Discussion on challenges borne by Originators, Conveyancers and Estate Agents in the bond process

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Attorneys, Conveyancers, Notaries

SELECTING THE CORRECT BOND ATTORNEY

Most estate agents are very particular in choosing the transfer attorney of their choice and can easily influence the seller to appoint the attorney of their choice. This can be due to various reasons, most of all I think loyalty and strong business relationships. But what most of agents don't know is that the TAT and skills of the bond attorneys in fact dictate the speed of the conveyancing process.

WHO DOES WHAT?

The transfer attorney, bond attorney and cancellation attorney need to work hand in hand to streamline the conveyancing process. The Transfer attorney must arrange the guarantees between the bond attorney and the cancellation attorney, secure the selling price, obtain municipal and SARS clearances and prepare the new title deed. The cancellation attorney cancels the Seller's existing bond and require guarantees and a consent to cancel and the bond attorneys must comply with the terms and conditions of the buyer's new bond.

FEEDBACK IS NECESSARY TO UNDERSTAND DELAY AND THE PROCESS

- Many agents have asked me the question as to why they get progress reports from the transfer attorneys reading “awaiting bond attorneys to lodge”. One can easily get frustrated and feel that the bond attorneys are delaying process. That is the reason I feel it is imperative that the bond attorneys also give weekly feedback to estate agents and originators on the progress made on the bond.
- Although you can often find bond attorneys where the conveyancer is not involved in her files and does not assist bond secretaries with solving possible delays in files, most of the times there is a genuine legit reason for the delay in which case you ought to know what the delay is.
- Our bond department understand this need and even if we do not attend to the transfer of the property, the estate agent and the originator will get notifications from us on the critical steps of the bond process.

WHAT ARE THE MOST COMMON DELAYS EXPERIENCED BY BOND ATTORNEYS?

In order to understand that, you need to understand our process:

After bond approval we receive the instructions 3-5 days electronically and make contact with the client to acknowledge receipt of the instructions. For FNB at this stage we must initialize the Debi-check system and upload client’s life cover before we can proceed to prepare transfer documents.

- We sometimes experience delays when the transfer attorneys are not specialising in conveyancing matters and take long to prepare their transfer documents;
- We also experience delays in estate late transfers where the Letters of Executorship has not been issued and the OTP is therefor invalid and needs to be resigned on receipt of the Letters of Executorship;

Further steps…

- At this stage we also do deed searches to ensure neither the property or the parties have any endorsements such as interdicts or sequestrations against them. In many instances we realize at this stage that the buyer’s details or the property descriptions are incorrect. Amendments needs to be requested from the bank which takes between 5-7 working days.
- If there is an interdict or sequestration, it must be handled by proving to the deeds office that the endorsement can be uplifted. We need to present a court order or sheriff’s order to that effect.

- The transfer attorneys will also favour us with the cancellation figures of the seller’s bond- this can be a further delay because the seller’s bank can sometimes delay the issuing of the figures. We always inform estate agents that if they want the transaction to register quickly, they need to ensure that the transfer attorneys have the seller’s bond account number immediately. As bond attorneys we need those figures before the buyer can sign because he needs to authorise the issuing of the guarantees for the cancellation
- Once the buyer signs all the bond documents, we need to upload these documents on stordoc, or gateway, the banks’ electronic programs – they first do a face clearance and then after a clearance what we call a proceed to lodge notification. Note that FNB’s documents are signed electronically on a digital pad in our offices. The proceed to lodge normally takes 7 working days before we receive a reply but the bank can reply that there are outstanding requirements (i.e. debit order details incorrect or life cover not complying) at which stage that must first be attended to, uploaded again and another 7 working days awaited. Delays experienced at this stage is insufficient fica provided and life cover.
- We may only lodge once we receive the proceed to lodge notification.

