

PROPERTY GUIDE
YOUR KEY TO BUYING PROPERTY

2011



STBB

SMITH TABATA
BUCHANAN BOYES



OUR SERVICE

STBB | SMITH TABATA BUCHANAN BOYES is a firm of business-minded lawyers which was established in 1900. At present, the firm consists of approximately 50 professionals practising from 7 offices throughout South Africa.

By understanding our clients' needs and objectives, we strive to deliver cost-effective legal solutions to their business and personal matters. A vital aspect of the professional service we provide, is a commitment to developing close working relationships with our clients. This commitment enables us to consistently succeed on their behalf.



CONTENTS

■ APPOINT THE BEST	3
■ A QUICK GUIDE TO THE TRANSFER PROCESS	4
■ A QUICK GUIDE TO THE BOND REGISTRATION PROCESS	6
■ TRANSFER AND BOND COSTS EXPLAINED	8
■ TRANSFER AND BOND COSTS – NATURAL PERSONS AND/OR ENTITIES BUYING	14
■ DEEDS OFFICE PROCEDURES	16
■ NON-RESIDENT TAX IMPLICATIONS	18
■ TRANSFER YOUR HOME FREE OF TAX LIABILITY	22
■ ELECTRICAL CERTIFICATE	24
■ BEETLE CERTIFICATE	26
■ GAS CERTIFICATE OF CONFORMITY	27
■ PLUMBING CERTIFICATES	28
■ FIXTURES AND FITTINGS	29
■ CAPITAL GAINS TAX IN RESPECT OF PROPERTY	30
■ BUYING AS AN INDIVIDUAL OR ENTITY: CONSIDER THE TAX IMPLICATIONS	36
■ UNDERSTANDING SECTIONAL TITLES	44

APPOINT THE BEST

WHY DO YOU NEED A CONVEYANCER?

A conveyancer is an attorney who is specialised in the preparation of deeds and documents registrable in a deeds office, and who has been admitted to practise as a conveyancer in the High Court of South Africa.

WHY DOES THE SELLER APPOINT THE CONVEYANCER?

A seller often takes little interest in who is appointed as his conveyancer to act for him because the purchaser pays the conveyancer's fees. However, even though the purchaser finances the transaction costs, the election to nominate rests with the seller so that the process can be driven by the party who has the least interest in delaying transfer. A late transfer will cost a seller money in lost interest and opportunity cost and, if transfer of the property sold was intended to occur simultaneously with the property that the seller has purchased, delays can also cause much anxiety and embarrassment. Therefore, exercise your right to appoint a conveyancing attorney by entrusting the realisation of the proceeds of your sale to a trusted name. After all, it is not every day that one gets to choose something of value that someone else will pay for, especially professional services!

WHY CHOOSE STBB?

STBB is one of South Africa's largest and most experienced property law firms, and we pride ourselves on providing a personal and dedicated service to our clients. We offer you:

- Accurate and speedy processing of your transfer or bond registration.
- State-of-the-art technology developed especially to enhance communication and service delivery.
- Instant notification and updates regarding the progress of your transfer or bond via SMS and e-mail.
- The ability to track the progress of your transaction online.

Why make selling your property or registering your bond any more complicated than it needs to be? Put your mind at ease – appoint the best!



A QUICK GUIDE TO THE TRANSFER PROCESS

STEP 1

RECEIPT OF DEED OF SALE

Acknowledgement of receipt. Deeds office search and copy of the title deed requested

Apply to municipality for rates figures and valuation certificate.

STEP 2

FULFILMENT OF SUSPENSIVE CONDITIONS

Follow up on fulfilment of suspensive conditions, e.g. bond approval or sale of purchaser's property.

On confirmation of fulfilment, issue cancellation instructions to seller's bondholder, if the property is bonded.

Collect necessary documents for transfer and FICA from seller and purchaser and draft transfer documents.

STEP 3

FICA

Check FICA compliance.

STEP 4

COMPLIANCE CERTIFICATES

Seller to provide a Plumbing Certificate (if property falls within the jurisdiction of the City of Cape Town municipality) as well as an Electrical, Beetle and Gas certificate.

STEP 5

SIGNATURE OF DOCUMENTS & PAYMENT OF COSTS

Seller and purchaser sign transfer documents. Purchaser signs bond documents (if applicable).

Purchaser pays transfer costs. Seller and purchaser pay pro rata share of rates and taxes.

Apply for transfer duty receipt and rates clearance certificate.



STEP 6 GUARANTEES

Ensure satisfactory guarantees in place for purchase price.

STEP 7 LODGEMENT OF DEEDS AT DEEDS OFFICE

Upon receipt of transfer duty receipt, rates clearance certificate and original title deed, arrange with linked bond cancellation and bond attorneys for simultaneous lodgement.

Deeds lodged at the deeds office and allocated a barcode for tracking purposes. Deeds examined.

Examination process takes seven to ten working days.

On about the seventh or tenth working day, the deeds come 'up for registration'. The conveyancer has five working days to finalise anything outstanding and register the transaction.

STEP 8 REGISTRATION

Registration takes place at about 10h00 on the day of registration.

On that day ownership passes from seller to purchaser. Purchaser's new bond (if applicable) is registered. Seller's existing bond (if applicable) is cancelled.

Final accounts drawn for the seller and purchaser. Seller paid out net proceeds. Agent's commission paid, if applicable.

STEP 9 DELIVERY OF DEEDS

Once registered, the deeds are numbered and microfilmed in the Deeds Office and it can take up to three months for the Deeds Office to deliver the original title deed and mortgage bond back to the conveyancer. Once delivered, the conveyancer will send the original Title Deed to the relevant bank (if the property is bonded) or purchaser (if unbonded).

A QUICK GUIDE TO THE **BOND** REGISTRATION PROCESS

STEP 1

RECEIPT OF INSTRUCTIONS FROM BANK

Receipt of instructions from the bank to register the bond. Usually the instructions are received electronically.

Contact the client to confirm receipt of the instructions.

STEP 2

PREPARATION OF DOCUMENTS

If linked to a transfer of property – guarantee requirements from the transferring attorney.

Obtain a deeds office printout in respect of the property and the client to check for any interdicts, insolvencies etc. that may be registered against the client or the property.

If the bond registration involves only a further advance, obtain the title deed from the bank and prepare the bond documents for signature.

If the client is switching his bond account to another bank, arrange for cancellation of the existing bond and determine guarantee requirements.



STEP 3

SIGNATURE OF DOCUMENTS

On receipt of the various documents, prepare the bond documents for signature.

Contact the client and arrange for signature of the documents and payment of costs.

STEP 4

GUARANTEES AND FICA

Advise the transferring attorneys and/or bond cancellation attorneys that the bond documents have been signed. Send guarantee, if requested, or advise of the amount available under the bond. Arrange simultaneous lodgement with linked attorneys.

Comply with the bank's pre-lodgement requirements and verify FICA compliance.

STEP 5

LODUREMENT OF BOND DOCUMENTS

The documents take seven to ten days to be examined in the deeds office whereafter they come up for registration.

The conveyancer must now register the transaction within the next five days.

