

CAPE LAW SOCIETY:

Guidance for Proper Conduct of Property Law Matters

The Society is often asked by members to give guidance on procedures or to lay down rules of practice. It has become apparent that members require guidance on the ethical principles and codes of professional conduct that apply to property law practice. This document is intended to serve the needs of the experienced conveyancer and also to serve as an introduction to conveyancing practice for newly qualified practitioners who may not have enjoyed exposure to the practical and ethical aspects of conveyancing. The CLS Property Law Committee accordingly offers the following guidance, including principles of practice that are widely accepted by conveyancing attorneys.

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1. ETHICS AND HONESTY

1.1 Accuracy and Transparency

Conveyancers register transactions involving large sums of money, represented by undertakings exchanged on trust. Mutual trust grounded in the highest ethical standards of professionalism and honesty is so fundamental to conveyancing that the process will disintegrate if these standards are not maintained. The fact that a very small number of conveyancing matters end up in litigation is proof of the efficiency of the current system.

The general public, business and all public sectors rely on the accuracy of the registration system, where the input of the conveyancer is of vital importance. Apart from duties towards the parties involved in the transaction, the conveyancer has a duty towards the State and to the public to ensure that no incorrect or misleading information is recorded or perpetuated in the Deeds' Office. The conveyancer is obliged to point out any error or change in information for recording, even if this may result in a delay to registration. In this respect, the duties of the conveyancer, with professional obligations, override the interests of a client, who may feel that such aspects should be overlooked if the registration can be achieved sooner or at lower cost. For example, a conveyancer attending to a transfer is obliged to advise a colleague attending to the bond if he/ she, at any stage, becomes aware of an addendum that may adversely affect the price or the property rights, from the perspective of the bondholder. It is not sufficient to argue that the information need only be divulged if specifically requested by the other conveyancer.

"Dummy transactions", "shortcuts" to achieve faster registration or the eliciting of information from another party, who would not otherwise divulge same, amounts to unprofessional conduct. For examples, a conveyancer requests figures for the cancellation of a bond from a bank on the basis of a fictitious transfer, well knowing that legal steps to recover arrear bond instalments will be suspended because the bank is under the impression that the bond is about to be repaid. Another example, the conveyancer becomes aware that a property transaction is not genuine and is intended

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to hide assets from creditors or to frustrate pending litigation. No conveyancer may be a knowing party to such a transaction.

Conveyancers have a particular duty of care when dealing with clients at less than arms length, for example, where the conveyancer is party to the contract, registers a bond or will receive commission or some other benefit, directly or indirectly arising from the transaction. Complaints are unlikely to arise if any such benefit or interest is disclosed to all interested parties at the earliest opportunity. Another example, the practice of conveyancers registering bonds in favour of themselves has become widespread but remains risky. The conveyancer must be aware that such a transaction is particularly vulnerable to allegations of a conflict of interest or failure to protect the interests of the other party. If the conveyancer cannot find it in his heart to refer such a transaction to a colleague, prudent practice would dictate that a colleague be requested to supervise the transaction in order to ensure that justice is not only done but is also seen to be done.

1.2 No Excessive Discounts

A sustainable business or commercial undertaking must make a reasonable profit in order to give proper service to clients, to fund the business and to provide for future growth. It is not a sin to make profit. Any attorney who cannot make a profit from his/her practice will inevitably close or resort to unacceptable conduct in order to survive.

Practitioners fail to realise that discounts given by professionals are not the same as those given by traders. Special discounts given by such entities are invariably based on specific products, valid for a limited period only and apply to a limited quantity of stock. This is not possible in conveyancing where "stock" consists of bond and transfer instructions not yet received. Once a conveyancer offers a discount, clients feel that the discounted fee has been established as the upper limit of a proper charge and other attorneys are pressurised to match the discounted fee. There is nothing wrong with reasonable discounts, furnished purely on financial or marketing considerations, but such discounts should extend to a limited number and type of transactions only. They should also relate to a specific client and be based on volume, a series of simple transactions or other factors that persuade the attorney that, in the circumstances, he/she can do the work and still make a reasonable profit.

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Overhead costs of 60%, and even 70%, are not unusual in attorney firms, which mean that, against discounts in excess of 30%, the attorney is working at a loss, is subsidising his conveyancing practice from other areas of work or is touting.

