MOORE STEPHENS

PROPERTY
& TAX GUIDE

Long Live Sensible

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IMPORTANT NOTE AND DISCLAIMER

This guide is an easy reference, pocket-sized overview of the South African Tax System and residential property, incorporating announcements made in the Budget delivered on 24 February 2016.

- The information contained in this guide is a summary of current legislation, budget proposals and property related information.
- We suggest that you do not act solely on material contained in this guide as the nature of the information contained herein is general and may in certain circumstances be subject to misinterpretation. In addition, the budget proposals may not include all legislative adjustments which could be made in the near future. The information is provided with the understanding that no legal or professional advice is being rendered in this guide. We recommend that our advice be sought when encountering these potentially problematic areas.
- It is specifically noted that the Table of Bond and Transfer Costs are illustrative in nature and based on recommended guidelines of fees issued by and on behalf of the various law societies from time to time. Our fees may therefore vary from the guideline, based on the requirements of each specific matter quoted for.
- While every care has been taken in the compilation of this guide, no responsibility of any nature whatsoever will be accepted for any inaccuracies, errors, or omissions.

2016/2017 BUDGET HIGHLIGHTS

- Personal income tax relief of R5.65 billion.
- An increase in the monthly medical scheme tax credits.
- Capital gains tax inclusion rate for natural persons increases from 33.3% to 40%, and for other taxpayers from 66.6% to 80%.
- It is proposed that assets transferred through a loan to a trust are to be included in the estate of the founder (*sic*) at death and interest-free loans to trusts are to be treated as donations.
- The transfer duty rate on properties above R10 million will increase from 11 per cent to 13 per cent wef 1 March 2016.
- General fuel levy increases by 30 cents per litre on 6 April 2016.
- Excise duties on alcoholic beverages increase by between 6.7% and 8.5%.
- From 1 April 2016 the plastic bag levy is to increase from 6 cents to 8 cents per bag and the incandescent globe tax will Increase from R4 to R6 per globe.
- A tyre levy at R2.30 per kilogram is to be introduced on 1 October 2016 and a tax on sugar-sweetened beverages on 1 April 2017.
- A special voluntary disclosure programme in respect of offshore assets and income has been proposed for non-compliant taxpayers.
- Draft Revenue Laws Amendment Bill 2016 introduced to provide postponement to the annuitisation requirement for provident funds for 2 years, until 1 March 2018.

NORMAL RATES OF TAX PAYABLE BY NATURAL PERSONS FOR THE YEAR ENDED 28 FEBRUARY 2017

TAXABLE INCOME	RATES OF TAX
R0 – R188 000	+ 18% of each R1
R188 001 – R293 600	R33 840 + 26% of the amount above R188 000
R293 601 – R406 400	R61 296 + 31% of the amount above R293 600
R406 401 – R550 100	R96 264 + 36% of the amount above R406 400
R550 101 – R701 300	R147 996 + 39% of the amount above R550 100
R701 301 and above	R206 964 + 41% of the amount above R701 300

NORMAL RATES OF TAX PAYABLE BY NATURAL PERSONS FOR THE YEAR ENDED 29 FEBRUARY 2016

TAXABLE INCOME	RATES OF TAX
R0 – R181 900	+ 18% of each R1
R181 901 – R284 100	R32 742 + 26% of the amount above R181 900
R284 101 – R393 200	R59 314 + 31% of the amount above R284 100
R393 201 – R550 100	R93 135 + 36% of the amount above R393 200
R550 101 – R701 300	R149 619 + 39% of the amount above R550 100
R701 301 and above	R208 587 + 41% of the amount above R701 300

NORMAL RATES OF TAX PAYABLE BY NATURAL PERSONS FOR THE YEAR ENDED 28 FEBRUARY 2015

TAXABLE INCOME	RATES OF TAX
R0 – R174 550	+ 18% of each R1
R174 551 – R272 700	R31 419 + 25% of taxable income above R174 550
R272 701 – R377 450	R55 957 + 30% of taxable income above R272 700
R377 451 – R528 000	R87 382 + 35% of taxable income above R377 450
R528 001 – R673 100	R140 074 + 38% of taxable income above R528 000
R673 101 and above	R195 212 + 40% of taxable income above R673 100

* The tax rates applicable to special trusts are the same as those applicable to natural persons, except that the primary rebate and interest exemptions do not apply.

Tax rebates	2015	2016	2017
Primary	R12 726	R13 257	R13 500
Secondary (Persons 65 and older)	R7 110	R7 407	R7 407
Tertiary (Persons 75 and older)	R2 367	R2 466	R2 466

Tax thresholds	2015	2016	2017
Below age 65	R70 700	R73 650	R75 000
Age 65 to below 75	R110 200	R114 800	R116 150
Age 75 and over	R123 350	R128 500	R129 850

Interest Exemption:	2015	2016	2017
Below age 65	R23 800	R23 800	R23 800
Age 65 & above	R34 500	R34 500	R34 500

TRANSFER DUTY ON IMMOVABLE PROPERTY

Transfer duty is an indirect tax on the acquisition of immovable property situated in South Africa. The following are the main provisions:

- It is calculated on the value of the immovable property (purchase price or market value whichever is the highest).
- It is payable within six months after the transaction is entered into.
- Where a registered VAT vendor purchases property from a non-vendor, the notional input tax is calculated by multiplying the tax fraction (presently 14/114) by the lesser of the consideration paid or market value.
- The acquisition of a contingent right in a trust that holds a residential property or the shares in a company or the member's interest in a close corporation which owns residential property comprising more than 50% of its assets, is subject to transfer duty at the applicable rate.

Transfer duty is calculated as follows:	
R0 – R750 000	0%
R750 001 – R1 250 000	3% of the value above R750 000
R1 250 001 – R1 750 000	R15 000 plus 6% of the value over R1 250 000
R1 750 001 – R2 250 000	R45 000 plus 8% of the value over R1 750 000
R2 250 001 – R10 000 000	R85 000 plus 11% of the value over R2 250 000
R10 000 001 +	R937 500 + 13% of the value over R10 000 000

The most notable exemptions from transfer duty are the following:

- If the purchase price/value is R750,000 or less.
- If the transaction is subject to VAT (i.e. where the seller is a VAT vendor).
- In the event of immovable property being transferred to a person (including a close corporation, company or trust), in terms of a Last Will and Testament, or as a result of intestate succession.
- The transfer of any property to a surviving spouse, or divorced person, who acquires sole ownership of the whole or any portion of property registered in the name of his or her deceased or divorced spouse where that property or portion is transferred to that surviving or divorced spouse as a result of the death of his or her spouse or dissolution of the marriage or union.

CAPITAL GAINS TAX & YOUR PROPERTY

IMMOVABLE PROPERTY SUBJECT TO CGT

CGT is payable on disposal of immovable property to the extent that the capital gains arise after 1 October 2001. Persons are subject to CGT on the following immovable property:

- Residents: On all immovable property disposed of including overseas immovable property.
- Non-residents: On immovable property or any right or interest in a property situated in South Africa.

Note: *Any right or interest in a property includes a direct or indirect interest of at least 20% held alone or together with any connected person in the equity share capital of a company, where at least 80% of the value of the net assets of the company is, at the time of the disposal, attributable to immovable property in South Africa.*

CGT CALCULATION AND INCLUSION RATES

The capital gain or loss is the difference between the proceeds on disposal and the base cost of the property.

A disposal includes a sale, donation, exchange and a vesting of the property in a beneficiary of a trust.

Proceeds are equal to the amount received by the taxpayer in respect of the disposal. The base cost is calculated as follows for property bought after 1 October 2001:

- The purchase price; plus
- Allowable capital expenditure.

The base cost is calculated as follows for a property bought before 1 October 2001:

- The valuation date value of the property on 1 October 2001; plus
- Allowable capital expenditure incurred after 1 October 2001.

The valuation date value is calculated as follows:

- The market value on 1/10/2001 as determined by a valuation; or
- 20% of the proceeds after deducting the allowable capital expenditure incurred after valuation date; or
- The time apportioned base cost, as determined by a formula.

Allowable capital expenditure includes the following:

- The cost of acquiring, creating or improving the asset (excluding any borrowing costs).
- The cost for valuation of the property for CGT purposes.
- Cost incurred in respect of disposal of the property (including sales commission, advertising, valuation costs, accounting and legal costs, removal cost etc.).

A capital gain or loss is calculated separately in respect of each asset disposed. Once determined, gains or losses are combined for that year of assessment and if it is:

- An assessed capital loss, it is carried forward to the following year; or
- A net capital gain, it is multiplied by the inclusion rate and included in taxable income.
- Annual exclusion of R40 000 capital gain or capital loss is granted to individuals and special trusts.
- Instead of the annual exclusion, the exclusion granted to individuals is R300 000 for the year of death.