STEP 6

REGISTRATION

On the day of registration, the bond attorney registers the bond with the other linked transactions and arranges with the bank to have the bond proceeds paid out. The transferring attorney is handed a cheque for the bond proceeds at the deeds office.

Alternatively, if there is a guarantee, the transferring attorney will present it for payment after registration has taken place.

The bank and client are advised of registration.

In the case of a further bond, the bond proceeds are paid to the client in terms of his payment instructions.

STEP 7

DELIVERY OF BOND DOCUMENTS

Once the deeds office has numbered and microfilmed the bond, it is delivered to the bond attorney. This can take up to three months.

The bond attorney then obtains the title deed of the property from the transferring attorney, if applicable, and delivers the title deed, bond and other security documents to the bank.

TRANSFER & BOND COSTS EXPLAINED



TRANSFER COSTS

Transfer fees are the fees that are payable by a purchaser in order to effect transfer of the property into his name. As a rule of thumb you should make allowance for an additional 8% to 10% of the amount of the purchase price of the property to cover all the other costs involved in purchasing a home (excluding the deposit). These costs are commonly referred to as transfer costs or conveyancing fees.

Transfer Duty

This is a tax levied by the Receiver of Revenue on the acquisition of property by a buyer. It generally constitutes the major portion of the costs involved.

- It is payable once off, before transfer of the property, to the conveyancing attorney who will then pass it on to SARS.
- If the buyer of property resells that property prior to taking transfer, transfer duty will be payable in respect of both sales. However, if in the above scenario the purchaser buys the property on behalf of a nominee, he must nominate the nominee by 12 midnight on the date of last signature of the deed of sale. He will then avoid paying double transfer duty.

VAT

If the seller is registered as a VAT vendor, no transfer duty is payable. In such a case, the seller must provide for VAT in the purchase price. You will come across this scenario when buying property in a new development, since the developer will generally be registered for VAT.



If the Buyer is a Natural Person or an Entity

- For properties with a purchase price of up to R600 000, no transfer duty is payable.
- From R600 001 to R1 000 000, transfer duty is calculated at 3% on the value above R600 000 (In other words, you don't pay transfer duty on the first R600 000, only on the portion that exceeds this amount.)
- From R1 000 001 to R1 500 000, transfer duty is calculated at 5% on the value above R1 000 000 PLUS a flat rate of R12 000.
- From R1 500 001 upwards, transfer duty is calculated at 8% on the value above R1 500 000 PLUS a flat rate of R37 000.

Conveyancer's Fee for the Transfer

The fees payable to a conveyancer for registering the transfer of ownership in the property are called transfer fees. The amount is determined on a sliding scale according to the purchase price of the property. The fees on the sliding scale are based on tariffs recommended by the Law Society. Fees may include VAT.

The fees are payable to the conveyancing firm once off and before registration of transfer of the property into the name of the seller.

Deeds Office Registration Fee

This is the fee charged by the Deeds Office for registering the transfer and recording that you are the new owner of the home. The amount is fixed and is determined by a sliding scale based on the amount of the purchase price.

Provision for Municipal Rates & Taxes/Levies

This charge relates to those rates and taxes or levies that need to be paid in order to obtain a rates clearance certificate or levy clearance. The amount payable for rates and taxes varies from one local authority to another and in accordance with the valuation of the property. Make provision for approximately R5 000. It is payable, before transfer of the property, to the transferring attorney who will pass it on to the local authority/managing agent.

Occupational Interest (Occupational Rent)

In most instances an agreement of sale will determine that occupational interest is payable if the buyer takes occupation of the property before the transfer of the property into his name has been



BOND COSTS

registered. The amount of occupational interest can either be a fixed amount (usually calculated as either the amount of the seller's bond repayment on the property or 1% of the purchase price) or an amount subject to an escalation if registration of transfer has not taken place within a certain period.

It is payable monthly, in advance, either to the estate agent or to the transfer attorneys (who will pass it on to the seller) or directly to the seller.

Postage & Petties

The transferring attorneys charge a levy to cover small expenses such as the posting and delivering of secured documents to the various role players, faxes and telephone calls sent and received and the like. Each law firm has its own rates but it averages R700 (VAT included).

Conveyancer's Fee

These are the fees that are payable to the attorney charged with registering your mortgage bond (the bond attorney). The amount varies according to the capital of your home loan amount. The fee is based on tariffs recommended by the law society and will be subject to VAT. The fees are payable once off before registration of your bond to the bond attorney.

Deeds Office Registration Fee

This fee is charged by the deeds office for the registration of your mortgage bond. It is a set fee, determined by the amount of your home loan.

The fees are included in the account you receive from the bond attorney and payable before registration of your bond. The bond attorney will pass the fee on to the deeds office.

Postage & Petties

The bond attorneys charge a levy to cover small expenses such as the posting and delivering of secured documents to the various role players, faxes and telephone calls sent and received and the like. Each law firm has its own rates but it averages R700 (VAT included).

Home Loan Initiation Fee

This fee is charged by the bank for the processing of the home loan application. You can expect to pay a base fee of approximately R1 000 plus an ad valorem fee of $\pm 0,4\%$ of the value of the loan, up to a maximum of approximately R5 700.

It is payable on registration of your bond, and could be debited from your home loan account (added to your outstanding balance) depending on the bank's internal rules.

Administration and Service Fee

This is the fee that is charged by the bank to administer the home loan account.

You can expect to pay between R17 and R57 per month, depending on whether you have taken out the bank's in-house homeowners' insurance.

Generally the service fee is less if you make use of the bank's insurance. It is payable monthly and will be debited from your home loan account.

Homeowner's Insurance

The bank will insist that you take out a homeowner's insurance policy to cover the risk of damage to the property that may result from natural disasters, such as fire or storm damage.





The amount payable will vary depending on the value of your property. It is payable monthly and will most likely be debited from your home loan account. The bank will then pass the amount on to the insurance company.

Home Loan Protection Insurance

If you do not already have a life assurance policy to cede as additional security for the loan, you may be required to take out some form of home loan protection insurance, such as:

- Death Only
- Disability Only
- Retrenchment Only
- Death & Disability
- Death & Retrenchment
- Disability & Retrenchment
- Death, Disability & Retrenchment

The value of the policy will depend on the balance owing under your home loan. It is payable monthly and will most likely be debited from your home loan account.

Note: Depending on the home loan package, some of the costs mentioned above can be absorbed into the mortgage bond. Speak to your banker or financial adviser for more information and to double check these costs.

Disclaimer: The transfer duty and conveyancing tariffs detailed above are quoted according to the announcement made by the Minister of Finance in his budget speech in February 2011, regarding the transfer duty rates, as well as the prescribed conveyancing tariffs. The other estimated costs are only a guideline for your convenience, and may vary in reality.



TABLE OF TRANSFER AND BOND COSTS

PURCHASER
IS A NATURAL
PERSON OR
COMPANY,
CLOSE
CORPORATION,
TRUST

To assist you in the purchase of your new property

we have set out in the tables on page 15 the approximate costs that are involved (VAT inclusive). The amounts include the attorney fees plus VAT, transfer duty and deeds office fees. Note that provision should be made for additional disbursements relating to municipal taxes and clearance certificates, FICA compliance, postage and petties and the like which may range between an additional R1 000 and R5 000.

