AGREEMENT OF SALE 201

Understanding the more complex legal principles of an agreement of sale of immovable property.

PRESENTED BY: *TIAAN (M.C.) VAN DER BERG*

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

1

This Lecture – Contract 201

- We looked at the broad legal principles in Contract 101 on 10 June 2020
- What we are not going to do in Contract 201
  - Defects – 28 April 2020
  - Commission – 3 June 2020
  - Subject-to Transactions – 24 June 2020
  - Tenants and Occupation – 1 July 2020
  - Statutory Compliance certificates 15 July 2020
  - Transfer Duty and VAT 22 July 2020
- What we going to do in Contract 201
  - Parties (corporate)
  - All legal matters
  - Admin matters

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

2

Definition of a Contract

- Legal bond
- Between two or more 'legal' subjects (persons)
  - Natural persons
  - Incorporated entities
    - Close Corporations
    - Companies
  - Trusts
  - Others – Partnership, Club, Church, Organ of State, etc.
- To establish reciprocal legal duties/rights
- They intend to be bound by

(*Pacta sunt Servanda*) – Contracts must be adhered to

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

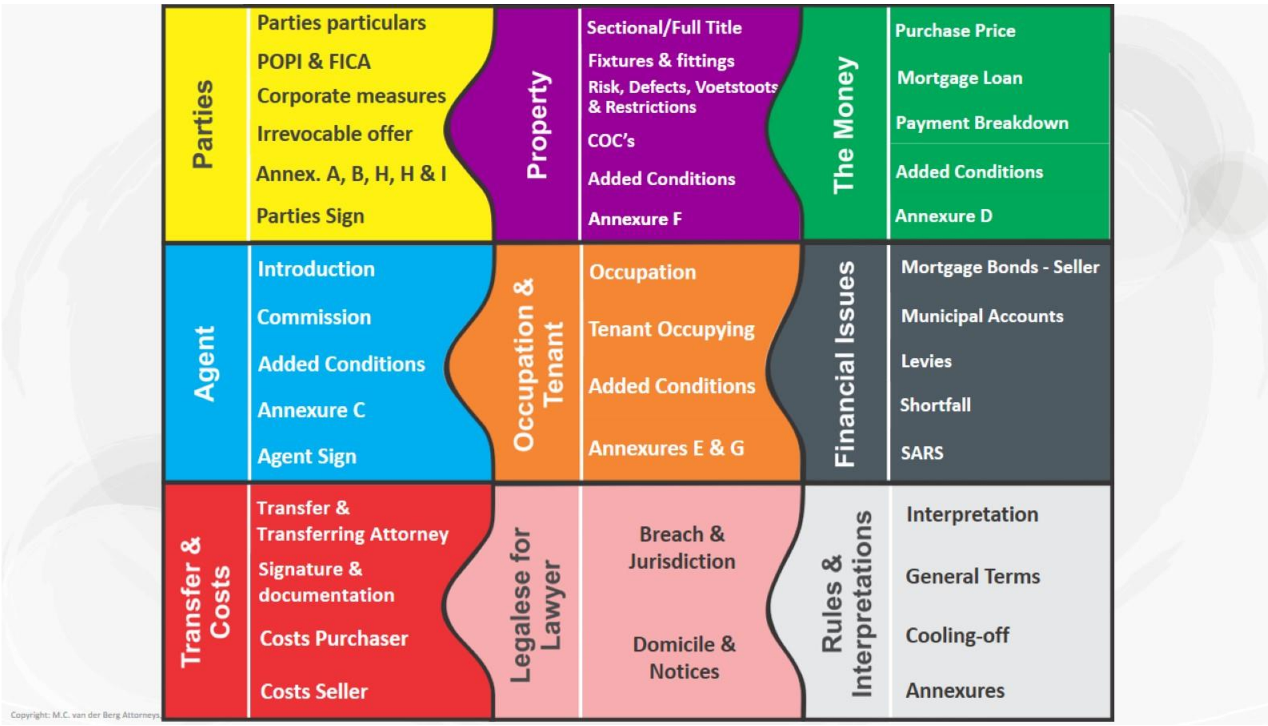
3

Purpose of a Contract

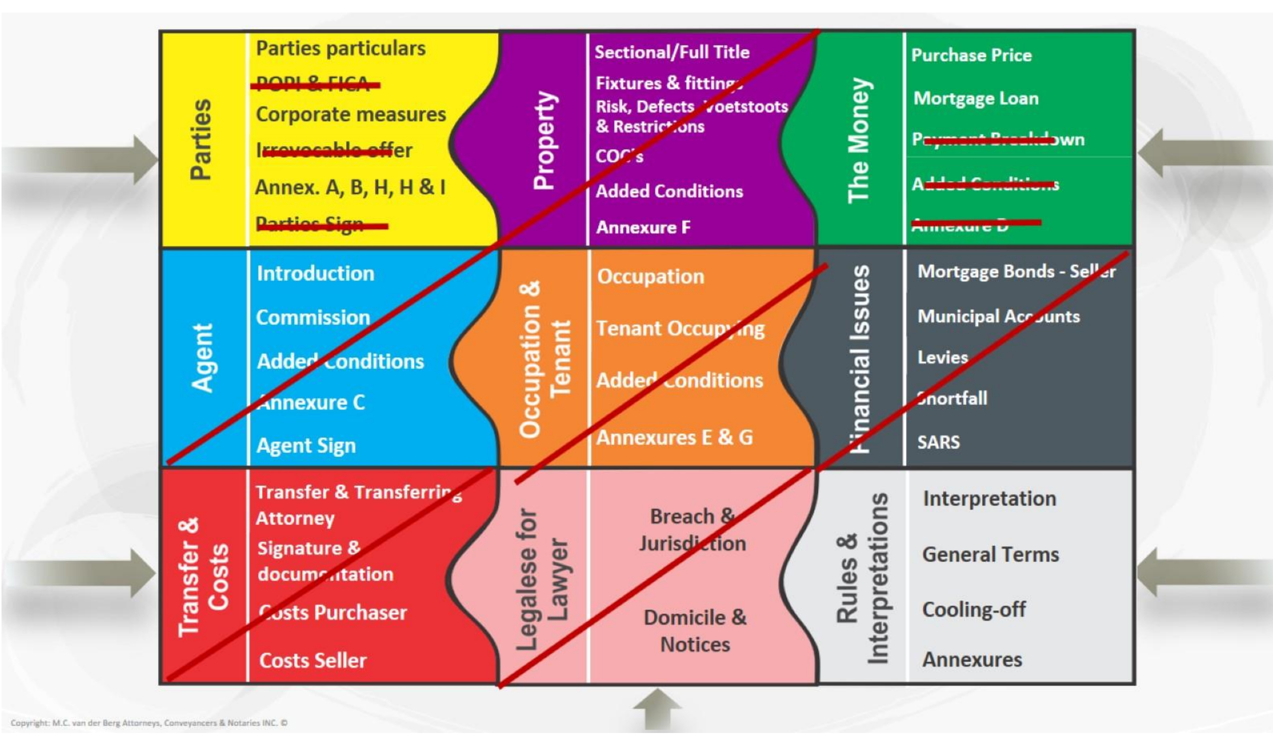
- Binds the parties legally
- Protects the parties legally (seller, purchaser & agent)
- Inform parties of contractual duties and rights (CPA)
- Explain terms to parties
- Regulate the practicalities
- Amends Common Law
- Obtains information
- Guides the agent
- Sets out the roles: who must do/is responsible for what?

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

4


Parties
Parties particulars
POPI & FICA
Corporate measures
Irrevocable offer
Annex. A, B, H, H & I
Parties Sign
Property
Sectional/Full Title
Fixtures & fittings
Risk, Defects, Voetstoots & Restrictions
COC's
Added Conditions
Annexure F
The Money
Purchase Price
Mortgage Loan
Payment Breakdown
Added Conditions
Annexure D
Agent
Introduction
Commission
Added Conditions
Annexure C
Agent Sign
Occupation & Tenant
Occupation
Tenant Occupying
Added Conditions
Annexures E & G
Financial Issues
Mortgage Bonds - Seller
Municipal Accounts
Levies
Shortfall
SARS
Transfer & Costs
Transfer & Transferring Attorney
Signature & documentation
Costs Purchaser
Costs Seller
Legalese for Lawyer
Breach & Jurisdiction
Domicile & Notices
Rules & Interpretations
Interpretation
General Terms
Cooling-off
Annexures

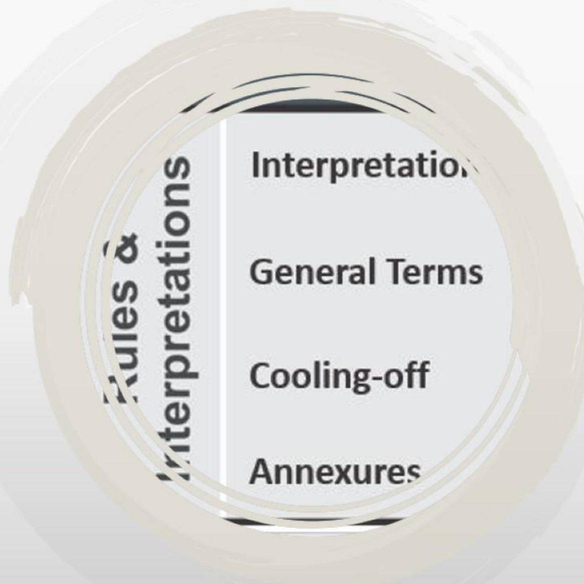
5


Parties
Parties particulars
~~POPI & FICA~~
Corporate measures
~~Irrevocable offer~~
Annex. A, B, H, H & I
~~Parties Sign~~
Property
Sectional/Full Title
Fixtures & fittings
Risk, Defects, Voetstoots & Restrictions
COC's
Added Conditions
Annexure F
The Money
Purchase Price
Mortgage Loan
~~Payment Breakdown~~
~~Added Conditions~~
~~Annexure D~~
Agent
Introduction
Commission
Added Conditions
Annexure C
Agent Sign
Occupation & Tenant
Occupation
Tenant Occupying
Added Conditions
Annexures E & G
Financial Issues
Mortgage Bonds - Seller
Municipal Accounts
Levies
Shortfall
SARS
Transfer & Costs
Transfer & Transferring Attorney
Signature & documentation
Costs Purchaser
Costs Seller
Legalese for Lawyer
Breach & Jurisdiction
Domicile & Notices
Rules & Interpretations
Interpretation
General Terms
Cooling-off
Annexures
Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

6

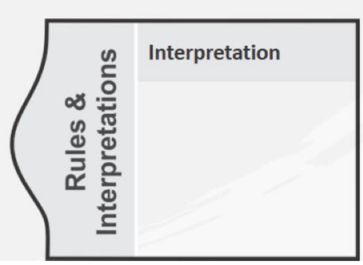
INTERPRETATION

MCCONTRACT CLAUSE 16



Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

7



Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

8

3 categories of terms in a Contract

1) Essential terms
   - Must be agreed on expressly
   - In writing (NOT VERBAL)
   - Signed by the parties
     - Alienation of Land Act sec 2
     - Electronic Communications and Transactions Act
2) Incidental terms
   - Expressly
     - In writing in agreement
     - Verbal (non-variation clause must limit)
   - Tacit
3) **Natural terms**
   - Implied by common law →
   - Implied by legislation

- Substantive
- Procedural
- Interpretational

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

9

3 categories of terms in a Contract

1) Essential terms
   - Must be agreed on expressly
   - In writing (NOT VERBAL)
   - Signed by the parties
     - Alienation of Land Act sec 2
     - Electronic Communications and Transactions Act
2) Incidental terms
   - Expressly
     - In writing in agreement
     - Verbal ('Entire agreement – clause' must limit)
   - Tacit
3) **Natural terms**
   - Implied by common law →
   - Implied by legislation

- Substantive
- Procedural
- Interpretational

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

10

Blank Spaces

16.1 This agreement is a pro forma agreement with blank spaces. If any of the blank spaces (including witnesses) remain open at the conclusion thereof, it will not have the effect that this agreement is null and void or voidable.

Note: Complete all blank spaces; or

N/A; or

____

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

11

Contra proferentem-rule

16.2 This pro-forma agreement was drafted by an independent third party and it will not, in the event of ambiguity, be interpreted against either of the parties or the agency/agent.

- Common law rule of interpretation:
- In case of ambiguity a contract is interpreted against the drafter
- Who is the drafter?
  - Agent who introduces the pro-forma document
  - Seller who appointed the agent
  - Purchaser who makes the offer
- Rather regulate the position that everyone is on the same playing field

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

12

Headings

16.3 Headings are for convenience only and the intention of the parties must be derived from the text.

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

13

Singular and gender

16.4 All references to singular includes plural and vice versa (if applicable). All references to male includes female and vice versa (if applicable).

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

14

16. Eiusdem generis-rule

16.5 Any reference to a list and/or the words "including", "in particular" and "amongst others" must be read as inclusive and not limiting.

