

Mortgage Bond Types and Registration Procedure

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INTRODUCTION

The steps taken after receipt of an instruction from the bank and prior to registration of a mortgage bond vary from transaction to transaction, there are however certain steps which are uniform depending on the type of bond instruction and we set these out below, together with a brief explanation. This is not intended to be an exhaustive resume of all procedures in every transaction but is intended simply as a guideline.

NEW BONDS

A new bond registration takes place where a Purchaser purchases property and a mortgage bond is to be registered as a first bond to finance the purchase price. A new bond can also be registered by an owner if the property is unbonded or initially bought cash.

On receipt of a new bond instruction from the Bank (usually electronically), the Bond Attorneys will:

- Contact the client to advise of the receipt of the bond instruction and confirm the basic details of the mortgage bond to be registered;
- Contact the Transferring Attorneys and advise them of the amount available for guarantees and will simultaneously request a copy of the draft title deed and any specific guarantee requirements.

Once the Bond Attorneys are in receipt of the draft deed from the Transferring Attorneys, the documents can then be prepared for signature by the clients. Once the documents have been signed the Bond Attorneys are in a position to issue guarantees as requested by the Transferring Attorneys.

The Bond Attorneys further prepare the bond documents to be sent to the bank and the deeds office, provided that all the standard and special conditions imposed by the Bank have been met.

The Bond Attorneys then await confirmation from the Bank that the documents are in order and that they may proceed to lodge the bond.

The Bond Attorneys will wait for advices from the Transferring Attorneys that they are ready to lodge in the deeds office.

Once all parties to the transaction are in a position to lodge, lodgement is arranged in the Deeds Office for registration.

FURTHER LOANS

A further loan is one where the owner of property already has a bond registered over the property and is now loaning further funds from the bank who is the bond holder in respect of the first bond. The further mortgage bond is registered as a second (or third or fourth etc.) bond to secure the further loan by the bank to the owner of the property.

On receipt of a further loan instruction the Bond Attorney will request the title deed from the bank as the original deed needs to be lodged in the deeds office for endorsement.

In the interim documents are prepared for signature. The signed documents are submitted to the Bank for their approval. The bank may also impose special conditions which will have to be complied with prior to submission of the documents to the Bank.

Once the Bond Attorneys are in receipt of the original title deed and confirmation from the bank that they may proceed, the matter is lodged in the Deeds Office for registration.

SWITCHING BONDS

A switching bond is where a client has a bond with another bank and wishes to cancel that bond and change to a new bank.

The procedure here is that the first registered bond needs to be cancelled and the new bond registered. These two registrations take place simultaneously in the Deeds office and are attended to concurrently by the Conveyancers.

The Bond Attorneys will require the current bond account number to obtain cancellation figures from the existing bank. The existing bank will instruct an attorney on their panel to attend to the cancellation of the registered bond on their behalf and will send them the relevant title deeds and bond/s together with cancellation figures.

Should the bank not be in possession of the title deed and/or mortgage bond/s registration copies will have to be obtained from the relevant deeds office which may take some time. On receipt of copies of the title deed and cancellation figures the Bond Attorney will be in a position to prepare your documents for signature.

Clients should be aware that on average an amount of R4 500.00 is charged per bond cancellation but this amount varies according to the amount of the bonds being cancelled.

If the registered bond contains an access facility and the client wishes to draw funds from the account, the client should advise the Bond Attorney of same as early as possible as from the moment the cancellation figures are issued the registered bond account will be frozen and there will be no access to the relevant funds.

In terms of the National Credit Act Banks are entitled to 90 days' interest in lieu of notice. To avoid having to pay this notice interest, the Client should give the Bank 90 days' notice of their intention to cancel their bond. Should this notice not have been given, the client will have to pay or secure payment of the interest for this period to the Bank or delay the bond registration until this period has expired.

During the above process the client will be required to continue to pay the monthly bond installments. This money is, however, not lost and the bank will refund post registration any monies received in excess of the cancellation amount.

On receipt of the cancellation figures and copies of the bonds the Bond Attorney will prepare the documents for signature. Once these bond documents have been signed guarantees can be issued. Guarantees will then be sent to the cancellation attorneys and the bond documents will be prepared for lodgment and for submission to the bank in question.

SUBSTITUTION OF DEBTOR

Section 45 and section 57 of the Deeds Registries Act create certain situations whereby one debtor can substitute another under a registered mortgage bond. The substitution is effected by way of an endorsement against the existing bond.

Section 57 applies where the whole of the mortgaged property has been transferred to the new mortgagor and the mortgagor has not reserved any real right in the land. An example of this is where one joint owner of property sells his share to his co-owner and the purchaser substitutes the seller under the existing bond and takes full responsibility under the bond. It is important to remember that the purchaser must qualify for the full bond amount on his own merit, i.e. must prove affordability to the bank.

Section 45 of the Deeds Registries Act allows for transfers by endorsement in certain circumstances. The first is a Section 45(1) transfer whereby property which formed part of a joint deceased estate and the surviving spouse has acquired the deceased spouse's share in the property. Section 45 bis(1)(a) applies to the situation where spouses who were married in community of property get divorced and one spouse is entitled to the other spouses share in the property in terms of the divorce order. In these scenarios the bond will also be endorsed to reflect the substitution of debtor under the bond.

Section 45 and 57 Endorsements are usually charged at 75% of the conveyancing tariff.



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