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Understanding the legal implications of property sale agreements



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By **MATOME MATSHETA**



Buying or selling property is one of the most exciting experiences for most people. However, one should take care not to sign an offer to purchase without fully understanding the implications of all the provisions contained in the agreement. The importance and effect of the so-called suspensive and resolutive conditions contained in agreements are discussed in this article.

A suspensive condition is a condition which suspends the rights and obligations (or the coming into operation of the entire agreement), until a certain future event occurs. Upon the occurrence of the event, the suspended part of the agreement (or the entire agreement) is brought to life.

The following conditions are examples of suspensive conditions:

- A condition requiring the purchaser to obtain approval of a loan from a financial institution, within a specified period, to finance the acquisition of the property.
- A condition that the purchaser first needs to sell an existing property.

Such conditions protect both the purchaser and the seller. The purchaser can walk away from the agreement without any repercussions if he/she does not qualify for the loan or does not sell the property. Similarly, the seller will be able to proceed with marketing of the property and not be bound to an agreement with a purchaser who is unable to fulfil the obligations.

If the suspensive condition is complied with timeously, the agreement shall be deemed to have been in force from the date of conclusion thereof. A suspensive condition is usually imposed for the benefit of either the seller or the purchaser, who may waive the condition prior to its expiry date. In practice, should the purchaser obtain some other means of securing the purchase price, without the need for assistance from a financial institution, the purchaser may waive the benefit afforded to him by the suspensive condition, upon which the agreement will become unconditional and of full force and effect.

The due date for fulfilment of a suspensive condition is of utmost importance. Our common law provides that a suspensive condition which is not fulfilled by the specified date, has the effect that the whole agreement lapses, even if both parties had already performed in terms of the agreement after the fact. As such, the party who had already performed in terms of the agreement cannot claim any specific performance and/or contractual damages from the other party. If the parties wish to continue with the sale, a new agreement will have to be concluded.

To avoid the adverse legal implications of a suspensive condition, it is advisable that the clause should be constructed in such a way that it allows the parties to extend the time period within which a suspensive condition must be fulfilled.

A resolutive condition can easily be confused with a suspensive condition. A resolutive condition is an arrangement between the parties that the agreement of sale will terminate on the happening of a certain future event. Unlike a suspensive condition, the agreement is immediately binding with all the rights and obligations contained therein from the day of conclusion. If the resolutive condition is fulfilled, the agreement will terminate retrospectively.

A practical example of a resolutive condition is one which stipulates that if the seller does not provide proof that the building plans for the property have been approved by the relevant authorities by a specific date, the agreement will terminate. The fulfilment of such a condition renders the agreement null and void. In other words, if the seller does not provide the said proof by the agreed date, all the rights and obligations of the parties shall immediately cease to exist, and the parties may then need to be restored to their respective pre-contractual states.

As the legal implication of a resolutive condition may require the restoration of parties to their pre-contractual state, it is recommended that such conditions be avoided as it may be quite difficult to unbundle and quantify actions already performed by the parties. If avoidance is not possible, one should consider using such condition in an agreement where the rights and obligations that may need to be performed, prior to the specified date, are rather minor and with no major financial consequences.

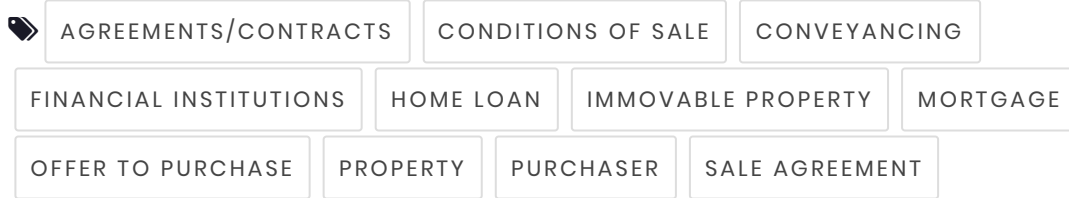
It is important for purchasers and sellers to carefully read the provisions of the sale agreement they wish to enter. It is advisable that professional advice be sought to obtain a clear understanding of the extent of all legal implications and to avoid unintended consequences. Contact [Adams & Adams](#) for more information.

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PROVIDED BY:**BY****Matome Matsheta**

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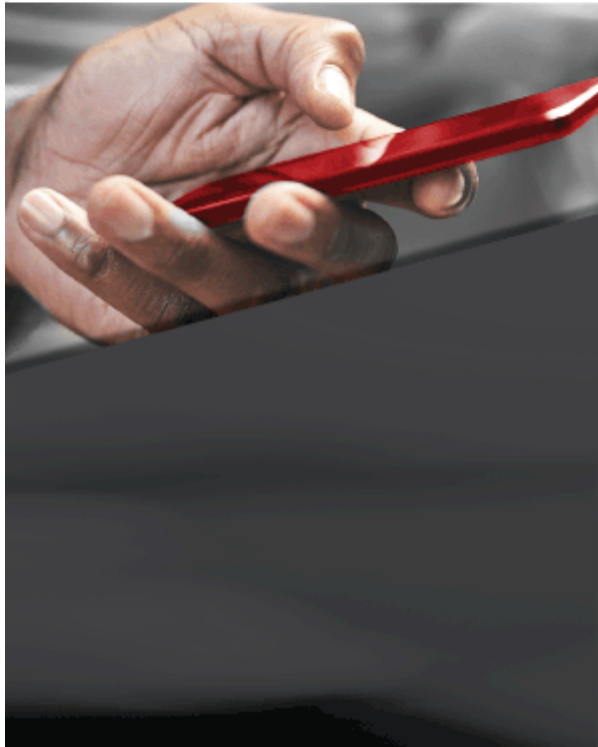
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