The inclusion rates are as follows:

PERSON	RATE
Natural person and special trust	40%
Company	80%
Trust	80%

Note: *A special trust is a trust created solely for the benefit of someone who suffers from a disability that prevents such person from earning sufficient income for their maintenance or from managing their own financial affairs. A special trust can also be created by way of a testamentary trust whereby relatives of the testator who are alive on the date of death are the beneficiaries. In order to qualify as a special trust, the youngest of the beneficiaries must, on the last day of the year of assessment of that trust, be under the age of 18 years.*

PRIMARY RESIDENCE EXCLUSION

When a primary residence is disposed of capital gains up to R2 million is exempt from CGT. The following are the main provisions relating to primary residences:

- The exemption is applicable to natural persons and special trusts.
- Only one residence at a time may be a primary residence of a person.
- The exemption is applicable if a person merely has an interest in the residence. As a result a share in a share block company and a usufruct may qualify (subject to further provisions).
- If the residence is held by more than one person as a primary residence an apportionment of the R2 million must be made in relation to their interest.

- An apportionment of the profit must be done if the person used the house as a primary residence for only part of the time it was owned. If a person was absent from the residence for less than 2 years as a result of the residence being offered for sale and vacated due to the intended acquisition of a new primary residence, the residence being erected on land acquired, the residence being accidently rendered uninhabitable or the death of that person, it will not be seen as an absence from the residence.
- When the residence is used partially for residential and partially for business purposes an apportionment must be done.
- If a person is absent from his residence for a continuous period of 5 years or less and lets the premises during this time, the absence will be ignored if the person stayed in the residence for a period of at least one year before and after the period it was let, no other residence was treated as a primary residence during this period and the person was absent from the residence due to being absent from South Africa or was employed or engaged in a business in South Africa at a location more than 250 kilometers from the residence.
- Where the residence is more than 2 hectares in size, the exemption only applies to the gain made on the residence and 2 hectares, provided that the land is used mainly for domestic or private purposes together with the residence and the land is disposed of at the same time and to the same person who buys the residence (this land could be unconsolidated and next to the residence to qualify).

WITHHOLDING TAX ON ACQUISITION OF PROPERTY FROM NON-RESIDENT

The purchaser must withhold CGT on the purchase price where assets are purchased from a non-resident except where the amount payable by the purchaser is less than R2 million. The amount withheld is an advance tax in respect of the sellers' liability for CGT.

If the purchaser is a resident withholding tax must be paid within 14 days from the date on which the seller was paid and if the purchaser is a non-resident, within 28 days.

The following withholding tax rates are applicable and are based on the proceeds on disposal:

NON-RESIDENT SELLER	RATE
Natural person	5%
Company	7.5%
Trust	10%

The seller may apply to SARS for a directive in order to reduce the amount to be withheld.

THE DEED OF SALE

A written agreement must be drafted and signed. A verbal sale agreement in respect of immovable property is unenforceable and void in South Africa. The following are some important clauses to be borne in mind:

DESCRIPTION OF THE PROPERTY AND PARTIES

The property and parties must be properly defined, so as to be capable of identification from the very wording used in the agreement.

UNFAIR CONTRACT TERMS PROHIBITED

In terms of the Consumer Protection Act (68 of 2008), or "the CPA", unfair contract terms are to be prohibited in deeds of sale to which the Act applies. Note that it is still ambiguous as to whether the CPA applies at all to residential property sales, as a seller in these "once off" private sales, may not be deemed to be a supplier selling goods in his/her ordinary course of business, as defined in the Act. Where the CPA does apply, each case will be determined on its merits as to what is deemed to be fair or unfair contract terms. Notwithstanding the above, the general view is that Section 49 of the CPA should be taken cognisance of in all cases– and provision should be made that any waiver of liability, assumption of an obligation, or waiver of a right is drawn specifically to the attention of both parties to the agreement in a conspicuous manner.

PURCHASE PRICE & PAYMENT

- The price offered must be clearly stated, written both numerically and alphabetically.
- Sellers normally do and should require the payment of a deposit, which shows good faith, and the financial ability on the part of the purchaser and also provides security for the seller to cover its losses should the purchaser breach the agreement. As a purchaser, it is advisable to stipulate that the deposit be held in trust in an interest-bearing account, for the purchaser's benefit pending transfer by the conveyancer (in terms of Section 78(2)(A) of the Attorneys Act).
- The balance of the purchase price is normally secured by a bank guarantee, usually coupled with a mortgage bond to be registered over the property. The seller's conveyancer must make sure that guarantees are provided timeously, and the purchaser must ensure that the contract provides sufficient time to arrange finance and provide guarantees.

OCCUPATIONAL INTEREST

Where occupation takes place on a particular date and transfer takes place after the date of occupation, occupational interest is paid at an agreed amount for the period of occupation until transfer. In most cases this is paid by the purchaser, who may take occupation prior to transfer being registered. The terms should be stipulated in the deed of sale. In some cases, it is the seller who is the one who has to stay on in the property he or she has sold and where transfer has been registered. In this case, the seller will be required to pay occupational interest to the purchaser. In general, on occupation, risk passes to the purchaser. Clauses dealing with occupational interest and risk (who is at risk while the purchaser is in occupation) should be included in the deed of sale.

CERTIFICATES

The contract of sale is required to include clauses which deal with the Electrical, Beetle, Gas and Plumbing Certificate (where applicable).

ELECTRIC FENCE REGULATIONS

Regulation 12 of the "Electrical Machinery Regulations" require that you have an "electric fence system certificate of compliance" if you install, add to, or alter an electric fence after 1 October 2012, or where there is a change of ownership of the premises on which the system exists, if the change of ownership takes place after 1 October 2012.

DISCLOSURE OF LISTED INVASIVE SPECIES

The National Environmental Management Biodiversity Act (10 of 2004) requires that the seller of an immovable property must, prior to the conclusion of the relevant sale agreement, notify the purchaser of such immovable property, in writing, of the presence of listed invasive species on the property. The obligation and the duty to remove could be negotiated between the seller and the purchaser.

THE FICA CLAUSE

Cash transactions and FICA:
The Financial Intelligence Centre Act (38 of 2001) provides that Accountable institutions (AI's), which include attorneys, are required to file a report with the Financial Intelligence Centre in regard to any cash transactions involving domestic and foreign notes and coins, and travellers cheques above R25 000.

The transferring attorney and the estate agent is required to request certain documents from both the seller and the purchaser, in compliance with FICA.

If applicable, the bank, and the bank's attorneys granting the bond may require the same documents as listed below. The documents required are as follows:

Trust

- Verification of all authorised Trustees and Beneficiaries (income tax, identity numbers and residential addresses)
- Letters of authority to act as Trustees
- Copy of the Trust Deed
- Resolution authorising Trustee to act on the Trust's behalf in the property transaction
- Income tax number of the Trust
- VAT number of the trust (where applicable)
- For bond registrations, financial institution may require financial statements and/or personal suretyship from the Trustees

Company/Close Corporation

- Verification of all Directors and shareholders/members (income tax, identity numbers and residential addresses)
- Memorandum of Incorporation/Founding Statement (and amended where applicable)
- CoR 39 Certificate (Certificate of Director amendments)
- Resolution authorising Director/Member to act on entity's behalf in the property transaction
- Income tax and VAT number of the company/CC (where applicable)
- For bond registrations, financial institution may require financial statements and/or personal suretyship from the shareholders/members

Natural Person

- Identity document(s)
- Income tax registration number (latest tax return submitted to SARS and VAT number – where applicable)
- Proof: marital status:marriage certificate, antenuptial contract, divorce orders
- Consent papers (where applicable)
- Either a utility bill (water or lights), or a levy account that is addressed to the natural person at his or her residential address

Estate agent

- VAT details, income tax details of agency and agent involved in the transaction

These lists are not exhaustive and are intended to give an idea of the required documentation for FICA compliance.

HOME LOANS AND MORTGAGE BONDS

HOME LOAN AND MORTGAGE DISCLOSURE ACT (63 OF 2000)

A "home loan" is defined as a loan or advance by a financial institution to a person for purposes of constructing, purchasing, renovating or improving a home against security of a mortgage bond or other accepted form of security.

When mortgage finance is necessary, a suspensive condition will be included in the Offer to Purchase setting out the specific terms under which the finance must be approved and these conditions must be fulfilled on or before the time limit stated in the contract, failing which the contract will lapse and be null and void and cannot be reinstated, even with the agreement of the parties by means of signing an Addendum. A lapsed contract cannot be reinstated. Due care should be taken to properly understand the conditions relating to the Bond approval as once the mortgage bond condition and any other suspensive conditions have been fulfilled a binding, enforceable contract comes into existence. Financial institutions reserve the right to withdraw the approval should any new or previously undisclosed facts emerge, or should there be a change in circumstances which may prejudice the rights of the financial institution.

