

MEETING  
@ 9.30 AM



# Louise Tonkin Inc

ATTORNEYS | NOTARIES | CONVEYANCERS

## PROPERTY TRANSFER GUIDE

Meeting your unique needs

At Louise Tonkin Incorporated, we believe that communication is the key to ensuring our clients remain confident that their transaction is on track and under control.





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## INDEX

SELLING OR BUYING A PROPERTY	● PAGE 2
CHOICE OF CONVEYANCER	● PAGE 2
TRANSFER PROCESS	● PAGE 3 - 4
BOND REGISTRATION PROCESS	● PAGE 5 - 6
BOND CANCELLATION PROCESS	● PAGE 7 - 8
DEEDS OFFICE PROCESS	● PAGE 9
FINANCIAL INTELLIGENCE CENTRE ACT NO 38 OF 2001	● PAGE 10
LIST OF FICA DOCUMENTS	● PAGE 10 - 12
TRANSFER DUTY	● PAGE 13
CLEARANCE CERTIFICATE	● PAGE 14
CERTIFICATES OF COMPLIANCE ("COC")	● PAGE 15
ELECTRICAL	● PAGE 15
FENCE	● PAGE 15
GAS	● PAGE 15
CONTACT	● PAGE 16





## SELLING OR BUYING A PROPERTY

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Owning property is the largest, most expensive and most important investment most people will make. Therefore, it is important to have a basic understanding of the process followed and how it will affect you as a Seller or Purchaser.

When buying or selling property, the Seller will transfer ownership of his property to the Purchaser and cancel the existing mortgage bond over the property, if there is an existing bond. The Purchaser will take the transfer of the property and simultaneously register a new mortgage bond over the property, if the Purchaser is using the bank to finance the property. If the Purchaser is paying cash there will be no mortgage bond registered over the property. The entire transfer process and the procedure followed at the Deeds Office are regulated by the Deeds Registrar Act No 47 of 1937. The Deeds Office is the Government Institution that records the ownership of property, mortgage bonds and related transactions registered over the property and other real rights related to property. The documents lodged with the Deeds Office, and the coordination of the transfer process in compliance with the Act is the responsibility of the Conveyancer.

## CHOICE OF CONVEYANCER

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When buying or selling property the Seller and Purchaser will deal with a Conveyancer in order to finalise the process of registration. Only Conveyancers may sign documents needed to transfer property or register a mortgage bond. A Conveyancer is an Attorney who has written and passed a specialised exam that allows the Conveyancer to attend to property-related transactions. To qualify as a Conveyancer, you must first become an Attorney and then write a specialised additional exam to become a Conveyancer.

**The Seller chooses the Conveyancer.** The Conveyancer will represent both Seller and Purchaser in order to transfer the property. If the parties become involved in a dispute, the Conveyancer will normally represent the Seller, unless the Purchaser is already an existing client of the Conveyancer. In our system of property transfers, the Purchaser pays the Conveyancing costs. The costs are based on a tariff recommended by the Legal Practice Council. For further information regarding transfer and bond costs, log onto our website [www.ltinc.co.za](http://www.ltinc.co.za) and click on our Cost Calculator.

# TRANSFER PROCESS

(Timeline between 30 and 90 days)

## 1. Receive Offer to Purchase

- Transferring Attorney ("TA") receives Offer to Purchase and requests payment of the deposit, if applicable.
- TA requests the title deed from the seller/bondholder.
- TA request the bond cancellation figures from existing bondholders (Bank).
- TA requests FICA documents from seller/purchaser.

## 2. Fulfilment of suspensive conditions

- TA receive a bond grant.
- TA requests rates clearance figures from the Local Authority.
- TA requests levy clearance figures from body corporate/homeowners' association or managing agent.
- TA receive cancellation figures and title deed.
- TA draws transfer documents.

## 3. Payment of costs & signature of documents

- TA furnishes bond attorney with a draft deed and guarantees requirements.
- TA requests seller/purchaser to sign transfer documents and pay transfer costs.
- TA lodges transfer duty with a receiver of revenue via e-filing.

## 4. Guarantees

- TA receives guarantees from the bond attorney.
- TA sends guarantee to bond cancellation attorney.
- TA receives transfer duty receipt.
- TA receives clearance figures and levy figures.
- TA pays Local Authority and body Corporate/homeowners association and awaits receipt of certificates.

