

Why Property Sellers Should Choose Their Own Conveyancing Attorneys

Selling property in South Africa is a significant financial and legal transaction, often involving your most valuable asset. One of the most important decisions a seller can make is the appointment of the conveyancing attorney who will manage the transfer process. While buyers may sometimes request to nominate the conveyancer, often citing cost savings or personal relationships, there are compelling reasons why sellers should always retain the right to choose their own attorney.

1. The Seller Carries Greater Risk

In a property transaction, the seller stands to lose far more than the buyer if things go wrong. The value at stake is the entire property, not just the transfer costs, deposit or fees. If the transaction is delayed or mishandled, the seller risks not only financial loss but also potential legal complications and delays in receiving the proceeds from the sale. For this reason, South African common law and standard practice dictate that the seller nominates the conveyancer, ensuring the process is managed by someone who is directly accountable to the seller.

2. Control Over the Process and Timelines

Appointing your own conveyancer gives you control over the pace and efficiency of the transaction. A conveyancer chosen by the seller is motivated to expedite the process, avoid unnecessary delays, and ensure all conditions of the sale are met promptly. This is especially important if the buyer takes occupation before transfer, as there is a risk the buyer may have an incentive to delay the transfer to benefit from lower occupational interest, gaining interest on invested funds or delaying bond installment payments.

3. Protection of the Seller's Interests

While conveyancers are legally required to act fairly towards both parties, a buyer-nominated attorney may not be as focused on protecting the seller's interests. The seller's attorney will scrutinize the sale agreement, ensure that all contractual obligations are met, and act decisively if the buyer defaults or delays payment. This level of vigilance is crucial for safeguarding the seller's investment and ensuring a smooth transfer.

4. Avoiding Conflicts of Interest and Legal Pitfalls

Allowing the buyer to appoint the conveyancer can create conflicts of interest, especially if the buyer has a longstanding relationship with the attorney. This can lead to situations where the seller's concerns are not prioritized, or technical issues are not addressed promptly. Also, there is a risk that the transaction could be outsourced to an unknown or less experienced firm.

5. Ensuring Professionalism and Experience

Selecting a reputable, experienced conveyancing attorney ensures that the transaction is

handled by a specialist who understands the complexities of South African property law. This includes verifying title deeds, checking for encumbrances, and ensuring compliance with all legal requirements.

6. Preventing Delays and Financial Loss

Delays in the transfer process can be costly for sellers, especially if payment is postponed or if disputes arise after the buyer takes occupation. A seller's conveyancer is incentivized to avoid such delays, ensuring that the transfer is registered as quickly as possible and that the seller receives the proceeds without unnecessary hold-ups.

7. Seller's Prerogative Is Supported by Law and Industry Practice

South African law and industry norms strongly support the seller's right to appoint the conveyancer, precisely because the seller's asset is at risk and the seller is responsible for ensuring a correct and timely transfer. Even though the buyer pays the conveyancing fees, this does not entitle them to dictate who manages the transfer.

Conclusion

Choosing your own conveyancing attorney as a property seller is not just a matter of tradition. It is a critical step in protecting your financial interests, maintaining control over the transaction, and ensuring a smooth, legally compliant transfer. Sellers should resist pressure to relinquish this right, as doing so exposes them to unnecessary risk, potential delays, and conflicts of interest.

Our firm would be proud to be appointed as your conveyancers.

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