Apart from these items, financial institutions also charge an initiation/valuation fee, which may vary depending on the institution.

PURCHASE PRICE / BOND AMOUNT	TRANSFER COST	BOND COST	BOND REPAYMENT FACTOR OVER 20 YEARS	
150 000	5 075	3 947	5.00%	6.60
200 000	5 925	4 329	5.25%	6.74
250 000	6 381	4 671	5.50%	6.88
300 000	7 179	5 127	5.75%	7.02
350 000	7 735	5 683	6.00%	7.16
400 000	8 305	6 253	6.25%	7.31
450 000	8 875	6 709	6.50%	7.46
500 000	9 559	7 165	6.75%	7.60
550 000	10 799	8 177	7.00%	7.75
600 000	10 799	8 177	7.25%	7.90
650 000	13 439	9 089	7.50%	8.06
700 000	14 939	9 089	7.75%	8.21
750 000	17 579	10 001	8.00%	8.36
800 000	19 079	10 001	8.25%	8.52
850 000	21 719	10 913	8.50%	8.68
900 000	23 219	10 913	8.75%	8.84
950 000	25 859	11 825	9.00%	9.00
1 000 000	27 359	11 825	9.25%	9.16
1 100 000	33 029	12 431	9.50%	9.32
1 200 000	38 599	12 887	9.75%	9.49
1 300 000	44 169	13 343	10.00%	9.65
1 400 000	49 739	13 799	10.25%	9.82
1 500 000	55 309	14 255	10.50%	9.98
1 600 000	63 879	14 711	10.75%	10.15
1 700 000	72 449	15 167	11.00%	10.32
1 800 000	81 019	15 623	11.25%	10.49
1 900 000	89 589	16 079	11.50%	10.66
2 000 000	98 159	16 535	11.75%	10.84
2 200 000	115 499	17 797	12.00%	11.01
2 400 000	132 639	18 709	12.25%	11.19
2 600 000	149 779	19 621	12.50%	11.36
2 800 000	166 919	20 533	12.75%	11.54
3 000 000	184 059	21 445	13.00%	11.72
3 200 000	201 399	22 357	13.25%	11.89
3 400 000	218 539	23 269	13.50%	12.07
3 600 000	235 679	24 181	13.75%	12.25
3 800 000	252 819	25 093	14.00%	12.44
4 000 000	269 959	26 005	14.25%	12.62
4 200 000	287 099	26 917	14.50%	12.80
4 400 000	304 239	27 829	14.75%	12.98
4 600 000	321 379	28 741	15.00%	13.17
4 800 000	338 519	29 653	15.25%	13.35
5 000 000	355 659	31 565	15.50%	13.54
5 500 000	397 284	32 705	15.75%	13.73
6 000 000	438 709	33 845	16.00%	13.91
6 500 000	480 134	34 985	16.25%	14.10
7 000 000	521 559	36 125	16.50%	14.29
7 500 000	562 984	37 265	16.75%	14.48
8 000 000	604 409	38 405	17.00%	14.67
8 500 000	645 834	39 545	17.25%	14.86
9 000 000	687 259	40 685	17.50%	15.03
9 500 000	728 684	41 825	17.75%	15.24
10 000 000	770 109	42 965	18.00%	15.43

To calculate bond repayment, divide bond amount by 1 000 and multiply by relevant factor.

Disclaimer: The transfer and bond costs detailed above are quoted according to the February 2011 budget speech regarding the transfer duty rates as well as the prescribed conveyancing tariffs and estimation of other costs. The figures are a guideline only and may vary in practice.

DEEDS OFFICE PROCEDURES



LODGEMENT

The entire administration of the transfer process by the conveyancing attorney culminates in the lodgment and registration of documents known as deeds in the relevant deeds registry. The jargon that is used from this point on is often very confusing and the sudden urgency with which certain queries are raised with the client when the deeds are up on prep after a quiet spell (after lodgment) can often prove to be frustrating! We clarify the terminology in the next few paragraphs.

For purposes of clarity, let us begin with the concept of lodgement. Lodgement occurs when a set of documents (in respect of a specific transaction) is submitted to the deeds office so that it can be examined. In many instances one transaction will require the simultaneous registration of other linked transactions. For example, when dealing with a transfer one would at the same time be required to cancel any bonds currently registered over the property; and typically where a purchaser finances the sale with a loan in respect of which the bank will register a mortgage bond as security, the bond transaction will also need to be lodged simultaneously with the transfer. As such all related transactions are linked (or grouped) together and lodged simultaneously as simul in the deeds office.

If linked transactions are not submitted to the deeds office simultaneously, the process is delayed and the parties must arrange re-lodgement the following day.

PASSED OR REJECTED

Upon successful lodgement, the deed is examined by the deeds office officials. First a junior examiner and

thereafter a senior examiner will check the documents for compliance with the various provisions that apply. It usually takes seven to ten working days. During this period the examiners deal with any queries that they wish to raise with the conveyancing attorney by way of notes. The notes may be purely administrative, in which case the deed will be passed by the senior examiner. However, if the notes are of a more serious nature and require redrafting of documentation, the deed will be rejected by the senior examiner.

Once a transaction is rejected the deed is released from the deeds registry and returned, together with all linked deeds, to the respective conveyancing attorneys to address the note(s). Thereafter they will re-lodge their deeds together with all the simul transactions.

COME UP ON PREP

If the deed is passed it will come up on prep, which means that the deed is released back to the conveyancing attorneys for a five-day period. In these five days, the conveyancer will attend to any notes raised by the examiner and when done, will arrange for registration.

Handing in, is the procedure by which the deed, together with all the linked transactions, is submitted for simultaneous registration. If one of the linked conveyancing attorneys is unable to hand in the deeds within the five-day period, the entire batch is rejected from prep which means that it would be necessary to re-lodge all the deeds.

As soon as all linked attorneys hand in for registration submitted in the five-day prep period, the deeds are checked finally by the deeds registry for any last-minute attachments or insolvencies. If all is clear, the conveyancing attorneys are able to execute and effect registration of their respective deeds and all related simul transactions on the next day.

REGISTRATION

Registration takes place daily from Monday to Friday (public holidays excepted) from 10:00am to approximately 12:00am each day when the conveyancers and Registrar sign the deeds.

Upon registration ownership in property is transferred. Funds can be released only once registration has been effected.

Our various deeds registries deal with a substantial number of registrations daily and it is an achievement for South Africa to boast a property registration system that is considered to be one of the best in the world.

NON-RESIDENT TAX IMPLICATIONS



WHEN BUYING PROPERTY FROM A NON-RESIDENT OF SOUTH AFRICA

It is important that a buyer establishes whether the seller of the property which he intends buying is a South African resident. If the seller is a non-resident, the buyer may be liable to withhold a portion of the purchase price and pay it to SARS, on behalf of the non-resident seller. This is referred to as withholding tax.

WHY WITHHOLDING TAX?

SARS realised that it loses out on capital gains tax (CGT) in respect of properties that are bought and sold by non-residents of South Africa.

New legislation was enacted in 2007 to ensure that non-residents who enjoy the benefits of owning property in South Africa are brought into the tax net along with resident taxpayers.

