

# *MC Sellers Guide*

*Revised May 2022*



**M.C. VAN DER BERG** INC  
INC  
**ATTORNEYS, CONVEYANCERS & NOTARIES**  

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*Your Property Attorneys*

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**Legal indemnity – M.C. van der Berg Incorporated has compiled this MCSellersGuide to provide general legal information regarding the sale of immovable property. It must not be construed as being advice applicable to your specific transaction. Furthermore, it does not bind us, the banks, or any other party. Changes in legislation, procedures and processes are frequent and readers are advised to contact us to ensure they obtain advice that is correct and up to date.**

## 1. Introduction

M.C. van der Berg Inc. provides this MCSellersGuide free of charge with the purpose of introducing our firm and supplying important information to you, the prospective seller. This guide will assist estate agencies to comply with their obligations in terms of the Consumer Protection Act (CPA) as well as the Property Practitioners Act (PPA).

**Because we know you are probably busy, we have taken the opportunity to highlight certain aspects that we know require your immediate attention should you receive an offer to purchase (OTP).**

The MCSellersGuide contains general information you need before you accept an OTP. The information relating to the process after you have accepted the OTP, in other words the transfer process, is contained in a guide known as the MCQuickGuide, which will be forwarded to you once you have instructed us to attend to the transfer of your property. These guides are also available on our website at [www.mcvdberg.co.za](http://www.mcvdberg.co.za) for your convenience.

We trust that you will find the information contained in this guide useful. Our hope is that sharing our expertise and information will result in a mutually beneficial business relationship. We will gladly guide you through the labyrinth of laws, rules, regulations, and contractual requirements that accompany the sale of your property.

**We offer a free consultation to discuss your transaction.**

## 2. M.C. van der Berg Incorporated – An Introduction

**M.C. van der Berg Inc. Attorneys, Conveyancers and Notaries is a well-established law firm specialising in property law since 1999.** While our head office is in Centurion, we also have offices in Midstream and Garsfontein (Pretoria East). Our company mainly conducts business in the greater Pretoria, Centurion, Ekurhuleni, Midrand, Johannesburg, and surrounding areas.

**The primary focus of our practice is giving legal advice pertaining to property law, drafting agreements, attending to property transfers as well as registration of new bonds and cancellation of existing bonds.**

*We also attend to the registration of trusts, estate planning, drafting of wills, administration of deceased estates, registration of ante-nuptial contracts and other notarial services.*

In our view, feedback is the backbone of good customer relations and service excellence!

**M.C. van der Berg Inc. undertakes to attend to the transfer of your property in a professional and diligent manner and keep you informed with relevant and contextualised feedback on a regular basis.**

*For more information on M.C. van der Berg Inc. please visit us at [www.mcvdberg.co.za](http://www.mcvdberg.co.za).*

## 3. Terminology

### 3.1 Attorney description

**Attorney** – A person who is admitted by the High Court as an attorney and practises law.

**Conveyancer** – An attorney who passed an additional exam and is admitted by the High Court as a conveyancer and who specialises in property law.

### 3.2 Contract terms

**Offer to purchase (OTP)** – This is a written offer that the purchaser makes to you, the seller, to buy your property. It specifies all the purchaser's conditions relating to purchasing the property.

**Purchase agreement** – Once a seller accepts the offer to purchase (OTP) in writing, it becomes the purchase agreement. This is also known as a 'deed of sale'.

### 3.3 Estate Agency terms

**Estate agent:** The natural person instructed and authorised to market your property, advising on all aspects of the transaction to facilitate the successful sale of your property.

**Estate agency:** The business the estate agent works for. Also known as a business property practitioner.

**Property Practitioners Act:** Act 22 of 2019 (PPA): Legislation regulating the Property Practitioner industry since 1 February 2022.

**Property Practitioner:** Various role players in the property sector, as defined by the PPA. An estate agent falls within this description.

**Property Practitioners Regulatory Authority (PPRA):** Property Practitioners' governing body. This is also the statutory body who will facilitate disputes between Property Practitioners and the public.

**Fidelity Fund Certificate (FFC):** A certificate issued by the PPRA to every estate agent and estate agency which certifies they comply with all legal and training requirements set by the PPRA. Every estate agent and agency must hold a valid FFC to operate as such. It is your right as a seller to request the agent's FFC for verification purposes. If an estate agent does not hold a valid FFC, you should not do business with him/her.

**Code of Conduct:** Legislation which requires certain practical and ethical standards from Property Practitioners. An abridged version of the [code of conduct](#) can be found on our website.

### 3.4 Registration

An administrative act that takes place at the deeds office. The following transactions, where applicable, are registered simultaneously on a specific date at the deeds office: **Transfer, Bond registration and Bond cancellation.**

## 4. Your risk, your right, your choice

The transferring attorney plays a pivotal role in the successful completion of the transfer process. There are potential pitfalls in the process of selling and eventually transferring your property. Therefore, receiving the correct advice timeously, could protect you in the long run.

**As seller, you have the right to nominate a conveyancer to attend to the transfer of your property.** It is best to appoint an established, reputable law firm that specialises in property law. Make sure your conveyancing firm has the expertise to manage and expedite the transfer process while giving frequent and relevant feedback.

**The PPA prohibits estate agencies or agents to enter into an arrangement, formally or informally, to oblige or encourage a seller to make use of the services of a specific transferring attorney. Although it may happen that an agent recommends the services of M.C. van der Berg Incorporated we assure the seller that we do not have an arrangement with any estate agent or agency and that the interests of the seller and purchaser will be protected. Take note that this is only a recommendation and the choice of appointing a transferring attorney remains yours.**

**The most important aspect of our mandate is to transfer your property swiftly and effectively. In addition, we undertake to:**

- Act proactively by providing relevant information and weekly reports;
- Ensure that our requests are clear and unambiguous;
- Answer your emails and telephone calls within 24 hours;
- Provide easy access to our conveyancers;
- Assist you in Afrikaans or English, according to your preference; and
- Settle and make payment of the available proceeds of your transaction within 48 hours after registration at the latest. (Note that while payment usually takes place within 24 hours, bank systems can delay payments, in which case we will communicate the delay and make payment as soon as the funds are available).