- ❑ Common law rule of interpretation:
- ❑ When a law lists classes of things, this concept is used to clarify such a list.
- ❑ General words follow specific words in a statutory enumeration, the general words are construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words
- ❑ E.g. The seller must fix the damp amongst other in the bedroom, sitting room and kitchen
- ❑ What if there is also damp in the bathroom?

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

15

Days

16.6 Any reference to "days" refers to working days except if legislation dictates otherwise. When calculating days, the first day is excluded and the last day included.

- ❑ Common law rule of interpretation:
  - ❑ Days are calculated ito Civil method (FILO)
  - ❑ Legislation – Interpretation Act (FOLI)

Calendar days vs Business days vs Court days

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

16

Conditions

16.7 Excluding the suspensive conditions contained in clauses 2 (bond approval) and 3.4 (sale of the purchaser's current property) no other condition will be interpreted as suspensive or resolutive in nature, but merely as a term to the agreement, unless the condition specifically states otherwise.

A special condition must be complied with prior to lodgement unless a specific due date is agreed upon.

The transferring attorney may ask for confirmation of the completion or compliance of the special condition once they are in a position to lodge the transaction in the deeds office.

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

17

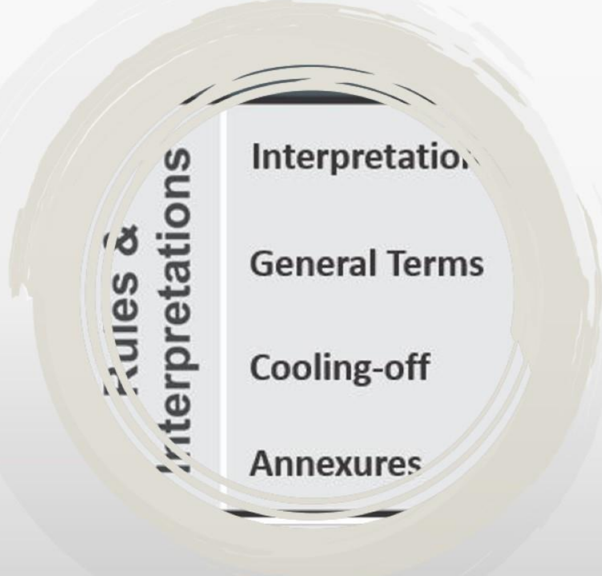
Governing law

16.8 This agreement is governed by the laws of the Republic of South Africa.

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

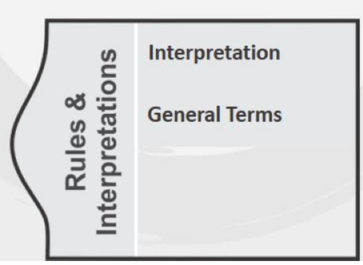
18

GENERAL TERMS
MCCONTRACT CLAUSE 17



Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

19



Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

20

3 categories of terms in a Contract

1) Essential terms
   - Must be agreed on expressly
   - In writing (NOT VERBAL)
   - Signed by the parties
     - Alienation of Land Act sec 2
     - Electronic Communications and Transactions Act
2) Incidental terms
   - Expressly
     - In writing in agreement
     - Verbal ('Entire Agreement – clause' must limit)
   - Tacit
3) **Natural terms**
   - Implied by common law →
   - Implied by legislation

- Substantive
- Procedural
- Interpretational

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

21

3 categories of terms in a Contract

1) Essential terms
   - Must be agreed on expressly
   - In writing (NOT VERBAL)
   - Signed by the parties
     - Alienation of Land Act sec 2
     - Electronic Communications and Transactions Act
2) Incidental terms
   - Expressly
     - In writing in agreement
     - Verbal ('Entire Agreement – clause' must limit)
   - Tacit
3) Natural terms
   - Implied by common law
   - Implied by legislation

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

22

Entire Agreement clause

17.1. This agreement constitutes the sole and entire agreement between the parties.

No warranties, representation or other terms and conditions of whatsoever nature that the agent, seller or purchaser makes, shall be of force or effect unless contained or recorded in this agreement, or in an annexure or addendum signed by both the parties or as set out in clause 17.2.2.

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

23

Non-Variation

17.2. No variation, addition or deletion of the terms and conditions of this agreement, its annexures or addendums, including this clause, shall be of any force or effect unless:

17.2.1. it is reduced to writing and signed by the parties in an addendum; alternatively

17.2.2. it is confirmed via email (as set out in clause 11.2) by both the seller and purchaser on written request by the transferring attorney or agent, in which request the amendment is expressly contained and it is declared that it is their intention to make the amendment, addition or deletion to the agreement as set out in the request.

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

24

No failure, omission, waiver or relaxation

17.3. No failure, omission, waiver or relaxation of any of the provisions of this agreement, nor any failure by a party to enforce the provisions of this agreement due to any breach, shall operate as a legal defence against any party in respect of his/her rights under this agreement, nor shall it preclude such party thereafter from exercising its rights strictly in accordance with this agreement.

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

25

Multiple parties

17.4. If multiple sellers or purchasers are party to this agreement, they are jointly and severally liable for the fulfilment of the contractual obligations.

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

26

Direct Marketing (sec 15 CPA)

17.5. The purchaser confirms that this transaction does not result from direct marketing by the agent and that he/she had ample time to consider the offer before it was made.

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

27

Contract explained – CPA & PPA

17.6. The purchaser and seller confirm that the material terms of this agreement have been brought to their attention and they understand the contents thereof.

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

28

Severance Clause

17.7. Any term or stipulation in this agreement that is void and/or unenforceable shall be limited to that clause of the agreement. Such stipulation shall, therefore, be regarded as a separate clause that is not part of the agreement and does not affect the legal validity of the rest of the agreement.

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

29

Counterparts

17.8. This agreement and any annexures or addendums thereto may be executed in counterparts, each of which shall be deemed an original and all of which together, shall constitute one and the same document concluded on the date of the last signature thereof.

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

30

Certain clause becomes effective immediately

17.9. All obligations are effective as from date of acceptance of this agreement by the seller regardless of any suspensive condition clause, unless it is clearly stated that an obligation is suspended until the fulfilment of the suspensive conditions. The purchaser and seller must therefore fulfil these obligations, notwithstanding the fact that the date for fulfilment of any suspensive condition has not yet transpired.

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

31

Certain clause remain effective after cancellation

17.10. If any clause in this agreement is intended to have effect after termination of this agreement, the termination will not affect the validity of that clause. The rights and obligations arising from clauses intended to subsist after termination, are enforceable.

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

32

Rules & Interpretations

Interpretation

General Terms

Cooling-off

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

33

Cooling off clause

- Three cooling off Clauses
  - Sec 29 A – Alienation of Land Act
  - Sec 92 – National Credit Act
  - Sec 16 – Consumer Protection Act

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

34

Sec 29 A – Alienation of Land Act

COOLING-OFF CLAUSE

The purchaser has the right to revoke this offer or to terminate this agreement, as stipulated and set out in section 29A of the Alienation of Land Act 68 of 1981. A written notice must be delivered to the seller or his/her agent within 5 (five) days from date of offer. This right is only available to the purchaser if the purchase price is R250 000 (Two hundred and fifty thousand Rand) or less, provided the purchaser is a natural person.

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

35

Sec 92 – National Credit Act

- A credit provider must not enter into a small credit agreement unless the credit provider has given the consumer a pre-agreement statement and quotation in the prescribed form.
- a quotation in the prescribed 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.
- (3) Subject only to subsection (4), sections 81 and l0l(l)(d)(ii), for a period of five 5 business days after the date on which a quotation is presented in terms of subsection (a) with respect to a small agreement, the credit provider must, at the request of the consumer, enter into the contemplated credit agreement at or below the interest rate or credit cost quoted, subject only to sections 81 and 101(i)(d)(ii); 50 (2Mb

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

36

Sec 16 – Consumer Protection Act

- Direct Marketing

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

37

Rules & Interpretations

- Interpretation
- General Terms
- Cooling-off
- Annexures

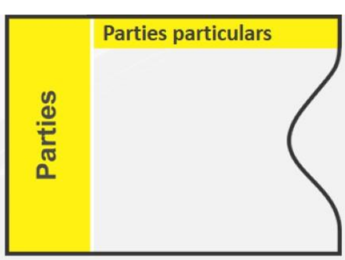
Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

38

PARTIES

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

39



Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

40

Legal requirements for (all) Contracts

- Consensus (meeting of the minds)
  - on at least the ***Essential*** terms of that particular specie (type) of contract
    - Parties
    - Property
    - Price

    Agreement of sale
- Parties must be legally competent
- Legally and physically executable
- Comply with legal formalities
  - In writing
  - Signed
  - Witnesses?

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

41

1. Contractual capacity – Natural Persons

- Contractual capacity = ability of person to enter into an agreement
- Not all natural persons have contractual capacity
- Various aspects influence this
  - a) Age
  - b) Marriage
  - c) Mental Capacity
  - d) Insolvency

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

42

Example

Purchaser One

Name: John Smith ________________________________ *(Marital status as per Annexure A)*

ID/Reg. no.: 700202 5123 085 and *(if the purchaser is a company, close corporation or a trust)* herein represented by the undersigned, duly authorised thereto being _N/A____________________________

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

43

2. Contractual capacity – Juristic Person

- **Juristic person**
  - Company
  - Close Corporation
- **Regulated by**
  - Companies – Companies Act
  - Close Corporation – Close Corporations Act
- **Registered at**
  - CIPC

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

44

3. Contractual capacity – Trusts

- **Trust is neither**
  - Natural person
  - Juristic person
- **Regulated by**
  - The common law and
  - The Trust property Control Act
- **Registered at Master of High Court**
  - Issues a letter of authority as proof
  - Assigns unique number IT 1234/95T
  - Appoints trustees

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

45

Juristic Person / Trust will be bound by agreement

- If signatory is indeed duly authorized
- Agent can't assume that
  - Director (Company)
  - Member (CC)
  - Employee
  - Official

  Is duly authorized
- ∴ Must obtain a resolution (or ratification if permitted)
- Hold representative liable!

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

46

Example

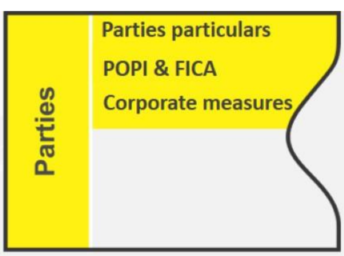
Purchaser One

Name: Corona Masks (Pty) Ltd______________________*(Marital status as per Annexure A)*

ID/Reg. no.: 2007/123456/07 and *(if the purchaser is a company, close corporation or a trust)* herein represented by the undersigned, duly authorised thereto being John Smith

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

47



Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

48

15.1 Representation and authorization

- Signatory confirms he/she (John Smith) is:
  - Appointed as representative
  - Duly authorized
  - As follows:
    - Pty/CC
      - Resolution (before)
      - Ratifications (after)
  - Trust
    - Resolution (before)

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

49

Annexure H: Resolution / Ratification

- Referenced in clause 15.1
- Authorization needed for PTY/CC/Trust
- NB! Trusts – before date of contract
- Pty/CC can be ratified
- Template (Annexure H)

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

50

15.1 Representation and authorization

15.1. Representation and authorisation

The signatory hereto acting as a representative of a company, close corporation (hereafter a 'legal entity') or trust warrants that he/she is duly authorised, to enter into this agreement as well as any annexures, addendums and the commission agreement:-

