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COMPLIANCE WITH SUSPENSIVE CONDITIONS

More often than not deeds of sale are made subject to a suspensive condition providing that the approval in writing must be obtained from a financial institution, on its usual terms and conditions, for a mortgage loan in respect of the purchase price or balance thereof.

The question requiring an answer is; "*when is such suspensive condition deemed to have been fulfilled?*

"One school of thought is that the suspensive condition is deemed to be fulfilled on confirmation of approval of the loan.

However, this is not the true given the provisions of section 92 of the National Credit Act 34 of 2005 (the Act)

Section 92(2) (b) of the Act reads in this regard as follows:

"A credit provider must not enter into an intermediate or large credit agreement unless the credit provider has given the consumer –

.....

*A **quotation** in the presented form, setting out the principal debt, the proposed distribution of that amount, the interest rate and other credit costs, the total cost of the proposed agreement, and the basis of any costs that may be assessed under section 121 (3) if the consumer rescinds the contract."*

Subsequent to the quotation having been received the client has **five** business days to accept or reject the quotation, and is thus not bound by the contract until the mortgage loan is accepted.

Conclusion

Where an application for a loan is financially not viable for a client, the client has a statutory right not to accept the quotation.

This statutory right cannot be undermined by a contractual provision in a deed of sale.

The court in *Basson v Remini* and Another 1992(2) SA 322 (N) held that a suspensive condition is only fulfilled once the loan agreement has been accepted. It is thus advisable that deeds of sale clearly provide that the suspensive condition is only fulfilled once the quotation has been accepted by the purchaser.

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