

## **SPECIAL CONDITIONS IN A DEED OF SALE**

In many contracts for the sale of immovable property, you will find a special condition indicating that the deed of sale is subject to the Purchaser obtaining financial assistance from a financial institution for a certain amount and within a specified period.

The legal effect of a conditional contract before the condition is fulfilled depends on the nature of the condition. In the case of a resolutive condition the contract comes into full operation immediately and may cease to exist at the happening of an uncertain event. In the case of a suspensive condition the contract is unenforceable before the condition is fulfilled.

In most instances the special conditions in a contract allowing the Purchaser to first obtain financial assistance will be called a positive suspensive condition. In other words: there is a positive duty on the Purchaser to timeously apply for the approval of a mortgage bond by a financial institution.

Upon fulfillment of the condition a conditionally suspended contract acquires full legal operation. Failure of condition will occur when fulfillment does not take place within the period stipulated by the parties. Upon failure of a suspensive condition, the contract is automatically discharged. In practice this means that the Seller of the house cannot sell the property to anyone else and he remains bound to the contract until the suspensive condition is not fulfilled.

It should be noted that if the suspensive condition is not timeously fulfilled, the contract is automatically discharged. In other words if the Purchaser obtains a loan after the set date, the contract has no legal force and effect unless the parties have prior to the expiry date agreed to extend the expiry date.