15.1.1. In the case of a company or a close corporation:

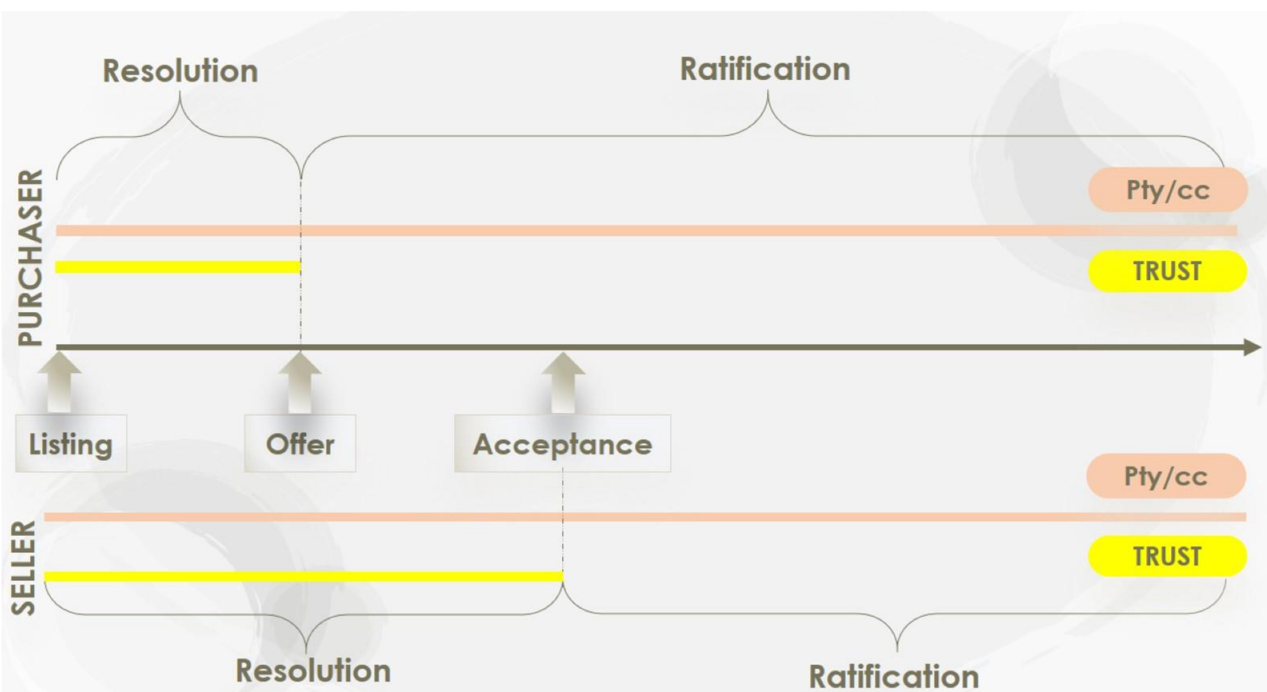
15.1.1.1. By resolution (Annexure H) before the date of signature of the representative; or

15.1.1.2. By ratification (Annexure H) immediately after the date of signature of the representative.

15.1.2. In the case of a trust, by resolution (Annexure H) before the date of signature of the representative.

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

51



Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

52

REFERENCE NUMBER:

ANNEXURE H – RESOLUTION/RATIFICATION

Passed by the DIRECTORS / MEMBERS / TRUSTEES of the COMPANY/CLOSE CORPORATION/TRUST of ______________________ Registration number: ______________________ passed:

i. At a meeting held at ______________________ on ______________________ 20_____; or

ii. By round-robin and via email on the dates and places as stipulated in clause 4.

IT IS RESOLVED/RATIFIED THAT:

1. **The Company / Close Corporation / Trust** | ***Purchases** | ***Sells** | **Delete which is not applicable*

a) The following property:

Sectional title: Unit no.:______ Erf no.:______ Suburb/Township:______________________

Sectional title scheme known as: ______________________

OR

Full title: Portion:______ (if applicable) Erf no.:______ Suburb/Township:______________________

PROPERTY

b) in the amount of R______________________ (______________________ Rand)

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

53

2. **By resolution before signature of the agreement***

(Full names and surname) ______________________ *(ID no.)* ______________________ in his/her capacity as director/member/trustee/representative is hereby authorised to negotiate and sign the agreement of sale and all other relevant documents and to do whatever necessary to effect registration of transfer of the aforementioned property; or

3. **By ratification after signature of the agreement*** *(only Companies and Close Corporations)*

(Full names and surname) ______________________ *(ID no.)* ______________________ representative on behalf of the company/close corporation as well as the negotiations already effected and the agreement signed by him/her in his/her capacity as director/member or representative regarding the aforementioned property is hereby confirmed and ratified.

**Delete which is not applicable (2 or 3)*

4. **Signed by Directors/Members/Trustees:**

DIRECTORS/MEMBERS/TRUSTEES		PLACE	DATE	SIGNATURES
1				
2				
3				
4				
5				

The abovementioned signatories hereby certify that on date of signature they hold the office as director/member/ trustee of the said company/close corporation/trust.

This annexure must be read with clause 15 of the purchase agreement.

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

54

15.2. Liability and surety

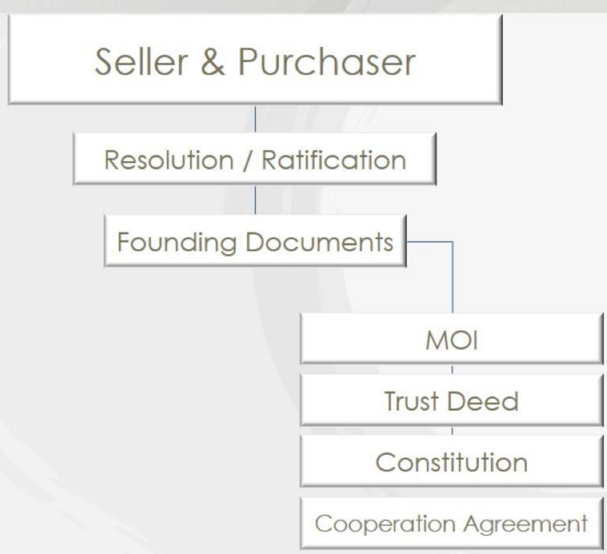
15.2. Liability and surety

In the case of non-compliance with the conditions set out herein, or if the necessary authorisation has not/cannot be obtained from the legal entity or trust, the signatory hereby binds him-/herself personally as surety and co-principal debtor jointly and severally for the proper fulfilment by the legal entity or trust of all its obligations in terms of this agreement.

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

55

15.3 Presentation of documents



Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

56

15.3 Presentation of documents

15.3. Presentation of documents

The various parties shall immediately, upon request, provide the transferring attorney and/or bond attorney with all documents including, but not limited to resolutions, ratifications, founding documents, shareholders agreements and any cooperation agreements.

The parties confirm that all documents supplied are correct, registered (if applicable) and the most recent documents.

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

57

Relevant clause in pro-forma contract

- Agent will not know if:
  - Transaction is legal → Companies Act / Close Corporation Act
    - e.g. shareholders must consent if > 50% is sold
  - Within scope of MOI (Internal rules + regulations of a company)
  - Within a scope of Association agreement (Internal rules of Close Corporation)
  - Trust deed
  - Signatory has indeed been authorized
    - If not yet authorized – actions should be ratified (ratified = approval by directors/members afterwards)
- Therefore get signatory to verify all of the above

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

58

15. Corporate measures

15.4 Compliance

15.4.1 Transaction not inconsistent with (external measures)

- ⇨ Companies Act, 71 of 2008; or
- ⇨ Close Corporation Act, 69 of 1984; or
- ⇨ Trust Property Control Act, 57 of 1988

15.4.2 Transaction not in conflict with objectives of (internal measures):

- ⇨ the memorandum of incorporation;
- ⇨ co-operation agreement;
- ⇨ trust deed;
- ⇨ Etc.

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

59

15. Corporate measures

15.4 Compliance continues..

15.4.3

- ❑ All necessary steps have been taken
- ❑ Signatory is acting within scope of authority
- ❑ Authority has been given:
  - ⇨ Directors;
  - ⇨ Members;
  - ⇨ Trustees

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

60

15.4. Compliance

15.4. Compliance

The signatory declares that:

15.4.1. this agreement is not inconsistent with any section of the Companies Act 71 of 2008, the Close Corporations Act 69 of 1984, the Trust Property Control Act 57 of 1988 or any other relevant legislation (whichever is applicable);

15.4.2. this agreement is not inconsistent with any of the objectives of any memorandum of incorporation, shareholders agreement, cooperation agreement, trust deed or constitution of the company, close corporation, trust or other institution (whichever is applicable);

15.4.3. all necessary steps have been taken and that this transaction, in particular, is authorised without limitation by the directors, members or trustees. The signatory also declares that he/she is indeed acting within his/her rights and the scope of the authorisation and the objectives and mandate of the legal entity or trust.

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

61

Pre-Incorporation Agreements

- You are sitting with a purchaser Friday 10 o'clock at night
- He wants to make an offer, but:
  - wants to but the property in the name of a CC/Company/Trust
  - he doesn't have the registered entity yet
- 2 Options
  - Wait till Monday and buy a company from Shelf Company Warehouse
  - Make use of a pre-incorporation agreement
    - Same pro-forma Agreement
    - Purchaser is just cited differently

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

62

Pre-incorporation Agreements

15.5 Pre-incorporation agreements

- Common law: "No one can act as a representative for a non-existing principal"
- Common law can be changed by legislation
  - ➪ Companies Act – makes provision for pre-incorporation agreements
  - ➪ Close Corporations Act – <u>used to</u> make provision for pre-incorporation agreements – NOT ANYMORE!
  - ➪ Trust Property Control Act – no provision for pre-incorporation agreements
    - Common law principle persists

Annexure I applicable

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

63

Pre-incorporation Agreements

- ▣ John Smith for a company to be formed
- ▣ John Smith for a Close Corporation to be formed
- ▣ John Smith for a Trust to be formed

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

64

Example

Purchaser One

Name: John Smith for a Company to be formed *(Marital status as per Annexure A)*

ID/Reg. no.: N/A_________ and *(if the purchaser is a company, close corporation or a trust)* herein represented by the undersigned, duly authorised thereto being _N/A_____________________________

Note : It is not the intention that John Smith becomes the purchaser

: Sec 2 of the Transfer Duty Act is not applicable

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

65

15.5. Pre-incorporation Agreements

15.5. Pre-incorporation agreements

If the purchaser is a company to be formed, Annexure I is incorporated into this agreement.

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

66

Annexure I – Pre-Incorporation Agreements

This annexure/addendum forms an integral part of the main agreement signed by:

______________________________ (the purchaser(s)) and

______________________________ (the seller(s))

on this ______ day of ____________________ 20 ______ regarding the property known as:

PROPERTY

<u>Sectional title</u>: Unit no.:_____ Erf no.: __________ Suburb/Township: ____________________

Sectional title scheme known as:______________________________

<u>Full title</u>: Erf No.:___________ Suburb/Township:______________________________OR

<u>Farm</u>: Portion: ______ *(if applicable)*, of the Farm known as ______________________________OR

<u>Agricultural Holding</u>: Portion:______ *(if applicable)* Holding ______________________________

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

67

Annexure I – Pre-Incorporation Agreements

As the purchaser is purchasing the property on behalf of a company which has not been registered yet, the parties hereby agree as follows:

1. The signatory hereto acts as a representative for the company and shall be held personally liable should such company not fulfil the obligations in terms of this agreement. By signing this agreement, the representative binds him-/herself as surety and co-principal debtor jointly and severally for the proper fulfilment of all the contractual obligations.

2. After conclusion of this agreement: -

- **2.1.** the company to-be-formed must be incorporated within 40 (forty) working days; and
- **2.2.** the company to-be-formed must ratify this agreement within 10 (ten) working days from date of incorporation.

3. Should the representative fail to comply with clause 2, the said representative shall become the purchaser in his/her personal capacity and shall be obliged to take transfer into his/her/their own name.

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

68

Annexure I – Pre-Incorporation Agreements

Purchaser(s)

THUS DONE AND SIGNED BY ME/US at ________________ **on this** _____ **day of**______________**20**____

Signature - Purchaser 1: ______________________ **Witness:** ______________________

Full names: ______________________ Name: ______________________

ID no.: ______________________

Signature - Purchaser 2: ______________________ **Witness:** ______________________

Full names: ______________________ Name: ______________________

ID no.: ______________________

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

69

Annexure I – Pre-Incorporation Agreements

Seller(s)

THUS DONE AND SIGNED BY ME/US at ________________ **on this** _____ **day of**______________**20**____

Signature - Seller 1: ______________________ **Witness:** ______________________

Full names: ______________________ Name: ______________________

ID no.: ______________________

Signature - Seller 2: ______________________ **Witness:** ______________________

Full names: ______________________ Name: ______________________

ID no.: ______________________

This Annexure must be read with clause 15.5 of the agreement of sale.