By law, if a purchaser buys a property from a non-resident and the purchase price is more than R2 million (even if the buyer is a non-resident himself), he must withhold a percentage of the purchase price and pay it over to SARS. The percentage of the purchase price that the buyer must withhold (and pay over to SARS) is determined as follows:

If the seller is a –

- Natural Person – 5%;
- Company – 7,5%;
- Trust – 10%.

PAYMENT OF THE WITHHOLDING TAX TO SARS

In order to avoid this fee the seller may obtain a directive from SARS stating that it is not necessary for him to pay the tax. (The seller can apply for such a directive on a directive form obtainable from SARS.) If granted, the seller must supply the buyer with proof thereof.

The withholding tax is not payable on properties that are sold for less than R2 million.

The payment of withholding tax must be accompanied by the relevant SARS form and must be paid over within 14 days of it being withheld if the purchaser is a South African resident, and within 28 days if the purchaser is a non-resident.

Note that though the relevant provisions state that withholding tax must be withheld from payments made to the seller, the payment of a deposit to the seller does not yet trigger the withholding tax.





HOW TO DETERMINE WHETHER A SELLER IS A RESIDENT OR NON-RESIDENT

If a seller lives overseas permanently, it would be clear that he or she is a non-resident. But what if, for example, the seller currently lives in South Africa and has done so for the past four years? Unfortunately one cannot simply assume that the seller is a resident or non-resident.

Circumstances may vary greatly and one would be advised to obtain professional advice in this regard from SARS, a tax consultant or a lawyer.

Generally though, resident status is determined by applying either of two 'tests', namely the Ordinarily Resident Test or The Physical Presence Test.

A person is ordinarily resident in South Africa if it can be said that he is "without a doubt residing in South Africa." It will be the place where the person returns to after being abroad on vacation or a business trip.

If he is not so ordinarily resident he may still be regarded as a resident, for tax purposes, if he qualifies in terms of the physical presence test. This is based on the number of days per year (over a five-year period) that a person has spent in South Africa. In terms of this test a natural person is a 'resident' if he was physically present in South Africa:

- for at least more than 91 days in the tax year as well as 91 days during each of the preceding five tax years; and
- for the 6 years involved, the person must have lived here for more than 915 days altogether.



For more information on these tests, visit the SARS website at www.sars.gov.za and do a search within the site for 'tests'. The SARS forms that need to be completed with the transfer duty payment do have a space for the seller's passport number if he is a non-resident. The forms do not specify that the seller must declare his tax residency. The seller himself may not even know whether he is resident for tax purposes.

Our advice to you as the buyer:

- Do not assume that any person selling their property to you for more than R2 million is a South African resident for tax purposes.
- Check with your attorney and agent what was indicated on the transfer duty forms in respect of the seller's residence status.
- Ask the seller to sign an affidavit stating his tax residence status.
- Make sure that a percentage of the purchase price (as noted above) is withheld and paid to SARS if you believe that the seller is a non-resident.

TRANSFER YOUR HOME FREE OF TAX LIABILITY

TAX-FRIENDLY TRANSFERS FROM COMPANIES, CORPORATIONS AND TRUSTS

Changes introduced to the Taxation Laws in October 2010 (paragraph 51A of the 8th Schedule of the Income Tax Act) offer considerable tax savings on the transfer of residences owned by companies (including Close Corporations) and trusts. The purpose of these changes is to allow persons who own their homes in companies or trusts to take individual ownership thereof, without incurring the usual tax liabilities. The legislation introduced a window period in which transfers of residences may be effected into the names of the individuals, without attracting transfer duty, capital gains tax (CGT) or secondary tax on companies (STC).

In order to qualify for such an exemption:

- the residence must be disposed of by the company or trust on or before 31 December 2012;
- the residence must have been used mainly for domestic purposes during the period from 11 February 2009 onwards and up to the date of disposal of the property (which must be before 31 December 2012); and
- the property must be transferred to natural persons who are 'connected persons' in relation to the company or trust. 'Connected persons' are typically the beneficiaries of the trust, shareholders of the company or members of the close corporation.



The CGT liability is postponed until disposal by the natural person at a future date. This is referred to as 'rollover' relief.

No transfer duty is payable in respect of the acquisition of the property by the qualifying natural person. Furthermore, no secondary tax is payable by a company provided the residence is distributed as a dividend in 'specie'.

A previous amendment of the Taxation Laws only allowed these savings in the case of transfers of residences from companies, close corporations or trusts directly to a natural person, excluding transfers from multiple-tiered structures (for example, where residences were owned by a company, the shareholding of which was held by a trust). The October 2010 amendment however specifically allows transfers from such structures to the individual 'connected persons'.

Remember that the Act requires that once the property has been disposed of by the company, the company must within six months thereafter, commence its own liquidation, winding up or deregistration. In the case of a trust, the founder, trustees and beneficiaries must revoke the trust or apply to Court to revoke the trust. (During November 2010 SARS released a draft guide on the transfer of a residence from a company or trust. The draft guide is accessible on the SARS website.)

The tax consequences of terminating the Company or Trust must be considered where other high growth assets are held by such Company or Trust.

ELECTRICAL CERTIFICATE



The Occupational Health and Safety Act ('the OHSA') aims to provide for the health and safety of persons at work and as such is not an act that one would expect to find in a conveyancing and property law context. However, the Act determines that responsibility for and maintenance of any electrical installation on a property lies with the owner or lessor thereof; and it also lays down requirements that must be complied with when ownership of any electrical installations (whether installed on residential, commercial or any other property) is passed. Therefore it is relevant to all home owners, lessors and role players in the property market.

The aim of the regulations promulgated in terms of this act is not to ensure that each and every aspect of the electrical installation is necessarily in 100% working order, but that the installation is safe. A plug outlet may well not be in working order but nevertheless safe and an electrical clearance certificate can be issued in respect thereof.

New regulations came into effect on 1 May 2009. These require that any owner or lessor of an electrical installation must be in possession of a valid electrical compliance certificate. Moreover, a property owner may not allow change of ownership of the electrical



installation if the certificate is older than two years. Therefore, if property is transferred to the name of a new owner and the existing electrical certificate is more than two years old, a new certificate must be obtained before transfer. If the certificate is more recent, then it is not necessary to obtain a new certificate.

There is an exception: No electrical compliance certificate is necessary for electrical installations that existed prior to 23 October 1992, provided there was no change of ownership after 1 March 1994 and no addition or alteration was effected to the electrical installation.

Whether a clause in respect of the electrical compliance certificate should be included in the deed of sale is a matter of much debate. There is no statute that compels its inclusion and neither is it an essential term of the agreement of sale. It is therefore difficult to argue that it is compulsory to include such a clause in the agreement.

Be that as it may, it is certainly necessary to determine what the seller and purchaser agree to in respect of the certificate so as to ensure that the regulations are complied with, especially the new regulation 7(1), as discussed above.



BEETLE-FREE CERTIFICATE



In the Western Cape and KwaZulu-Natal regions it is customary to include a clause in the deed of sale that the seller will provide the purchaser with a beetle-free certificate. Usually the beetle certificate is required only in respect of two types of borer beetles. These are *Hylotropes bajulus* and/or *Oxypleuris nodieri*.

