

Property transfers - what could be the delay?

By [Lethabo Mashishi](#)

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Most sellers, purchasers, estate agents, banks and attorneys were relieved when it was announced that deeds offices could re-open on 4 May 2020 under the Alert Level 4 of lockdown regulations. This meant that property transactions previously concluded could be finalised, at which stage sellers could receive the proceeds of sale, purchasers who contracted to move into properties on registration could do so, estate agents could receive payment of their commission, banks could disburse loans granted and start receiving interest and attorneys could pass their fees.



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Covid-19 decontamination delays

Unfortunately, deeds offices only resumed operations on 13 May 2020 after a public announcement by the Department of Rural Development and Land Reform on 12 May 2020. Until then, deeds offices awaited receipt of PPE (personal protective equipment) from government and made arrangements for staff to safely return to work. Since re-opening, the deeds offices in Cape Town, Johannesburg and Pietermaritzburg had to close their doors at some stage due to positive cases of Covid-19 to decontaminate their buildings. In fact, the Cape Town deeds office is closed for a second time at this stage. This, together with the fact that only a limited number of staff members are allowed in buildings, has caused delays in the examination of deeds.

The situation in Cape Town has worsened to such an extent that the Cape Town Attorneys Association and other interested bodies were forced to institute legal proceedings on an urgent basis against the Deeds Office to seek an order from court to compel the it to re-open.

However, this is not the only concern for parties involved in property transactions.



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Rates clearance certificates

Transferring attorneys are dependent on external role players such as SARS and municipalities as a transfer duty receipt issued by SARS and a rates clearance certificate issued by the relevant municipality are documents which are required to be lodged at the Deeds Office to ultimately register a property transaction.

All role players are expected to play their part to successfully register a property transaction and the transferring attorneys are required to drive the conveyancing process. Once ready, lodgement of documents is arranged with the attorneys attending to other aspects of the transaction, such as the attorneys attending to the registration of the purchaser's bond and the attorneys cancelling the seller's existing bond, all of whom have their own requirements to comply with prior to being in a position to lodge.

Currently, transferring attorneys are struggling to obtain rates clearance figures from municipalities, which causes delays

and frustration amongst the parties involved, specifically those financially dependent on the registration of transactions, who are now at the mercy of municipalities.

Under normal circumstances, it takes a week to obtain rates clearance figures from a municipality and a further two to three days to obtain a rates clearance certificate once the figures have been paid. At the moment, rates clearance figures that have been applied for at the beginning of May 2020 are still outstanding.



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Municipal Systems Act

The Municipal Systems Act provides that a rates clearance certificate is only valid for a period of 60 days from the date of issue. This is the case, even though rates clearance figures are issued by municipalities for periods of up to four months in advance. Most transactions which were ready for lodgement prior to lockdown now require new rates clearance figures as the certificates have expired.

It seems that rates clearance departments at the various municipalities did not work remotely during Alert Level 5 and are slow to get their operations back to the level required in order to deliver this crucial service. The backlog that has been created, coupled with the limited number of staff permitted at the office to process rates clearance applications, has dire consequences for the property sector.

Various municipalities have acknowledged this problem and engaged with representatives of associations within the legal fraternity to address the delays. The City of Tshwane Municipality had for instance met with members of the Pretoria Attorneys Association and the Gauteng Attorneys Association to address, amongst others, these delays. There seems to be a commitment on the part of municipalities, which gives one hope that there is light at the end of the tunnel. However, until such time that rates clearance figures and certificates are issued within acceptable timelines, parties involved in property transactions will have no other choice but endure the delay.

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