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

70

Nomination Agreements

- You are sitting with a purchaser FRIDAY MORNING 10 o'clock
- She wants to make an offer
- But is unsure whether she wants to buy property in
  - Her own name / husbands name / both their names
  - Company A
  - Trust
- First wants to get legal and financial advice
- Two options
  - Wait till after she received advice
  - Make use of nomination agreement
    - Same Pro-forma Agreement
    - Purchaser is just cited differently

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

71

Nomination Agreements

Purchaser One

Name: Susan Smith or Nominee____________________*(Marital status as per Annexure A)*

ID/Reg. no.: N/A__________ and *(if the purchaser is a company, close corporation or a trust)* herein represented by the undersigned, duly authorised thereto being N/A______________________________

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

72

Nomination Agreements

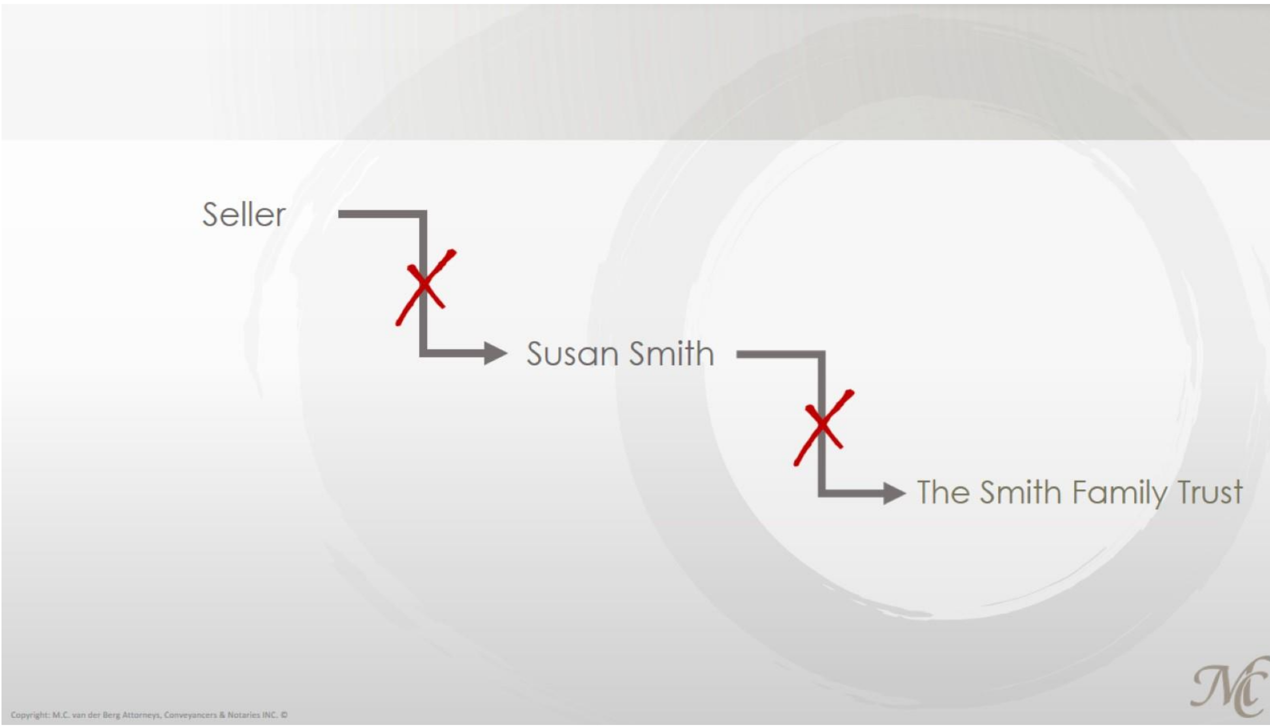
- It is the intention Susan Smith becomes the purchaser (if no nomination)
- Therefore Sec 2 of the Transfer Duty Act is applicable
- But Susan MUST nominate a 3rd party ON THE SAME DAY
  - another person or entity – The Smith Family Trust
  - It will then be regarded as 1(one) transaction (Seller sells to Smith Family Trust)
- If Susan Smith does not nominate a 3rd party she will remain the purchaser
- If Susan does not nominate on the same day the transaction will be regarded as 2 transactions for transfer duty purposes
  - Seller – Susan Smith
  - Susan Smith – The Smith Family Trust

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

73

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

74


Seller
Susan Smith
The Smith Family Trust
Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

75


Seller
The Smith Family Trust
Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

76

Seller not owner (yet)

- Seller – does not have to be owner on date of agreement of sale
- BUT must have reasonable expectation to become owner
- This will happen when:
  - Purchaser of property wants so sell the property
  - Before he/she took transfer
    - Speculation
    - Divorce
    - Heir
- Back to back transfer
- Transfer duty on both transfers
- Disclose position and make conditional to seller taking transfer

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

77

Parties

- Parties particulars
- POPI & FICA
- Corporate measures
- Irrevocable offer
- Annex. A, B, H, H & I
- Parties Sign

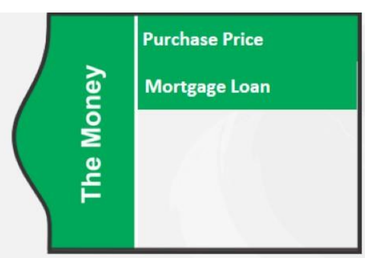
Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

78

MONEY

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

79



Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

80

Approval of Mortgage Loan – Clause 2.

2.1. This offer is subject to the suspensive condition that the purchaser obtains a mortgage loan from a bank as regulated by the National Credit Act 34 of 2005, if applicable, in the amount of R ______________ (____ Rand) before 23:59 on ____________________ 20 ____ (mortgage loan fulfilment date), on the usual terms and conditions applicable from time to time as required by the banks.

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

81

National Credit Act

- Protects certain category of consumers of Purchasers
  - Natural person
    - Always
  - Juristic person
    - Assets < R2 million or
    - Turnover in a year is < R2 million
  - Trust
    - Trust with 2 or less trustees or
    - Assets < R2 million or
    - Turnover in a year is < R2 million

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

82

When is the suspensive condition fulfilled?

When did the purchaser obtain the mortgage loan?

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

83

Sam Seller

2.1 Subject to suspensive conditions that Peter Purchaser qualifies for a bond of R1 300 000 before 6 April 2020

Process

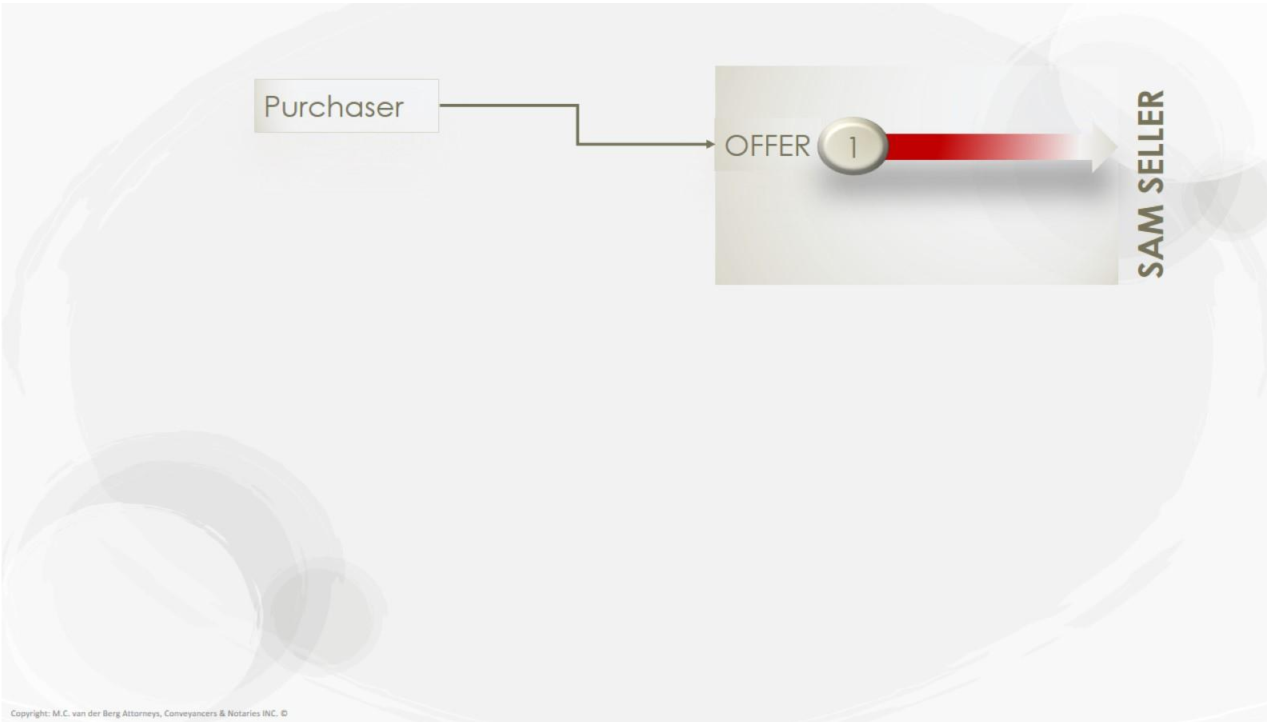
- Purchaser applies to ABSA
- Absa makes offer (quotation) (no loan agreement yet) (offer must be accepted)
- Purchaser accepts quotation
- Suspensive condition is fulfilled
- ABSA issues grant

Peter Purchaser

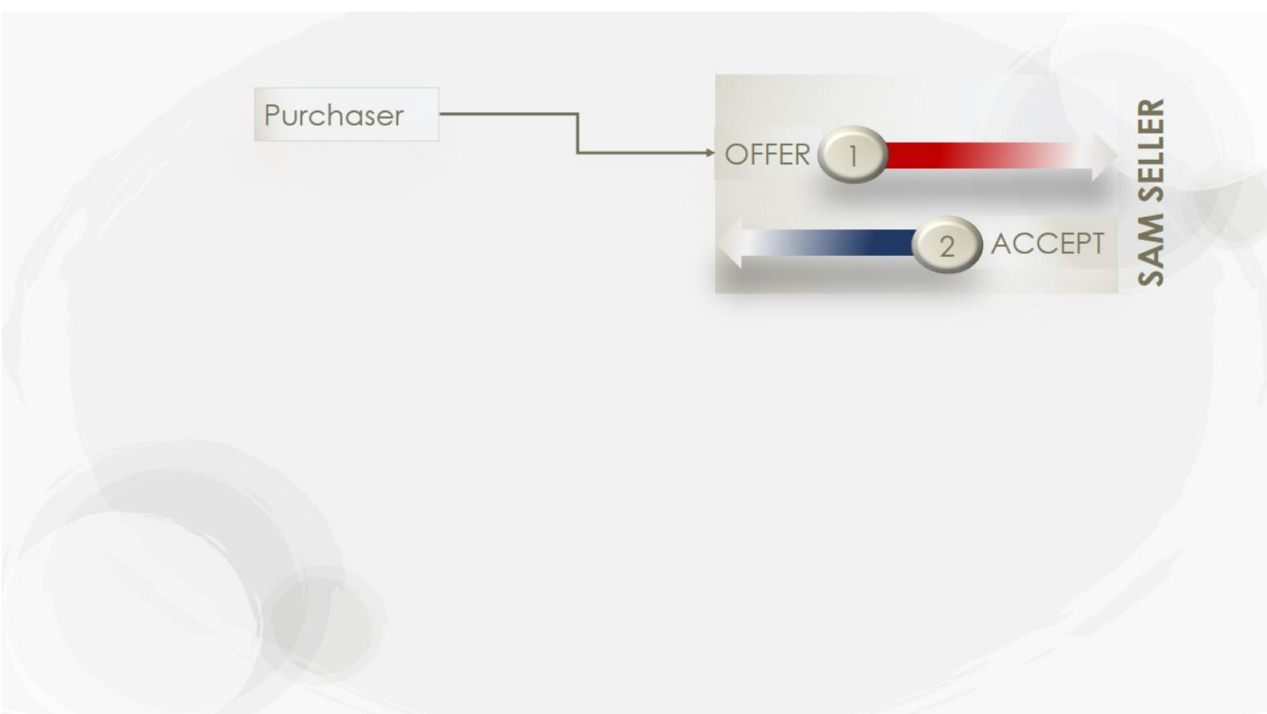
absa

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

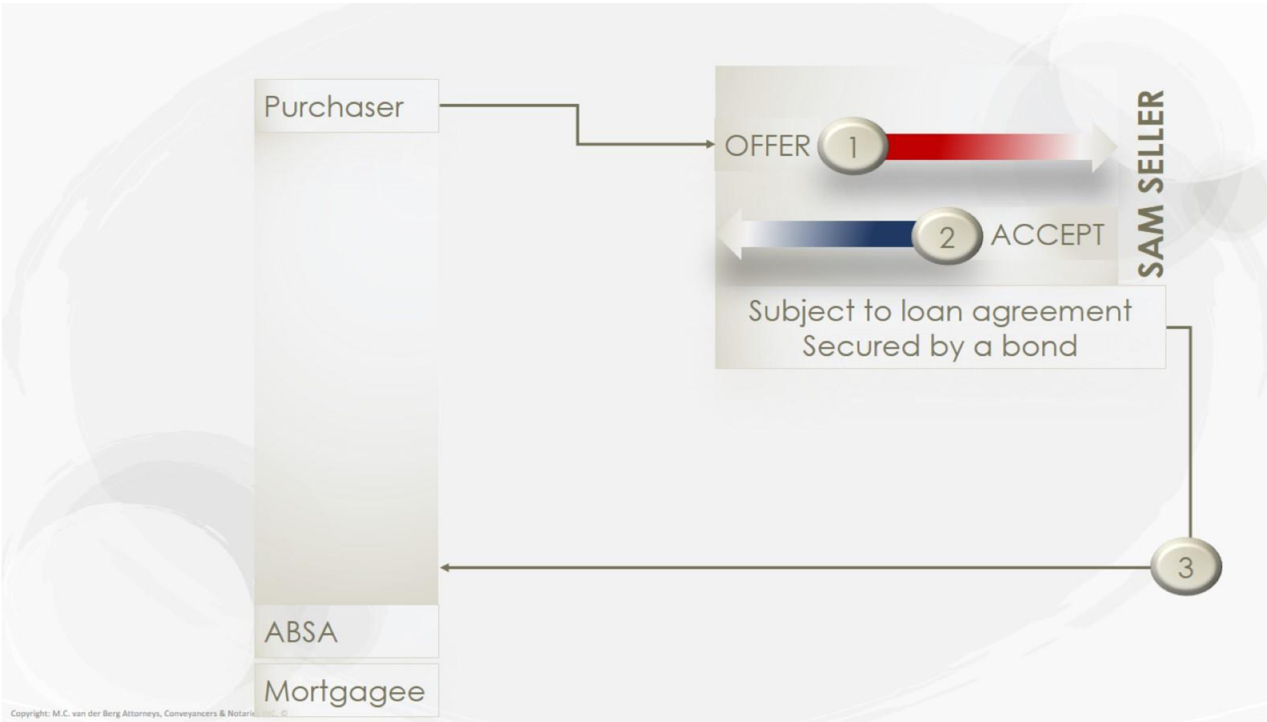
84


Purchaser
OFFER
1
SAM SELLER
Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

