

BEWARE OF THE "VOETSTOOTS" CLAUSE

Parties to a Deed of Sale and in particular the Purchaser should be cautious of the so-called "Voetstoots" clause in a Deed of Sale.

The "Voetstoots" clause is usually a fairly standard clause in any Deed of Sale and by signing the Deed of Sale the parties contractually agree that the Seller shall not be held liable for any defects in the property being sold whether these defects are either latent to patent of nature.

Patent defects are those defects in the property that are clearly visible like the exterior condition of the house for eg: cracks in the walls, broken windows etc. The "Voetstoots" clause will protect the Seller against any claims by the Purchaser as these defects are easy visible and the Purchaser purchased the property "as is".

The Latent defects, however, are the problematic ones as these defects are not visible for eg: a leaking waterpipe or a material difference in the extent of the property, etc. The "Voetstoots" clause will protect the Seller against any claims by the Purchaser provided that the Seller had no knowledge of the defect. The Seller loses his or her protection under the "Voetstoots" clause if he or she had knowledge of the defect and fraudulently withheld this information from the Purchaser.

Patent defects in a property can have a huge impact on the decision making of the Purchaser had he or she knowledge thereof at the time of signing of the Agreement of Sale. The repair cost of such a defect could influence the purchase price or even deter the Purchaser from signing the Deed of Sale. The Purchaser will have to allege and proof the deliberate concealment, a duty to disclose the concealment and the failure to do so by the Seller, which is a huge burden of proof on the Purchaser.

SO PURCHASER BE AWARE OF THE "VOETSTOOTS" CLAUSE!