## 5. Lodgement at Deeds Office

- TA arranges with bond & cancellation attorney to lodge at the Deeds Office
- The transfer document goes through the examination process at the Deeds Office.

## 6. Registration

- The transfer of property, registration of purchaser's new bond and cancellation of seller's existing bond are registered simultaneously
- The guarantees are electronically paid.

## 7. Distribution of funds and Delivery of Title Deeds

- TA receives payment of guarantees, final statements are drawn and proceeds are distributed.
- Title deeds are delivered back to the TA within 3 months of registration.

All processes explained above are a brief guide and should not be interpreted as being an extensive lay-out of all the steps to affect the transfer of a property, registration of a bond or cancellation of an existing bond. The entire procedure should take between 30 – 90 days, failing any unforeseen circumstances.

# BOND REGISTRATION PROCESS

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## 1. Instruction from Bank

- Bond Registration Attorney ("BRA") receives electronic instructions from the Bank to attend to the bond registration on behalf of the purchaser/mortgagor ("mortgagor").

## 2. Client Contact

- The mortgagor is contacted to ascertain whether they will be proceeding with the mortgage bond, if so, a pre-loan agreement is forwarded to the mortgagor for his perusal and signature.
- The BRA requests a documentary proof from the mortgagor in compliance with the Financial Intelligence Centre Act ('FICA') and Bank requirements.

## 3. Draft Deed

- The BRA requests the draft deed and guarantee requirements from the transferring attorney.

## 4. Draft and Signing of Documents

- Upon receipt of the draft deed and guarantee requirements, the BRA proceeds to draft the bond documents in compliance with the Deeds Registry Act.
- The BRA Conveyancer is responsible for the correctness and validity of the information contained in the bond registration documents.
- The BRA calls for the mortgagor to sign the bond registration documents and pay the bond registration costs.
- The BRA attends to the Debi-check process of validating the debit order details.
- The BRA attends to all insurance requirements and ensures all special conditions of the Bank are met.

## 5. Guarantees and Proceed from the Bank

- Guarantees are then forwarded to the transferring attorneys who forward them to the cancellation attorneys.
- The BRA uploads all bond documents and FICA documents on the bank system to obtain approval from the Bank to proceed with lodgement and registration.

## 6. Lodgement and Registration

- The BRA waits for the transferring attorney to arrange lodgement.
- Once the documents are lodged in the Deeds Office and there are no notes, the Conveyancer executes the deeds before the Chief Registrar and hands same in for registration.
- The deeds which include the transfer documentation, the bond documentation and the cancellation documentation are then registered simultaneously.

## 7. Distribution of funds and Delivery of Title Deeds

- The BRA notifies the Bank that the bond has been successfully registered before 12H00 on the day of registration and furnishes the bank electronically with the Authority for Payment.
- The guarantees are paid out by the Bank within 24 hours of being notified of registration.
- Once the registered title deed and mortgage bond are returned to the transferring attorney by the Deeds Office, the transferring attorney forwards them to the BRA who then returns the title deed and mortgage bond documents ("securities") to the financial institution for safekeeping as security for the mortgage bond registered.

# BOND CANCELLATION PROCESS

## 1. Request to Cancel the Bond

- Bank receives a request for cancellation of the bond from you or the transferring attorney.

## 2. Instruction to Attorney

- Cancellation instructions are issued by the bank to the transferring attorney and a Panel Cancellation Attorney ("PCA").
- PCA contacts the transferring attorney to request FICA, banking details (refund form), a guarantee to settle the existing bond and cancellation cost.

## 3. Bank Releases Security Documents

- Bank releases the original title deed and mortgage bond to the PCA. The PCA liaises with the transferring attorney/client and receives the client's FICA, Refund sheet, banking detail and guarantee to settle the existing bond and cancellation cost.

## 4. Signing of Consent

- Cancellation documents are signed by the bank or by the PCA Attorneys if they are so authorised to do so.

## 5. Lodgement

- Consent to Cancellation, Bond Registration Document and Transfer Documents are lodged in the Deeds Office by the PCA together with the transferring attorney and bond registration attorney, if applicable.

## 6. Examination in Deeds Office and Prep Figures

- Documents are examined and go through the Deeds Office process and may be passed or rejected.
- If passed the documents come up on preparation in the Deeds Office. At this point, the PCA requests final settlement figures from the bank. This step is to ensure that the initial settlement figures issued are still sufficient to settle the existing loan.