Banks and estate agents agree that the quality of service and standards drop sharply at firms who offer large discounts. Many firms have already decided to refuse discounts and to concentrate on a smaller number of profitable instructions, rather than to manage a large practice with large volumes but no profit.

Excessive discounts potentially undermine the profession and may be the subject of disciplinary scrutiny to establish whether such discounts amount to unprofessional business approaches. Discounts should be given circumspectly, based on sound business principles.

1.3 Purchasing of Work

The purchasing of work is undoubtedly the worst problem that conveyancers have faced in the past decade. It is unprofessional and unacceptable for a practitioner to reward third parties for the referral of instructions.

The attorney who is party to a transaction where the agent or bank manager receives a benefit, not disclosed to the seller or purchaser, may well be guilty of purchasing work. The independence of the practitioner is undermined when the conveyancer becomes beholden to the agent and accepts instructions from him/ her, to the prejudice of the client, whose interests are not then protected.

A practitioner found guilty of purchasing work will be disciplined. The payment by an attorney to a non-professional person of a portion of the professional fee, that is fee sharing, is prohibited. Apart from all other considerations, the purchasing of work falls within the ambit of the Corruption Act and the attorney, agent or other facilitator involved in purchasing work should expect no mercy from the courts if such matters are brought before them.

A result of this practice has been that many are now convinced that conveyancers make excessive profit and should be squeezed to the limit to extract the biggest possible advantage from the referral of instructions. The purchasing of work has undermined the profession so seriously that it may result in the loss of conveyancing as work reserved to practising attorneys. Such a move is likely to enjoy support from a public who feels that it cannot trust corrupt practitioners who associate themselves with corrupt agents and officials. There should be no doubt that the Society will deal harshly with any practitioner found guilty of buying work.

2. HONOURING OF UNDERTAKINGS

- 2.1 Undertakings are asked and given freely between co-operating colleagues in order to facilitate registration of transactions.

A practitioner is not compelled to give, or to accept, an undertaking in any matter. It is established practice, and widely accepted, that attorneys facilitate registration of transactions by giving undertakings to make a payment against the happening of certain future events.

It is a long established practice in the Cape Town Deeds' Registry for trust cheques to be exchanged on the morning of registration, pursuant to undertakings given in transactions. The practice relies, for its continued existence, on the integrity of the participating practitioners and their adherence to professional standards.

- 2.2 An undertaking can be qualified to be revocable. Irrevocable undertakings may not be unilaterally revoked and should not be given lightly. An attorney who gives a revocable undertaking is professionally bound to honour the undertaking if reliance has been placed on it, irrespective of changes in the circumstances of the client on whose behalf the undertaking was given.

Many conveyancers have found that the insistence on unconditional, irrevocable undertakings poses too high a risk or obligation on the attorney requested to furnish it. This may result in a situation where the attorney refuses to give an undertaking and gives a bank guarantee, with commensurate costs for the client and inconvenience for the attorney demanding the undertaking.

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- 2.3 Revocable undertakings (and undertakings that are not stated to be irrevocable) can be revoked but ethical considerations apply where the party in whose favour the undertaking has been issued has already acted on the strength of such undertaking. Revocation should be made timeously and the party who has acted in reliance on the undertaking should be given the opportunity to restore the *status quo ante*.
- 2.4 Care should be taken in drafting undertakings. Attorneys issuing undertakings should be aware of the application of the 'reliance theory' pursuant to which the substance of an undertaking may take precedence over its form. Reference in this regard should be made to *Ridon vs Van der Spuy & Partners (Wes Kaap) Inc 2002(2) SA 121(C)* in which it was held that an undertaking by the defendant firm of attorneys to pay 'on behalf of' its client was properly construed as a personal undertaking of the firm and not that of the client.

For example, the attorney for a judgement creditor uplifts an attachment over immovable property on the strength of an undertaking furnished by the transferring attorney. Should the latter, at any stage, exercise the right to revoke the undertaking, professional ethics requires that the attorney for the judgement creditor be advised timeously and given proper opportunity to restore the position *ante*: ie. to re-attach the property, alternatively, to obtain new instructions.

