



HOME LOANS AND MORTGAGE BONDS

An Explanation of the Home Loan Agreement and Mortgage Bond for the purchase of Immovable Property

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The purchase of immovable property can be a daunting experience, especially for first-time buyers. When deciding on how to purchase property, a purchaser may be faced with two possibilities:

1. Cash Payments and/or
2. Finance from the Bank.

A. An Example

Generally, a purchaser will utilise a combination of his or her own cash together with finance from their chosen bank in order to purchase a property. If the purchase price of a property is R1 000 000.00, a purchaser may pay a 10% deposit in cash and finance the balance through a bank. The R1000 000.00 purchase price will then be paid as follows:

1. A cash deposit of R100 000.00 into the transfer attorneys trust account to be invested; and
2. The balance of R900 000.00 to be financed through a bank by a home loan agreement.

The purchaser may approach various banks (or financial institutions) in order to get quotations. The quotations from the bank will only be provided in the event that the purchaser passes the various credit and assessment checks of the bank. In essence, the affordability status of the purchaser will be assessed by the bank. A bank will provide a quotation which sets out, amongst other things: the loan amount, the minimum monthly

repayment amount, the interest rate, the term and the mortgage bond amount over the property.

B. Home Loan versus Bond

On a technical aspect, people often refer to the loan agreement and the bond interchangeably. However, the two are very different concepts. The loan amount is the amount the bank will lend to the purchaser. In this instance the amount of R900 000.00. The purchaser will be required to repay the loan amount in monthly instalments which are calculated over the term of the loan. The term of a home loan is usually 240 months or 20 years. To ensure that the purchaser repays the loan amount, the bank will register a mortgage bond over the purchased property. The mortgage bond acts as security for the repayment of the loan by the purchaser to the bank.

The bond amount may be the same as the loan amount, which in this case is R900 000.00. However, the bond amount may be a higher amount if the property value is high enough. For instance, if the purchaser pays a bigger deposit of R200 000.00 then the balance to be loaned by the bank would only be R700 000.00. If the value of the property is R1 200 000.00 (the purchaser may have gotten a great bargain on the purchase price which is the case now in the property market) then the purchaser may be able to get a bond for R1 000 000.00, depending on the lending requirements of the specific bank.

If this is the case, the bank will loan the purchaser an amount of R700 000.00 which the purchaser will have to repay in monthly instalments until repaid in full. However, the property will have a mortgage bond of R1 000 000.00 over it which means that the purchaser may, in future borrow more money from the bank, up to possibly R1 000 000.00 without the bank having to register a second bond over the property. Although, the downside of registering a higher bond, though maybe beneficial in the long term, is that bond fees are payable to the bond attorneys on the total bond amount. If the bond amount is higher, at the request of the purchaser, the higher the bond registration fee.

The purpose of the mortgage bond over the property is to provide security for the bank in terms of its loan agreement with the purchaser. In the event that the purchaser defaults on their home loan agreement by failing to make consecutive monthly repayments, the bank has security. The mortgage bond over the property allows the bank to approach the court to have the property of the purchaser sold in the event of a breach of the home loan agreement. Although there are various extensive processes to follow, the gist of the matter is that the bank will sell the property and deduct the outstanding loan amount (plus interest) from the purchase price. In this way, the mortgage bond over the property secures the repayment of the loan amount as the property will be sold in the event of a breach of the home loan agreement by the purchaser.

Therefore, the concept of a loan and a bond are very different. The loan amount is the amount loaned to the purchaser. The bond amount may be slightly higher than the loan amount, based on the value of the property. In the event that there is a breach, only the outstanding loan amount (plus interest) is to be repaid to the bank and not the bond amount.

C. The Process of the Bond Registration

Once a purchaser enters into a home loan agreement and signs all the necessary documentation, the bank will issue a guarantee for the loan amount. The guarantee, which is essentially a promise to pay the seller of the property on registration is delivered to the transfer attorneys from the bond attorneys. The bond attorney is appointed by the bank to attend to the registration of the

mortgage bond for the bank. The transfer attorney is usually appointed by the seller to transfer the property to the purchaser. Both the transfer and the bond attorney charge registration fees based on the purchase price and the bond amount. Purchasers need to bear in mind that these fees will be payable prior to registration and they should have the necessary cash available.

On registration of the property, the purchase price is paid from the purchaser to the seller. The transfer attorney will co-ordinate these payments. The bank will pay out the guarantee amount (the loan amount) to the seller and the purchaser will then be indebted to the bank for the full loan amount. Any cash deposit held by the transfer attorney which was paid by the purchaser will be paid out to the seller. If the deposit amount was invested by the transfer attorney for the purchaser, the interest accrued on the invested amount will be paid over to the purchaser.

As is most often the case, the seller will also have a bond over the property at the time of transfer to the purchaser. In this instance, the guarantee from the purchaser's bank will be paid out directly to the seller's bank to settle the outstanding loan amount of the seller. In this case, you will have a bond cancellation attorney which is appointed by the seller's bank to attend to the cancellation of his or her mortgage bond. Once again, there are bond cancellation fees which are payable to the attorneys but they are a fixed amount and not related to the purchase price of the property. On registration of the property to the purchasers, the seller's loan amount will be paid up and the bond over the property cancelled to allow the purchaser's bond to be registered over the property.

One last point to note is that the owner of the property and the person against whom the bond is registered must be the same person. If the property is to be transferred to Jane Smith then the bank will register a bond over the property against Jane Smith.

This is a lot of information to digest and we would be more than happy at Tim du Toit & Co Incorporated to assist with your transfer and mortgage bond registration. Contact us for more information at <https://www.timdutoit.co.za/contact-us/>.