Taking into account the increase in the prime interest rate quoted by the financial institutions, the facility in terms of the mortgage bond approval may be withdrawn in the event that the banks find that their rights are prejudiced due to an increase in the bond rate. The withdrawal of the approval does not affect the Seller's rights to argue that the transfer of the property should proceed as the suspensive conditions had been fulfilled, which would place the purchaser in the position that the transfer would have to proceed on a cash basis.

THE HOUSING CONSUMERS PROTECTION MEASURES ACT (95 OF 1998)

In terms of Section 18, no financial institution may advance mortgage bond finance to enable the consumer to purchase or build a home unless the financial institution is satisfied that the home builder is registered in terms of the Act and that the home is or will be enrolled with the National Home Builders Registration Council. The financial institution will impose a requirement that the necessary NHBRC Certificate be obtained prior to transfer of the property when the building on the property is less than five years old.

THE CONSUMER PROTECTION ACT

Please note that the information contained in this section is not exhaustive and serves as a brief overview of the CPA as it specifically relates to property related transactions. There are still many ambiguities and uncertainties surrounding some of the provisions of the Act which only time (and the courts) will be able to interpret and clarify. You are strongly advised to contact our offices for further advice or consultation on this topic.

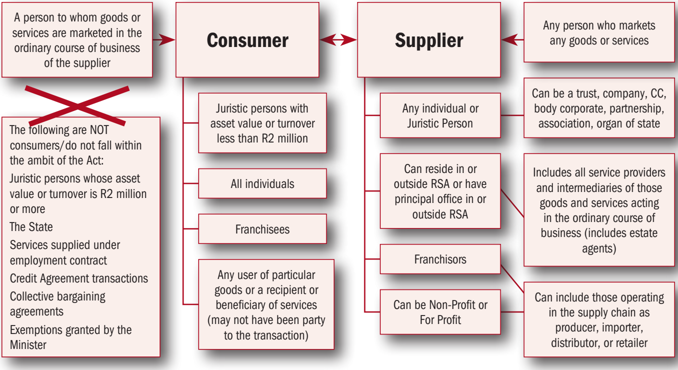
Scope of the Act:

The CPA regulates the activities of suppliers and creates rights for consumers in the event that they fall within the ambit and scope of the Act. The CPA applies to every transaction occurring within SA, and covers both goods or services delivered or rendered "in the ordinary course of business" and it applies to transactions which suppliers enter into with consumers (a transaction refers to the supply of goods or services in return for payment). It therefore covers:

- The promotion and advertising of goods or services that could lead to the transaction being entered into (unless exempted), the performance of the service and the supply of goods, the goods and services themselves after the transaction is completed, and the goods which form the subject of an exempted transaction.

The Act does not apply to certain consumers, certain transactions, or in specific instances where exempted by the Minister.

Summary of Consumer/Supplier:



SALE AND PURCHASE OF IMMOVABLE PROPERTY:

- Where the supplier is a seller of property (who sells property as his/her ordinary course of business), and the purchaser is an individual or a juristic body whose turnover or asset value is less than R2 million, the Act will have application.
- The basic test is whether the consumer purchases the property from the supplier in the course of the latter's "ordinary course of business". This means that it is unlikely that the CPA will apply to property sales in the average "one-off" private sale situation – it is aimed more at "commercial" sales – by property developers, builders, speculators, and other property dealers, extending to transactions where people buy and sell property on a continuous basis. In such cases, the deed of sale and actual transfer of property into the name of the purchaser would fall under the provisions of the CPA (where the purchaser qualifies as a consumer in terms of the Act).

Definition of "goods" includes a legal interest in land or other immovable property:

- The definition of "goods" in the CPA is defined to include a legal interest in land or any other immovable property, other than an interest that falls within the definition of "services". In other words, the definition of "goods" includes the sale and purchase of immovable property. Note: whether the CPA applies to a once off sale of residential property has not yet been tested in our Courts, as it will depend on who is selling the property, and whether such seller falls within the definition of supplier in terms of the Act.

REMEDIES FOR CONSUMERS (AS PURCHASERS) PROVIDED BY THE ACT:

Right to fair and honest dealing with consumers – Sections 40–42, 44

The CPA deals with unconscionable conduct, false, misleading or deceptive representations (whether by word or conduct), fraudulent schemes or offers, and the consumers right to assume a supplier is entitled to sell goods. Consumers (purchasers) are entitled to fair and reasonable marketing. "Market" is defined in the CPA as the "promotion and supply of any goods or services".

All negotiations and representations made by sellers, estate agents, property developers, builders and other property dealers – to purchasers, must comply with the Act, so as to ensure that purchasers are treated lawfully and fairly.

Cooling off period – Section 16

Consumers are afforded a period of five business days to rescind a transaction resulting from any direct marketing without reason or penalty, by notice to the supplier in writing. Direct marketing includes telephone calls, electronic communications and cold calling – as opposed to ordinary marketing-which involves printed brochures, print media and websites. It is only in relation to direct marketing that this cooling off period applies.

This section may have the effect of allowing a cooling-off period when a property is purchased due to direct marketing, even if it is sold for more than R250 000 (i.e this cooling off right is in addition to the cooling off period in terms of Section 29A of the Alienation of Land Act, which applies where the value of the property is less than R250 000, and the purchaser is an individual).

On a literal interpretation of this section, the disgruntled purchaser may rescind a sale agreement within five days of signing it, or even worse, within five days after taking transfer of the property – in the event of the transaction occurring as a result of direct marketing. The supplier has fifteen days to return any payment or property after receiving the cooling off notice. The person who directly markets, and who concludes a transaction with a consumer must inform them of their rights to rescind the agreement.

Disclosure and Information – Section 22–28

Consumers (purchasers/tenants where applicable) are entitled to information in plain and understandable language. Purchasers must understand exactly what they are buying. The purchaser has the right to receive express notice of any term in an agreement which limits the risk or liability of the provider, or of any term which constitutes an assumption of risk or liability by the consumer.

Certain information is required to be disclosed by intermediaries, agents and/or estate agents in terms of Regulation 9, such as their full names, identity number, a description of the exact service to be provided and fees to be earned.

The Legal Practice Act (28 of 2014) was enacted in September 2014, but the provisions of Section 35 governing attorney's fees in respect of litigious and non-litigious legal services rendered, has not as yet been enabled. The Rules and Conduct Committee is presently drafting a code of conduct for the attorneys' and advocates profession. When the Rule Board has finalised its work, legal practitioners will be required to provide clients with a cost estimate in writing specifying the likely financial implications, the practitioner's hourly fee rate, an outline of the work to be done in respect of each stage of litigation, the likelihood of engaging an advocate, and the financial consequences of withdrawal from litigation. Despite the fact that the Section has not yet come into law, and will not necessarily change the scale of the Conveyancing Tariff, it would be advisable for these matters to be discussed with the Attorney and Conveyancer.

Consumer agreements – Sections 48–52

Unfair, unreasonable or unjust contract terms are not allowed in deeds of sale. These agreements will be scrutinised – the meaning and effect of all applicable terms and conditions of the agreement are required to be explained, and no terms or conditions that are deemed unfair for the consumer will be able to be inserted.

In terms of Section 49(1)(c) of the CPA, a supplier "must not require consumer, or other person to whom any goods or services are supplied at the direction of the consumer – to waive any rights, assume any obligations, or waive any liability of the supplier, on terms that are unfair, unreasonable or unjust, or impose any such terms as a condition of entering into a transaction".

It is also considered to be an unfair or unjust contract if the effect of any terms was not drawn to the attention of the consumer in a conspicuous manner. Both parties attention must be drawn to the clause.

Right to fair value, good quality and safety – Sections 53–60

A. Right to fair value

Sale prices could be scrutinised for reasonableness. The price should always be displayed when the property is being advertised for sale.

B. Right to good quality and safety – Sections 55–56

Section 55(2): Except to the extent contemplated in subsection (6), every consumer has a right to receive goods that are reasonably suitable for the purposes for which they are generally intended, are of good quality, in good working order and free of any defects, and will be useable and durable for a reasonable period of time, having regard to the use to which they would normally be put, and to all the surrounding circumstances of their supply.

In other words, where the CPA applies, it would seem that the purchaser has a right to return goods (to require the seller to take re-transfer of the property) if any of the requirements listed in (a) to (c) are not met.

Where the sale agreement expressly lists any patent (visible) defects, latent (unknown) defects, or specifies the exact condition of the property, the seller will most likely be protected. Such a clause must be expressly accepted by the purchaser. The purchaser must have expressly agreed to accept the goods (property) in that condition or knowingly acted in a manner consistent with accepting the goods in that condition [Section 55(6)].