## 5. Roles of the different attorneys

Various conveyancing firms and attorneys can be involved in a typical property transaction, depending on the nature of the transaction and the required actions in the deeds office. It is obviously much faster and convenient for the parties if only one law firm deals with all aspects of the transaction. The different role players are:

### 5.1 The Transferring attorney

The transferring attorney is the conveyancer responsible for the transfer of the property into the purchaser's name and is usually appointed by the seller.

**The transferring attorney's responsibilities are wide-ranging and include:**

- Ensuring that the parties comply with the terms of the agreement;
- Drafting the legal documents and overseeing the signature thereof;
- Obtaining the transfer duty receipt/exemption from SARS as well as the clearance certificates from the relevant municipality and HOA's (and sectional title body corporate, if applicable);
- Holding the deposit in trust and dealing with the financial aspects of the transaction;
- Co-ordinating lodgement of the documents at the deeds office once all the legal and contractual requirements have been met;
- Ensuring that the relevant certificates of compliance (COC's) are in place (e.g. the electrical-, electric fence- and gas certificates).

**M.C. van der Berg Inc. will gladly oversee your property transfer.**

### 5.2 The bond registration attorney

The bond registration attorney is the conveyancer who oversees the registration of the purchaser's bond.

Some banks will allow the purchaser to nominate an attorney to attend to the registration of the bond (such attorney must be on the bond registration panel of the bank involved). It simplifies the process if both the transfer and the bond registration is attended to by the same law firm.

**M.C. van der Berg Inc. serves on the bond registration panels of Absa, FNB, Nedbank, Standard Bank, HIP (Housing Investment Partners) and SA Home Loans, and we will gladly assist with the bond registration.**

### 5.3 The bond cancellation attorney

The bond cancellation attorney is the conveyancer who oversees the cancellation of the seller's bond (if applicable). The attorney firm attending to the cancellation on behalf of the seller's bank must be on that specific bank's bond cancellation panel.

**M.C. van der Berg Inc. serves on the bond cancellation panels of Absa, FNB, Nedbank and Standard Bank.** If we are appointed to oversee the transfer of the property, we also apply for the cancellation figures from the seller's bank and subsequently attend to the cancellation of the existing bond.

## 6. Before accepting the offer to purchase (OTP)

Once the offer made by the purchaser is accepted by you in writing, it becomes the purchase agreement. The purchase agreement together with legal principles and legislation create the rules that govern a transferring attorney's actions when your property is transferred.

**Scrutinise the offer before accepting it. Rather be safe than sorry!**

**Should you decide to appoint us to attend to your property transfer, we offer a free consultation to discuss the OTP.**

## 7. Rules of the game – the purchase agreement

The purchase agreement is the instruction that the parties give to the transferring attorney, and cannot be deviated from, unless agreed to by the parties in an addendum. Besides scrutinising an OTP before you accept it, be mindful of the following important aspects:

*Pro forma offers to purchase will usually contain a 'memorial' clause stipulating that the purchase agreement will constitute the complete and only agreement between the seller and purchaser and that any variations must be in writing to be valid.*

**Verbal amendments and variations to the purchase agreement are not enforceable and therefore should be set out in a written addendum. Our conveyancing experts can assist you with drafting legally correct addendums should the parties wish to amend certain clauses in the purchase agreement.**

## 8. Suspensive conditions

Sale agreements usually contain one or more suspensive conditions. The sale agreement will not be enforceable and binding if these suspensive conditions are not fulfilled completely and timeously.

Any deviation from the terms of a suspensive condition must be addressed in an addendum **before its due date**. Together with the estate agent, we monitor these dates carefully and negotiate and formalise any amendment to the existing conditions.

A sale agreement typically contains two types of suspensive conditions, namely the mortgage loan and clauses pertaining to the sale of another property.

### 8.1 Suspensive condition: Mortgage Loan

Purchasers seldom have the resources to pay cash when purchasing a property. Therefore, a sale agreement will often be made subject to the approval of a mortgage loan.

Approval of a mortgage loan will usually not take longer than a month, but circumstances may dictate a longer period. Each case should be assessed on its merits.

**The period allowed for the approval of a mortgage loan must serve both parties. On the one hand, it needs to be sufficient to give the purchaser a fair opportunity to obtain a loan, yet on the other hand it should not disadvantage the seller by removing the property from the market for a prolonged time.**

Take note that the OTP may contain an automatic extension clause, whereby the suspensive condition is automatically extended if the condition is not met within the initial timeframe given. Also, be mindful of whether the time allowed for bond approval is calculated as 'business days' or 'calendar days' (if not a fixed date).

Sometimes, *pro forma* offers to purchase may stipulate that the suspensive condition is deemed to be fulfilled once the bank approves the bond 'in principle' or when it issues a 'quotation' to the purchaser.

It's important to note that this condition is not in line with the provisions of the National Credit Act (NCA). The Act specifies that a loan is only formally granted when the borrower has accepted the quotation as far as it applies to the bond amount, expenses, interest, and repayment period. An accepted quotation is therefore necessary before it can be stated that the suspensive condition has indeed been fulfilled. This final grant must be obtained on or before the date set out in the purchase agreement.

### 8.2 Suspensive condition: 'Subject to the sale of another property'

A purchaser or the bank granting the loan often, for various reasons (e.g., affordability or availability of funds), requires that a currently owned property or a property owned by a linked person (spouse) or entity (e.g. trust or company) must first be sold and/or registered.