An attorney who furnishes an undertaking to gain a specific advantage and then withdraws the undertaking without permitting the other party to re-affirm its rights, will be exposed to complaints to, and inquiry by, the Society for acting unprofessionally, in addition to other civil remedies of the offended party.

- 2.5 An undertaking may be conditional or unconditional. Care should be taken to disclose any suspensive conditions upon which payment is dependent and to disclose any circumstances that might influence the acceptance of the undertaking.

For example, if an undertaking is given to pay over the net proceeds of a sale on transfer, the existence of an unfulfilled suspensive condition at the time of giving the undertaking should be specifically disclosed.

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- 2.6 Undertakings should not be given lightly, should not be misleading and should be given only once the financial details of the underlying transaction have been established.

For example, where the amount owing in respect of a bond over the property exceeds the sale price, an undertaking to pay the net proceeds of the sale is misleading.

- 2.7 The onus of collecting bond costs is generally that of the attorney attending to the registration of the bond. However, where bond registration costs are included in the purchase price of a property, convenience may dictate that the costs are deducted from the proceeds of the bond before the net proceeds are paid to the transferring attorney. If this is the case, any undertaking to pay the proceeds of a bond to the transferring attorney should make it clear that costs are to be deducted. This should be communicated in good time to enable the transferring attorney to plan the financial aspects of the transaction timeously.

To summarise -

The continued acceptance by conveyancers of undertakings as a useful means of facilitating transactions is dependant on the honouring by them of their legal and professional obligations. Care must be taken in the calculation, and the wording, of the undertaking, as other parties will rely and act thereon. An attorney may be held to the letter and intent of an undertaking and is, accordingly, at risk of civil action and/or a complaint of unprofessional conduct.

3. RELATIONSHIP WITH COLLEAGUES

3.1 **Duty to transact openly, to co-operate and not to delay matters**

In conveyancing, a number of attorneys, dealing with different aspects of a batch, are required to co-operate with each other to ensure that the entire batch is successfully lodged and timeously registered.

If we assume that a standard batch contains a transfer, a bond cancellation and a new bond, each being attended to by a separate conveyancer, the duties of each of the conveyancers are the following -

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3.1.1 The transferring attorney

- i) Send the flysheet timeously to the bond attorney, with full details of the guarantee requirements. If a preliminary power of attorney has been provided, ensure that it is followed up with a flysheet.
- ii) Immediately advise the bond attorney of any changes made to the flysheet.
- iii) Act promptly when receiving the title deed from the bond cancellation attorney, by acknowledging receipt of the title deed and furnishing the latter with the required undertaking or guarantee for payment of the outstanding capital and interest secured by the bond.
- iv) Answer any queries raised by the bond cancellation attorney regarding account numbers and the address of the mortgagor after registration of the bond cancellation as soon as possible to enable the bond cancellation attorney to inform the mortgagee.
- v) Honour any undertaking given.
- vi) Deliver the title deed to the bond attorney within a reasonable time after receipt thereof from the Deeds' Office.

3.1.2 The bond cancellation attorney

- i) Write to the transferring attorney as soon as instructions are received to cancel the bond, furnishing the transferring attorney with the title deed, or a copy thereof, as well as the bank's cancellation requirements.
- ii) Prepare the consent to cancellation of the bond, without delay, and submit same for signature as soon as the required letter of undertaking or guarantee is received.

3.1.3 The bond attorney

- i) Contact the transferring attorney as soon as instructions to register the bond are received with a request that the transferring attorney furnish a flysheet. It is important to indicate precisely how much of the proceeds of the bond will be available for payment on registration of transfer and whether or not the bond registration costs are to be deducted from the proceeds of the bond. It is unacceptable to advise the transferring attorney only on registration that the bond registration costs are to be deducted.

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- ii) Draw the bond documents and arrange as soon as possible for the mortgagor to sign them in order that they may be ready to lodge upon the request of the transferring attorney.
- iii) Ensure that all the mortgagee's conditions are fulfilled prior to the deeds becoming available for registration to obviate any delay with registration.
- iv) Honour any undertakings to pay on registration.
- v) Ensure that a full flysheet of transfer is provided and checked for any detrimental conditions and/ or consents that may be required. Obtain any waiver of conditions that prejudice the mortgagee's rights.