Right to return defective goods – Section 56(2)

Within six months after the delivery of any goods to a consumer, the consumer may return the goods to the supplier, without penalty and at the supplier's risk and expense, if the goods fail to satisfy the requirements and standards contemplated in Section 55.

Where the CPA applies, the purchaser has the right to return the goods to the seller –without penalty and at the seller's risk and expense – within six months of delivery (registration of transfer at the deeds office). The purchaser has the choice as to whether the seller will be required to refund the full purchase price or repair the 'goods" (where applicable).

Effect of the CPA on the Voetstoots clause

There are conflicting views on the likely effect of the CPA on the traditional voetstoots clause.

Certainly, where the Act applies, traditional voetstoots clauses that breach the consumer's rights as per Section 55 of the Act will no longer be applicable.

Property speculators, developers, builders, estate agents, and attorneys involved in the drafting of the contract of sale will be required to comply with Sections 55–56.

However it is also likely that the exception in Section 55(6) will relate to the voetstoots clause in that when the purchaser signs the deed of sale, and (s)he acknowledges that (s)he has been expressly informed that the property is sold in the specific condition that (s)he sees it, and which condition is listed in detail in the contract itself, and is acquainted with the property's condition, nature and extent, land use planning and building plan approval, accepts it as is, then the exception should apply. As per Section 49 of the CPA, such provision must have been drawn to the attention of the consumer and in a conspicuous manner, that is likely to attract the attention of an ordinarily alert consumer, having regard to the circumstances, and before the earlier of the time at which the consumer enters into the transaction or agreement, or is required or expected to offer consideration for the transaction or agreement.

LEASES AND LANDLORDS

'Lease' is not defined in the CPA, however, 'services' is defined as including the provision of accommodation or sustenance, access to or use of any premises or other property in terms of a rental. 'Rental' means an agreement for consideration in the ordinary course of business, in terms of which temporary possession of any premises or other property is delivered to or at the direction of the consumer, or the right to use any premises or other property is granted to or at the direction of the consumer, excluding a lease within the meaning of the National Credit Act.

Landlord as Supplier/Tenant as Consumer:

- The Act applies where the landlord is in the business of letting properties, and the tenant meets the criteria of 'consumer' – being an individual or juristic body whose turnover or asset value is less than R2 million.
- The question arises as to what is meant by "the landlord being in the business of letting properties" – one view is that it includes the individual property owner who earns rental income from a property irrespective of what he or she does for a living. Another view is that the landlord must be a serial property renter before (s)he falls within the ambit of the Act. There are still many ambiguities and uncertainties surrounding some of the provisions of the Act which only time (and the courts) will be able to interpret and clarify.

Some sections in the Act which will apply to lease agreements:

- Sections 22 and 40 of the Act state that it is the inherent duty of the landlord to ensure the tenant understands the lease agreement, and to provide full disclosure and information.
- The tenant is entitled to information in plain and understandable language. Sections 48–52 deal with unfair, unreasonable or unjust contract terms.
- Most lease agreements are for a fixed period. Section 14 provides that the tenant may arbitrarily terminate the lease by providing twenty working days written notice to the landlord (for a lease entered into after 1 April 2011).
- Where the CPA applies, a landlord can only terminate the lease if there was a material breach and the tenant has not remedied the same within the specified period provided for in the lease agreement.
- Upon cancellation by the tenant, the landlord may impose a reasonable cancellation penalty.
- Section 14 however does not apply to transactions between juristic persons, regardless of their annual turnover or asset value. The consequence may well be that landlords (who are also juristic persons) may insist on only transacting with a juristic person as tenant (where the landlord is an individual and the tenant is a juristic person, the latter will still have the right to cancel per Section 14).
- In addition, fixed lease agreements under the Act now have a maximum duration of twenty-four months. After expiry of the agreement, it will continue on a month to month basis unless a new agreement is signed. Should the landlord wish to terminate the agreement upon its expiry, (s)he must notify the tenant in writing not more than eighty but not less than forty business days (before expiration of the agreement) of its looming expiry.
- If the agreement is to be renewed, a notice of any material changes that would apply would need to be provided to the tenant by the landlord within the same time frame.
- In summary, if two individuals enter into a lease agreement (commercial or residential), the CPA will apply, including Section 14. If an individual as landlord and a juristic person with assets or turnover of less than R2million, as tenant, enter into a lease agreement, the CPA will apply, including Section 14. However, if two juristic persons, regardless of assets or turnover value, enter into a lease agreement, Section 14 of the Act will not apply (the remaining provisions of the Act may apply where both parties are juristic persons and the tenant as juristic person has assets or turnover value of less than R2 million). Note that where the tenant as juristic person has assets or turnover over R2 million, the CPA will not apply to the lease agreement at all.

THE PROTECTION OF PERSONAL INFORMATION ACT

- The Protection of Personal Information Act (4 of 2013), otherwise known as POPI, promotes the protection of personal information by public and private bodies.
- Estate agents, intermediaries, property companies and other institutions conducting business in the property sector, are required to comply with the Regulations of the Act, which includes obtaining approval from the consumer or client before any of their private information is used or distributed, and collecting and storing client information in such a way that only individuals with the necessary authorisation are able to access it.
- The process to appoint an Information Regulator is on hold, and POPI is only likely to commence in the second half of 2016. There will be a one year grace period from the date of commencement, following which, POPI will be enforced.

TAX IMPLICATIONS ON THE LEASING OF PROPERTY

For the landlord:

- All income received from rental of a property is of a revenue nature and has to be declared as part of a landlord's gross income.
- Deductions are available, such as: interest on bond repayments, repairs and maintenance, municipal rates and taxes, letting agent's fees (if applicable), and expenses not recovered from the tenant, such as security, utilities or garden services. In the case of a sectional title scheme, the levy is also deductible.
- In order for the deductions to be allowed the expenditure must have been actually incurred in the production of income and not be of a capital nature.
- The cost of improvements, reconstructions or additions to the property cannot be deducted, as these expenses are of a capital nature. Improvements made to leasehold property in terms of a lease agreement by the tenant must be included in the income of the landlord. Either the stipulated amount or a fair and reasonable value will be included. The landlord may be entitled to discount the value of the improvements over the period of the lease or 25 years whichever is the shorter.
- Allowed deductions are subtracted from rental income received and tax is payable on the balance at the tax rates applicable to the landlord.
- Note: Rental agents are obliged to give SARS a document showing rental collected and paid over to a landlord, and thus SARS will be looking out for this income on the landlord's income tax return.

For the tenant:

- The tenant can claim the rental expense as a deduction for tax purposes if the rental payment or expenditure was actually incurred in the production of income.
- If improvements are made to leasehold property in terms of a lease agreement by the tenant, the tenant may deduct such expenditure over the period of the lease.

THE RENTAL HOUSING ACT

The Rental Housing Act (50 of 1999), as amended, aims to regulate the relationship between tenants and landlords by setting out general requirements relating to leases, laying down general principles and governing conflict resolution. The Rental Housing Tribunal's function is to ensure that unfair practices between landlords and tenants are eliminated and hence it interprets both the Act and the Procedural and Unfair Practice Regulations, where applicable, in its deliberations. The service is free to both tenants and landlords. A lease will be deemed to include a number of terms, which cannot be waived by either party, such as:

- That the landlord must furnish the tenant with written receipts for all payments received by the landlord from the tenant.
- If on the expiration of the lease, the tenant remains in the dwelling with the express or tacit consent of the landlord, the landlord and tenant are deemed, in the absence of a further written lease, to have entered into a periodic lease, on the same terms and conditions as the expired lease, except that at least one month's written notice must be given of the intention by either party to terminate the lease.
- A deposit must be invested by the landlord in an interest bearing account, such interest not to be less than the rate applicable to a savings account. During the period of the lease, the tenant is entitled to request proof from the landlord in respect of interest accrued.
- Leases must be reduced to writing. The onus will be on the landlord to make sure it is in writing.
- A tenant has the right, during the lease period, to privacy, and should the landlord wish to exercise his or her right of inspection, the inspection must be done in a reasonable manner after reasonable notice to the tenant, and consent to sub-let may not be unreasonably withheld.
- A landlord must provide a tenant with a dwelling that is fit and suitable to live in, maintain the existing structure of the dwelling and facilitate the provision of utilities to the dwelling.

Due to the limitations in the length of this guide, all of the provisions of the Act (as amended), and Regulations cannot be included in this guide.

