



fn inc

Attorneys Notaries Conveyancers

1st Floor, 2 Albury Park, Albury Road, Dunkeld West, 2196. Docex 11 Hyde Park. t +27 11 560 7100 f +27 11 759 7960. Stellenbosch Office: t +27 82 287 3173

COOLING OFF

There are potentially three types of cooling off applicable to the purchase of land

1. Purchaser price of R250 000 or less

Section 29A of the Alienation of Land Act provides that if someone purchases a property valued at R250 000 or less they are entitled to a cool off period. Although the Act does not stipulate that the "cooling off" must be stated in the Agreement of Sale itself, in the case of *Sayers v Kahn* it was ruled that failure to make reference to the "cooling off clause" rendered the Agreement of Sale null and void. In this case the buyer was not liable for any payment to the seller or agent because both parties neglected to make the buyer aware of the "cooling off period".

As a result of the above ruling back in the early 2000's it became common practice for many standard sale agreements to contain a reference to the above cooling off provision. However since then and countless revisions of standard sale agreements the impact of the above ruling has been forgotten and dropped from many agreements.

2. Transaction resulted from Direct Marketing

There is also a cooling off provision in terms of the Consumer Protection Act. Section 16 of the CPA provides for a cooling-off period of five business days, in instances where transactions were concluded as a result of direct marketing. Direct marketing occurs when a transaction was not initiated by the consumer themselves. Section 16 (3) of the CPA provides that a consumer may without furnishing reasons cancel an agreement that resulted from any form of direct marketing. The consumer should only within 5 days from the date of the transaction or agreement or from the date on which the goods has been delivered to the consumer give a written notice to the supplier. A supplier has an obligation to refund any payments which was received from the consumer in terms of the said agreement, which must be done within 15 days after he/she has received the notice of cancellation from the consumer. On a similar accord the consumer has to return any or all goods which was received from the supplier to the supplier.

The cooling off right set out in this paragraph only applies where there exists a supplier and consumer relationship. Consequently a once-off sale of immovable property (that does not fall within the ambit of the a supply in the ordinary course of business) does not falls within the scope of the CPA. On the other hand, the sale of immovable property by a property developer who supplies property as an ongoing business venture will be viewed as a supplier in terms of the CPA and these buyers will enjoy the protection afforded to them by the Consumer Protection Act.

3. Instalment sale/ lease concluded at a venue other than the registered premises of the credit provider

A third potential cooling off is provided for in terms of the National Credit Act (NCA) where the purchase is on instalments or a lease was concluded at a place other than registered premises of the credit provider. Any goods which has been received has to be returned to the credit provider. The credit provider has to, within 7 days of receipt of the said notice, refund any deposit which was made by the consumer.

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