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NON-FULFILMENT OF SUSPENSIVE CONDITIONS VS BREACH OF CONTRACT

It is important to distinguish between cases where a condition in a contract is a suspensive condition, and cases where it is not, as the consequences of non-compliance differ.

Should a transaction be subject to a suspensive condition, for example:

1. the purchaser must obtain a bond; or
2. the purchaser must sell his existing property,

the contract will merely not come into effect if the condition is not fulfilled by the due date (as determined in the contract). This will mean the end of such an agreement, and no claim for damages or for commission can be instituted against any of the parties.

Should the condition not constitute a suspensive condition, for example where the contract merely states that a party must:

1. pay a deposit on a specific date; or
2. deliver guarantees on a specific date;
3. repair the swimming pool leak by a specific date,

the contract will remain valid if the deposit is not paid / guarantees not delivered on the specified date/swimming pool leak not repaired (since it is not a suspensive condition to the contract). In such cases a party will have to rely on the breach of contract clause. The party in breach must be given written notice of such breach and a timeframe within which the breach must be remedied (placed on terms) before the other party will be in a position to cancel the agreement (or to exercise his / her other remedies in terms of the breach of contract clause). If the breach is not remedied within the notice period, the aggrieved party can elect to cancel the agreement and the party in breach can be held liable for damages, agent's commission and the wasted costs of the attorney.