**If an OTP is made subject to the sale of a removed property, ensure that it is effectively dealt with in the purchase agreement to protect both the purchaser and seller.**



If an offer is subject to both the approval of a bond and the sale of a purchaser's property, do not permit delaying of bond approval until the sale of the purchaser's property. It is important to establish whether the purchaser qualifies for the loan as soon as possible.

Ask us or your estate agent to assist you in wording of the condition as it is technical in nature and often causes discord between a seller and a purchaser if not worded correctly.

## 9. Your next property

Do not commit yourself contractually to buying a new property before confirming that all suspensive conditions in the sale of your property have been met. If you intend to buy a new property it is sensible to ensure that your OTP is subject to the successful sale and registration of your present property, regardless of the progress of that transaction.

**If you are selling your property and purchasing a new property, ensure that the conditions and timeframes in both transactions are aligned.** You are welcome to contact us to assist you in this regard.

## 10. Fixtures and fittings

Distinguish between the terms 'fixtures' and 'fittings'. **Fixtures** are items that form part of the property and may not be removed when you relocate. E.g., curtain rails and swimming pool equipment. Fixtures are thus sold with the property. **Fittings**, however, are regarded as items that do not form part of the property, which means you can take them with you when you relocate. Purchasers and sellers often disagree on this issue because it is not always clear in which category a certain item fall.

Although there are broad legal principles that assist us to determine whether a particular item is deemed a fixture or a fitting, these legal principles are often not clear and also cannot cater for each and every unique situation. It is always advisable to clarify this matter in the purchase agreement.

**We recommend inserting an extensive list of fittings in the purchase agreement that you want to remove and that are not part of the sale. We further recommend that you supply your estate agent and potential purchasers with a copy of this list to avoid conflict later on.**

Some estate agents use *pro forma* purchase agreements that already contain a generic list of fixtures and fittings that are not specific to your particular transaction.

**Study this list carefully and delete or add items as applicable.**

## 11. Costs

**Although the purchaser is responsible for payment of the costs relating to the transfer of the property and bond registration, there are certain costs and miscellaneous charges which you are responsible for, and which must be paid before registration of a property can take place.**

Some of these charges are standard, but some depend on the circumstances of the transfer.

### 11.1 The most common charges which you may be responsible for are the following (see explanation below):

- Bond cancellation costs.
- Compliance certificates.
- Rates and taxes (City Council Clearance Certificate).
- HOA or Body Corporate Clearance Certificate.
- Estate Agent's commission.

### 11.2 Other costs which are not necessarily applicable to every transaction but that may be payable in certain circumstances:

- 4(1)(b) Application for rectification of a title deed, should there be any errors on the current title deed.
- Regulation 68(1) application for a copy of the title deed if the original is lost.
- Section 24(6) application: Extension of a Unit (where a sectional title unit was extended).
- Registration of a General Power of Attorney.
- Section 68(1) Application: Removal of a Title Deed Condition

An explanation of some of these costs:

#### 11.3 Bond Cancellation Costs

If a bond is registered over the property, it must be cancelled simultaneously with the registration of transfer. The costs of cancellation (approximately R4 500.00) are borne by the seller. This fee increases with each additional bond to be cancelled. The bond cancellation attorney attending to the cancellation of the bond is appointed by the bank where your bond is registered. Even if the bond/s is paid up, the cancellation must still be effected in the deeds office.

#### 11.4 Compliance Certificates

The seller is responsible for the costs of all compliance certificates. This includes an electrical compliance certificate as well as an electric fence-, gas-, beetle- and/or plumbing certificate (if applicable). The seller will also be responsible for repairs, if any, to be done for the relevant certificate(s) to be issued.

#### 11.5 City Council Clearance Certificate

A clearance certificate is issued by the city council after payment of the clearance figure, which will include rates and taxes for 3 months from request, as well as any outstanding amounts on the account (see paragraph 16). The seller is responsible for payment of the fee to issue the certificate as well as payment of the clearance figure. If there are serious issues to resolve pertaining to your municipal accounts or meters, it may be necessary to appoint a city council consultant to assist in obtaining the clearance figures and the issuing of the rates clearance certificate. A city council consultant's fee ranges between R800 and R1 200 or even more if there are serious issues to be resolved. The seller is liable for the consultant's fee.

#### 11.6 HOA and Body Corporate Clearance Certificate

If the property is situated in a sectional title development and/or an estate, a clearance certificate from the Body Corporate and/or Homeowners' Association (HOA) is also required. The seller is responsible for payment of the administration fee payable to the body corporate and/or HOA which usually amounts to between R1 000 and R1 500, but varies between different schemes and estates.

#### 11.7 Agent's Commission

If an estate agent brokered the transaction, the seller will be liable to pay commission as per the commission agreement. The transferring attorney will deduct the commission from the proceeds and pay it to the estate agency. The seller cannot unilaterally instruct the transferring attorney to withhold the commission or any part thereof after registration.

#### 11.8 4(1)(b) Application (Rectification of a Title deed)

If there is an error in the holding (current) title deed that needs to be rectified (for e.g., a spelling error in the property description or purchaser's name) this needs to be rectified before transfer can take place. The seller is responsible for the costs involved to rectify such error in the deeds office. The transferring attorney brings an application in terms of Section 4(1)(b) of the Deeds Registries Act on behalf of the seller and the costs involved for such rectification is approximately R2 580.