It is clear that conveyancing transactions must be conducted in a spirit of co-operation, with each conveyancer doing their best to ensure that other linked conveyancers are assisted in the performance of their respective mandates.

It is wise to accommodate, as far as possible, any special requests for assistance from other conveyancers since no conveyancer can know when the assistance of a colleague will be required by them.

3.2 Duty to use title deed and other documents for intended purpose and to return deed after declared purpose has been achieved (or cannot be achieved)

Each conveyancer receiving a title deed, released to him/ her for a declared purpose, has a duty of care in respect of that title. Should the title remain open after the registration of the transaction for which it was released or should that transaction be cancelled or unduly delayed, the title must be safely returned to the attorney who provided it.

The attorney delivering the deed must also make sure that such deed is correctly despatched to the intended recipient. All reasonable steps must be taken to ensure that the deed reaches its destination.

In the event that a title deed is mislaid by the attorney charged with its care, that attorney is required to make an application for the issue of a certified copy and to bear the cost of such application.

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3.3 Duty not to interfere with a transaction nor to quote for work, where the work has already been allocated to a colleague

Although there is guideline for fees, it is only a guideline and fees may be negotiated. When the resolution permitting that conveyancing fees be negotiated was passed, it was clearly stated that a conveyancer, who undercuts the fee of a colleague to whom instructions have been issued with a view to procuring the work, would be guilty of touting. Touting is prohibited. Undercharging is considered to be a calculated means of attracting clients and is therefore unlawful competition, similar to touting. However, professional business approaches are permitted (for further guidance in this respect, refer to the CLS marketing guideline, available on the Society's website at www.capelawsoc.law.za).

Unless acting *pro amico*, an attorney is expected to charge a reasonable fee for work done. He/ she should act fairly and honourably towards clients, colleagues and the profession as a whole. Once a conveyancer has received an instruction to register a transaction, it is unprofessional for any other conveyancer to cause the former conveyancer's mandate to be terminated in order that he/ she be instructed. Even more unprofessional is the action of the conveyancer who, having ascertained that a colleague has been instructed, approaches the purchaser or mortgagor to cause the former conveyancer's mandate be terminated because the latter is prepared to reduce his/ her fee should he/ she be substituted.

3.4 Obligation not to interfere with, or give, instructions to a colleague's staff

It is very tempting when a conveyancer is tardy in responding to letters and requests of linked conveyancers to telephone the former conveyancer's secretary and give her instructions to deal with matters, for example, asking her to telephone her client bank regarding the return of a signed consent to cancellation of a bond. Even though a conveyancer may be frustrated with the lack of attention paid by a colleague to a matter, it is impolite to instruct that colleague's secretary. The conveyancer should deal directly with the colleague.

4. RELATIONSHIP BETWEEN CONVEYANCER & PARTIES TO TRANSACTION

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4.1 Relationship with the seller

4.1.1 In most instances, the seller's attorney will be nominated to attend to the transfer of the seller's property. It is therefore the primary duty of the conveyancer to protect the interest of his client seller at all times.

4.1.2 Upon receipt of an instruction to attend to a transfer, contact the seller to acknowledge receipt of the instruction and explain to him/ her the legal process to be followed to finalise registration of transfer.

4.1.3 Highlight to the seller all clauses contained in the deed of sale which could have a detrimental impact on the transfer ie suspensive conditions, especially those referring to the prior sale of the purchaser's property.

4.1.4 Keep the seller informed of progress.

4.1.5 Pay particular attention to the seller's bond settlement amount and warn him/ her timeously of any penalty interest, notice periods or other administrative charges to be levied against cancellation of the bond which might increase the amount beyond the seller's expectations.

4.1.6 Obtain the seller's permission before issuing any guarantee or undertaking on his/ her behalf.

4.1.7 Endeavour to cause transfer to be registered on the date stipulated in the deed of sale or as close as possible thereto.

4.1.8 Ensure that the seller complies with all his/ her obligations in the deed of sale and remind him/ her thereof timeously in order to avoid delays to the registration of transfer.

4.1.9 Attend personally on the seller when he/ she calls to sign the transfer documents and explain to him/ her the nature and purpose thereof.

