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WHAT PROCESS NEEDS TO BE FOLLOWED WHEN THE PURCHASER NEGLECTS TO MAKE TIMEOUS PAYMENT OF A DEPOSIT / TO DELIVER GUARANTEES?

When it comes to the payment / financing of the purchase price, it is very important to take note of the fact that the payment of a deposit / delivery of guarantees do not constitute suspensive conditions.

Should the sale agreement for example state that the purchaser must pay a deposit in the amount of R100 000.00 on / before 1 December 2021, and he neglects to do so, the agreement will not lapse automatically. In such a case, one must act in terms of the breach clause in the sale agreement, and the purchaser must first be placed on terms by giving him/her written notice of breach of the agreement due to non-payment of the deposit.

If the payment has still not been made by the time the notice period lapses, the seller will have the right to exercise his remedies in terms of the breach clause, which will include the cancellation or enforcement of the sale agreement, as well as a possible claim for damages. The agent will also have a claim for their commission against the party in breach. Any claims for specific performance, damages or commission will have to be attended to by a litigation attorney.