#### 11.9 Application in terms of Regulation 68(1) for Lost Deeds

If the original holding title deed is lost, the transferring attorney needs to apply to the deeds office for the issuing of a certified copy of the title deed. This involves advertisement in the local newspaper where the property is situated and could also involve advertisement in the Government Gazette if the Deeds Office also does not have a copy of the title deed. The costs for such advertisement start at approximately R 700, but advertising requirements and costs differ. The transferring attorney thereafter brings an application to issue a certified copy of the lost title deed and the fee for the application amounts to approximately R1 500. If the bank is responsible for misplacing the documents, they will carry the cost.



#### 11.10 Section 24(6) Application (To amend a sectional title scheme)

If the owner (or a previous owner) of a sectional title property made improvements to the property and the extent of the property consequently increased, the sectional plans must be amended. The seller is liable for the costs involved to have the amended sectional plan of extension drafted by a land surveyor, the costs of obtaining a SPLUMA certificate by a town planner, as well as the application to have the amended plan registered at the deeds office by a conveyancer. The approximate costs involved for obtaining a SPLUMA certificate is R6 000 and an additional R6 500 for the application by the conveyancer. The cost of the land surveyor will depend on the extent of the property to be surveyed.

#### 11.11 General Power of Attorney

If you want to authorise another person to sign documents on your behalf a general power of attorney must be drawn up and registered in the deeds office. The seller will be liable for the fee for drafting and registration of said power of attorney which amounts to approximately R2 000. Typically, a general power of attorney is required if the seller will not be available to sign the transfer documents. Please alert the conveyancer should you foresee that you will not be available during the transfer process to attend to signature.

#### 11.12 Section 68(1) Application – Removal of Conditions

If the holding title deed contains a condition which must be removed simultaneously with the transfer of the property as the condition is not applicable anymore, the transferring attorney must obtain a consent for removal from the institution (e.g. Municipality) in whose favour the title deed condition is registered. The institution charges a fee for this consent. Furthermore, the transferring attorney will bring an application in terms of Section 68(1) of the Deeds Registries Act for endorsement of the title deed that the condition is removed from the title deed. The costs for such an application is approximately R1 600.

### 12. Cancelling your existing bond

The existing bond over a seller's property must be cancelled at the deeds office to enable the simultaneous, unencumbered transfer of the property into the purchaser's name. The misconception exists that a bond does not have to be cancelled if there is no outstanding balance on the loan account. There will still be a formal bond cancellation in the deeds office.

The transferring attorney obtains the outstanding balance (cancellation figures) from the seller's bank and ensures that guarantees are issued to settle the balance on registration. The seller's bank will only consent to the cancellation of the existing bond once it receives these guarantees.

**In terms of the National Credit Act, the bank may charge penalty interest (equal to three month's interest on the seller's bond) if it is not given 90 days' notice of the intention to cancel the bond.**

If the bond is cancelled during the 90-day period, *pro rata* penalty interest will be charged for the remainder of the penalty period. For example, if 90 days' notice was given and the bond is cancelled within 30 days from date of such notice, penalty interest will be charged on the remaining 60 days. Any overpayment to the bank on this, or any other amount, will be refunded by the bank within a few days of registration.

The seller can give written notice to the bank of his/her intention to cancel the bond. Our standard practice is to also notify the bank once we receive an instruction to transfer the property and the seller confirms the bond account number.

**If you are concerned that you will be liable for penalty interest, feel free to send a request to [bc@mcvdberg.co.za](mailto:bc@mcvdberg.co.za) together with the bond account number. We will request cancellation figures which serves as notice of the seller's intention to cancel the bond. The 90 days' notice period will commence once we have issued this notification.**

**The seller will not be able to access any additional funds from his/her bond account once cancellation figures are requested or this notice is given.**

### 13. Tax related matters

#### 13.1 Value Added Tax (VAT)

VAT is only payable on the purchase price if the seller is a property trading enterprise registered for VAT and the property sold is a supply in terms of the VAT Act. Usually, only developers and speculators are liable to pay VAT. Sellers should contact their auditors if they are uncertain about whether they are liable to pay VAT. If it is a VAT transaction, it must be clear whether the purchase price includes VAT.

#### 13.2 Transfer duty

If you are not registered for VAT or the property is not sold as a VAT supply, the purchaser will be liable to pay transfer duty. The transferring attorney collects the transfer duty from the purchaser and pays it to SARS. SARS then issues a transfer duty receipt which the transferring attorney lodges at the deeds office.

#### 13.3 Capital Gains Tax (CGT)

CGT is a tax that may be payable by the seller if the proceeds are deemed to be capital in nature. Most property transactions where the seller does not trade in property fall in this bracket. The calculation of CGT is complex as the inclusionary rates, income tax rates and subsequently the effective rates, differ from entity to entity. There is a rebate of R 2 000 000 applicable when a natural person disposes of his/her primary residence. The calculation of CGT is further complicated by expenses and costs that can be added to the base cost and others that can be deducted from the proceeds. We suggest consulting with your financial consultant with the appropriate knowledge and insight into your financial affairs to properly advise on CGT payable. Note that CGT is not paid over to SARS by the transferring attorney. The seller will make payment thereof (if payable) with his/her next tax return.

#### 13.4 Income Tax

Income tax will only be payable if the seller ventured into a scheme of profit making. In other words, a developer or speculator may become liable for income tax (and not for capital gains tax). A seller who has recently sold other properties, must consult his/her financial consultant to establish whether the proceeds forthcoming from such further sales will be deemed income (in which case income tax is payable) or capital (in which case capital gains tax is possibly payable).

### 14. South African Revenue Service (SARS)

SARS carries out a risk analysis on both the purchaser and the seller before issuing the transfer duty receipt/exemption.

**Take note that SARS's systems are integrated and accordingly no transfer duty receipt will be issued if you have outstanding tax matters.**

All tax-related matters (whether private or otherwise), including tax returns and payments, should therefore be up to date (for previous filing seasons) as failure will delay the transaction. If this is not the case, you should attend to your tax matters immediately.

