16 April 2021

WHAT HAPPENS TO A SALE AGREEMENT IN THE EVENT OF DEATH?

What happens if the parties enter into a sale agreement and subsequent to the conclusion of the agreement, one of the parties passes away? In the event where death of a party occurs and the agreement was concluded prior to the death of either party, in which transfer has not yet taken place, the sale agreement will remain valid and enforceable.

The death of a party would however cause inevitable delays. In this instance it turns into a deceased estate transaction and a letter of Executorship will first have to be obtained to proceed with the transaction. In some instances it would not be possible to proceed with the transfer, for example when a purchaser bought a property with mortgage finance from a bank as the bank would most likely withdraw the bond as there would no longer be an income to repay it. In a cash transaction, the estate would be obliged to proceed with the transfer and pay the purchase price or alternatively, come to an agreement with the seller for the consensual cancellation of the sale.

In the event of the death of a seller, the special power of attorney signed by the seller in favour of the conveyancers to effect transfer falls away and the conveyancers now require the signature of the executor to proceed with the transfer. This even applies where documents have already been lodged at the deeds office and these documents would have to be withdrawn in these circumstances. The power of attorney must also be endorsed by the Master of the High court which can cause further delays.