

DEED OF SALE

In terms of Namibian Law, the sale of Immovable Property needs to be recorded in writing and signed by both the Seller and the Purchaser. Certain other minimum requirements are also needed to ensure that the Deed of Sale is valid and binding.

The Deed of Sale must reflect who the Seller and Purchaser is. In certain instances the Purchaser does not always exist on date of purchase for eg. where someone purchase the property on behalf of a Close Corporation or a Company still to be incorporated. Transfer can then only be effected once the Close Corporation or Company comes into existence and ratifies the purchase.

The Immovable Property sold must also be identified or be identifiable. It is interesting to note that Immovable Property transferred in the Deeds's Office is identified by an erf number and a township and not by street names and numbers.

The consideration payable by the Purchaser to the Seller must also be stated in the Deed of Sale or must be able to be calculated in the Deed of Sale for eg. N\$500,00 per hectare. It should also clearly indicate whether the purchase price is payable on date of signature or as is the case in most instances, on date of registration of transfer.

A proper deed of sale should also deal with the following issues, namely:-

Transfer cost – who is liable to pay the transfer cost and does it include stamp duty payable on the Deed of Transfer.

Conveyancer – who is the appointed conveyancer to take instructions from the parties and to effect registration of transfer in the Deed's Office.

Occupation – when is occupation of the property to take place and if not on date of registration of transfer, what will the monthly rental be payable by the one party to the other party.

Estate Agent's commission – The Deed of Sale should indicate if estate agent's commission is payable and if so, by whom.

Breach Clause – a proper Deed of Sale should have a clause that deals with the breach of any terms in the Deed of Sale by either party and how the defaulting party can be put on to terms or how the Deed of Sale can be cancelled by the non-defaulting party.

Special conditions – the Deed of Sale may be subject to special conditions for eg: that the Purchaser must first obtain a loan for a minimum amount before the Deed of Sale comes to operation or the Purchaser must first successfully sell his property before the new contract can be proceeded with.

The drafting of a proper Deed of Sale can become complex and when in doubt the parties should request assistance from a legal practitioner or an estate agent.