In the Western Cape and KwaZulu-Natal regions it is customary to include a clause in the deed of sale that the seller will provide the purchaser with a beetle-free certificate. Usually the beetle certificate is required only in respect of two types of borer beetles. These are the notorious *Hylotropes bajulus* and/or *Oxypleuris nodieri* that originally found their way to our shores by way of infected timber imported from South America many years ago.

An interesting point to consider regarding the beetle-free certificate is that while the certificate is usually supplied only in respect of the two types of beetle mentioned above, there are other types of borer beetle, particularly the *Anobium punctatum*, which may infest wood other than furniture, such as floor boards or rafters, which could cause damage and deterioration to property. This latter beetle is often the most common but is not covered by the standard wording of the beetle-free certificate.

Although it is not a requirement for the validity of the sale agreement to insist on a beetle-free certificate in a deed of sale, it is considered advisable to do so, as financial institutions might require a beetle-free certificate prior to approving a home loan.

Remember also that if the agreement makes no provision for a beetle-free certificate, and the seller was aware of beetle infestation at the time of contracting and failed to disclose it, he would not be able to rely on the voetstoots clause to avoid liability.

GAS CERTIFICATE OF CONFORMITY

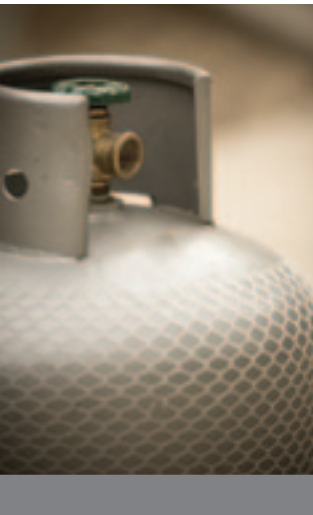
Whether due to cost savings or culinary reasons, gas appliances (such as hobs, water heaters and fireplaces) are all the rage in South Africa.

Our legislature took note of this increase in permanent home appliances and in 2009, amended the regulations to the Occupational Health and Safety Act by placing a duty on a homeowner to:

- ensure that he/she is in possession of a Certificate of Conformity when gas appliances with permanent LP Gas cylinders are installed on the property; and
- when the property is sold, to give the Certificate to the new owner of the property.

The Certificate must be prepared and issued by an authorised person, registered with The Liquefied Petroleum Gas Safety Association of Southern Africa (LP Gas).

The regulations do not indicate how compliance with this requirement will be monitored. As a general rule, parties make provision in the agreement of sale that the certificate be provided to the new Purchaser.



PLUMBING CERTIFICATES



In February 2011, the City of Cape Town municipality passed a new water by-law which requires that, with effect from 18 February 2011 onwards, all sellers of properties within its jurisdiction must furnish a Plumbing Certificate to the municipality before transfer.

The certificate serves to confirm that:

- the water installation conforms to the national building regulations;
- the property's water meter is registering;
- there are no defects that can cause water to run to waste; and
- no rainwater leaks into the sewerage system.

Note that:

- this requirement is only applicable to properties that are situated within the jurisdiction of the City of Cape Town Municipality; and
- the Certificate is required for freehold and sectional title properties.

In order to facilitate future compliance with this requirement on the side of the Purchaser, sale agreements usually include a provision that the Seller furnishes a copy of the Plumbing Certificate to the Purchaser, before transfer.

FIXTURES & FITTINGS

Take time and make the effort to be as fully comprehensive as possible in a deed of sale, as this will ultimately lead to a trouble-free and timeous transfer.

A 'fixtures and fittings' clause in a deed of sale of immovable property acknowledges the legal principle that ownership of an object that attaches itself to land in such a way that it forms a whole, can be acquired by the owner of the land by virtue of accession.

Our common law (by virtue of the maxim *superficies solo cedit*) prescribes that buildings and other structures on land, including movables that are attached to the buildings or the land, become part of the land and as such, part of the property owned by the owner of the land.

The decision whether a movable which is affixed to an immovable thing loses its identity and becomes an integral part of the immovable depends on three factors, namely:

- the nature of the thing attached;
- the manner of its affixation to the land; and
- the intention of the owner of the movable at the time it was affixed.

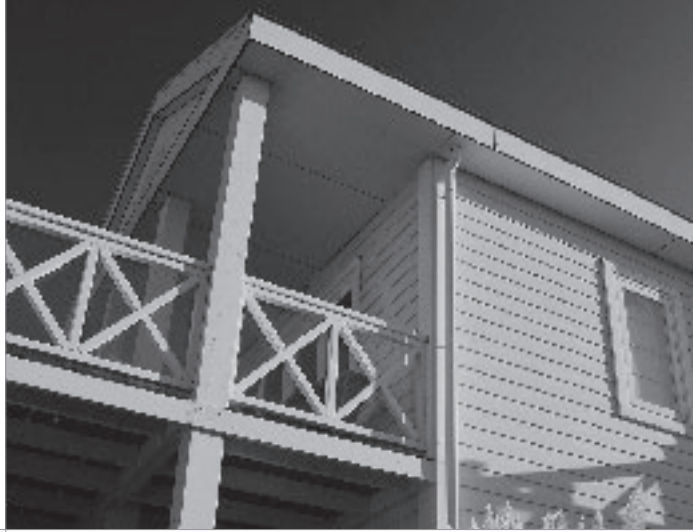
The first two components of the inquiry are self-evident and usually do not pose an evidentiary burden. It is the third requirement, however, that often proves to be the determining factor and difficult to prove.

It is therefore imperative that a 'fixtures and fittings' clause be inserted in a deed of sale to define exactly what is being sold together with the dwelling so as to avoid having to resort to litigation. When drafting this clause in the agreement, err on the side of caution and be over-specific, with each and every fixture and fitting intended as being part of the sale, listed in an annexure to the agreement.

Typical examples of items that cause uncertainty and should be addressed in the 'fixture and fittings' clause include hanging mirrors, towel racks and shelves, as well as lamp shades, special tap fittings and removable kitchen units.



CAPITAL GAINS TAX IN RESPECT OF PROPERTY



AT WHAT RATE IS CGT CALCULATED?

When immovable property is disposed of, the seller becomes liable for the payment of capital gains tax ("CGT") on any profit made in respect of that property after 1 October 2001, which is the date on which this tax was first introduced in South Africa.

If the property is owned by an individual or a special trust, 25% of the capital gain made on disposal of the property must be included in their taxable income for the year of assessment in which the property is sold. The present maximum marginal rate of income tax for individuals is 40% and therefore individuals will pay a maximum of 10% of the capital gain.

Likewise, if a property is owned by a company, a close corporation or an ordinary trust, 50% of the capital gain must be included in their taxable income. The income tax rate for a company or close corporation is 28% and these entities will therefore pay 14% of the capital gain in CGT, while trusts, whose income tax rate is 40%, will pay 20% of the capital gain.

If a capital loss is made on disposal of the property, it may be offset against any capital gains made in that year of assessment and, if no capital gains have been made, the loss may be carried forward to subsequent years of assessment.