PURCHASING VIA LEGAL ENTITIES – PRO'S & CON'S

COMPANY

ADVANTAGES

1. CC, trust, company can be shareholders
2. Strictly controlled by legislation Companies Act (71 of 2008) as amended
3. Can have more than 10 shareholders, as opposed to CC's
4. Has greater image value than a CC or a trust as a business vehicle
5. Relatively easier sale of interest through a sale of shares
6. Shareholders agreement can neatly regulate the relationship between the shareholders (subject to the MOI and Act)
7. A bond may be registered subject to the solvency and liquidity requirements of Section 44 having been met

DISADVANTAGES

1. The costs of annual audit (where applicable based on the provisions of the Companies Act)
2. Complex legislation to comply with

CLOSE CORPORATION

ADVANTAGES

1. Management is also represented by members who hold interest in the CC

DISADVANTAGES

1. Membership limited to 10. If a trust is a member, the number of beneficiaries on the trust, plus the individual members may not be more than 10
2. Unique to SA, not readily recognised internationally
3. From 1 May 2011, no new CC's have been able to be registered

TRUST

ADVANTAGES

1. The trust is treated as an entity separate from the individuals
2. Requirements for registration relatively simple
3. Good risk and estate planning device
4. Assets don't form part of the insolvent estate in the event of sequestration
5. Strict controls – Trustees accountable to Master of the High Court
6. Special trusts formed for mentally ill or seriously disabled, will be allowed CGT exemption if primary residence (and meets other requirements to qualify)
7. Special trusts – taxed at individual rates
8. Trust deed can be set up so as to determine the manner in which Trustee administers the fixed property and the Trustee is dutybound to obey these wishes
9. Perpetuity – the trust ordinarily continues to exist as an entity, despite the death of the founder, a trustee or beneficiary

DISADVANTAGES

1. Cannot be sold as an entity
2. The beneficiaries normally have discretionary rights which are not assets that can be sold such as shares
3. Letters of authority must be issued at the date of signature of agreement. Trustees cannot act until this authority has been issued

APPLICABLE TO ALL ENTITIES	
ADVANTAGES 1. Separate legal personality (CC's and Companies) 2. If shares held in trust, may protect the shares as long as not offered as security against a loan 3. Shares/Members interests can be sold 4. Continues to exist as an entity even in event of death or resignation of member/shareholder/director/trustee 5. Need not be in existence at time of signing agreement (CC's and Companies) **DISADVANTAGES** 1. Capital gains tax – where property is held in Company/CC, ordinary trust, and special testamentary trust, even although may be the primary residence, no primary residence exemption allowed	2. Dividends tax levied at a rate of 15% on the amount of any dividend paid by a company. The recipient of the dividend (the shareholder) will be liable for the dividend tax, but subject to certain exemptions, the company declaring and paying the dividend is obliged to withhold the tax from the amount of the dividend paid and pay the tax to SARS by the last day of the month succeeding the date of payment 3. Registration and administration costs 4. Transfer of members interest, shares – subject to Securities Transfer Tax at a rate of 0.25% on the transfer of listed or unlisted securities

COSTS OF BUYING & SELLING PROPERTY

TYPICAL COSTS OF BUYING:

PURCHASE PRICE

- A deposit (usually 10% of the gross purchase price) to the estate agent or conveyancer payable usually on signature of the deed of sale by both parties or within 7 to 14 days from signature (if applicable).
- The balance of the purchase price is lodged with the conveyancer prior to transfer, or is secured by way of a bank guarantee. Over and above the purchase price, the purchaser should have the cash available to cover the transfer costs (if this is not included in the bond) and the bond registration costs as follows:

TRANSFER COSTS

- **Transfer duty** – calculated on a sliding scale between 0% to 13% of the gross purchase price, is payable to SARS. **(R0 to R750 000 is exempt)**.

- If the seller is a VAT vendor, then VAT is payable at 14% of the purchase price. As the seller is liable for payment, it is important to add the VAT to the purchase price, and to state clearly whether the agreed purchase price includes or excludes VAT. If nothing is stated, it is deemed to be inclusive of VAT, and the seller will be liable for VAT at the "tax fraction" (which equates to 12.28% of the gross price).
- The transaction may be zero-rated only when an income generating entity, which is also a going concern, is sold from a VAT vendor to a VAT vendor.
- A divorced spouse may acquire sole ownership in the whole or any portion of property registered in the name of his or her divorced spouse. Such transfer shall be exempt from transfer duty where that property or portion is transferred to that divorced spouse as a result of the dissolution of their marriage.
- **Conveyancing fees** – of the transferring attorney, may vary slightly according to rates set by the conveyancer who attends to the transfer, but are based on recommended fee guidelines from the law society (plus VAT).
- **Bond registration costs** – the purchaser normally pays the transfer and bond registration costs (plus VAT).
- **Deeds office/registration fees** – a fee which varies between **R35** and **R5 500**, dependent on purchase price/value of property.
- **FICA costs** – usually between **R500** and **R1 000** (plus VAT) per FICA investigation.
- **Sundry charges** – posts and petties and telephone calls payable to the transferring attorney (usually about R850 plus VAT), and valuation certificates – a disbursement to the local authority to obtain valuation and rates clearance certificate – which varies depending on the local authority e.g. Cape Town is **R310-50** (manual), and **R116.10** (electronic), and electronic document generation fee.
- **Occupational rental/pro rata rates and taxes** – occupational rental payable as per agreement and usually prior to and adjusted on registration of transfer. Rates and taxes and utilities (levied by the local authority) are paid by the seller in advance for 120 days, who may then claim a refund from council for any amount overpaid, covering the period after registration of transfer.

TYPICAL COSTS OF SELLING:

- **Estate agent's commission** – Commission rates are calculated as a % of the gross purchase price and should be negtiated upfront with the agent. Sellers need to establish very clearly what commission an agent proposes to charge before awarding a mandate and to ensure that the % agreed upon after any negotiation is written into the mandate document (where applicable) and establish whether such % includes VAT.

- **Beetle inspection, electrical inspection, plumbing and gas certificates** – usually between **R350** and **R500** (plus VAT). The Seller will be responsible for any repairs required before such a clearance certificate can be issued. The beetle inspection certificate may be required by inclusion in the contract of sale. The electrical inspection certificate is required to be obtained by the seller in terms of legislation – the Occupational Health and Safety Act (85 of 1993).
- **Bond cancellation fees** – to cancel an existing bond.
- **Rates and taxes** – the seller is normally liable to pay rates up to the date of transfer. This may involve paying a 120 days rates in advance, payable before registration of transfer (can vary from agreement to agreement).
- **Electrical System Fence Certificate** – Usually this will be provided for in sale agreements concluded after 1 October 2012, which in most cases, will require the seller to bear the cost of ensuring compliance with specifications, together with the cost of obtaining the compliance certificate.
- **Other costs** – the bank may also charge a bond initiation fee – usually a base fee plus % of the loan amount, which is usually debited off home loan account. A homeowners insurance policy (to cover property and structures on it against natural disasters), home loan protection assurance (death, disability), moving costs, and telephone and internet connection costs may also need to be taken into account.

EXCHANGE CONTROL

ACQUISITION OF FIXED PROPERTY BY NON-RESIDENTS

Non-residents may acquire fixed property in the Republic, provided that suitable documentary evidence is received in order to ensure that such transactions are concluded at arms' length, at fair market-related prices, and are financed in an approved manner.

The following provisions relate to financial assistance in South Africa:

- Emigrants: Local financial assistance made available to emigrants is subject to the 1:1 ratio.
- Non-residents: Authorised Dealers may grant or authorise local financial assistance facilities to non-residents in respect of the acquisition of commercial property without restrictions.Where the funds are required for the acquisition of residential property in South Africa the 1:1 ratio will apply.

- Affected persons (i.e.where non-residents directly or indirectly owns 75% or more of the shares): There is no restriction on the amount that could be borrowed locally in instances where an affected person wishes to borrow locally to finance the acquisition of commercial property. Wholly non-resident owned subsidiaries may borrow locally up to 100% of the total shareholders' investment in respect of the acquisition of residential property in South Africa.The effect of local participation in non-resident controlled entities is to make the abovementioned norms more liberal the greater the local participation, i.e. the ability to borrow locally increases. This is based on a formula.

DISPOSAL OF FIXED PROPERTY BY NON-RESIDENTS

Proceeds from the sale of immovable property by non-residents in South Africa may be remitted abroad. Proceeds on the sale of immovable property in South Africa by Emigrants will be subject to the blocked account provisions, and withholding tax.

