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ADVICE TO PROPERTY SELLERS

Below are nine important matters to consider when selling your property:

1. BOND CANCELLATION AMOUNT

1.1 PENALTY INTEREST

Penalty interest is often overlooked and an important factor to take into consideration when calculating the expected proceeds on your sale.

“Notice Penalty”

All the major banks' terms and conditions contain a clause that a borrower should notify the bank of their intention to pay the outstanding amount in full and cancel their bond. Make reference to the particular clause in your mortgage bond to verify the provisions applicable to your mortgage bond in this regard.

A typical notice period clause reads as follows:

The borrower will give the Bank not less than 90 (ninety) days advance notice in writing (or such shorter period as may be agreed by the Bank) of the date on which the borrower will pay the outstanding balance of the loan in one amount;

If the borrower failed to give the bank notice, then the 90 day period will be triggered by the transferring attorney's request for cancellation figures.

A borrower will pay interest on the outstanding balance at the interest rate applicable to his bond until date of cancellation of his bond. The borrower will however incur a minimum of 90 days interest calculated from the date that notice of cancellation is given up to the expiration of the 90 days notice period.

2. OTHER CHARGES

Other charges that may be added to the settlement figure are;

- provision for unpaid instalments during the transfer period,
 - uncleared effects,
 - outstanding legal costs,
 - home owners insurance premium,
 - life assurance premium,
 - administration fees,
 - interest to be capitalised,
 - security variation fee,
 - branch requirements,
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- fixed rate finance fee

For a comprehensive list of the additional charges that may be applicable to your particular mortgage bond, we recommend that you make reference to the terms and conditions of your mortgage bond. The above is merely intended as a general guideline.

CONCLUSION

It is thus apparent that the amount reflected on a borrower's home loan statement will not be the settlement amount payable on cancellation of the mortgage bond.

3. ACCESS FACILITY

If the borrower has been granted a facility to access funds available in his bond account (a so called "access bond"), then it would be advisable to withdraw funds that the borrower may need in the near future, prior to date of application for a settlement figure, as this facility will not be available after the bank has issued a settlement figure as the account will be "frozen".

4. RATES AND TAXES/ LEVIES

An owner of a freehold property should also provide for rates and taxes payable to the local authority. In terms of section 118(1A) of the Local Government: Municipal Systems Act 32 of 2000 the owner is liable for assessment rates, sewerage, refuse, water and electricity consumption charges in arrears as well as for a period of six months in advance. In practice the figures are calculated by taking the average charges per month and multiplying it by six. This amount has to be paid prior to transfer of the property to obtain a rates clearance certificate.

An owner of a sectional title unit will also be liable for all arrears on the levy account and the managing agents will require payment of levies in advance for approximately two months to enable them to issue a levy clearance certificate.

5. HOME OWNERS ASSOCIATION CLEARANCE

When townships are established or small-scale sub-divisions approved, it is often a condition of the local authority that each owner become a member of the Home Owners Association ("HOA") and that the erven may not be transferred/alienated without the consent of the HOA. A HOA levy clearance certificate is required whenever such a property is transferred and the seller is liable to pay the amount required by the HOA to enable them to issue the clearance certificate.

6. CAPITAL GAINS TAX

A further potential future liability that may arise is Capital Gains Tax ("CGT"). The seller will have to disclose the sale of the capital asset in the next income tax return to be filed after he/she disposed of the property to the Receiver and the Receiver will determine whether CGT is payable on the disposal. If any CGT tax is payable it will be remitted to the Receiver together with any other tax payable.

Section 35A of the Income Tax Act introduced a so called withholding tax and requires a conveyancer to retain a certain percentage of the proceeds in trust when the seller is a non resident and the value of the property exceeds the amount of R2 000 000.00. This section has however not yet been promulgated in the Government Gazette and is not effective yet.

7. AGENTS COMMISSION

The commission payable to the estate agent is normally a first charge against the proceeds of the sale and the seller should ensure that the sale realizes a sufficient profit to satisfy this charge which usually also includes VAT.

8. ELECTRICAL COMPLIANCE CERTIFICATE

An agreement of sale normally contains a provision that the seller must obtain an Electrical Compliance Certificate issued in terms of the Machinery and Occupational Health and Safety Act. Even when the agreement is silent in regards to this obligation it should be noted that the duty is imposed by law by virtue of the provisions the Machinery and Occupational Health and Safety Act.

The seller is liable for all costs incurred in obtaining such a certificate, including costs of any repairs or replacements required in order for the certificate to be issued. If the seller is unable to pay the electrician prior to transfer, an arrangement may be made with the conveyancer to provide the electrician with an undertaking to pay his charges from the proceeds of the sale.

It is important to note that the certificate merely certifies that the electrical installation on the property complies with the safety standard and does not guarantee that all appliances connected to the electrical installation are in a working condition.

9. ENSURE COMPANY SELLERS ARE STILL IN BUSINESS

If the seller is a legal entity, ensure that the entity reflects as still in business on the records of the Companies and Intellectual Property Commission (CIPC). In the event that it is de-registered, please see our publication dealing with Re-registration of De-registered Companies

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