4.1.10 Prep the deed of transfer and supporting documents carefully, prior to lodgement in the Deeds' Office, to minimise the chance of a rejection.

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4.1.11 Inform the seller of registration of transfer and account to him/ her on the same day for finances relating to the transaction.

4.2 Relationship with the purchaser

4.2.1 Having regard to the primary duty to the seller, the conveyancer nevertheless has a duty towards the purchaser who must be dealt with forthrightly and courteously and advised if there is any abuse of rights by the seller. In the event of a dispute between the seller and the purchaser, inform the purchaser that your primary duty lies in protecting the interest of your client, the seller, and, in the event of the dispute not being amicably resolved, the purchaser should consult his/ her own attorney/ conveyancer.

4.2.2 Contact the purchaser immediately upon receipt of instructions to attend to the transfer and introduce yourself.

4.2.3 Inform the purchaser of his/ her obligations in terms of the deed of sale and, in particular, explain to him/ her the legal consequences of the material conditions.

4.2.4 Call upon the purchaser to sign the transfer documents as early as possible after receipt of instructions and attend on him/ her when signing personally to explain to him/ her the nature and purpose of the documents which require signature.

4.2.5 Explain to the purchaser how the transfer costs are calculated and when payable. Also explain the obligation to pay municipal rates and services or levies to a body corporate or Home Owners Association.

4.2.6 Call for the purchaser's guarantee in respect of the purchase price or balance thereof timeously, as stipulated in the deed of sale.

4.2.7 Invest all moneys paid by the purchaser towards the purchase price in an interest bearing trust account in terms of Section 78(2A) of the Attorneys Act, as is normally provided in the agreement of sale or, if not, with the written consent of the purchaser as

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stipulated in the said Act. Remember that you have a duty of care in this regard (refer authority).

4.2.8 Keep the purchaser fully informed as to progress.

4.3 Relationship with the mortgagee

4.3.1 In most cases, the mortgagee is your client, ie a bank or financial institution instructs you to attend to the registration of a mortgage bond in its favour.

4.3.2 On receipt of the bond instruction, immediately acknowledge receipt thereof.

4.3.3 Peruse the instructions to ascertain what conditions imposed by the mortgagee should be complied with prior to registration of the bond.

4.3.4 Make sure that you are familiar with the administrative process required by the mortgagee for the registration of its bonds, in particular, reporting requirements, highlighting any potential problems that may cause a delay in registering the bond.

4.3.5 You should comply with all the requirements set by the mortgagee as far as computer hardware and software are concerned.

4.3.6 You should protect the interests of the mortgagee at all times. If demand is made for return of a title deed released by the mortgagee, you are obliged to immediately return the deed to the mortgagee.

4.3.7 Title conditions of the property to be bonded should be carefully perused and any detrimental condition immediately brought to the attention of the mortgagee.

4.3.8 Inform the mortgagee immediately of the registration of the bond and ensure that funds are only released on behalf of the mortgagee in accordance with the authority for payment and guarantees and or undertakings issued.

4.3.9 Attend to delivery of all securities to the mortgagee, without delay, after finalisation of transfer.

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4.4 Relationship with the mortgagor

4.4.1 Although the mortgagor is normally not your client, it is your duty to look after his/ her interests in respect of the bond to be registered.

4.4.2 Contact the mortgagor as soon as possible after receipt of the bond instruction and introduce yourself. Explain to mortgagor the process to be followed in having the bond registered.

4.4.3 As soon as the bond documents have been drawn, call on the mortgagor to sign same.

4.4.4 Attend personally on the mortgagor when signing of the bond documents and explain to him/ her every aspect of the documents he/ she is about to sign. In particular, you should highlight all detrimental conditions contained in the bond documents eg. notice periods for the cancellation.

4.4.5 Explain to the mortgagor how bond costs are calculated and when payable.

4.4.6 Assist the mortgagor in all respects to meet the conditions of grant of loan imposed by the mortgagee.

5. RELATIONSHIP WITH DEED'S OFFICE

5.1 Formal Conduct

5.1.1 Deeds Lodged

Contact with the Deeds' Office is established through the deed being lodged.