ARE NON-RESIDENTS ALSO LIABLE TO PAY CGT?

For individuals and special trusts in the year 2011 / 2012, the first R20 000 of their capital gain or loss in any year of assessment will be exempt and thus disregarded. This figure increases to R200 000 in the year in which an individual dies.

Yes. Non-residents are liable for the payment of CGT on the disposal of any immovable property owned by them in South Africa, or on the disposal of an interest of at least 20% in the share capital of a company where 80% or more of the net asset value of the company is attributable to immovable property.

■ **S35(A) Income Tax Act**

New legislation imposed in September 2007 provides for the withholding of a provisional CGT from non-resident sellers' proceeds which must be paid to SARS by the buyer in such transactions on date of registration. See the discussion on page 18 in this regard.



HOW IS PROFIT CALCULATED?

A capital gain is calculated by deducting the base cost from the proceeds on disposal of the property. Disposal includes a sale, donation, exchange, vesting of the property in a beneficiary of a trust or emigration.

The following may be included in the base cost:

1. the cost of acquiring the property, including the purchase price, transfer costs, transfer duty, VAT and professional fees (e.g. attorneys and surveyors);
2. the cost of improvements, alterations, renovations, etc. Only in the case where the costs and payment thereof are capable of being proven by presentation of invoices/receipts;
3. the cost of disposing of the property, including agent's commission, advertising costs, valuation costs (including valuing the property for CGT purposes) and professional fees.

Expenditure on repairs, maintenance, insurance and rates and taxes are not deductible. It is essential to maintain accurate records of the above costs. If such records are not retained, no deduction from the proceeds will be allowed when determining the capital gain. It is therefore advisable to locate receipts and compile a record relating to the cost and date of acquisition of the property as well as subsequent costs incurred.



All records must be kept for a period of four years from the date of submission of the income tax return for the year in which the capital gain or loss is reflected. If no return is lodged, the records must be kept for five years from the date of disposal of the property. If an objection or an appeal against a CGT assessment is lodged, all records must be kept for the above periods and thereafter until the assessment is finalised.



**HOW IS PROFIT
CALCULATED IF THE
PROPERTY WAS
ACQUIRED PRIOR TO
1 OCTOBER 2001?**

If the property was acquired before 1 October 2001, the following methods of valuing the property at that date may be used:

1. a fair market value of the property as at 1 October 2001, i.e. the price obtainable on a sale between a willing buyer and a willing seller at arm's length in an open market. The valuation must have been carried out within three years of the effective date (i.e. before 30 September 2004), but the property must have been valued according to its condition and in terms of the prevailing economic and market conditions as at 1 October 2001. If no valuation was obtained before 30 September 2004, this method may not be used;
2. the time-apportionment base cost, i.e. the percentage of the total gain that was made after 1 October 2001;
3. where no fair market valuation was submitted and no accurate records maintained, the value as at 1 October 2001 will be deemed to be 20% of the proceeds on disposal.

**IF THE PROPERTY IS
BEING SOLD
AS A PRIMARY
RESIDENCE, IS
CGT APPLICABLE?**

Yes. However, there is a primary residence exemption which applies only in cases where the primary residence is registered in the name of an individual or in the name of a special trust. In such a case, upon disposal of a primary residence (on land not exceeding 2 hectares), any capital

gain or loss up to R1.5 million can be excluded. This will not apply to properties registered in the name of a company, close corporation or trust. A person who does not ordinarily reside in South Africa cannot have a primary residence in South Africa, and this exemption can therefore not apply in the event of a non-resident disposing of his/her property.

When the residence is used partially for residential and partially for business purposes, an apportionment must be done. Likewise, where the residence is occupied for a part-period, an apportionment must also be done.

However, where the residence was not inhabited because it was being offered for sale, in process of erection or renovation or had accidentally been rendered uninhabitable, the exemption will apply for a period not exceeding two years.

If the owner is employed or trading more than 250km from his or her residence and rents it to a tenant for a period not exceeding five years, the exemption will apply if the owner lived in the premises for a continuous period of at least one year prior to and subsequent to the letting period and does not treat any other residence as his or her primary residence during that period.

Where more than one person holds an interest in a primary residence (e.g. spouses married to each other out of community of property), the exclusion will be in proportion to the interest held by each party in the residence.

BUYING AS INDIVIDUAL OR ENTITY: CONSIDER THE TAX IMPLICATIONS

INTRODUCTION

Various entities can hold ownership of immovable property. Transfer can be effected to a purchaser in his personal capacity (a natural person) or to a legal entity (a trust or a company) and the choice depends on the specific circumstances of the purchaser.


The new Companies Act 71, 2008 came into operation on 01 May 2011. Whilst it determines that no new close corporations may be incorporated after 01 May, existing close corporations (such as those holding immovable property) can continue to exist.

FACTORS

■ **Transfer Duty**

Transfer duty is paid by a purchaser on the acquisition of immovable property. The rate at which the duty was levied used to be different for natural persons and legal entities. However, since 23 February 2011 transfer duty is levied at the same rate for all purchasers, whether individuals or entities, as follows:

Transfer duty is also payable on the transfer of a member's interest in a close corporation owning residential property, on the transfer of shares in a company owning residential property and on the transfer of the beneficial interest in a trust holding residential property. (The 2010 Taxation Laws



Amendment Act introduced a window period during which entities owning residential properties can, in certain circumstances, transfer property free of transfer duty to the members, shareholders or beneficiaries of the entity. In this regard, see the notes on page 22 of this brochure.)

- Note that if a purchaser signs an agreement of sale personally whilst reserving the right to nominate another person or entity as purchaser (usually within a stipulated period) then the nominee must be appointed on the same day. If the nominee is appointed later, SARS will construe it as a subsequent sale and double transfer duty will be payable. A purchaser must therefore have a clear idea of the entity in which he intends acquiring ownership at the time of contracting, since a nomination (and acceptance thereof by the nominee) offers too little time to make an informed decision.

If a purchaser chooses to buy property in an entity that is not formed yet, the agreement of sale must be signed by the purchaser "on behalf of the company/ close corporation" to be formed". Once the company/ close corporation* is formed, it must ratify the decision to purchase the immovable property. Note that the Trust Property Control Act does not provide for the acquisition of immovable property on behalf of a trust that is not yet in existence and it is therefore not possible to do so.

■ VAT

Purchasers must keep in mind that no transfer duty is payable if the transaction attracts VAT. If VAT is payable, the seller is liable to pay it to SARS. It is imperative that the deed of sale clearly indicates whether the purchase price includes or excludes VAT. If the property is being sold as part of a going concern and both the seller and purchaser are VAT registered, then the transaction will be "zero-rated" for VAT. The deed of sale must then stipulate that the property is being sold as part of a going concern.





When VAT is payable it is important to ensure that the parties are up to date with the filing of their VAT returns with SARS, otherwise delays will ensue since SARS will not issue a receipt until the parties are compliant.

■ **Protection from Creditors**

If a purchaser intends to trade or run a business on the property, it may be to his advantage to purchase the property in his personal capacity in order to ensure that his business creditors will only be able to lay claim to business assets, whilst the property owned in his private capacity remains protected from claims.