YOUR WILL & YOUR PROPERTY

- If you bequeath your fixed property to your surviving spouse, then no tax is payable, as all bequests to spouses are exempt from estate duty and/or CGT. No transfer duty is payabe on a bequest of fixed property to an heir/legatee.
- If the value of your estate is more than R3,5 million, estate duty will become payable on the balance in excess of R3,5 million. Sufficient cash should be made available to pay this duty in order to avoid selling any fixed property.
- If your property is subject to a mortgage bond, and you leave your property as a specific bequest, you may wish to make the bequest subject to the provision that your legatee takes over the bond liability. Alternatively, you may wish to secure the bond by life assurance, the proceeds of which would clear the debt on your death.
- If your children are still minors, (under 18 and unmarried), it is advisable to set up a testamentary trust in your will, which would come into effect should both parents pass away before they reach majority.
- If you bequeath your fixed property to a number of heirs in equal shares, this may give rise to impracticalities due to the indivisibility of the bequest, and may give rise to a redistribution agreement being drawn up between your heirs.
- There may be specific provisions in your antenuptial contract in regard to your fixed property, which may override your wishes in terms of your will.

- There is a portable R3.5 million estate duty deduction between spouses.
- Where agricultural property is bequeathed, the testator needs to be aware of Section 3 of the Subdivision of Agricultural Land Act, which prevents the subdivision of agricultural land, and such land being registered in undivided shares in more than one person's name. This is especially relevant when the testator is considering bequeathing agricultural land to more than one beneficiary.
- An executor is entitled the remuneration fixed by the deceased in the Last Will and Testament, or 3,5% of gross assets and 6% on income accrued and collected from date of death. It is subject to VAT where the executor is registered as a vendor.

REGULATIONS FOR NEW BUILDINGS AND ENERGY USAGE

The EE Regulations or "energy efficiency regulations" for energy usage in buildings provide that all new buildings and building extensions in South Africa must conform to the regulations on energy conservation, including homes, industrial buildings, hotels and schools.

Compliance:
The regulations are enforceable in terms of the National Building Regulations and Building Standards Act. Building plans will not be approved without compliance with the regulations. Buildings Control Officers (inspectors) will be required to ensure that buildings are built in accordance with National Building Regulations and specifically with energy usage requirements. No compliance – no occupancy certificate.

TAX ALLOWANCE FOR ENERGY-EFFICIENCY SAVINGS

Regulations on the tax allowance for Energy-efficiency savings stipulate that any company holding a certificate that can prove their energy savings are genuine, can submit the certificate to claim an allowance from SARS. The allowance is as contemplated in Section 12L (2) of the Income Tax Act, 1962. Section 12L provides that tax incentives are available for savings in all energy forms, and not only electricity.

DONATIONS TAX

Donations Tax is payable by any individual living in the Republic of South Africa, or any South African company or one managed or controlled in the Republic, on the value of any gratuitous disposal of property including the disposal of property for inadequate consideration and the renunciation of rights.

PRINCIPAL EXEMPTIONS:

1. Donations between spouses.
2. Donations to charitable, ecclesiastical and educational institutions, and certain public bodies in the Republic of South Africa limited to certain thresholds.
3. Donations by natural persons not exceeding R100 000 per year.
4. The donation of assets situated outside the Republic, subject to certain conditions.
5. Donations by companies not considered to be public companies up to R10 000 per annum.
6. Donations where the donee will not benefit until the death of the donor.
7. Donations made by companies which are recognised as public companies for tax purposes.
8. Donations cancelled within six months of the effective date.
9. Property disposed of under and in pursuance of any trust.
10. Donations between companies forming part of the same group of companies.
11. Reasonable bona fide contributions to maintenance of individual.

RATES:

Donations tax is payable at the end of the month following the month in which the donation was made, at a flat rate of 20%.

ESTATE DUTY

The general rule is that if the taxpayer is ordinarily resident in the Republic at the time of death, all of his assets, wherever they are situated, will be included in the gross value of his estate for the determination of duty payable thereon. Non-residents are only liable to pay estate duty on South African properties.

The dutiable amount is arrived at as follows –

◆ **Value of all property at date of death (including limited interests such as usufruct)**	**R ________**
◆ **Deemed property**	**R ________**
◆ **Gross value of property**	**R ________**
◆ **Deductions**	**R ________**
◆ **Net Value of Estate**	**R ________**
◆ **Abatement**	**R (3 500 000)**
◆ **Dutiable Estate (A)**	**R ________**
◆ **Estate Duty 20% of A**	**R ________**

Deemed property includes: Insurance Policies on the life of the deceased, claims in terms of the Matrimonial Property Act, as well as property that the deceased was competent to dispose of immediately prior to his death.

The most important deductions are:

- Deductions for liabilities at date of death
- Bequests to certain public benefit organisations and/or charities
- Property accruing to surviving spouse.

There is relief from Estate Duty in the case of the same property being included in the estates of spouses dying within 10 years of each other. The deduction is calculated on a sliding scale varying from 100% where the taxpayers die within 2 years of each other and 20% where the deaths are within 8 to 10 years of each other.

Portable R3.5 million deduction between spouses

The Act allows for the R3.5 million deduction from estate duty to roll over from the deceased to a surviving spouse so that the surviving spouse can use a R7 million deduction amount on death. The portability of the deduction will apply to the extent that the first dying spouse did not use the whole abatement.

RATES: Estate duty is payable at a flat rate of 20%.

MORTGAGE BOND REPAYMENT FACTORS

INTEREST	YEARS		
%	20	25	30
8.00	8.36	7.72	7.34
8.50	8.68	8.05	7.69
9.00	9.00	8.39	8.05
9.50	9.32	8.74	8.50
9.75	9.48	8.91	8.59
10.00	9.65	9.10	8.80
10.50	10.00	9.45	9.15
11.00	10.32	9.80	9.52
11.50	10.66	10.16	9.90
12.00	11.01	10.53	10.29
12.50	11.36	10.90	10.67
13.00	11.72	11.27	11.06
13.50	12.07	11.65	11.45
14.00	12.43	12.03	11.84
14.50	12.80	12.42	12.24
15.00	13.16	12.80	12.64
15.25	13.35	13.00	12.84
15.50	13.53	13.19	13.04
15.75	13.73	13.39	13.25
16.00	13.91	13.58	13.44
16.25	14.10	13.79	13.65
16.50	14.28	13.98	13.85
16.75	14.48	14.18	14.05
17.00	14.66	14.37	14.25
17.25	14.86	14.58	14.46
17.50	15.04	14.77	14.66
17.75	15.24	14.97	14.87

INTEREST	YEARS		
%	20	25	30
18.00	15.43	15.17	15.07
18.25	15.63	15.37	15.28
18.50	15.82	15.57	15.48
18.75	16.01	15.78	15.68
19.00	16.21	15.98	15.89
19.25	16.40	16.18	16.09
19.50	16.60	16.38	16.30
19.75	16.79	16.58	16.50
20.00	16.99	16.78	16.71
20.25	17.18	16.99	16.92
20.50	17.38	17.19	17.12
20.75	17.58	17.89	17.33
21.00	17.78	17.60	17.53
21.25	17.97	17.80	17.74
21.50	18.17	18.00	17.95
21.75	18.37	18.21	18.15
22.00	18.57	18.41	18.36
22.25	18.77	18.62	18.57
22.50	18.97	18.82	18.77
22.75	19.17	19.03	18.98
23.00	19.37	19.23	19.19
23.25	19.57	19.44	19.39
23.50	19.77	19.64	19.60
23.75	19.97	19.85	19.81
24.00	20.17	20.05	20.01
24.25	20.38	20.26	20.22
25.00	20.98	20.88	20.85

The table gives a monthly repayment per R1,000 of a loan with an interest rate ranging between 8% and 25% p.a, over a period of 20, 25 or 30 years. For example, if the loan is R100 000 at an interest rate of 10% p.a, to be repaid over 20 years, the monthly repayment is R100 000 divide by R1,000 × 9.65 which is R965. Monthly repayments of approximately R965 will be required to liquidate capital and interest on a bond of R100 000.

SALE OF PROPERTY TIMELINE

While the transfer process follows a series of successive stages, the time period involved varies considerably. Here are some guidelines:

- Cash transactions may take 6 to 8 weeks, subject to delays at the local authority and/or SARS and/or the Deeds office.
- In normal circumstances (including bond approval and registration), approx 2 months.
- If conditional on sale of purchaser's property (within 30 days), approx 3 months.