### 15. Compliance Certificates (COC's)

The Occupational Health and Safety Act (OHS) requires that certain compliance certificates must be in place when an immovable property is transferred. If any of these certificates are required, the transfer attorneys will not proceed with transfer until it has been obtained. The purchaser's bank may also require some of these certificates prior to lodgement of the transaction at the deeds office. Ensure that qualified, registered, and trustworthy contractors are appointed as the seller will remain liable if these certificates are issued inaccurately. We recommend that the agreement of sale regulates delivery of these certificates well before lodgement of the transaction in the deeds office to enable the parties to address any issues timeously.

**Repairs may be necessary before these certificates can be issued. We recommend obtaining the necessary certificates as soon as possible to avoid any unnecessary delays in your transaction.**

### 15.1 Electrical Compliance Certificate

The OHS requires a seller to provide a purchaser (or transferring attorney) with an electrical certificate of compliance on the date of occupation or registration, whichever is earlier. This certificate certifies that the electrical installation is safe and complies with SABS standards.

Although the certificate makes no reference to the working order of the installation or to any appliances such as stoves and geysers, the specific clause relating to an electrical compliance certificate in your purchase agreement may require that these installations and appliances are in working order. In this case you are obliged to ensure that it is indeed functional. If you already have an electrical compliance certificate, it may not be older than two years on date of registration of the property.

If any alterations or additions were made to the electrical installation after the certificate was issued, it becomes void, and you will need to obtain a new or additional certificate. This certificate may also be required by the purchaser's bank prior to lodgement.

### 15.2 Electric Fence Compliance Certificate

When transferring a property with an electric fence, the OHS requires a certificate verifying that the installation is in accordance with the relevant SABS standards. The seller needs to deliver this certificate, to either the purchaser or transferring attorney. Note that it is not the same as an electrical certificate. While an electric fence compliance certificate is transferable, it becomes void if any alterations or additions are made to the installation. This means a new certificate will have to be issued.

Where property is situated within a sectional title complex, such a certificate will be obtained from the body corporate.

### 15.3 Gas Certificate

If your property has a gas installation, the OHS requires that you provide the purchaser or transferring attorney with a gas certificate before date of occupation or registration, whichever is earlier. This certificate must certify that the gas installation is safe and complies with the relevant SABS standards.

A new gas certificate is required every time the owner or user of the installation changes. **In other words when a property is sold, a new gas certificate is required.**

The company who installed the gas appliance or reticulation can issue the gas certificate. Alternatively, any institution specialising in the installation of gas equipment will be able to issue these certificates.

The cost of this certificate and any expenses relating to the repair of the gas installation will be for your account.

### 15.4 Plumbing- or water certificate (only applicable to properties in the Cape Town area)

The issuing of a plumbing- or water certificate in the municipal jurisdiction of Cape Town is a prerequisite when transferring any properties in this area. According to the Cape Town Water By-Laws of 2010 (Section 14), sellers are obliged to obtain a plumbing certificate from a certified plumber.

### 15.5 Beetle Certificate (only applicable to properties situated in coastal areas)

Purchase agreements for coastal properties usually contain a clause requiring a beetle certificate, which guarantees the absence of beetles in or on the property. If this applies to your property, make sure that the certificate includes a guarantee with regard to all beetles and not only to a specific species.

The cost of the certificate and/or other expenses relating to the extermination of beetles will be for the seller's account.

## 15.6 Declaration regarding Invasive Species

In terms of Section 29(3) of the Alien and Invasive Species regulations of 2014, a seller has to notify a purchaser in writing, prior to concluding a sale agreement, of the presence of any listed invasive species on the property. This list is available on the website of the Invasive Species of South Africa (ISSA) at [www.invasives.org.za](http://www.invasives.org.za).

## 16. Municipal accounts

The transferring attorney applies for a clearance figure, which includes all rates and taxes and charges for utilities in arrears, as well as an advance payment for three months. The municipality issues a clearance certificate after payment of the clearance figure.

**If your account is in arrears, we will provide you with a figure that includes arrears. Do not pay arrears whilst we are in the process of obtaining the figures as it will confuse matters and may lead to double payments.**

**If you appoint us to attend to your property transfer, we will advise how the municipal accounts can be closed in the most effective way.**

## 17. Homeowners' Association (HOA)/Sectional Title Body Corporate

As with your municipal account, your property cannot be transferred without a certificate from the HOA and/or body corporate confirming that your levies are paid up.

The transferring attorney applies to the HOA/body corporate to issue the clearance figure, which includes the levies in arrears as well as an advance payment. After the clearance figure is paid to the HOA/body corporate, a clearance certificate will be issued.

**If you are in arrears with your levies at the body corporate or HOA, wait for us to provide a figure that includes all the arrears instead of paying the arrears yourself.**

## 18. Occupation and occupational rent

The term '**occupation**' refers to the date on which a seller is obliged to give vacant possession of the property to a purchaser.

Once the parties agree in the purchase agreement to give occupation on a specific date, they are contractually and legally bound to this date, unless they enter into an addendum at a later stage. The transferring attorney cannot change conditions unilaterally or at the will of either party.

**The parties should contractually agree on the requirements that must be in place before occupation can take place. Examples of such requirements are obtaining loan approval and paying the deposit. M.C. van der Berg Inc. will monitor the process and ensure that the requirements are met before the purchaser takes occupation. Evicting unwanted occupants in the event of a transaction not proceeding, is a costly and time-consuming exercise!**

*Occupational rent* refers to the amount payable by either party occupying the property while it is registered in the name of the other party. Usually, the purchaser will pay occupational rent to the seller if the property is occupied before date of registration.

There is no established rule or percentage occupational rent payable, thus the parties can negotiate and agree on any amount. We suggest that you negotiate the amount of occupational rent in the purchase agreement, even if the occupation date is set for registration.