## 7. Registration and Delivery of Deeds

- The Consent to Cancellation and Bond and Transfer documents, if applicable are registered, and the bond endorsement on the title deed is cancelled.
- Guarantees are paid out into the existing bond account number within 24 hours.
- The title deeds are delivered within 3 months after registration to the PCA.
- If the property is sold the title deed remains in the PCA's file, as it becomes a dead deed. If it's a private client the title deed is delivered to the client by the PCA.

All processes explained above are a brief guide and should not be interpreted as being an extensive lay-out of all the steps to affect the transfer of a property, registration of a bond or cancellation of an existing bond. The entire procedure should take between 30 – 90 days, failing any unforeseen circumstances.

# DEED OFFICE PROCESS

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## WHAT HAPPENS BETWEEN LODGEMENT AND REGISTRATION?

STEP 1. Documents are lodged in Deeds Office. (Day 1)

STEP 2. Personal and property printouts are done. Interdicts are checked. (Day 1)

STEP 3 Deeds are sorted for distribution to the examiners. (Day 1)

STEP 4. First examination by Junior Examiner and back to distribution. (Day 2 - 3)

STEP 5. Second Examination by Senior Examiner and back to distribution. (Day 4-5)

STEP 6. Deeds passed or rejected. Rejected Deeds sent for delivery to transfer attorney. (Day 5)

STEP 7. Passed Deeds sent to Prep for notes to be dealt with by an Attorney. (Day 5 - 9)

STEP 8. If all is in order Deeds are put forward for registration. (Day 10)

STEP 9. Execution/Registration in front of Chief Registrar. (Day 11 - 12)

Approximately 10-12 working days n deeds office deeds on Prep 5



## FINANCIAL INTELLIGENCE CENTRE ACT NO 38 OF 2001 (“FICA”)

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The Financial Intelligence Centre Act (“FICA”) is an anti-money laundering legislation that was introduced to South Africa in 2003. In basic terms, this Law aims to stop money laundering and to identify and prosecute those involved in such activities.

In terms of FICA, a firm of Attorneys is an Accountable Institution that is required to verify the identity of every client with whom they enter into a single or business transaction. An attorney may not do business with an “anonymous” client (a client who cannot be identified). Failure by the Attorney to comply with FICA is an offence and can result in prosecution and huge fines and penalties.

Attorneys who are on the Bank’s panel are also required to verify the identity of every mortgagor for whom a mortgage bond is registered, in accordance with the requirements and policies of each Bank with regards to FICA.

# WHAT FICA DOCUMENTS WILL YOUR ATTORNEY REQUIRE FROM YOU?

The list of FICA documents below is not a conclusive and extensive list of all documents required in every possible scenario but is meant as a guide within the framework of FICA.

## 1. Proof of Residence (anyone)

In all instances, the documents listed above which reflect the name and residential address of the client, are acceptable Proof of Residence.

- Utility Bill;
- Bank statement from another bank (banking institutions cannot accept their own statements);
- UNEXPIRED Lease or Rental Agreement;
- Municipal Rates and Taxes invoice;
- Mortgage Statement from another institution;
- Telephone or cellular account;
- Valid Television Licence (VALID FOR 12 MONTHS);
- Recent long-term or short-term insurance policy document issued by an insurance company;
- Recent motor vehicle license documentation;
- Statement of account issued by a retail store;
- Statements from other accountable institutions;
- Co-habitant affidavit (co-habitant to provide ID and proof of residence);

## 2. FICA for Natural Persons - SA Citizens

- Green Barcoded ID book or new Smart ID card;
  - If above is not available and proper explanation is obtained then Passport or Drivers licence;
- FICA supplementary information for natural persons**
- Proof of residence not older than 3 months;
  - Contact details;
  - Tax number;
  - Marital status i.e., marriage certificate and Anti-Nuptial if applicable;

## 3. FICA for Foreign Nationals

A valid unexpired passport or document issued by the relevant authority of the country that serves as an ID document and contains a recent photo, date of birth and national ID number;

- Work permits;
- Visitor's visas;
- Asylum seeker or refugee permits;

## 4. FICA For Trusts

- Copy of trust Deeds;
- Letters of Authority;
- Resolution of all trustees nominating authorised representative;
- Copies of ID document and proof of residence for donor, trustees and beneficiaries, and supplementary information as per natural persons;

