

Suspensive Conditions – What is it and what to look out for.

A suspensive condition can be defined as follows:

“A suspensive condition is a condition which (as the name suggests) suspends rights and obligations until the uncertain future event occurs. Upon the occurrence of the event, the suspended part of the contract (or indeed the entire contract) is brought to life”.

Makes sense? On the eye this clause seems simple to understand and easy to interpret. In practice however, the suspensive condition can, and has caused much upset and disgrace for parties bounded by it. The purpose of this article is not to discuss all the different types of suspensive conditions and the legality thereof, but rather to shed light on the existence and importance of this condition.

The most used format of a suspensive condition is used in offer to purchase agreements where immovable property is sold. Normally the buyer will make an offer on a property he/she intends to buy, subject to the approval of a bond by a financial institution for the offer, or lesser amount in case where a cash deposit can be delivered. Normally a period of 30 – 40 days is granted to the buyer to obtain such approval from his or her financial institution.

Once the offer to purchase has been signed, both parties will be excited and will feel that a legal agreement has been reached. The fact is however, that until such condition is met and the buyer received his bond approval, no legal agreement comes into existence.

It has happen often that the seller will move out once the offer to purchase has been signed and proceed to make an offer on another property. Likewise, if the seller agrees to grant the buyer occupation before transfer, it has happened that the buyer has made certain renovations to the house already, thinking that he or she already owns the property.

However, should the initial condition of the bond approval not be met, any party can at that stage withdraw from the agreement, which means that if the seller has not made his or her offer on the other property subject to the successful sale of the first property, he or she will be bound by the latter contract and will have to proceed with that sale. Likewise, the buyer will not be entitled to any compensation for renovations made to the sellers property, unless it has been agreed upon between the parties in writing.

The suspensive condition will always be included in an offer to purchase for the benefit of one party, normally the purchaser, and even though the seller might feel that he or she has duly performed in terms of the agreement, the fact remain that if the condition is not timeously met, the agreement becomes null

and void and will require a new offer to purchase should the parties wish to proceed with the agreement.

It is always advisable to contact your attorney before you sign a contract subject to suspensive or any other special conditions. The example we referred to above seems to be straightforward, but this will not always be the case necessarily. Instead of signing the agreement and then seek legal advice, rather first determine the exact meaning of the suspensive and or other special conditions through your attorney and ensure that you know what you are letting yourself into.

***Should you require more information,
please feel free to contact NO Oelofse Ingelyf at 058 481 2291***