■ **Capital Gains Tax and Estate Duty**

The first R1.5 million of any profit made on the sale of a property by an individual is exempt from CGT, provided the property in question constitutes the individual's primary residence. This applies to South African residents only. Twenty-five percent of the net profit remaining (after the R1.5 million exemption, if applicable) is then added to the individual's income for the year, and taxed at the purchaser's marginal rate of income tax, resulting in a maximum net CGT cost of 10%. This is the lowest rate of CGT possible.

On death of the individual, his/her estate (including the immovable property) with certain deductions, will be subject to estate duty. An abatement of R3.5 million is granted, but the remaining value is taxed at 20%.

A company however pays CGT at a flat rate of 28% on half of all profit earned from the sale of the property, resulting in an effective tax rate of 14% of the capital gain.

THE FOR AND AGAINST OF OWNING AS A NATURAL PERSON

Trusts attract the highest rate of capital gains tax: 50% (inclusion rate) of all profits gained on sale of trust assets are included in the trust's taxable income and taxed at the rate of 40% (statutory rate), resulting in a net capital gains tax cost of 20% (effective rate) of the capital gain.

FOR:

- Lowest rate of CGT.
- First R1.5 million of profit is exempt from CGT if it is a primary residence.
- No auditors or accounting officer's fees.

AGAINST:

- R1.5 million exemption does not apply to non-residents.
- R1.5 million exemption does not apply to second or further properties.
- Estate duty payable on death.

■ Purchasing as a Private Company

FOR:

- At the time of acquisition of the immovable property, the agreement of sale can be signed on behalf of a company "to be formed" and the contract ratified by the company after its formation – thereby effectively allowing nominations at the time of signature without the entity being in existence or named at the time of signature.

The new Companies Act provides that, unless prohibited by the company's Memorandum of Incorporation, the Board of Directors can authorize the company to provide financial assistance to purchase shares in the company, if the Board is satisfied that

- Immediately after providing the financial assistance, the company would satisfy the solvency and liquidity test; and

THE FOR AND AGAINST OF OWNING AS AN ENTITY



- The terms on which the financial assistance is given, is fair and reasonable.
- Transfer duty is levied at the same rate as for individual purchasers.

AGAINST:

- Higher rate of CGT than payable by individuals:
 - Should the company dispose of the property then CGT is levied at an effective rate of 14% on the profit earned (i.e. 50% of the profits are taxed at the flat rate of 28%).
- Annual financial statements must be submitted by companies.
- Where the property being sold is the only asset/ greater of assets of the company, a special resolution must be passed.
- In order for the shareholder to access the profit made by the company, the company will have to declare a dividend which will attract secondary tax (STC).
- If you are the shareholder then the net value of the shares will form part of your estate when determining any liability for estate duty tax.
- Shares in the company are assets in an estate and can be attached by creditors in the event of sequestration.

■ Purchasing as a Trust

FOR:

- An effective estate planning tool.
- The assets held in a trust are not subject to estate duty.
- Assets are protected from attachment.
- Eliminates the complications arising when there are multiple heirs in your estate since the trust remains the owner even after your death.
- The trust is a separate legal entity and trust assets cannot be attached by the creditors of the beneficiaries.
- The trust does not need to be audited and is therefore a more cost-effective option than a company.
- Transfer duty is levied at the same rate as for individual purchasers.

AGAINST:

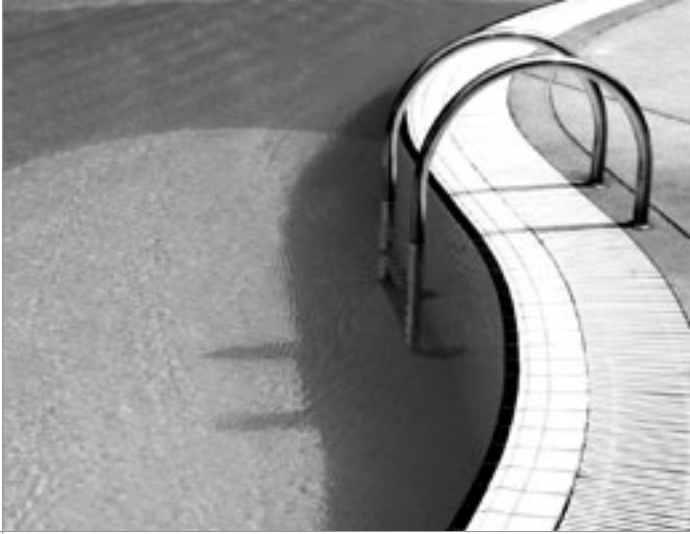
- Highest rate of CGT if profits on the sale of the property are taxed in the hands of the trust: 50% of the gains are included in the trust's taxable income and taxed at 40% thereby giving an effective rate of 20%. (Note that profits can also be distributed to the beneficiaries and taxed at their applicable marginal rate of income tax resulting in a maximum net capital gains tax cost of 10% ($25\% \times 40\% = 10\%$). The same principle can be applied to income generated by the trust. It can either be taxed in the hands of the trust or it can be distributed to the beneficiaries to be included in their gross income.)

CONCLUSION

- The trust must be in existence at the time of signing the agreement of sale.
- Income tax is levied at a flat rate of 40% which is more than you would pay as an individual or if the property was held in another entity;
- Unlike companies and close corporations the trust must be in existence at the date of signature of the agreement to purchase.

The decision on the appropriate entity for the acquisition of immovable property is not to be taken lightly. The information included here is not meant to be exhaustive and it is therefore recommended that the purchaser consults an attorney prior to signing an agreement of sale in order to obtain expert advice having regard to the purchaser's personal circumstances.





UNDERSTANDING SECTIONAL TITLE

WHAT IS A SECTIONAL TITLE UNIT?

A sectional title unit consists of a part of a building or a separate building on a piece of land that has been converted into a sectional title scheme. The owner's ownership of the unit includes ownership of an undivided share in the common property. All the sections together with common property comprise "the scheme".

WHAT IS THE COMMON PROPERTY?

This comprises the areas which are utilised by all owners, e.g. the grounds, driveways, roads, recreation facilities, corridors, entrance areas and exterior of the building.

WHAT ARE EXCLUSIVE USE AREAS?

Any part of the common property, e.g. a parking bay or garden area, may be delineated as an exclusive use area and the right to the exclusive use of such area may then be conferred on an owner of a section. Exclusive use rights can be acquired and held in terms of the rules applicable to the scheme or by way of notarial deed of cession.

IS OWNERSHIP CONFERRED UNDER SECTIONAL TITLE?

Yes, once transfer is registered in the deeds office the title holder is owner of the unit. A title deed is issued upon registration of transfer of the sectional title unit, as proof of ownership. A notarial deed of cession is issued in respect of certain exclusive use areas.

WHAT IS THE DIFFERENCE BETWEEN A SHARE BLOCK SCHEME AND A SECTIONAL TITLE SCHEME?

A share block scheme involves the selling of shares in a share block company that owns a building, coupled with an agreement that entitles the share-owner to occupy a portion of the building. Transfer of the right to occupy is effected by the registration of a share transfer as opposed to registration in the deeds office. (These shares cannot be mortgaged.)