- i) Utmost care should be taken to ensure that deeds are properly and correctly prepared, in all respects.
- ii) The lodgement cover should be neatly and correctly opened, the linking completed, the Deeds Office Tracking System Sticker affixed and the documents inside the cover

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neatly inserted, without unnecessary staples and covers. Remember that these documents have to be microfilmed so all unnecessary pages and documents should be removed from the lodgement cover.

- iii) Care must be taken, on preparation, to pre-empt notes that may be raised by the Deeds' Office.

5.1.2 Adhering to office hours

- i) Deeds must be lodged by 10:00. The reason for this cut-off time is to ensure that all deeds are lodged timeously and to give personnel undisturbed time to collate deeds and compile batches.
- ii) Adhere to the execution time of about 10:00. This is the time when all the conveyancers gather in the execution room and ensure, not only that communication with fellow conveyancers is punctual, but also that the deeds are executed as quickly as possible and handed to the registering personnel to facilitate prompt registration.
- iii) Adhere to the hours for the removal of notes. These hours are published by the Registrar from time to time to ensure that examiners are available to remove notes. Outside of these hours, examiners expect to be left undisturbed to examine deeds.
- iv) Hand in deeds for execution as soon as possible but not later than the stipulated time. This assists Deeds' Office personnel to collate deeds handed in for execution quickly and efficiently and to commence with final Black Bookings.

5.2 **Personal Contact with Deeds Office Personnel**

- i) Controversial notes or notes of substance should be discussed with the examiner by a conveyancer and by a clerk. Conveyancers should be thoroughly prepared to discuss the note.
- ii) If Deeds Office personnel need to be consulted over matters other than notes raised in deeds, a prior appointment will ensure the availability of the examiner.

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- iii) Switch off cellphones when discussing notes with examiners or refrain from taking calls.
- iv) Be courteous when dealing with Deeds' Office personnel. Even where you believe that a mistake has been made by an examiner, do not be rude.
- v) Always follow the correct administrative procedure and do not pressure junior staff members to bypass internal procedures. There are good reasons for such procedures and they should be adhered to.
- vi) When executing deeds, always greet the registering official to whom deeds are handed for registration.
- vii) Accept responsibility when you have made a mistake and do not blame the Deeds' Office.
- viii) Discuss notes with the examiner who made them or his/her senior. Do not go directly to a senior examiner unless the responsible examiner is not available.
- ix) Remember that the profession has established channels of interface with the Deed's Office. Regular meetings are held with a view to facilitating the whole registration process, marrying the needs of the professionals and the Deed's Office personnel. In need, you should contact the Deed's Office liaison person appointed by your Circle or members of the CLS Property Law Committee (particulars of whom appear on the Society's website).

6. THE RELATIONSHIP WITH THE RECEIVER OF REVENUE, LOCAL AUTHORITIES AND OTHER PARTIES WITH VESTED INTEREST IN THE CONVEYANCING PROCESS

6.1 Relationship with the Receiver of Revenue

In terms of Section 92(1) of the Deeds Registries Act 47 of 1937, no transfer of land shall be registered unless accompanied by a receipt or certificate from a public revenue officer that taxes and duties payable on the property have been paid. The main duties payable are transfer duty, imposed and collected in terms of the Transfer

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Duty Act 40 of 1949 and Value Added Tax, which is imposed in terms of the Value Added Tax Act 89 of 1991 and collected in terms of Section 9(15) of the Transfer Duty Act.

The Conveyancer interfaces between Revenue and the person responsible for the payment of the taxes or duties. The Conveyancer has a positive duty to uphold the revenue legislation and to ensure that what is due to Revenue is paid to Revenue.

A Conveyancer may not assist a purchaser or seller to enter into a scheme to evade the payment of property taxes. Lawful avoidance of the payment of taxes is acceptable; evasion is unlawful and a Conveyancer may not advise or assist a purchaser or seller to act unlawfully.

An example of the legal avoidance of the payment of "double" transfer duty is the tripartite agreement. In a typical situation A has sold to B and prior to the registration of that transfer B sells to C. They are 2 separate transactions and there must be 2 transfers and transfer duty is payable on both transactions. The provisions of Section 5(2)(a) of the Transfer Duty Act allow for this to be circumvented by a tripartite agreement whereby A, B and C agree that the sale A – B and the sale B – C are cancelled and that A sells directly to C. There is then only 1 transfer and transfer duty is only payable once. This is legal and the Receiver has in fact provided guidelines as to how the saving may be achieved.