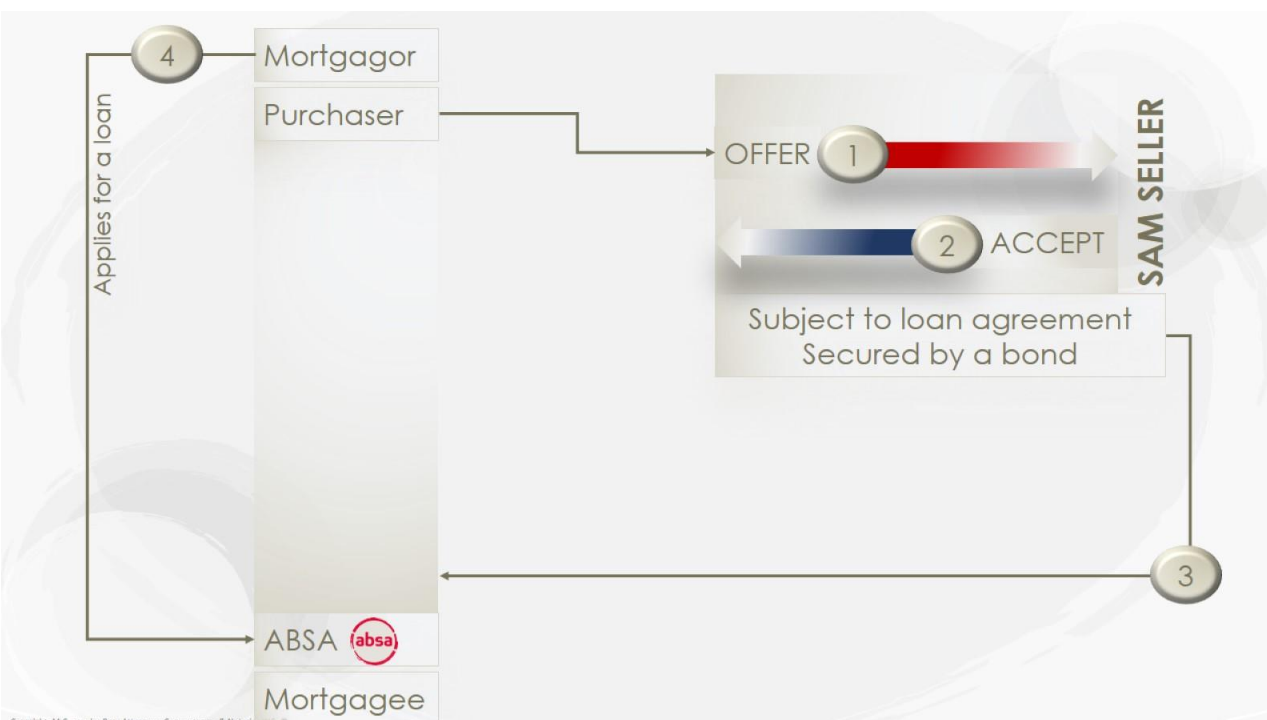
85


Purchaser
OFFER
1
2
ACCEPT
SAM SELLER
Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

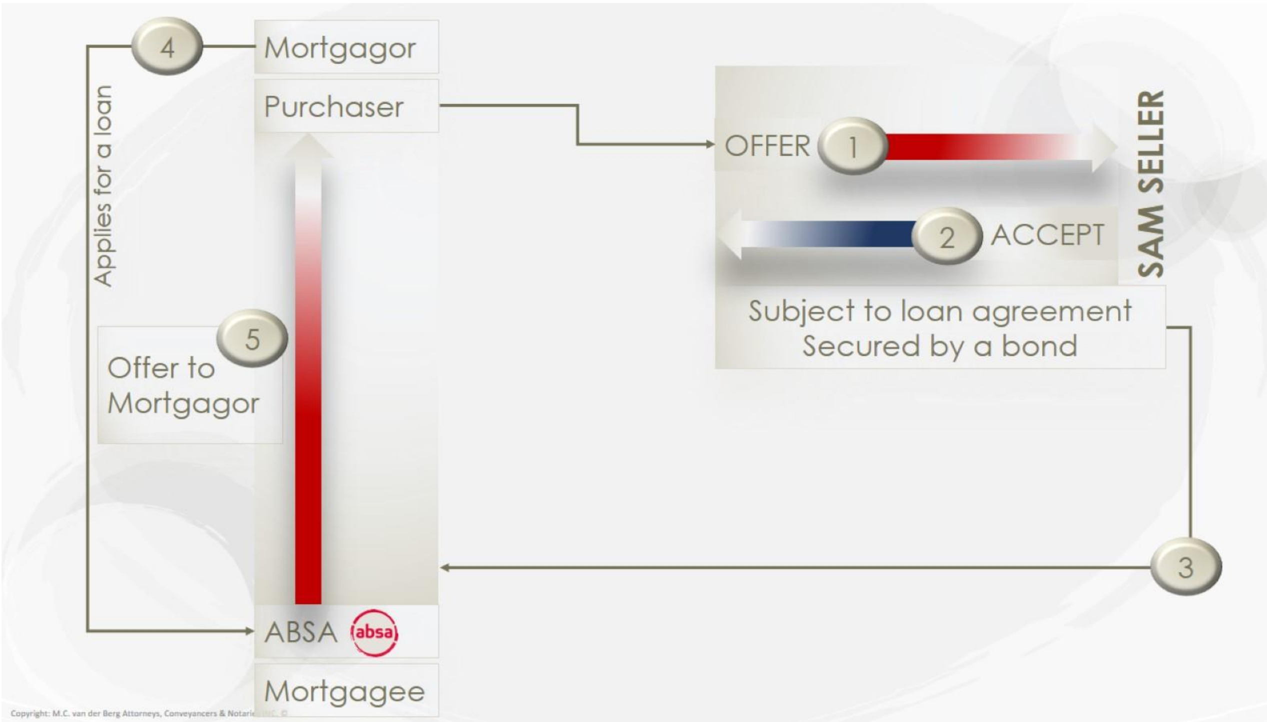
86


Purchaser
OFFER
1
2
ACCEPT
SAM SELLER
Subject to loan agreement
Secured by a bond
3
ABSA
Mortgagee

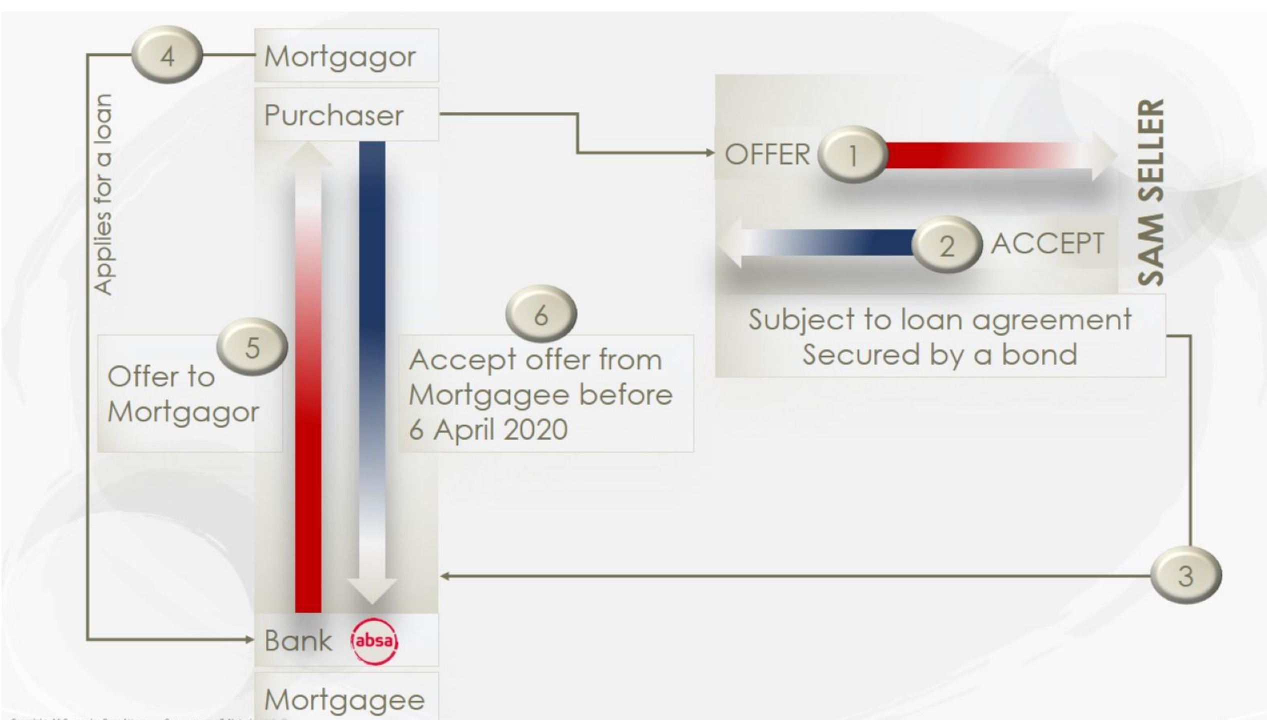
87


4
Mortgagor
Applies for a loan
Purchaser
OFFER
1
2
ACCEPT
SAM SELLER
Subject to loan agreement
Secured by a bond
3
ABSA
Mortgagee

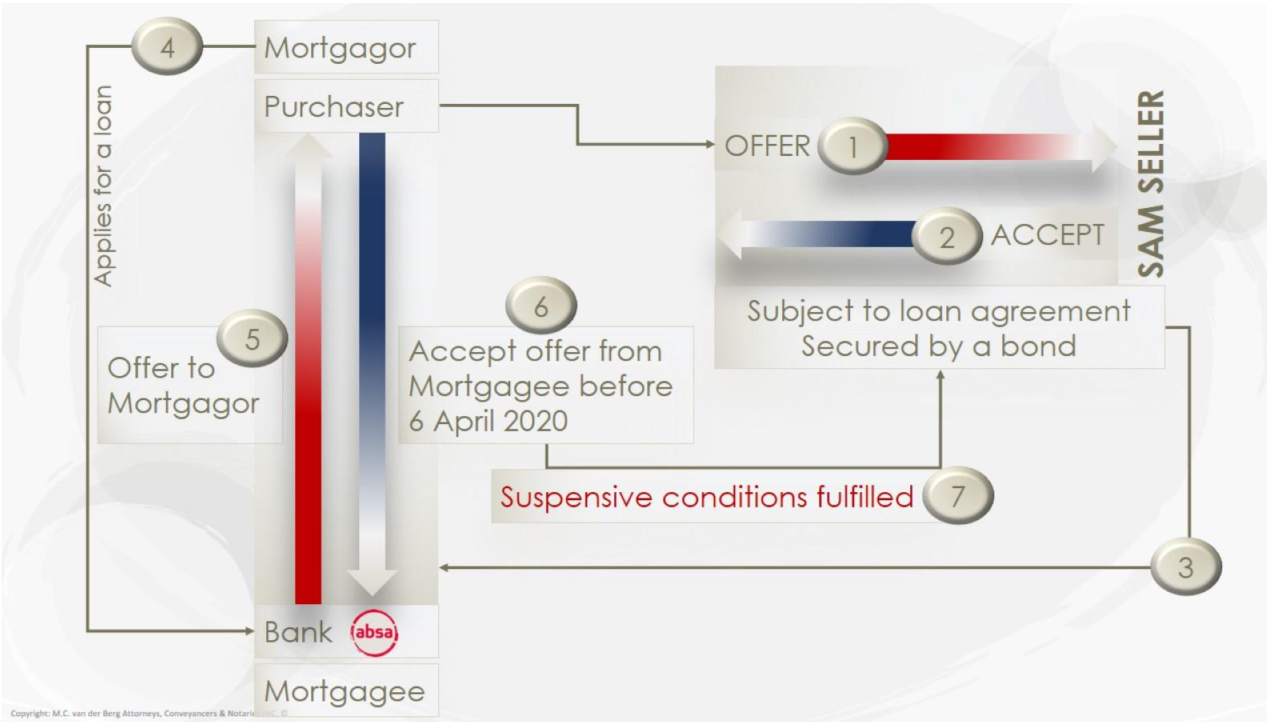
88


4
Mortgagor
Purchaser
Applies for a loan
OFFER
1
2
ACCEPT
SAM SELLER
Subject to loan agreement
Secured by a bond
5
Offer to
Mortgagor
3
ABSA
absa
Mortgagee
Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries

