

Partition Transfers

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INTRODUCTION

Partition transfers in South Africa are a specialised form of property transaction governed primarily by the Deeds Registries Act 47 of 1937. Partition of land takes place when two or more people (joint owners) who own in undivided shares the whole of any piece or pieces of land, have agreed to partition such land. This process is legally distinct from a conventional sale and has important procedural, financial, and legal implications.

WHAT IS A PARTITION TRANSFER?

A partition transfer is the legal process through which co-owned property is subdivided or otherwise allocated such that each co-owner receives a defined portion in place of their undivided share.

TWO FORMS

Partition of land can take two forms, depending on whether the joint owners own shares in the whole of a piece of land or shares in various pieces of land. When the joint owners own shares in the whole of a piece of land, the land must first be subdivided, in order to enable them to partition the land, meaning the subdivisional diagrams for the relevant portions must first be drafted by a land surveyor and approved by the Surveyor General.

When joint owners own shares in various pieces of land the land need not be subdivided, as it already consists of various pieces of land which makes partition easier and less costly.

LEGISLATION

Sections 26 to 30 of the Deeds Registries Act 47 of 1937 set out the procedure for the partitioning of land held under joint ownership.

The act stipulate that partitioning may be carried out by virtue of an agreement between the joint owners or by virtue of an order of court. Court orders are sought and can be obtained where the co-owners are unable to reach an agreement on the partitioning of land.

REQUIREMENTS

- There must be an agreement of partition, that is the joint owners must have agreed to partition the land in question, unless partitioning is effected by an order of the court.
- Each party consenting to the partition must have a share in the property.
- The land must be capable of being partitioned.
- There must be a redistribution of land.
- Each party must receive land or a share in land
- The co-owners must be competent to enter into partition agreement.
- Partition transfers must be registered simultaneously in the Deeds office.
- All the joint owners together must own the whole property.

DOCUMENTS TO BE LODGED AT THE DEEDS OFFICE

- Deeds of partition transfer
- Power of attorney
- Title deed of the land to be partitioned
- Subdivision diagrams
- Consent to subdivision by the Municipality
- Transfer duty receipt or exemption certificate
- Rates clearance certificate

MORTGAGE BONDS ON PARTITION

When there is a mortgage bond registered over the land to be partitioned, the mortgage bond must either be cancelled, replaced with a new bond or a portion of land awarded on partition must be substituted for the share. The mortgagee (Bondholder) must give written consent to the partition of land and the substitution of the land awarded on partition to the mortgagor for the share(s) mortgaged.

CONCLUSION

Partition transfers are an important part of South African property law, as they allow co-owners to divide property in a fair and orderly way. They are governed by the Deeds Registries Act 47 of 1937 and require proper planning, legal assistance, and compliance with relevant

laws. When done correctly, they provide a practical way for co-owners to obtain separate ownership without needing to sell the property.



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