**A purchaser cannot open a utility account at the local authority in his/her name before registration, therefore the seller will remain liable for payment of the utility account until registration. The parties must therefore come to an agreement for reimbursement by the purchaser for consumption.**

## 19. Insurance

As an owner, you are responsible for the short-term insurance over your property. Do not cancel your short-term insurance before registration. Should you cancel your short-term insurance before registration, the property is not insured against any damages that may arise in the period between cancellation of the insurance and transfer of the property. If a purchaser occupies the property before registration, it can increase your exposure to risk, and insurance is therefore essential.

## 20. The Agent and Mandates

You will probably appoint an estate agent to market and sell your property. The services of an estate agent can be invaluable, and sellers often underestimate the intricacies of the marketing and legal process. An estate agent may not operate without a valid FFC. Estate agents are required to comply with certain educational and training requirements which means that an estate agent holding a valid FFC should be able to deliver a professional service, complemented by their marketing, legal and ethical background. Agents should on request show their valid FFC to you. Estate agents must act in accordance with their code of conduct.

An estate agent may only market and sell a property if mandated to do so. The mandate is the authorisation and instruction to represent the seller.

**The mandate will usually be contained partly or fully in the mandate agreement, which the seller signs and the agent accepts when he/she appoints the estate agent.**

Although an open mandate (see directly below) can be given verbally, it is bad practice and should rather be contained in a written document to create certainty about the actual existence of the mandate and important terms such as the commission payable.

A sole mandate and an exclusive mandate (see below) must be in writing and signed by the seller.

In practice, there are four types of mandates.

### 20.1 Open mandate

In the case of an open mandate, the seller authorises several agencies to market the property. The agent who is the effective cause of the sale will be entitled to commission. The seller may also sell the property himself.

### 20.2 Shared mandate

In this case, the seller authorises a limited number of agencies (two or three) to sell the property. The agency that is the effective cause of the transaction will be entitled to commission. The seller may, in this case, also sell the property himself.

### 20.3 Sole mandate

In the case of a sole mandate, the relevant agency and the seller agree that the agency has the right to market and sell the property to the exclusion of all other agencies. Due to the restrictive nature of a sole mandate, it is usually granted for a limited period. If another agency sells the property during this period, the seller will remain liable for paying commission to the sole mandatory.

A sole mandate does not limit the seller to sell the property privately, with the understanding that this excludes purchasers introduced by the agent.

A sole mandate must be in writing, signed by the seller, accepted by the estate agent, contain a start and end date as a calendar date and include or refer to a marketing plan.

### 20.4 Exclusive mandate

This type of mandate is similar to a sole mandate with the exception that the seller in addition to appointing a specific agency to market the property to the exclusion of all other agencies, also cannot market and sell the property during the mandate period. The requirements for this mandate are the same as a Sole Mandate.

It is advisable for the seller to have the mandate scrutinised as it regulates the legal relationship between the seller and the agent.

## 21. Commission – liability

The seller expects an estate agency to market the property in an effective and professional manner. Estate agents earn their living from commission, which motivates them to put in their best efforts when marketing properties.

**If not managed correctly, commission can cause problems between agents and sellers and result in a legal dispute.**

### 21.1 Commission in sole and exclusive mandates

Giving a sole or exclusive mandate to a specific agency to market your property means you should refrain from marketing and/or selling the property through another estate agency.

An estate agent who is given a sole or exclusive mandate dedicates his/her attention, time, and resources to marketing and selling your property. Aside from the agency incurring expenses in this process, the agent also loses other opportunities because of his/her intensified efforts and commitment to market and sell your property. If you give an agency a sole or exclusive mandate, you will remain contractually liable to pay commission to the mandated agency if another agency sells the property during the mandate period.

You can also be held liable for the commission if you sell the property to someone who was introduced to the property during the sole or exclusive mandate period after the mandate lapses.

### 21.2 Double commission

Often the same prospective purchaser is introduced to the property by multiple agencies. The general rule is that the estate agency who is the effective cause will be entitled to the commission. It is not always clear who the effective cause is and this may result in a commission dispute between the various agencies and may even result in a double commission claim against the seller.

Where a second or subsequent agent introduces a purchaser, who has already been introduced to your property, you should disclose this information to the second agent. To this end it is advisable to request that the agent provides a list of names of everyone introduced to your property. This enables you to verify if another agency previously introduced a purchaser before you accept an OTP. Remember that small slip-ups could result in expensive double commission claims!

### 21.3 Private sale – commission claim

It sometimes happens that a purchaser contacts you directly to purchase the property while you are unaware that an agent initially introduced this purchaser. A purchaser may deliberately withhold this information in an attempt to avoid paying commission. When the agency later discovers that the purchaser who was initially introduced to the property bought it privately, it is highly likely that they can and will claim commission from you.

In the case of a private sales transaction, it is advisable to include a clause in the OTP in which the purchaser verifies that he/she was not introduced to your property by any estate agent and furthermore, that he/she indemnifies you against any possible commission claim, in which case the purchaser will be liable to pay the commission.

### 21.4 Deceitful behaviour

Some dishonest individuals who are interested in a property advertised by an agent might send family members or business associates to view it. In this scenario, the actual purchaser will make a sudden appearance and make an offer directly to the seller without collaborating with the estate agent. Their intention is to evade paying commission.

Beware of this practice, as it is not only unethical, but can result in you being held liable for the estate agent's commission in certain circumstances.

## 22. Building plans

Although the National Building Regulations and Building Standards Act requires building plans to be approved, there is no statutory requirement that local authority approved, as-built building plans must be in place before the property can be marketed, sold or transferred. If however, the seller is aware of the fact that building plans are not approved as-built, the immovable property condition report requires disclosure thereof.