89


4
Mortgagor
Purchaser
Applies for a loan
OFFER
1
2
ACCEPT
SAM SELLER
6
Accept offer from
Mortgagee before
6 April 2020
Subject to loan agreement
Secured by a bond
5
Offer to
Mortgagor
3
Bank
absa
Mortgagee
Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries

90



91

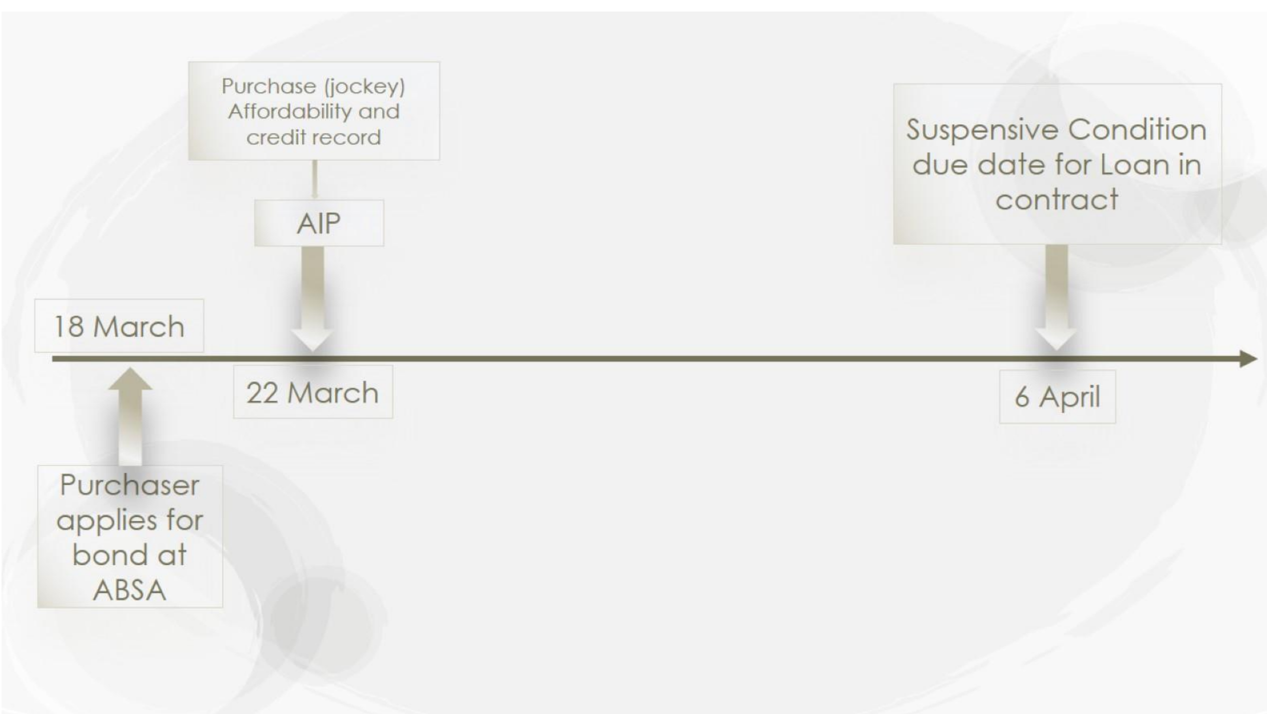
The Mortgage loan application and approval process

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

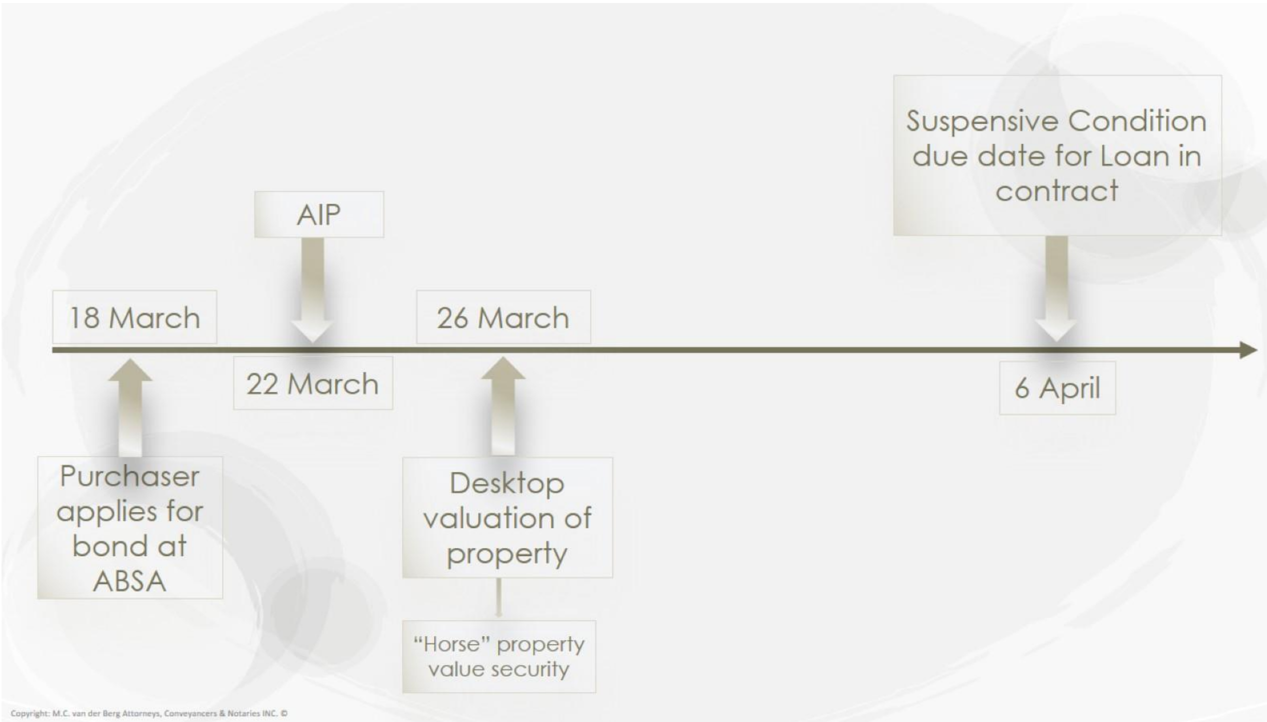
92


Suspensive Condition due date for Loan in contract
18 March
6 April
Purchaser applies for bond at ABSA
Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

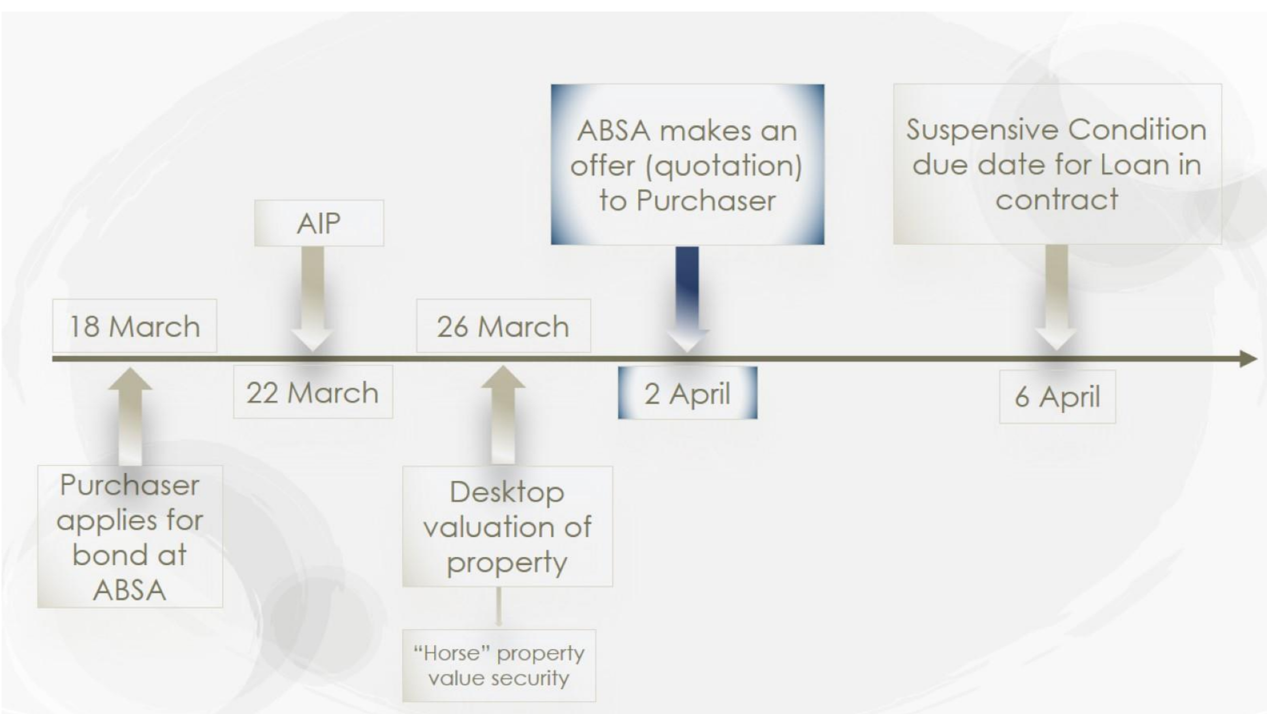
93


Purchase (jockey) Affordability and credit record
AIP
Suspensive Condition due date for Loan in contract
18 March
22 March
6 April
Purchaser applies for bond at ABSA
Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

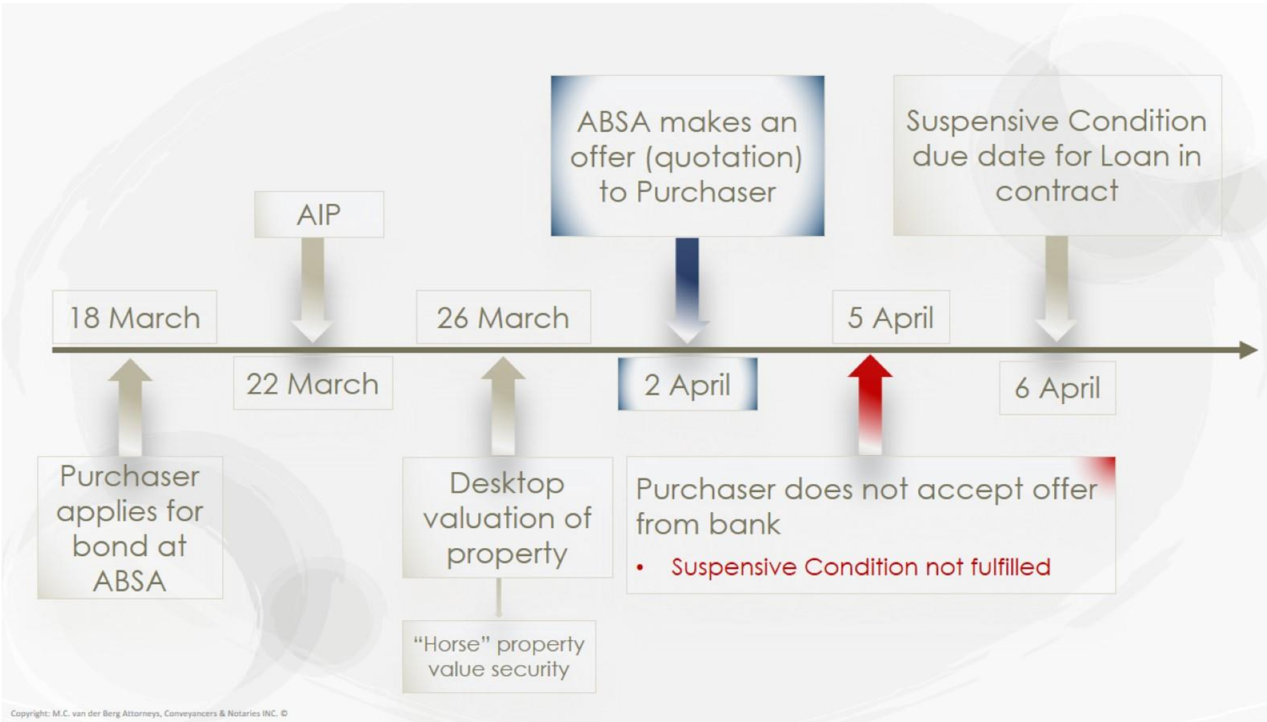
94


Suspensive Condition due date for Loan in contract
AIP
18 March
26 March
22 March
6 April
Purchaser applies for bond at ABSA
Desktop valuation of property
"Horse" property value security
Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