Purchaser and Seller sign agreement — **Stage 1**

Stage 2

- Seller to advise bank of intention to cancel bond to avoid 90 day cancellation penalty
- Bond approved
- Fulfillment of other suspensive conditions
- Deposit paid
- Transferring, bond and cancellation attorneys instructed
- Parties to provide FICA documentation and copy of rates account
- Transfer attorney requests title deeds and cancellation figures from the bank, and prepares transfer documents for signature by parties
- Bond attorney advises transfer attorney of amount available for guarantees

Stage 3

- Purchaser pays transfer costs
- Rates clearance and valuation certificates applied for (seller pays rates and utilities to transferring attorney). Both parties are advised to ensure that all rates arrears have been paid in full [S118(1) and (3) of the Local Government:Municipal Systems Act (32 of 2000)]
- Transfer attorney receives title deed and cancellation figures from cancellation attorneys and sends draft deed to bond attorney
- Bond documents prepared once draft deed received
- Cancellation attorney is requested to cancel seller's bond on receipt of guarantees from the new bond attorney
- Purchaser signs bond documents and pays bond registration costs
- Purchaser signs transfer documents
- Seller signs transfer documents
- Electrical, beetle, gas and electric fence certificates arranged (and plumbing, where appropriate)

Stage 4

- Transfer attorney pays rates/levies and transfer duty to SARS (electronically)
- Bond attorneys send guarantees to the transfer or cancellation attorneys
- Transfer attorney obtains consent from the bondholder to cancel the seller's bond

Stage 5

- Documents prepared for lodgement at Deeds Office
- Documents lodged at Deeds Office
- Documents are checked in the Deeds Office (+10 days, regulation: 7 days)
- Purchaser must have balance of purchase price available and pay it to transfer attorney before lodgement, or when called for in terms of the agreement

ON REGISTRATION:

- Financial institution's attorneys have bond amount available
- Property registered in purchaser's name. Seller's bond cancelled. Purchaser's bond registered

COMPARATIVE TAX RATES

RATES OF TAX	2015	2016	2017
NATURAL PERSONS			
Maximum marginal rate	40%	41%	41%
◆ Reached at a taxable income	673 100	701 300	701 300
Minimum rate	18%	18%	18%
◆ Up to taxable income of	174 550	181 900	188 000
◆ CGT inclusion rate	33.3%	33.3%	40.0%
COMPANIES & CC's			
◆ Normal tax rate	28%	28%	28%
◆ STC rate/Dividends Tax	15%	15%	15%
◆ CGT inclusion rate	66.6%	66.6%	80%
TRUSTS (other than special trusts)			
◆ Flat rate	40%	41%	41%
◆ CGT inclusion rate	66.6%	66.6%	80%
SUNDRY			
◆ Donations Tax	20%	20%	20%
◆ Estate Duty	20%	20%	20%
SMALL BUSINESS CORPORATIONS			
Maximum marginal rate	28%	28%	28%
◆ Reached at a taxable income	550 000	550 000	550 000
Minimum rate	0%	0%	0%
◆ Up to a taxable income of	70 700	73 650	75 000
MICRO BUSINESS			
Max Rate of Tax	6%	3%	3%
◆ On turnover of	750 000	750 000	750 000
Minimum Rate	0%	0%	0%
◆ Up to a turnover of	150 000	335 000	335 000

PRIME BANK OVERDRAFT RATES

EFFECTIVE DATE	RATE
16. 07. 2001	13,50%
28. 09. 2001	13,00%
16. 01. 2002	14,00%
18. 03. 2002	15,00%
15. 06. 2002	16,00%
16. 09. 2002	17,00%
13. 06. 2003	15,50%
15. 08. 2003	14,50%
11. 09. 2003	13,50%
20. 10. 2003	12,00%
15. 12. 2003	11,50%
16. 08. 2004	11,00%
15. 04. 2005	10,50%
08. 06. 2006	11,00%
03. 08. 2006	11,50%
13. 10. 2006	12,00%
08. 12. 2006	12,50%
08. 06. 2007	13,00%
17. 08. 2007	13,50%
12. 10. 2007	14,00%
07. 12. 2007	14,50%
11. 04. 2008	15,00%
13. 06. 2008	15,50%
12. 12. 2008	15,00%
06. 02. 2009	14,00%
25. 03. 2009	13,00%
04. 05. 2009	12,00%
29. 05. 2009	11,00%
14. 08. 2009	10,50%
26. 03. 2010	10,00%
10. 09. 2010	9,50%
19. 11. 2010	9,00%
20. 07. 2012	8,50%
30. 01. 2014	9,00%
18. 07. 2014	9,25%
24. 07. 2015	9,50%
20. 11. 2015	9.75%
29. 01. 2016	10.25%
18. 03. 2016	10.50%

ILLUSTRATIVE TABLE OF BOND AND TRANSFER COSTS

	Transfer Costs						Bond Costs			
Price/Value/ Bond amount R	Transfer fee (Excl)	VAT @ 14%	Deeds Office Levy	Total	Transfer Duty	Total	Bond fee (Excl)	VAT @ 14%	Deeds Office Levy	Total
100 000	4 300	602,00	35	4 937,00	0	4 937,00	4 300	602,00	340	5 242,00
150 000	4 950	693,00	75	5 718,00	0	5 718,00	4 950	693,00	340	5 983,00
200 000	5 600	784,00	440	6 824,00	0	6 824,00	5 600	784,00	380	6 764,00
250 000	6 250	875,00	440	7 565,00	0	7 565,00	6 250	875,00	380	7 505,00
300 000	6 900	966,00	440	8 306,00	0	8 306,00	6 900	966,00	380	8 246,00
400 000	8 200	1 148,00	550	9 898,00	0	9 898,00	8 200	1 148,00	550	9 898,00
500 000	9 500	1 330,00	550	11 380,00	0	11 380,00	9 500	1 330,00	550	11 380,00
600 000	10 800	1 512,00	550	12 862,00	0	12 862,00	10 800	1 512,00	550	12 862,00
700 000	12 100	1 694,00	770	14 564,00	0	14 564,00	12 100	1 694,00	770	14 564,00
750 000	13 400	1 876,00	770	16 046,00	0	16 046,00	13 400	1 876,00	770	16 046,00
800 000	13 400	1 876,00	770	16 046,00	1 500	17 546,00	13 400	1 876,00	770	16 046,00
900 000	14 700	2 058,00	880	17 638,00	4 500	22 138,00	14 700	2 058,00	880	17 638,00
950 000	16 000	2 240,00	880	19 120,00	6 000	25 120,00	16 000	2 240,00	880	19 120,00
1 000 000	16 000	2 240,00	880	19 120,00	7 500	26 620,00	16 000	2 240,00	880	19 120,00
1 100 000	16 650	2 331,00	990	19 971,00	10 500	30 471,00	16 650	2 331,00	990	19 971,00
1 200 000	17 300	2 422,00	990	20 712,00	13 500	34 212,00	17 300	2 422,00	990	20 712,00
1 250 000	17 950	2 513,00	990	21 453,00	15 000	36 453,00	17 950	2 513,00	990	21 453,00
1 300 000	17 950	2 513,00	990	21 453,00	18 000	39 453,00	17 950	2 513,00	990	21 453,00
1 350 000	18 275	2 558,50	990	21 823,50	21 000	42 823,50	18 275	2 558,50	990	21 823,50
1 400 000	18 600	2 604,00	990	22 194,00	24 000	46 194,00	18 600	2 604,00	990	22 194,00
1 500 000	19 250	2 695,00	990	22 935,00	30 000	52 935,00	19 250	2 695,00	990	22 935,00
1 600 000	19 900	2 786,00	990	23 676,00	36 000	59 676,00	19 900	2 786,00	990	23 676,00

ILLUSTRATIVE TABLE OF BOND AND TRANSFER COSTS (Continued)

