Elements of a contract of sale – Part 3 [Monday 20 October 2025]
Over the last few weeks we have been discussing elements of a contract of sale. This week, we continue our discussion of the various elements of a contract of sale.

As a property practitioner (PP), it is extremely important that you understand your own offer to purchase. If you don't, how do you then explain it to your sellers and buyers??? In terms of Regulation 34.5 of the Code of Conduct, the responsibilities of a PP are:

34.5 An estate agent shall –
34.5.1 explain to every prospective party to any written offer or contract negotiated or procured by him in his capacity as an estate agent, prior to signature thereof by such party, the meaning and consequences of the material provisions of such offer or contract, or, if he is unable to do so, refer such party to a person who can do so.

It is therefore your responsibility as a PP to explain your written offer or contract. In addition, some of the issues for you to be aware of include:

1. The parties – ensure that you have correctly identified the legal owner and purchaser of the property. These parties will be identified in your offer to purchase. Either of these parties may appoint someone to act on their behalf. If so, ensure that you are in possession of a written authority from the legal owner of the property authorising their representative to act on their behalf;
2. The property – likewise, the property must be correctly described. Best is to use the legal description of the property from the title deeds. Alternatively, it must be very clear that the property you are identifying is in fact the property being sold. Be very careful when dealing sectional title, that you clearly identify what the seller owns and what the seller is selling. The door number of the unit may not correspond by the section number, for example, door number 10 may be section number 1. In addition, is the garage a separate section or an exclusive use area? What about a storeroom that the seller is selling? How does this need to be described? More about this in future posts.
3. Never use TBA (to be advised) or TBC (to be confirmed) in an agreement of sale. This could invalidate the agreement as it would then be void for vagueness.
4. Anything to do with the sale of immovable property in South Africa, must be in writing. Hence, the parties cannot rely on any verbal representations made when entering into such a contract. If it is not reduced to writing, it is no value. Your offer to purchase should indicate that everything agreed upon has been reduced to writing and that the parties have not relied on any verbal warranties or representations. Go and find the clause and read it! Should be towards the end of your agreement.
5. Likewise, your contract will indicate that any amendments must be reduced to writing and signed. Should also be towards the end of your agreement.
6. Should the sale be subject to any condition, like the purchaser selling an existing property or the purchaser having to raise a loan, take note as to how this will affect the parties and be sure that you can explain this. What does such a condition mean for both the parties? What happens if the purchaser cannot sell their own property or cannot raise the loan that they need?
7. Similarly, take note of any special terms and conditions that the parties may wish to include in the contract. If you are not sure how to word the condition, ask your principal or a conveyancer that you deal with to assist you.

I would suggest to you, that you take your offer to purchase and really read through it thoroughly, if you have not done so previously. Make a list of all the important issues in your contract that need to be explained. Sit with a colleague and role play with one of you being the PP and one of you being the seller or buyer. And if you are not sure, ask! Do not assume that you know what a clause means. Rather ask, instead of making a mistake, which could be very costly.

Next week we will continue discussing various elements of the agreement of sale.

Don't forget to read my Monday Contemplation each week. Previous blogs are available on various websites.