

## AMBIGUITY IN CONTRACTS

Often times Agreements of Sale of immovable property are subject to suspensive condition to the effect that the Purchaser's application for a loan must be approved by a Bank or other financial institution. The clause will go further and stipulate that the loan application will be made "forthwith" and be confirmed in writing by no later than the 15<sup>th</sup> of March 2008 or within extended periods as the Seller in his/her sole discretion may allow. Should the Purchaser's application not be confirmed timeously by the grantor/s this Agreement shall terminate.

**What is it that needs to be confirmed in writing, the application for the loan or the granting of the loan?** The Seller will interpret this clause to mean that the granting of the loan must be confirmed in writing by the grantor of the loan whereas the Purchaser will interpret the same clause to mean the submission of his application. Let us assume that the Agreement is entered into and between the parties on the 15<sup>th</sup> of February 2008. Once in possession of the signed copy of the Sale Agreement, it is incumbent upon the Purchaser to submit his application as soon as is reasonably possible to the financial institution. In order to avoid costly litigation in the High Court for the interpretation of the clause concerned, should the loan not be approved by the 12<sup>th</sup> March 2008, it is incumbent upon the Purchaser to approach the Seller for an extension of the deadline. The extension of the deadline must be granted in writing – not orally - and before the expiration of the actual deadline **already set** in the Agreement signed by the parties.

To cure the ambiguity in the clause under scrutiny and to avoid unnecessary and costly litigation, Estate Agents and Legal Practitioners will be advised to effect minor amendments to the effect: "This Agreement is subject to the Purchaser's application for a loan being approved upon the security of a mortgage bond through a Bank or other financial institution for the sum N\$1,600,000,00 (One Million Six Hundred Thousand N\$) not later than the 15<sup>th</sup> March 2008." With this minor amendment, there will be no room for the Purchaser to argue that the deadline was meant for submission of the application for the loan and not the procurement thereof.