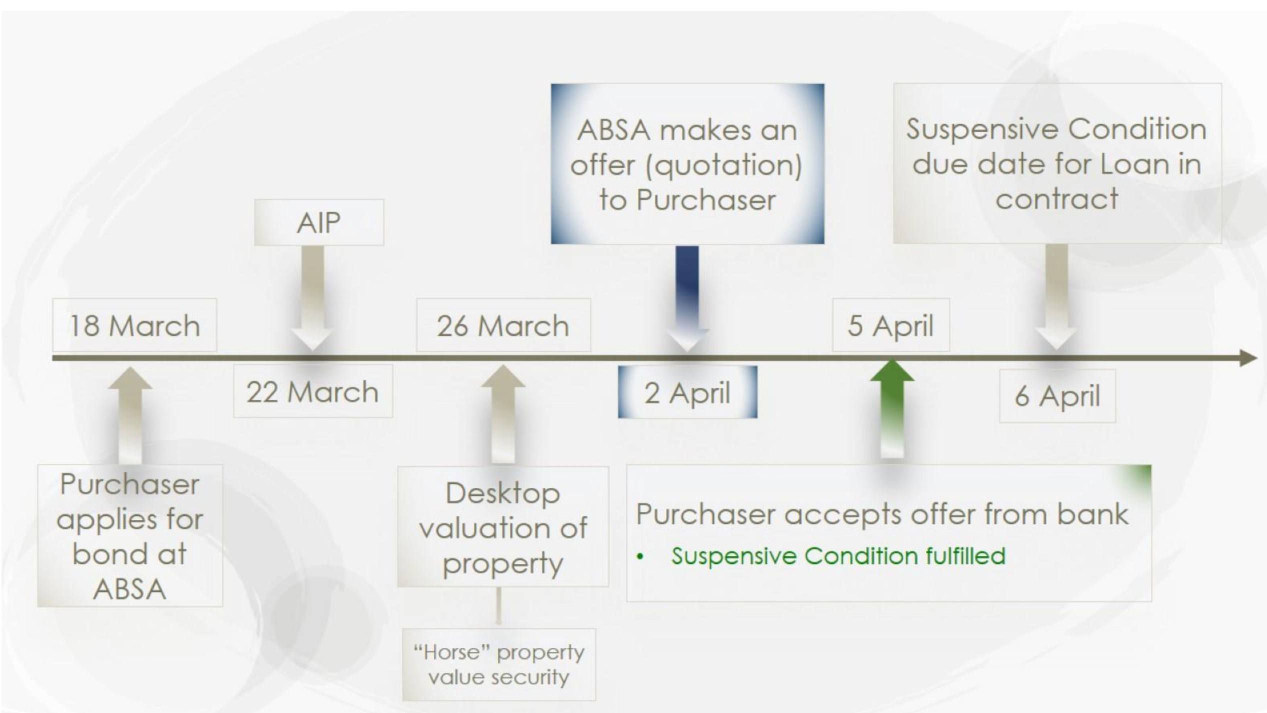
95


ABSA makes an offer (quotation) to Purchaser
Suspensive Condition due date for Loan in contract
AIP
18 March
26 March
22 March
2 April
6 April
Purchaser applies for bond at ABSA
Desktop valuation of property
"Horse" property value security
Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

96


ABSA makes an offer (quotation) to Purchaser
Suspensive Condition due date for Loan in contract
AIP
18 March
26 March
5 April
22 March
2 April
6 April
Purchaser applies for bond at ABSA
Desktop valuation of property
"Horse" property value security
Purchaser does not accept offer from bank
• Suspensive Condition not fulfilled
Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

97


ABSA makes an offer (quotation) to Purchaser
Suspensive Condition due date for Loan in contract
AIP
18 March
26 March
5 April
22 March
2 April
6 April
Purchaser applies for bond at ABSA
Desktop valuation of property
"Horse" property value security
Purchaser accepts offer from bank
• Suspensive Condition fulfilled
Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

98

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

99

Approval of Mortgage Loan

2.2. The purchaser must apply for the mortgage loan immediately after acceptance of this offer, irrespective that this transaction may be subject to the sale of the purchaser's property or any other suspensive condition

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

100

How to Postpone the Mortgage loan due date

- Important to get Mortgage loan approved before due date
- Must postpone due date before it lapses
- Question is how?
  - Bilateral?
    - Non-variation clause requires both parties to consent
  - Unilateral
    - Make provision in agreement

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

101

Non-Variation

17.2. No variation, addition or deletion of the terms and conditions of this agreement, its annexures or addendums, including this clause, shall be of any force or effect unless:

17.2.1. it is reduced to writing and signed by the parties in an addendum; alternatively

17.2.2. it is confirmed via email (as set out in clause 11.2) by both the seller and purchaser on written request by the transferring attorney or agent, in which request the amendment is expressly contained and it is declared that it is their intention to make the amendment, addition or deletion to the agreement as set out in the request.

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

102

APPROVAL OF MORTGAGE LOAN

2.3. Notwithstanding the provisions of clause 17.2:

2.3.1 If the purchaser's mortgage loan is not approved in time, the seller has the right to unilaterally postpone the fulfilment date by giving written notice to the purchaser before the mortgage loan fulfilment date.

2.3.2 If the purchaser fails to obtain a mortgage loan or receives a quotation from a bank for a lesser amount than required in clause 2.1, but he/she is in the financial position to supplement the deposit or to pay the full purchase price and wishes to proceed with the transaction, he/she must, before the fulfilment date:

2.3.2.1 accept the quotation from the bank and confirm, in writing to the transferring attorney, that a quotation for a lesser mortgage loan amount was accepted; and/or

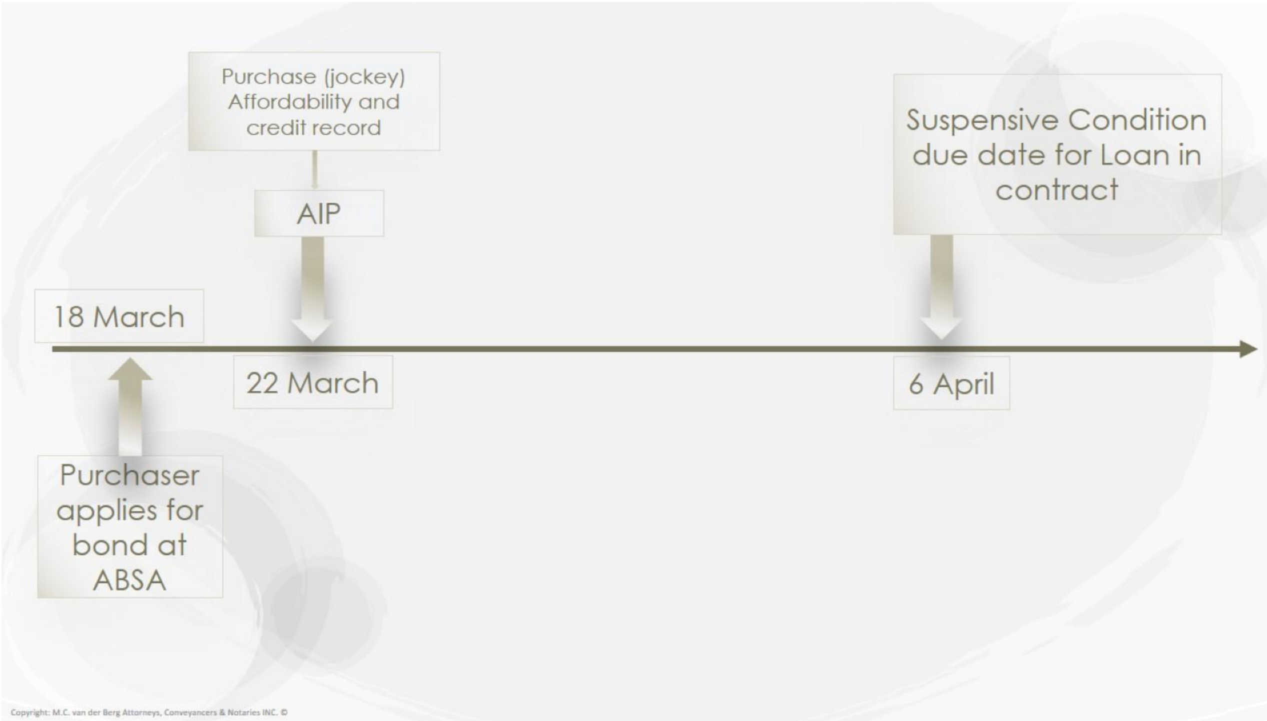
2.3.2.2 waive the condition in clause 2.1, in full or in part, by unilateral written notice to the transferring attorney. It will then be deemed that the suspensive condition is fulfilled. The purchaser must pay the balance between the initially required mortgage loan and the granted mortgage loan (or the full purchase price) to the transferring attorney on demand.

