

PROPERTY AGREEMENTS – AN ALTERATION COULD SINK YOUR SALE!

“Agreement makes law” (Old legal maxim)

Although in our law most verbal contracts are binding, property sale agreements are an exception. They must be in writing and signed by the parties to be valid, the reason being that it greatly reduces the risk of confusion or dispute as to what the buyer and seller have actually agreed.

In practice of course, the buyer’s initial offer is usually in the form of a written document which only becomes an agreement if and when signed in acceptance by the seller. And often that initial offer sparks negotiation, usually over price or other important terms, with the result that sale agreements are frequently amended both before and after signature.

A recent High Court case shows once again how vital it is to ensure that any such amendments have actually been agreed to by both seller and buyer.

An offer “accepted” – or was it?

1. A buyer offered R6.3m for a property
2. The seller signed the Offer to Purchase in “acceptance”, but conditionally, with changes to clauses relating to inspection of the property by a Building Inspector
3. The buyer, seeing these alterations only after paying a 10% deposit, rejected them and demanded her deposit back
4. When the seller refunded only part of the deposit (arguing that her acceptance of the offer had resulted in a valid and enforceable sale agreement) the buyer went to court.

The law on conditional acceptance

Ordering the seller to refund the balance of the deposit to the buyer, the Court held that –

- The seller had to prove that the buyer had agreed to the written contract “in its final form”
- Conditional acceptance of an offer amounts to either –
 - A rejection of the offer, or
 - A counter-offer
- When there are outstanding issues requiring further negotiation, either there is no contract at all, or a contract is formed with an understanding that the outstanding issues would be negotiated at a later stage.

On the facts of this case, the seller’s alterations were material and amounted to a counter-offer which was never accepted by the buyer. There was therefore no sale.

Avoiding the trap

Make sure that any changes to sale documents correctly reflect your agreement, and that both parties sign or initial them in confirmation. And as always with property transactions, don’t take any chances.

Sign nothing without your lawyer’s advice!

Miltons Matsemela Incorporated is a level 4 (100%.) B-BBEE contributor

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