A purchaser who makes an offer on your property may make it conditional upon the delivery of the approved plans. Banks are also increasingly requiring approved building plans as part of the loan conditions.

Often sellers are not aware that building plans are to be updated for structural alterations to the property such as building garden walls, erecting a Wendy house or Lapa and even building a swimming pool.

Should the purchaser or bank require approved plans, it **will delay your transaction, as it takes approximately 6 months for approval**. In the case of sectional title units, the consequences can be even more severe as both building plans and sectional title plans need to be updated and approved.

## 23. Town planning and legal compliance

Should you be required to update building plans it is important to note that there might be other town planning and legal challenges during the approval process including, but not limited to:

- Building line relaxation.
- Permission for servitude encroachment.
- Servitude cancellation application.
- Removal of Restrictive Conditions contained in the title deed.
- Rezoning to increase allowable building controls (coverage/FAR/height).
- Permission for an additional dwelling unit (especially relevant with sectional titles with 2 units).
- Engineer certificate for swimming pool (dolomitic areas).

**Compliance is a specialized field, and we recommend that you contact iCompli2sell to assist you timeously to ensure that your property is compliant and to avoid delays later in the process. iCompli2sell will assess the property and supply a Property Compliance Vetting Report to identify and address issues and assist with building plan approvals.**

**For further information regarding the services that iCompli2sell offers, visit [www.icompli.biz](http://www.icompli.biz) or contact iCompli2sell directly at [helpme@icompli.biz](mailto:helpme@icompli.biz) or 086 006 1062.**

## 24. FICA (Financial Intelligence Centre Act) and POPI (Protection of Personal Information Act)

### 24.1 FICA

**'FICA'** is an acronym for the 'Financial Intelligence Centre Act'. The FIC Act requires that certain individuals and institutions like attorneys, banks and estate agents verify certain information and keep records thereof. Our first letter to you contains a list of original FICA documents which you need to bring along when you sign the transfer and bond documents (if applicable) at our office.

Furthermore, we have a statutory obligation to disclose and report suspicious transactions. The primary objective of FICA legislation is to prevent money laundering and the flow of income earned from illegal activities.

**Do not become involved in a transaction where a purchaser offers to pay an amount in cash directly to you. Purchasers that do not want to disclose such payments are probably doing it as a form of money laundering or to avoid paying transfer duty to SARS. If you are involved in such a transaction, you would be assisting the purchaser to evade tax and take part in money laundering yourself (albeit unwittingly).**



FICA legislation obliges transferring attorneys to report transactions involving cash payments of R25 000 or more to the Financial Intelligence Centre (FIC). Not all cash deposits are necessarily obtained from illegal activities. Provided it is disclosed in the OTP, declared to the FIC and paid into our trust account, you will be protected.

## 24.2 POPI

**‘POPI’** is an acronym for the ‘Protection of Personal Information Act’. In terms of this Act, we need your consent to process your personal information (i.e. your identity number, contact details, email address etc.). We will request this consent when you sign the transfer, bond cancellation and/or bond documentation (if applicable) at our offices. We will only process your information for the purpose of property transfers, bond cancellation and other related matters.

## 25. Consumer Protection Act (CPA) and Property Practitioners Act (PPA)

The primary objective of the CPA is to protect ‘consumers’. The CPA, however, does not regulate all transactions and business relationships and not all people and entities entering into a business transaction are protected by the act. A property transaction where the seller sells the property in the normal course of business will fall within the ambit of the CPA. Generally, therefore, the CPA will not be applicable to the seller/purchaser relationship unless you, as the seller, are a property developer or speculator.

Estate agents provide a service to both the seller and the purchaser in the normal course of their business. Therefore, the CPA regulates the relationship between the seller and the agent on the one hand, and the purchaser and the agent on the other hand. We compiled this MCSellersGuide to assist estate agents to comply with this requirement.

## 26. Defects

### 26.1 Understanding defects

The legal principles relating to defects are influenced by an array of legislation and legal principles depending on various factors.

In this guide we only discuss the legal position for a run of the mill property transaction. i.e. where the property is sold by the person in the street through an estate agent. The legal position differs if the property is sold directly by the seller, as the purchaser then loses some statutory protection. The legal position also differs vastly if the property is sold by a developer or a speculator.

The term “defects” includes both physical defects e.g., cracks and leaks as well as regulatory measures e.g., building plans.

There are two categories of defects and the legal position pertaining to each category differs:

1. **Patent defects** are defects that are visible or detectable with a reasonable inspection. A typical example is a visible crack in a wall. Patent defects can also be a non-visible but detectable defect like a dysfunctional patio door. It may also be the absence of regulatory measures e.g. building plans that are not approved.
2. **Latent defects** are defects that are neither visible nor detectable with a reasonable inspection. A typical example is a leaking roof or even a visible crack in a wall concealed by furniture.

### 26.2 The seller’s obligation to disclose certain defects

The seller must disclose certain defects he/she is aware of to the purchaser before the purchaser makes the offer, namely:

- All latent defects and
  - Patent defects of a significant nature.
- } 

Of which you are aware

The disclosure of these defects must be done in the Immovable Property Condition Report (IPCR).

If you have not lived in the property for a significant amount of time, same must be declared on the report and it is advisable to request the occupant of the property to supply information on certain

aspects. You, as the owner of the property will still be able to supply certain information (e.g., repairs which you commissioned, regulatory matters etc.)

The seller **is protected** against claims for those defects:

- Disclosed in this report, unless he/she contractually agrees to attend thereto;
- He/she was not aware of;
- Which are not required to be disclosed.