## 5. FICA For Company - Listed Company

- A valid document which provides proof that the company is listed on the stock exchange;



## 6. FICA For Private Company - Unlisted Company

- COR 15.1 A Memorandum of Association;
- COR 14.1 Notice of Incorporation
- COR 14.3 Registration Certificate;
- COR 21 Notice of Registered address;
- COR 39 Certificate of Confirmation
- Proof of registered address for the company not older than 3 months;
- Resolution by all directors of the company nominating authorised representatives;
- Copies of ID documents and proof of residence for all directors, shareholders and representatives of the company and supplementary information as per natural persons;

## 7. FICA For Close Corporations [CC]

- CK1 Founding Statement or CK2 Amending Founding Statement;
- Proof of registered address for the CC not older than 3 months;
- Resolution signed by all members nominating authorised representative;
- Copies of ID documents and proof of residence of all members and authorised representative and supplementary information as per natural persons;

## 8. Deceased Persons

- Death Certificate;
- Letters of Executorship or Section 18 Master's Directions;
- Copy of ID and proof of residence of Executor;

## 9. Partnerships

- Partnership Agreement or written confirmation from partners that no written partnership agreement exists;
- Proof of physical business address;
- Copies of ID documents and proof of residence of all partners and supplementary information as per natural persons.

# TRANSFER DUTY

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Transfer Duty is a form of tax that is paid in terms of the Transfer Duty Act when a Purchaser buys an immovable property. There are various exemptions to the payment of Transfer Duty, in which case a Transfer Duty Exemption Certificate must be obtained. SARS issues the Transfer Duty Receipt or the Transfer Duty Exemption Certificate after receiving necessary documents and payment from the Conveyancing Attorney. The Seller and Purchaser will sign Transfer Duty Declarations which calls for the disclosure of certain information:

- Parties' income tax numbers
- Various tax information related to the sale and Capital Gains Tax
- Various information on the status of the parties
- Tax information relating to the Estate Agent, if applicable
- Consideration paid for the property purchased

Any outstanding tax issues a party to a transaction may have with SARS could create delays or obstruct the transfer process.

Both Sellers and Purchasers should be encouraged to resolve any outstanding tax issues with SARS at an early stage, to avoid delays, as the Deeds Office will not register the transfer unless the Transfer Duty Receipts or Transfer Duty Exemption Certificates are lodged, and SARS will not issue a Transfer Duty Receipt or Transfer Duty Exemption unless the parties tax obligations are up to date.

## RATES CLEARANCE CERTIFICATES

Rates Clearance is a Certificate ("RCC") received from the Municipal Local Authority that certifies that the Seller does not owe any money to the Local Authority. The Registrar of Deeds acts as a policeman on behalf of the Local Authority and will not transfer a property from the Seller to the Purchaser unless the Conveyancer presents an RCC with the documents lodged in the Deeds Office.

Rates Clearances are required for both freehold and Sectional Title property.

The Conveyancer calls on the Local Authority for Rates Clearance Figures. The figures are worked out by the Local Authority and not the Conveyancer. The RCC will include arrear rates and taxes, water and electricity, sewerage and refuse, and will also include an advanced portion for a period of approximately 3 to 5 (five) months from the date when the figures were requested. Once the figures are received, the Conveyancer will present them to the Seller and ask for a payment, which payment will be forwarded to the Local Authority in order to obtain an RCC.

Once the transfer is registered the Sellers account will normally be in credit due to the advanced portion paid by the Conveyancing attorney on behalf of the Seller, as set out in the Clearance Figures. The Conveyancer will not refund any funds to the Seller in respect of the advanced portion. The Local Authority is responsible for the change of ownership into the purchaser's name and the refunding of any credit portion still due to the Seller.

**We do assist the Seller and Purchaser with the change of ownership and refund on request and authorisation by the client to do so.**

This process can take up to 6 to 8 months to be finalized. The Seller will continue to receive monthly statements whilst the process is being finalised.

The Seller can only apply for the refund and the Purchaser can only open the new account once the transfer has been registered in the Deeds Office. Both Seller and Purchaser will receive a letter from the Conveyancing attorney confirming the date of registration, which is to be provided to Local Authority when applying for the change of ownership and applying for the refund.



MAKE THE RIGHT CHOICE AND CHOOSE LOUISE TONKIN INCORPORATED

## CONTACT US

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