

Time is money - have your ducks in a row to avoid costly transfer delays

While some delays cannot be foreseen, it's possible to exponentially reduce the risk by doing one's homework and having all one's ducks in a row from the onset, says Jill Lloyd, area specialist in Rondebosch and Claremont for Lew Geffen Sotheby's International Realty.



"Essentially there are two primary types of delay; the first relating to the confirmation of the sale and those that occur once the sale has been confirmed and hold up the transfer," explains Lloyd.

"Property transactions are known to be lengthy processes with multiple steps and reams of documentation, and once the potential minefield of suspensive conditions and contractual obligations has been successfully navigated and the deal is finally done, many people breathe a sigh of relief. But the expected downhill cruise to transfer can still become an uphill battle if one isn't careful."

Timeline out of sync

Lloyd explains how this can happen: "One of the main reasons for delayed transfers is that the timeline is out of sync, especially when two or more deals are linked and money from one sale is needed to purchase the next property and so on. I once brokered a transaction with seven linked deals all dependent on the sale of a Rondebosch East home and we had to pull out all the stops to get the house sold in time."

“It is also very important for buyers to budget for the transfer costs of the new property they are buying or have an access bond in place on their current home, otherwise when the attorney calls for bond cancellation that bond account will be frozen and they will not be able to access the funds.”

She adds that not giving the required 90 days’ notice of cancellation of the existing bond can also cause delays as well as avoidable late cancellation fees.

“If a homeowner is seriously thinking about selling, they should give notice to the bank holding the bond. In doing so, they are not committing to selling, merely notifying the bank of the possibility and they can keep on renewing the cancellation if they don’t sell timeously or revoke the notification if they change their minds.”

Role of the transferring attorney

Craig Guthrie, partner at Guthrie Colananni Attorneys says: “One of the transferring attorney’s key roles is to coordinate and control all the role players involved in a transfer, including SARS (transfer duty), the municipality (Rates Clearance Certificate) and the bank.

“In order to do this as seamlessly as possible, it is essential that both the buyer and seller submit all the necessary documentation in time, as per the legal requirements and without omissions. This is especially important if either party resides in another country or is otherwise difficult to contact for information and signatures.”

Guthrie says that although hiccups and stumbling blocks can occur at any point of the transaction, they most commonly occur at the following stages:

- Bond approval;
Bond cancellation;
- Signing of transfer documents;
- Obtaining valid compliance certificates;
- Issues encountered at lodgements requiring the removal of notes by the Registrar of Deeds; and
- Transfers which are unusual and more complex, such as estate transfers which require an endorsement of the Master of the High Court, which can cause a delay.

“Most of these delays can easily be avoided,” he adds, “through prompt co-operation with the transferring attorney and the paralegal handling their transfer or, if they are outside of South Africa, by giving a valid power of attorney to a person within South Africa who can sign the necessary documents and act on their behalf.”

“It’s vital that the client is completely up front with the agent regarding their financial situation,” says Lloyd. “We can then facilitate and expedite the process by having our bond broker prequalify them and the thorough credit check will reveal any potential snags.

“This step is particularly important for buyers who are self-employed as banks are very strict about the documentation that they require for a bond application. At this stage I always advise all my clients to avoid making any expensive purchases that could negatively impact their affordability.”

Lloyd concludes: “Experienced estate agents will guide their clients every step of the way and as long as they are upfront with their realtors, there should not be too many problems to circumvent.

“I also recommend appointing an accomplished conveyancing attorney who is really on the ball. It is all very well allowing

you best friend to handle the transfer, but you could end up being enemies if they make a complete hash of it and that happens more often than I like to remember!

“And, as the transferring attorney and agent work closely together behind the scenes to ensure a smooth transfer, it is always an advantage if they already have an established working relationship.”

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