The seller **is not protected** against claims for defects

- Required to be to be disclosed but were not;
- Covered by written contractual warranties
- Contractually undertaken to be repaired.
- Concealed to deceive the purchaser

### 26.3 Immovable Property Condition Report (IPCR)

If an estate agent is mandated to market and sell a property, the seller must, in terms of section 67 of the PPA, disclose the 'defects' as required in the prescribed IPCR.

**The estate agent must deliver the completed and signed IPCR to the purchaser before the purchaser makes the offer. The purchaser must acknowledge receipt of the IPCR. The IPCR must be incorporated into the agreement and form an integral part thereof.**

The IPCR requires the seller to disclose defects of a significant nature he/she is aware of. These defects imply any defect, whether patent or latent that would or could significantly:

- have a deleterious or adverse impact on, or affect, the value of the property;
- impair or impact upon the health or safety of any future occupants of the property; or
- shorten or adversely affect the expected normal lifespan of the property, if it cannot be repaired, removed, or replaced.

In addition to the defects disclosed as set out in the IPCR, the seller must, in terms of the common law, also disclose all other latent defects he/she is aware of, regardless of whether they are of a significant nature or not.

**The seller will only be required to attend to the defects agreed to in the agreement. The seller cannot be held liable for any defects disclosed as such.**

**If the IPCR is not completed and signed by the seller, it is deemed that the seller did not disclose any defects and the seller may be held liable for the defects he/she was aware of but did not disclose.**

Even though it is only a requirement to complete the IPCR if an estate agent is involved in the transaction, it is advisable to complete this document even when no estate agent is involved as it offers protection to both the purchaser and seller in a transaction.

### 26.4 Property Report by a specialist or property inspector

The purchaser is entitled to obtain a specialized report from a qualified professional at his/her own costs before making an offer. Unless agreed thereto, the seller also does not have an obligation to attend to any of the defects contained in the specialized report unless agreed thereto.

**TIPS:**

- **Complete the IPCR when estate agents list your property.**
- **Disclose all latent defects you are aware of.**

- **Disclose all patent defects of a significant nature as set out above.**
- **Study the report carefully to verify that you do not give any unnecessary guarantees or undertakings to repair, replace, or remove any defects.**

**You can obtain the IPCR drafted by our firm on our website at: [www.mcvdberg.co.za](http://www.mcvdberg.co.za).**

## **27. How to facilitate an expedient transaction**

**There are several things you can do to assist us in ensuring that your transaction runs smoothly, such as:**

- Providing your FICA and any other documentation to all parties involved on request;
- Supplying your bond account number;
- Immediately supplying your latest rates and taxes account and if applicable, a photo or screenshot of your pre-paid electricity meter;
- Provide us with photos of water and/or electricity meter readings;
- Signing documents as soon as possible when requested to do so;
- Notifying us when you will be unavailable or out of town for purposes of signing documents;
- Transferring the clearance figure amount when requested;
- Obtaining and forwarding the relevant compliance certificates timeously;
- Ensuring that you have an income tax number, if required to do so, and providing it to us immediately;
- Ensuring that your tax affairs at SARS are in order;
- Confirming that your building plans are updated.

## **28. Message from the directors**

The directors of M.C. van der Berg Inc. trust that this MCSellersGuide has provided you, our valued client, with essential and useful information.

We furthermore trust that this informative guide, together with our professionalism, effectiveness and expertise will result in a hassle-free, pleasant, and exceptional business experience.

**We invite you to put your trust in M.C. van der Berg Inc. You are welcome to contact us if you have any queries. Visit our website at [www.mcvdberg.co.za](http://www.mcvdberg.co.za), contact us on 012 660 6000 or send an email to [info@mcvdberg.co.za](mailto:info@mcvdberg.co.za).**

## COMPLIANCE RESPONSIBILITY

The owner of a property has the responsibility to ensure that the property complies with all legal requirements, for example, building plan and town planning compliance matters. Non-compliance can lead to the rejection of insurance claims in the case of damage. It can furthermore cause a sale transaction to fail, be delayed, or even lead to expensive, prolonged litigation.

## YOUR COMPLIANCE SPECIALIST

Consider appointing iCompli2sell, a compliance specialist company, to ensure that your valued asset is legally compliant. We can assist purchasers and sellers to ensure that legal measures like zoning, servitudes, building lines, building plans, site development plans, sectional plans etc. are in order. Our professional team consists of town planners, architects, draughts-persons, engineers, conveyancers, and land surveyors who will investigate and assess each case, based on its merits.

### LEVEL 1

#### PROPERTY COMPLIANCE VETTING

To establish the compliance status of your property:

- ✓ The owner appoints and authorise iCompli2sell to obtain copies of the required building plans, zoning certificate, SG Diagram, Sectional Plans and Title Deed.
- ✓ iCompli2sell will conduct a site inspection to determine if the structures on site correspond materially with the approved building plans.
- ✓ Thereafter our professional team will vet the compliance of the property.
- ✓ You will receive a comprehensive vetting report pertaining to your property which will include non-compliance matters, recommendations, cost estimates and timeframes to ensure property compliance.

### LEVEL 2

#### PROPERTY CONSULTING SERVICES

To resolve property compliance issues:

- ✓ iCompli2sell can be appointed if the cost estimate provided is approved by the owner.
- ✓ iCompli2sell will co-ordinate the project, appoint the necessary service providers and communicate project status progress continuously.
- ✓ Compliance documentation will be provided to the property owner as the non-compliance matters are resolved, to ensure successful marketing or registration of the property.

### LEVEL 3

#### BRIDGING FINANCE

We can assist in providing funding for the costs involved in the vetting as well as possible subsequent appointment of professional service providers to rectify the non-compliance concerns.

**M.C. VAN DER BERG<sup>INC</sup>**  
**ATTORNEYS, CONVEYANCERS & NOTARIES**  

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**Your Property Attorneys**

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