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WHEN A SPOUSE SIGNS A PURCHASE AGREEMENT ON YOUR BEHALF

If personal signature of a sale agreement is not possible, a seller / purchaser can appoint an agent to sign on their behalf. It is however pertinent to indicate if you are signing in a representative capacity.

In the case of *Makepeace v San Lameer Villa 3212 cc and Others (2021)*, Mr Makepeace entered into the purchase agreement after he bought a property on auction. The intention of Mr Makepeace was always that his spouse, Mrs Makepeace, will be the actual purchaser of the property, but this was never communicated to the seller or the conveyancer.

The deposit was paid by Mr Makepeace but then the bond was approved in principle in the name of Mrs Makepeace. It caused confusion for the seller as well as the conveyancers who are responsible for the transfer of the property as they did not previously know about Mrs Makepeace's involvement in the transaction. Upon a request for clarification Mr Makepeace provided an unsigned letter which stated that he represented Mrs Makepeace in the auction.

Mrs Makepeace did not make any effort between the time when the purchase agreement was signed and when the bond approval was granted to show the seller and conveyancers that she wanted to be the actual legal owner of the property, and she also did not ratify the purchase agreement. There was no indication from Mrs Makepeace that she wanted to substitute herself as the purchaser instead of her spouse, and there was no written authority that Mr Makepeace could act on her behalf. The court therefore found that the agreement was void and not legally binding.

To conclude, your spouse may sign a purchase agreement on your behalf provided that they have written authority to act on your behalf, and the representative capacity and the actual purchaser must be included in the sale agreement.