A Conveyancer may not be party to any arrangement whereby the purchase price is deflated in the deed of sale and side agreements are entered into between the purchaser and the seller and even third parties with regard to the payment of funds.

With regard to the collection of Value Added Tax, the Transfer Duty section of the Receiver of Revenue's office will no longer issue Transfer Duty Exemption Certificates for vatable transactions without an undertaking from the Conveyancer that the Value Added Tax due in respect of the transaction will be paid on registration of the transfer.

6.2 Relationship with local authorities

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Section 118 of the Municipal Systems Act 32 of 2000 prohibits the transfer of property without the production to the Registrar of Deeds of a prescribed certificate issued by the municipality in which the property is situate certifying that all amounts due, in connection with the property, for municipal service fees, surcharges on fees, property rates and other municipal taxes, levies and duties during the two years preceding the date of the application for the certificate have been fully paid up.

Regulation 63(2) of the Deeds Registries Act provides that "all deeds, bonds, diagrams or documents necessary in connection with the examination, execution or registration of any deed, bond, power or other document lodged in a Deeds Registry, including all receipts or certificates required by law to be produced, shall accompany such deed."

The Municipal Systems Act has caused immense problems for Conveyancers and purchasers and sellers given the wide interpretation of the words "and other municipal taxes, levies and duties" by local authorities. At present, most local authorities will not issue a rates clearance certificate unless ALL charges levied have been paid.

In the interim, Conveyancers will have to collect and pay over to the local authority the amounts required to enable a transaction to proceed.

6.3 Relationship with parties with vested interest in the conveyancing process

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(i) Estate agents

A number of attorney firms have estate agencies as their clients. In certain situations, the relationship between the Conveyancer and the estate agent may be an attorney and client relationship. However, the Conveyancer's role is to effect registration of the transfer in terms of the deed of sale. If for some reason a conflict situation arises, the conveyancer may find himself torn between his duty to the seller and his estate agent client, in which event, he/ she must disclose the fact that there is a conflict and, if necessary, withdraw.

In general, once the Conveyancer has been instructed, the Conveyancer will liaise with the estate agent insofar as fulfilment of any suspensive conditions is concerned and the beetle and electrical inspection of the property, advise the agent of any delays or problems and ensure that the agent is paid the commission due in terms of the deed of sale on registration of the transfer.

(ii) Managing agents or body corporates – issuing of levy clearance certificates

In terms of Section 15B(3) of the Sectional Titles Act 95/1986, the registrar of deeds shall not register the transfer of a unit unless there is produced to him/ her a certificate from a Conveyancer in terms of Section 15B(3)(a)(i)(aa) certifying that as at date of registration of the transfer all monies due to the Body Corporate by the seller have been paid or secured. If you have undertaken to pay the levy against registration of transfer, you must then do so.

In order to enable the Conveyancer to issue this certificate, the Conveyancer must liaise with either the managing agents or the chairman of the body corporate to ascertain what amounts are outstanding in order to enable the managing agent or the body corporate to issue the levy clearance certificate. Conveyancers may not rely on the say-so of the seller that all amounts owing to the body corporate have been paid.

The managing agent will often require the completion of a "questionnaire" by the Conveyancer to be forwarded to the managing agent on registration of the transfer which questionnaire is used by the managing agents to update their records. You should co-operate with the managing agent in this regard.

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(iii) Suppliers of beetle and electrical certificates of clearance

In many instances the agent liaises with the above suppliers to arrange for the inspection of the property. The reports and clearance certificates are forwarded to the Conveyancer who ensures that the suppliers are paid for the inspection and the report and any work done from the proceeds of the sale.

In certain instances, the Conveyancer may be requested by a seller (or purchaser) to arrange for the necessary inspections to be done. In particular, with the issuing of Electrical Clearance Certificates, the Conveyancer should ensure that the supplier is of sound reputation.

A Conveyancer should not recommend a particular firm to do the work if that firm is paying the Conveyancer a commission or referral fee, unless the payment of the commission is disclosed.