

1. **OUR CONVEYANCING PARTNER:**

As a boutique style firm, we strive to retain “the personal touch”. For that reason, our Conveyancing Partner, Liezel Schultz, has full control over all conveyancing matters being overseen by Goldman Schultz.

Liezel is an extremely experienced Conveyancer and Specialist Property Attorney having practiced in this field for 21 years. Liezel is available to assist clients with all property related matters.

Liezel also assists clients who are buying or selling property without the assistance of an estate agent, with the preparation of a sale agreement.

Contact Liezel Schultz on liezel@gslaw.co.za for assistance.

2. **DOCUMENTS REQUIRED FOR CONVEYANCING AND FICA PURPOSES:**

FICA: THE FINANCIAL CENTRE ACT 38/2001

SELLERS:

- **Natural Persons:**

1. Clear copies of Identity Documents/s;
2. If you are married, a copy of your marriage certificate;
3. If you are married in community of property, a copy of your spouse’s Identity Document;
4. If you are married out of community of property, a copy of your Antenuptial Contract;
5. If you are divorced, a copy of your Final Order of Divorce and Settlement Agreement;
6. A copy of a recent statement of account as proof of your residential address (not older than 3 months);
7. Your South African Income Tax Reference number/s;
8. A copy of the latest water and electricity account in respect of the property that we are transferring, indicating the water and electricity account numbers;

9. Details of the whereabouts of the title deeds to the property, including your existing home loan account number and name of the financial institution in whose favour any/all mortgage bonds are registered.

- **Close Corporations:**

1. Clear copy of founding statement and key particulars of members;
2. Clear copies of Identity Document/s of all members;
3. Copy of a recent statement of account as proof of the physical address of the Close Corporation (not older than 3 months);
4. The South African Income Tax Reference number of the Close Corporation;
5. If registered for VAT, the Vat Registration Number of the Close Corporation;
6. A copy of the latest water and electricity account in respect of the property that we are transferring, indicating the water and electricity account numbers;
7. The full names of the representative of the Close Corporation who are authorized to sign the transfer documents on behalf of the Close Corporation;
8. Details of the whereabouts of the title deeds to the property, including the existing home loan account number and name of the financial institution in whose favour any/all mortgage bonds are registered.

- **Companies:**

1. Clear copies of Certificate of Incorporation (forms CM1/CM3 and CM27/CM29);
2. Copy of Memorandum and Articles of Association;
3. Copy of Notice of Registered Office and Postal Address (form CM22);
4. Clear copies of Identity Document/s of all Directors and Shareholders;
5. The South African Income Tax Reference number of the Company;
6. If registered for VAT, the Vat Registration Number of the Company;
7. A copy of the latest water and electricity account in respect of the property that we are transferring, indicating the water and electricity account numbers;
8. The full names of the representative of the Company who are authorized to sign the transfer documents on behalf of the Company;

9. Details of the whereabouts of the title deeds to the property, including the existing home loan account number and name of the financial institution in whose favour any/all mortgage bonds are registered.

- **Trusts:**

1. Clear copy of Trust Deed;
2. Copy of the most recent Letter of Authority from the Master of the High Court appointing the trustees;
3. Clear copies of Identity Document/s of Founder, all Trustees as well as Beneficiaries;
3. Copy of a recent statement of account as proof of the physical address of the Trust (not older than 3 months);
4. Copies of recent statement/s of account as proof of the residential address/es of all the trustees of the Trust (not older than 3 months);
4. The South African Income Tax Reference number of the Trust;
5. If registered for VAT, the Vat Registration Number of the Trust;
6. A copy of the latest water and electricity account in respect of the property that we are transferring, indicating the water and electricity account numbers;
8. The full names of the representative of the Trust who are authorized to sign the transfer documents on behalf of the Trust;
7. Details of the whereabouts of the title deeds to the property, including the existing home loan account number and name of the financial institution in whose favour any/all mortgage bonds are registered.

PURCHASERS:

- **Natural Persons:**

1. Clear copies of Identity Documents/s;
2. If you are married, a copy of your marriage certificate;
3. If you are married in community of property, a copy of your spouse's Identity Document;
4. If you are married out of community of property, a copy of your Antenuptial Contract;
5. A copy of a recent statement of account as proof of your residential address (not older than 3 months);

7. Your South African Income Tax Reference number/s;
- **Close Corporations:**
 1. Clear copy of founding statement and key particulars of members;
 2. Clear copies of Identity Document/s of all members;
 3. Copy of a recent statement of account as proof of the physical address of the Close Corporation (not older than 3 months);
 4. The South African Income Tax Reference number of the Close Corporation;
 5. If registered for VAT, the Vat Registration Number of the Close Corporation;
 6. The full names of the representative of the Close Corporation who are authorized to sign the transfer documents on behalf of the Close Corporation;
 - **Companies:**
 1. Clear copies of Certificate of Incorporation (forms CM1/CM3 and CM27/CM29);
 2. Copy of Memorandum and Articles of Association;
 3. Copy of Notice of Registered Office and Postal Address (form CM22);
 4. Clear copies of Identity Document/s of all Directors and Shareholders;
 5. The South African Income Tax Reference number of the Company;
 6. If registered for VAT, the Vat Registration Number of the Company;
 7. The full names of the representative of the Company who are authorized to sign the transfer documents on behalf of the Company;
 - **Trusts:**
 1. Clear copy of Trust Deed;
 2. Copy of the Letter of Authority from the Master of the High Court appointing the trustees;
 3. Clear copies of Identity Document/s of Founder, all Trustees as well as Beneficiaries;
 3. Copy of a recent statement of account as proof of the physical address of the Trust (not older than 3 months);
 4. Copies of recent statement/s of account as proof of the residential address/es of all the trustees of the Trust (not older than 3 months);
 4. The South African Income Tax Reference number of the Trust;
 5. If registered for VAT, the Vat Registration Number of the Trust;
 6. The full names of the representative of the Trust who are authorized to sign the transfer documents on behalf of the Trust;