	Transfer Costs						Bond Costs			
Price/Value/ Bond amount R	Transfer fee (Excl)	VAT @ 14%	Deeds Office Levy	Total	Transfer Duty	Total	Bond fee (Excl)	VAT @ 14%	Deeds Office Levy	Total
1 700 000	20 550	2 877,00	990	24 417,00	42 000	66 417,00	20 550	2 877,00	990	24 417,00
1 800 000	21 200	2 968,00	990	25 158,00	49 000	74 158,00	21 200	2 968,00	990	25 158,00
1 900 000	21 850	3 059,00	990	25 899,00	57 000	82 899,00	21 850	3 059,00	990	25 899,00
2 000 000	22 500	3 150,00	990	26 640,00	65 000	91 640,00	22 500	3 150,00	990	26 640,00
2 100 000	23 150	3 241,00	1 200	27 591,00	73 000	100 591,00	23 150	3 241,00	1 370	27 761,00
2 300 000	24 450	3 423,00	1 200	29 073,00	90 500	119 573,00	24 450	3 423,00	1 370	29 243,00
2 400 000	25 100	3 514,00	1 200	29 814,00	101 500	131 314,00	25 100	3 514,00	1 370	29 984,00
2 500 000	25 750	3 605,00	1 200	30 555,00	112 500	143 055,00	25 750	3 605,00	1 370	30 725,00
2 600 000	26 400	3 696,00	1 200	31 296,00	123 500	154 796,00	26 400	3 696,00	1 370	31 466,00
2 700 000	27 050	3 787,00	1 200	32 037,00	134 500	166 537,00	27 050	3 787,00	1 370	32 207,00
2 800 000	27 700	3 878,00	1 200	32 778,00	145 500	178 278,00	27 700	3 878,00	1 370	32 948,00
2 900 000	28 350	3 969,00	1 200	33 519,00	156 500	190 019,00	28 350	3 969,00	1 370	33 689,00
3 000 000	29 000	4 060,00	1 200	34 260,00	167 500	201 760,00	29 000	4 060,00	1 370	34 430,00
3 200 000	30 300	4 242,00	1 200	35 742,00	189 500	225 242,00	30 300	4 242,00	1 370	35 912,00
3 300 000	30 950	4 333,00	1 200	36 483,00	200 500	236 983,00	30 950	4 333,00	1 370	36 653,00
3 400 000	31 600	4 424,00	1 200	37 224,00	211 500	248 724,00	31 600	4 424,00	1 370	37 394,00
3 500 000	32 250	4 515,00	1 200	37 965,00	222 500	260 465,00	32 250	4 515,00	1 370	38 135,00
3 600 000	32 900	4 606,00	1 200	38 706,00	233 500	272 206,00	32 900	4 606,00	1 370	38 876,00
3 700 000	33 550	4 697,00	1 200	39 447,00	244 500	283 947,00	33 550	4 697,00	1 370	39 617,00
3 800 000	34 200	4 788,00	1 200	40 188,00	255 500	295 688,00	34 200	4 788,00	1 370	40 358,00
3 900 000	34 850	4 879,00	1 200	40 929,00	266 500	307 429,00	34 850	4 879,00	1 370	41 099,00
4 000 000	35 500	4 970,00	1 200	41 670,00	277 500	319 170,00	35 500	4 970,00	1 370	41 840,00

4 200 000	36 800	5 152,00	1 650	43 602,00	299 500	343 102,00	36 800	5 152,00	1 660	43 612,00
4 300 000	37 450	5 243,00	1 650	44 343,00	310 500	354 843,00	37 450	5 243,00	1 660	44 353,00
4 500 000	38 750	5 425,00	1 650	45 825,00	332 500	378 325,00	38 750	5 425,00	1 660	45 835,00
5 000 000	42 000	5 880,00	1 650	49 530,00	387 500	437 030,00	42 000	5 880,00	1 660	49 540,00
5 500 000	43 625	6 107,50	1 650	51 382,50	442 500	493 882,50	43 625	6 107,50	1 660	51 392,50
6 000 000	45 250	6 335,00	1 650	53 235,00	497 500	550 735,00	45 250	6 335,00	1 660	53 245,00
6 200 000	45 900	6 426,00	1 980	54 306,00	519 500	573 806,00	45 900	6 426,00	1 980	54 306,00
6 400 000	46 550	6 517,00	1 980	55 047,00	541 500	596 547,00	46 550	6 517,00	1 980	55 047,00
6 500 000	46 875	6 562,50	1 980	55 417,50	552 500	607 917,50	46 875	6 562,50	1 980	55 417,50
6 700 000	47 525	6 653,50	1 980	56 158,50	574 500	630 658,50	47 525	6 653,50	1 980	56 158,50
6 800 000	47 850	6 699,00	1 980	56 529,00	585 500	642 029,00	47 850	6 699,00	1 980	56 529,00
6 900 000	48 175	6 744,50	1 980	56 899,50	596 500	653 399,50	48 175	6 744,50	1 980	56 899,50
7 000 000	48 500	6 790,00	1 980	57 270,00	607 500	664 770,00	48 500	6 790,00	1 980	57 270,00
7 200 000	49 150	6 881,00	1 980	58 011,00	629 500	687 511,00	49 150	6 881,00	1 980	58 011,00
7 300 000	49 475	6 926,50	1 980	58 381,50	640 500	698 881,50	49 475	6 926,50	1 980	58 381,50
7 400 000	49 800	6 972,00	1 980	58 752,00	651 500	710 252,00	49 800	6 972,00	1 980	58 752,00
7 500 000	50 125	7 017,50	1 980	59 122,50	662 500	721 622,50	50 125	7 017,50	1 980	59 122,50
7 600 000	50 450	7 063,00	1 980	59 493,00	673 500	732 993,00	50 450	7 063,00	1 980	59 493,00
7 700 000	50 775	7 108,50	1 980	59 863,50	684 500	744 363,50	50 775	7 108,50	1 980	59 863,50
7 800 000	51 100	7 154,00	1 980	60 234,00	695 500	755 734,00	51 100	7 154,00	1 980	60 234,00
7 900 000	51 425	7 199,50	1 980	60 604,50	706 500	767 104,50	51 425	7 199,50	1 980	60 604,50
8 000 000	51 750	7 245,00	1 980	60 975,00	717 500	778 475,00	51 750	7 245,00	1 980	60 975,00
8 200 000	52 400	7 336,00	2 310	62 046,00	739 500	801 546,00	52 400	7 336,00	2 310	62 046,00
8 300 000	52 725	7 381,50	2 310	62 416,50	750 500	812 916,50	52 725	7 381,50	2 310	62 416,50
8 500 000	53 375	7 472,50	2 310	63 157,50	772 500	835 657,50	53 375	7 472,50	2 310	63 157,50
8 600 000	53 700	7 518,00	2 310	63 528,00	783 500	847 028,00	53 700	7 518,00	2 310	63 528,00
8 800 000	54 350	7 609,00	2 310	64 269,00	805 500	869 769,00	54 350	7 609,00	2 310	64 269,00
8 900 000	54 675	7 654,50	2 310	64 639,50	816 500	881 139,50	54 675	7 654,50	2 310	64 639,50
9 000 000	55 000	7 700,00	2 310	65 010,00	827 500	892 510,00	55 000	7 700,00	2 310	65 010,00

ILLUSTRATIVE TABLE OF BOND AND TRANSFER COSTS (Continued)

	Transfer Costs						Bond Costs			
Price/Value/ Bond amount R	Transfer fee (Excl)	VAT @ 14%	Deeds Office Levy	Total	Transfer Duty	Total	Bond fee (Excl)	VAT @ 14%	Deeds Office Levy	Total
9 100 000	55 325	7 745,50	2 310	65 380,50	838 500	903 880,50	55 325	7 745,50	2 310	65 380,50
9 200 000	55 650	7 791,00	2 310	65 751,00	849 500	915 251,00	55 650	7 791,00	2 310	65 751,00
9 500 000	56 625	7 927,50	2 310	66 862,50	882 500	949 362,50	56 625	7 927,50	2 310	66 862,50
9 600 000	56 950	7 973,00	2 310	67 233,00	893 500	960 733,00	56 950	7 973,00	2 310	67 233,00
9 700 000	57 275	8 018,50	2 310	67 603,50	904 500	972 103,50	57 275	8 018,50	2 310	67 603,50
9 800 000	57 600	8 064,00	2 310	67 974,00	915 500	983 474,00	57 600	8 064,00	2 310	67 974,00
10 000 000	58 250	8 155,00	2 310	68 715,00	937 500	1 006 215,00	58 250	8 155,00	2 310	68 715,00
11 000 000	61 500	8 610,00	2 750	72 860,00	1 067 500	1 140 360,00	61 500	8 610,00	2 750	72 860,00
12 000 000	64 750	9 065,00	2 750	76 565,00	1 197 500	1 274 065,00	64 750	9 065,00	2 750	76 565,00
15 000 000	74 500	10 430,00	2 750	87 680,00	1 587 500	1 675 180,00	74 500	10 430,00	2 750	87 680,00
16 000 000	77 750	10 885,00	3 300	91 935,00	1 717 500	1 809 435,00	77 750	10 885,00	3 310	91 945,00
20 000 000	90 750	12 705,00	3 300	106 755,00	2 237 500	2 344 255,00	90 750	12 705,00	3 310	106 765,00
25 000 000	107 000	14 980,00	4 400	126 380,00	2 887 500	3 013 880,00	107 000	14 980,00	3 850	125 830,00
30 000 000	123 250	17 255,00	4 400	144 905,00	3 537 500	3 682 405,00	123 250	17 255,00	3 850	144 355,00

NOTES:

Transfer and bond costs not inclusive of FICA costs, and any other disbursements, such as post and petties, rates clearance and/or levies, cancellation costs of existing bond, bank initiation and valuation fee, electronic document generation fees etc. – for which provision should also be made. Whilst every care is taken with compiling these tables, we reserve the right to correct any possible inaccuracies and cannot be bound by them.

NB: the conveyancing fees serve as a GUIDELINE only as per recommended guidelines of fees and are subject to change and updates issued by the various law societies from time to time. Mere reference to the tables may result in in misapprehension as to the costs involved. Our fees may vary from the guideline based on each matter quoted for.