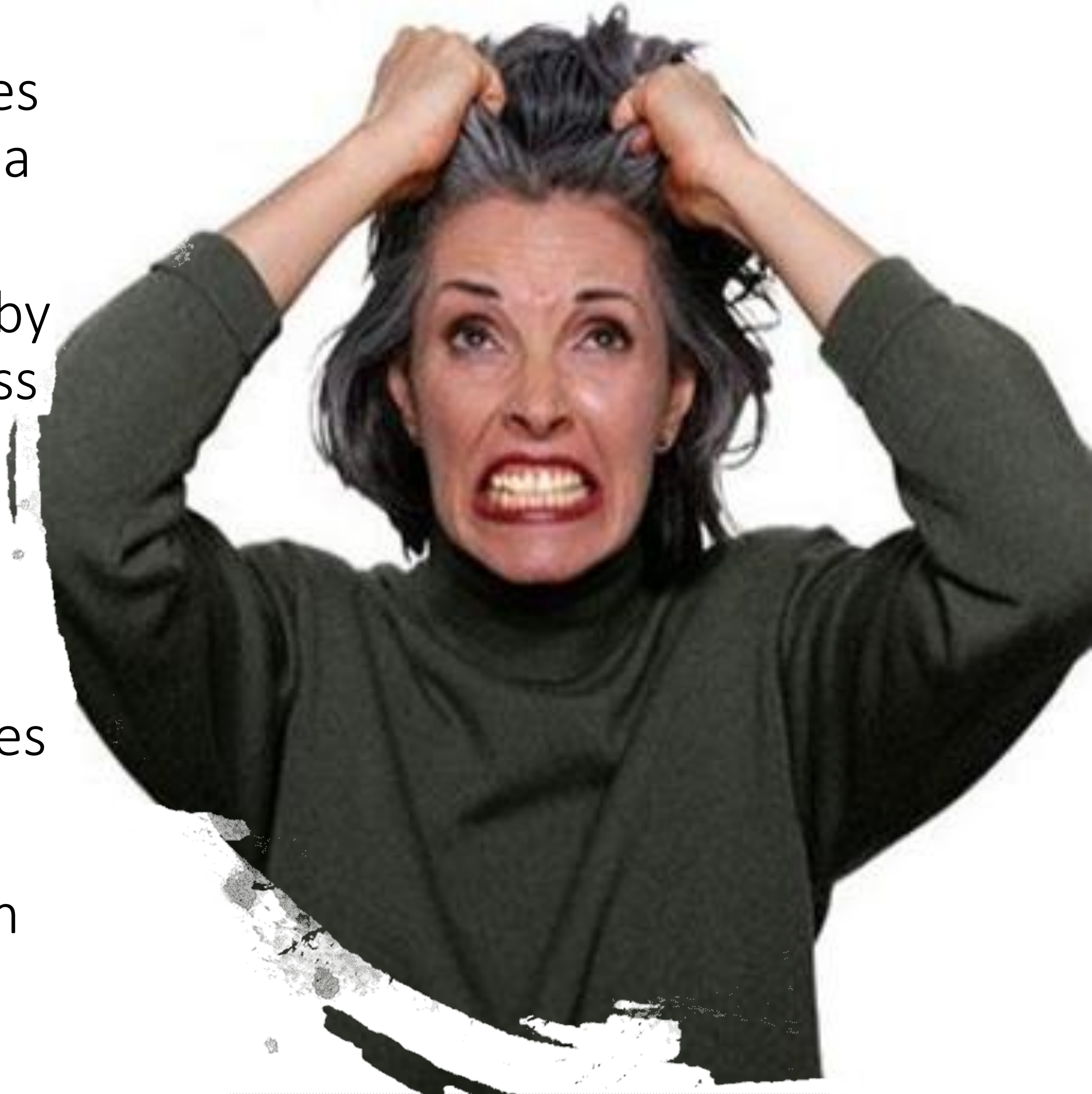
Property Developments are more intense -

For property developments the importance of the correct bond attorney is even more important as delays in upliftment of the retention can cause real interest losses for a developer. Remember, in a development unit are registered in phases and a delay in one bond will cause a delay in the whole phase. Many developers make the mistake of carefully selecting a transfer attorney, but if that attorney is not on the panels of the banks and not packaged, he can experience huge delays in the conveyancing process.

Delays in developments

- Doing bonds for development schemes is very difficult and you can easily get a two-month delay for instance….

1. Incorrect instructions only realised by the bond attorney late in the process when the units are completed
2. Incorrect building documents not realised timeously- under enrolment, incorrect occupancy certificates, no engineer's certificates
3. Cost not requested timeously
4. Land surveyor-plans does not match the instructions…etc



WE HAVE THE UPPER EDGE

The fact that we are developers ourselves and that we have developed hundreds of townhouses gives us the upper edge in that we understand the development

process from both sides.

Our office endeavour to obtain the proceed to lodge notification as quickly as possible and that the clients sign and meet the requirements as quickly as possible. We invite you to make use of our experience to increase your bond registration time.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