3. **CAPITAL GAINS TAX:**

Herewith some salient information on capital gains tax (CGT):

What is it?

Capital gains tax (CGT) is not a separate tax but forms part of income tax. A capital gain arises when you dispose of an asset on or after 1 October 2001 for proceeds that exceed its base cost. The relevant legislation is contained in the Eighth Schedule to the Income Tax Act, 1962.

Capital gains are taxed at a lower effective tax rate than ordinary income. Not all assets attract CGT and many capital gains and losses are disregarded.

Primary residence

Most primary residences will not be subject to CGT because –

- the first R2 million of any capital gain or loss on the sale is disregarded for CGT purposes. This means that you need to make a capital gain of more than R2 million in order to be subject to CGT; and
- in addition, if the proceeds on disposal of a primary residence do not exceed R2 million, any resulting capital gain must be disregarded (this rule is subject to certain conditions, for example, no part of the residence must have been used for the purposes of trade).

What is a “primary residence”?

A home will not constitute a primary residence unless –

- it is owned by a natural person (not a trust, company or close corporation); and
- the owner or spouse of the owner must ordinarily reside in the home as his or her main residence and must use the home mainly for domestic purposes.

When will the sale of a primary residence be subject to CGT?

A capital gain or loss will not be fully excluded in the following circumstances:

- If the capital gain on the sale of a primary residence exceeds R2 million, the portion of the capital gain that exceeds R2 million will be subject to CGT. Similarly, if you have a capital loss in excess of R2 million, only the portion of the loss exceeding R2 million will be allowed as a capital loss.

- The capital gain or loss attributable to the portion of a property that exceeds two hectares is subject to CGT.
- The primary residence exclusion does not apply to the portion of a capital gain or loss that relates to a period on or after the valuation date (1 October 2001), in which a person or his or her spouse was not ordinarily resident in a primary residence.
- The primary residence exclusion does not apply to the portion of a capital gain or loss that relates to any part of the primary residence that is used for the purposes of trade. This situation would apply, for example, if you use your study as an office for business purposes or if you let the residence.

Deemed period of ordinary residence

You will be treated as having been ordinarily resident for a continuous period of up to two years even if you were not living in your home during that two-year period if any one of the following circumstances applies:

- Your old home was in the process of being sold while a new primary residence was acquired or was in the process of being acquired.
- Your home was being built on land acquired for the purpose of erecting your primary residence.
- The primary residence had been accidentally rendered uninhabitable.
- Upon your death.

Deemed domestic usage despite letting

You will be treated as having used your primary residence for domestic purposes despite letting it for a rental if –

- you were absent from the residence for a continuous period not exceeding five years;
- you or your spouse resided in the residence as a primary residence for a continuous period of at least one year before and after the letting period;
- you did not have another primary residence during the letting period; and
- you were either –
 - temporarily absent from South Africa during the letting period (for example, you worked overseas); or
 - you were employed or carried on business more than 250 km from your primary residence.

What happens if you and your spouse hold a primary residence jointly?

The primary residence exclusion of R2 million is divided according to the interest each of you hold in the primary residence. For example, if you and your spouse have an equal interest in your primary residence, you will each qualify for a primary residence exclusion of R1 million. You will also each be entitled to the annual exclusion (2015: R30 000).

Calculation of CGT

In order to calculate CGT, one needs to deduct the “base cost” from the “proceeds”. Generally, this means the purchase price must be deducted from the proceeds of the sale of the property. However, the base cost will also be increased if certain improvements or repairs are made to the property. The next step after calculating the gain is to consider whether any of the deductions allowed by Sars apply to this gain. For example, if the property is bought and sold in the name of an individual, then an amount of R30 000 is deducted from the capital gain. Further, if the property that is sold was your primary residence, you will be entitled to deduct up to R2m in the form of a primary residence deduction. After affecting the deductions, you will arrive at a net taxable capital gain which must be included in your taxable income.

In closing, please take note that we are not tax specialists and we are therefore not in a position to give specific details of the rate of capital gains tax that may be payable by an individual nor the net taxable capital gain that should be included in an individual’s taxable income.

4. **USEFUL DOWNLOADS**

- 4.1 The Conveyancing Process
- 4.2 Vat Zero-Rating
- 4.3 ABC of Capital Gains Tax
- 4.4 Withholding Tax for non-residents
- 4.5 Regulations on Alien & Invasive Species