WHAT IS A REGISTERED REAL RIGHT OF EXTENSION?

A developer can, when registering a sectional title scheme, reserve to himself the right to extend the scheme by the addition of units and/or buildings, at a later stage. This is referred to as a right to extend. The plans of such a proposed extension must be drawn and approved at the time that the scheme is first opened and registered. If the right of extension is not exercised or reserved, the right to extend the scheme vests in the body corporate. Any prospective purchaser must be made aware of the existence of the reservation of a right of extension in the agreement of sale failing which he/she is entitled to resile from the contract.

WHO CONTROLS THE SCHEME?

The body corporate is responsible for the control, administration and management of the scheme.

WHO OR WHAT IS THE BODY CORPORATE?

All the owners of sections in the scheme automatically constitute the body corporate. At an annual general meeting of all the owners, trustees are elected to act on behalf of the body corporate and to carry out the day to day running of the scheme. In many instances and especially with bigger schemes, the trustees utilise the services of a managing agent to assist them. Ultimately however, the control lies with the owners who make decisions on the administration of the scheme at a general meeting.

WHAT ARE LEVIES?

Levies comprise all the anticipated costs of the running of the scheme and usually include:

- rates and taxes payable to the local authority by the scheme if the units are not separately rated;
- electricity and repair costs relating to any electrical installation on the common property;
- insurance in respect of buildings in the scheme;
- managing agent fees;
- annual audit fees; and
- security and maintenance costs.

One of the main functions of the trustees is to determine a monthly levy for each unit.



HOW IS THE AMOUNT OF THE LEVY DETERMINED?

The trustees calculate the total annual budget required for the proper running and maintenance of the scheme. The budget will be made up from various expenses, such as the items mentioned in the previous paragraph. The annual total is divided into monthly instalments which in turn are collectively paid by the individual owners. The levy payable by any one owner is calculated with reference to the floor area of his section, in relation to the total floor area of all the sections in the scheme. This is referred to as a section's participation quota.

- Thus total annual budget divided by 12 = required monthly budget for the scheme.
- Floor area of owner's section divided by the total floor area for all sections x 100 = percentage of monthly budget payable by the owner

WHAT ARE "SPECIAL LEVIES"?

If insufficient funds are available for maintenance and/or improvements or unforeseen, necessary expenses become payable, a special levy may be raised by the body corporate at a general meeting. Owners of sections will then be liable to make a further contribution towards levies. This special levy may or may not be payable in instalments. The questions of liability for and disclosure of an existing or possible special levy should be dealt with in the deed of sale since the owner at the time the levy was raised is the one who is liable for payment thereof.

WHAT ARE MANAGEMENT RULES?

The Sectional Titles Act contains provisions regarding the management of the scheme, e.g. how trustees are elected, what the obligations of the trustees are, what the voting procedure is at general meetings, and so forth. These provisions are referred to as management rules. It is also possible for the body corporate, by unanimous resolution, to amend, substitute, add to or repeal the management rules

WHAT ARE CONDUCT RULES?

from time to time. Copies of the management rules that apply to any scheme can be obtained from the local deeds registry.

Each scheme has a set of conduct rules to regulate the conduct of owners and occupiers in the scheme such as rules regarding the keeping of pets, refuse removal, etc. It is possible for the body corporate, by special resolution (75% majority), to amend, substitute, add to or repeal the conduct rules from time to time.

WHAT ARE THE DUTIES OF AN OWNER OF A SECTIONAL TITLE UNIT?

An owner must:

- Permit any person authorised in writing by the body corporate, at all reasonable hours and on notice (except in the case of emergency, when no notice is required) to enter his/her section or exclusive use area for the purposes of inspecting it and maintaining, repairing or renewing pipes, wires, cables and ducts existing in the section and which are capable of being used in connection with the enjoyment of any other section or common property or for the purposes of ensuring that the provisions of the Act and the rules are observed.
- Carry out all work that may be ordered by any competent public or local authority in respect of his/her section and pay all charges, expenses and assessments that may be payable in respect of his/her section.
- Maintain his/her section in a state of good repair and, in respect of an exclusive use area, keep it in a clean and neat condition.
- Use and enjoy the common property in such a manner so as not to unreasonably interfere with the use and enjoyment thereof by other owners or other persons lawfully on the premises.
- Not use his section or exclusive area (or permit it to be used) in a manner or for purposes that will cause a nuisance to any occupier of a section.
- Notify the body corporate immediately of any change of ownership in his/her section and any mortgaging or other dealing in connection with his/her section.



**CAN A UNIT BE EXTENDED,
CONSOLIDATED AND/OR
SUBDIVIDED?**

- Ensure that the section is used for what it was intended, e.g. residential or business; and
- Acquaint himself/herself with the content of the management and conduct rules and abide thereby.

Yes, but only after:

- The approval of the body corporate and local authority has been obtained;
- A sectional plan of subdivision / extension / consolidation has been drawn by a land surveyor and approved by the surveyor general;
- An application to the deeds office to register the extension / subdivision / consolidation has been made; and
- The bondholder has consented thereto.

**HOW IS A SECTIONAL TITLE
UNIT TRANSFERRED?**

Please consult pages 4 and 5 hereof as it applies similarly to sectional title transfers.

*The information contained in this booklet is for general information purposes only and does not constitute legal advice.
Any reliance thereon is at the reader's own risk. Whilst we have taken every care to ensure accuracy,
STBB Smith Tabata Buchanan Boyes accepts no responsibility for errors or omissions in this publication.
Please consult an attorney should you require legal assistance.*

CONTACT US

info@stbb.co.za | www.stbb.co.za

CAPE TOWN OFFICE

8th Floor, 5 St Georges Mall, Cape Town 8001
PO Box 395/DX 45, Cape Town 8000
Tel: 021 406 9100 | Fax: 021 419 7909

CLAREMONT OFFICE

2nd Floor, Buchanan's Chambers,
Cnr Warwick Street & Pearce Road, Claremont 7708
PO Box 23355/DX 9, Claremont 7735
Tel: 021 673 4700 | Fax: 021 673 4701

FISH HOEK OFFICE

26 1st Avenue, Fish Hoek 7975
PO Box 22272/DX 4, Fish Hoek 7974
Tel: 021 784 1580 | Fax: 021 782 6224

SOMERSET MALL OFFICE

Dynarc Triangle, 13 Urtel Crescent,
Somerset Mall, Somerset West 7130
PO Box 327/DX 15, Somerset West 7129
Tel: 021 850 6400 | Fax: 021 852 1770

TABLEVIEW OFFICE

24 Blaauwberg Road, Tableview 7441
PO Box 395/DX 45, Cape Town 8000
Tel: 021 521 4000 | Fax: 021 521 4001

TYGERVALLEY OFFICE

5 High Street, Rosenpark, Tygervalley 7530
PO Box 3758/DX 38, Tygerberg 7505
Tel: 021 943 3800 | Fax: 021 914 1080

JOHANNESBURG OFFICE

6 Sherborne Road, Parktown, Johannesburg 2193
PO Box 3274/DX 6, Parklands 2121
Tel: 011 853 8300 | Fax: 011 853 8322/21