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

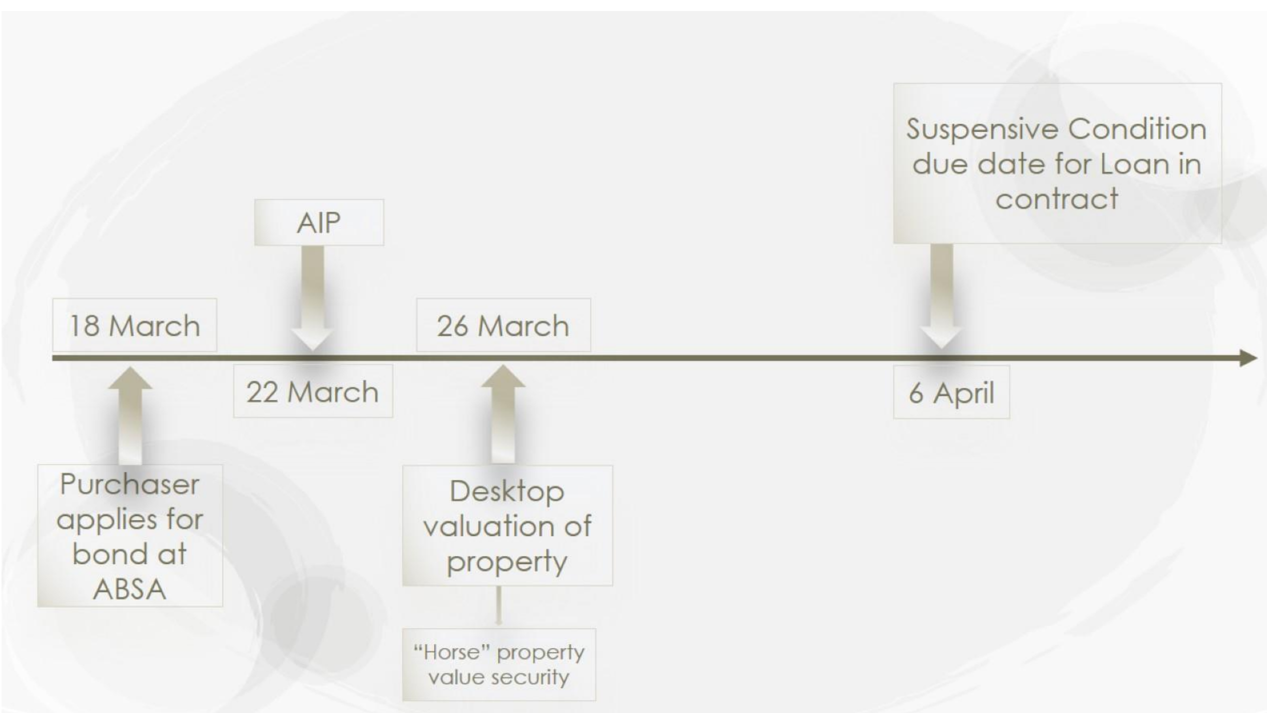
103

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

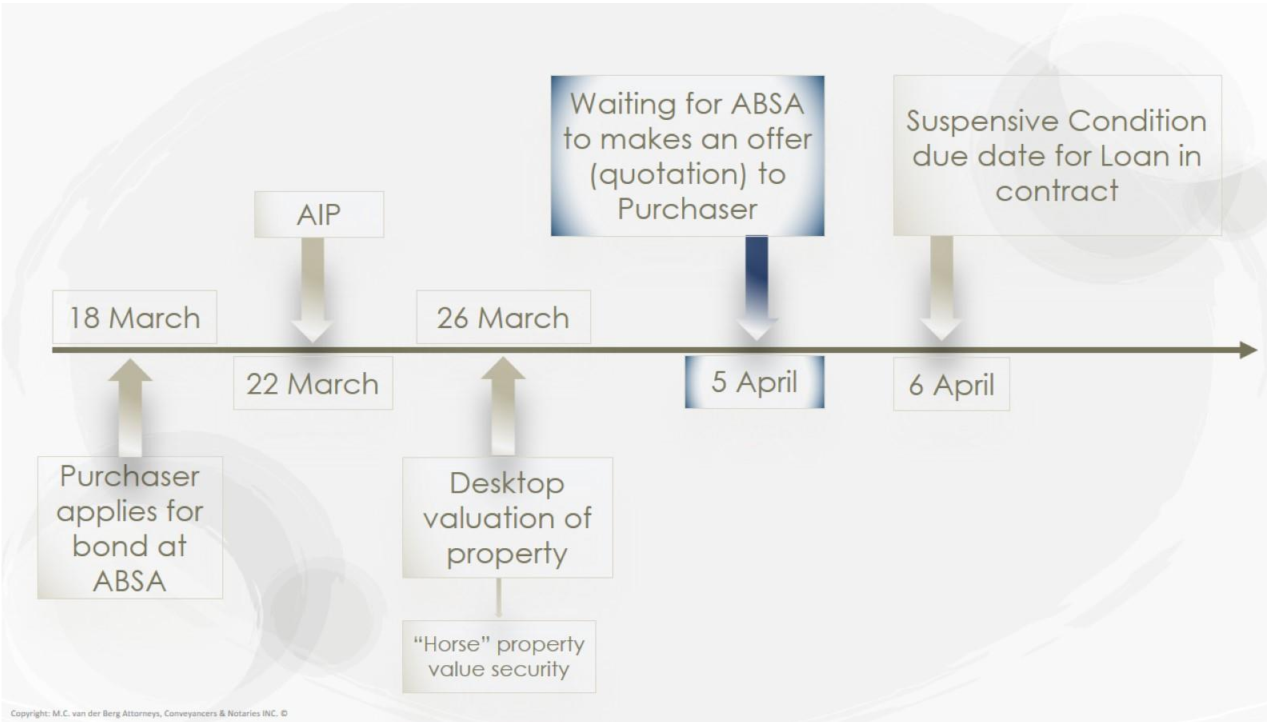
104


Purchase (jockey) Affordability and credit record
AIP
Suspensive Condition due date for Loan in contract
18 March
22 March
6 April
Purchaser applies for bond at ABSA
Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

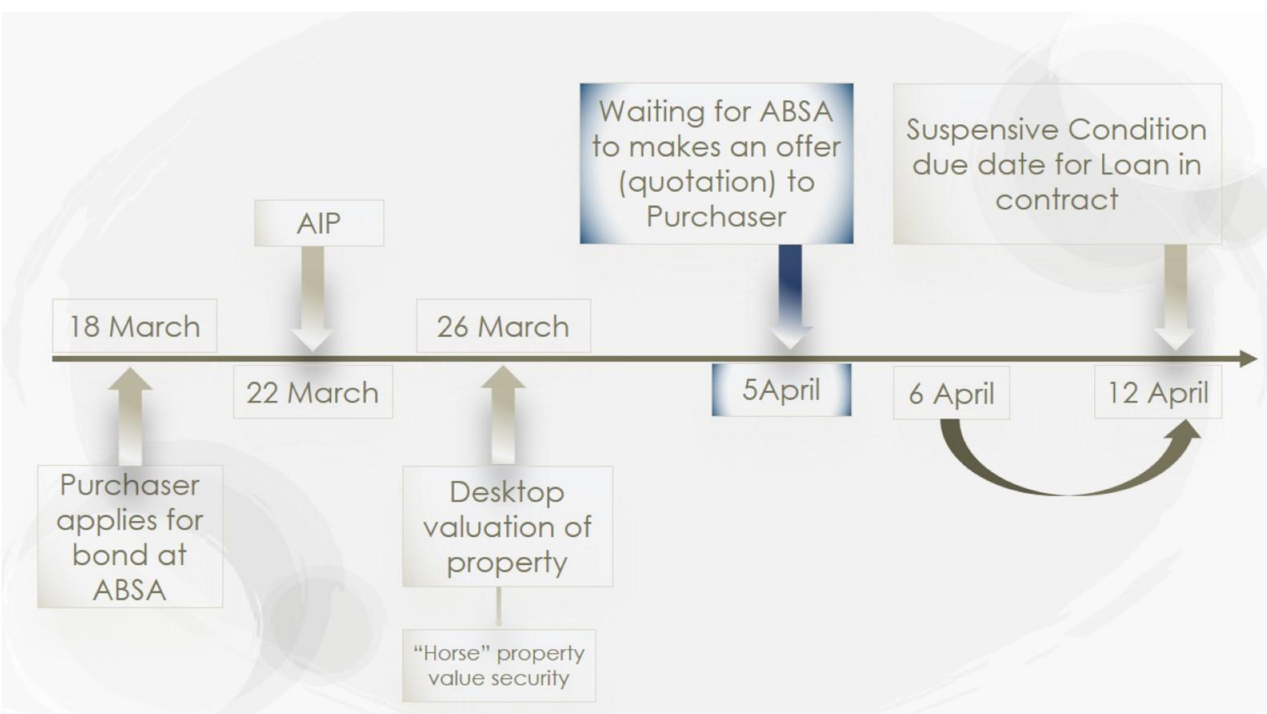
105


Suspensive Condition due date for Loan in contract
AIP
18 March
26 March
22 March
6 April
Purchaser applies for bond at ABSA
Desktop valuation of property
"Horse" property value security
Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

106


Waiting for ABSA to makes an offer (quotation) to Purchaser
Suspensive Condition due date for Loan in contract
AIP
18 March
26 March
22 March
5 April
6 April
Purchaser applies for bond at ABSA
Desktop valuation of property
"Horse" property value security
Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

107


Waiting for ABSA to makes an offer (quotation) to Purchaser
Suspensive Condition due date for Loan in contract
AIP
18 March
26 March
22 March
5April
6 April
12 April
Purchaser applies for bond at ABSA
Desktop valuation of property
"Horse" property value security
Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

108

Waiver of Protection of suspensive condition

- What if purchaser but does not obtain loan
- but wants to proceed with transaction
- e.g. R1 000 000 loan required
  - Only R 900 000 loan obtained or
  - No loan obtained
- But Purchaser can and wants to proceed?
- Can Purchaser waive protection in Suspensive condition?
- Question is how?
  - Bilateral?
    - Non-variation clause requires both parties to consent
  - Unilateral
    - Make provision in agreement

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

109

Non-Variation

17.2. No variation, addition or deletion of the terms and conditions of this agreement, its annexures or addendums, including this clause, shall be of any force or effect unless:

17.2.1. it is reduced to writing and signed by the parties in an addendum; alternatively

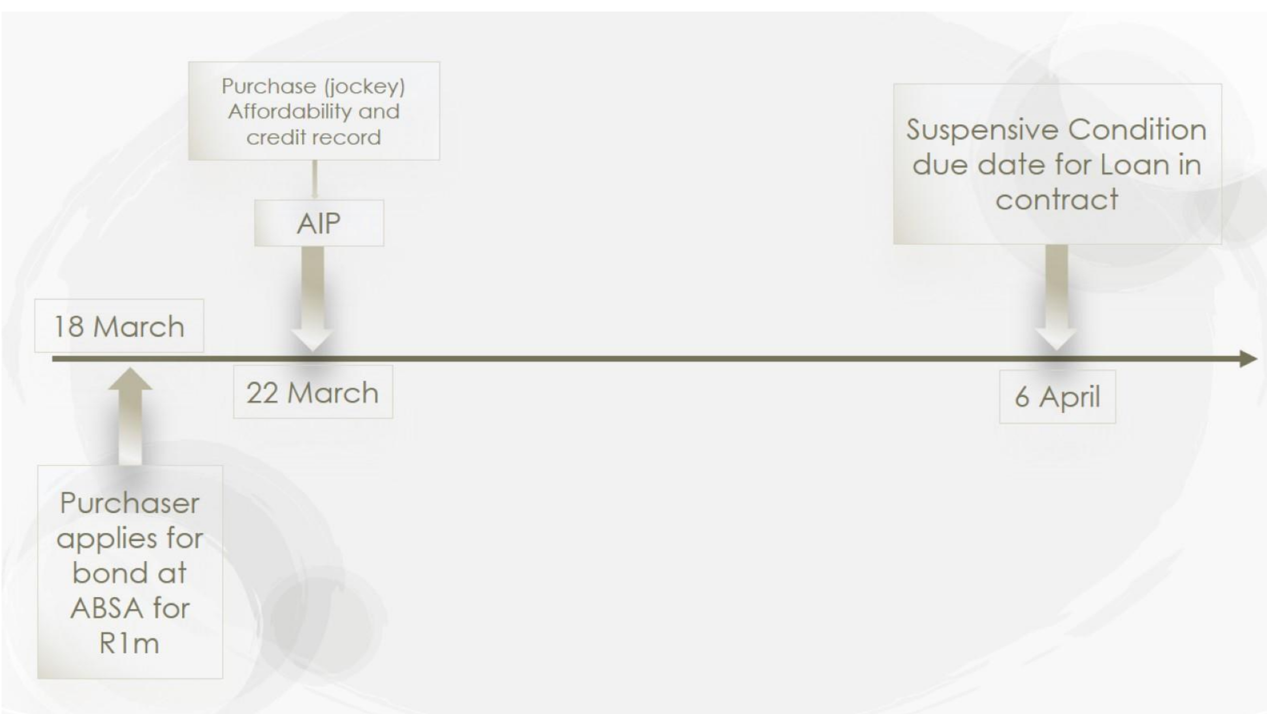
17.2.2. it is confirmed via email (as set out in clause 11.2) by both the seller and purchaser on written request by the transferring attorney or agent, in which request the amendment is expressly contained and it is declared that it is their intention to make the amendment, addition or deletion to the agreement as set out in the request.

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

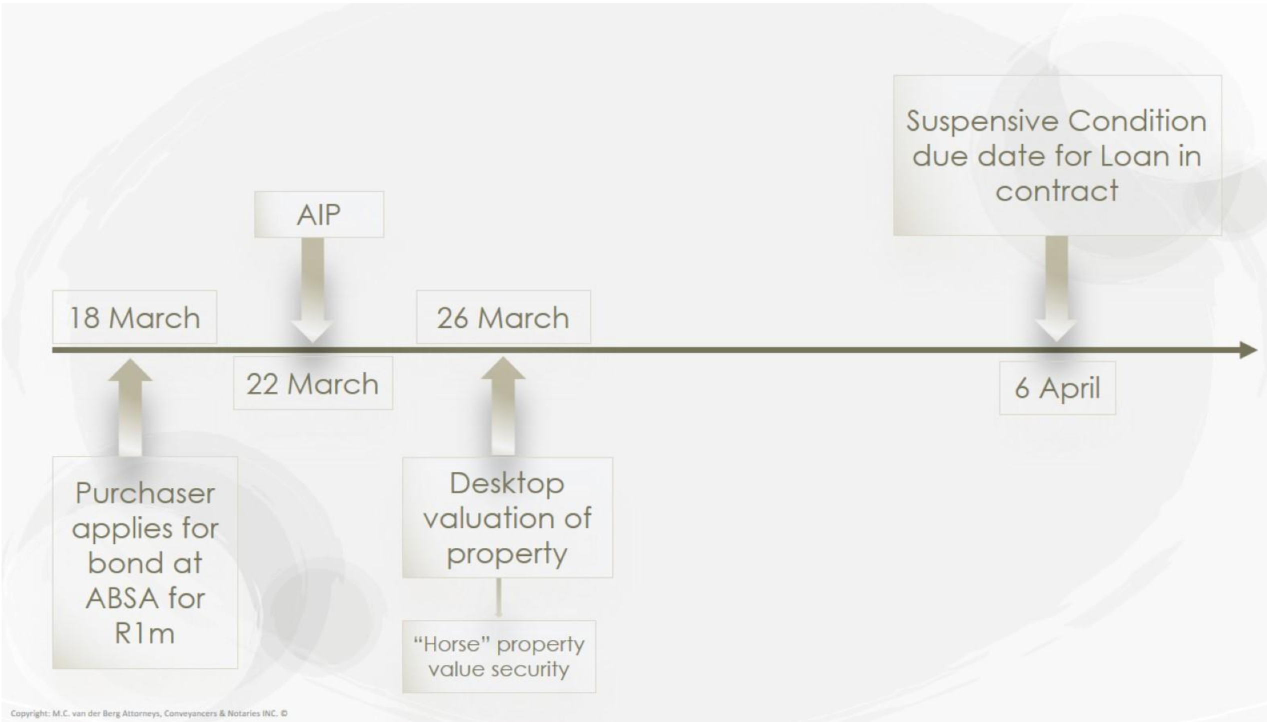
110


Suspensive Condition due date for Loan in contract
18 March
6 April
Purchaser applies for bond at ABSA for R1m
Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

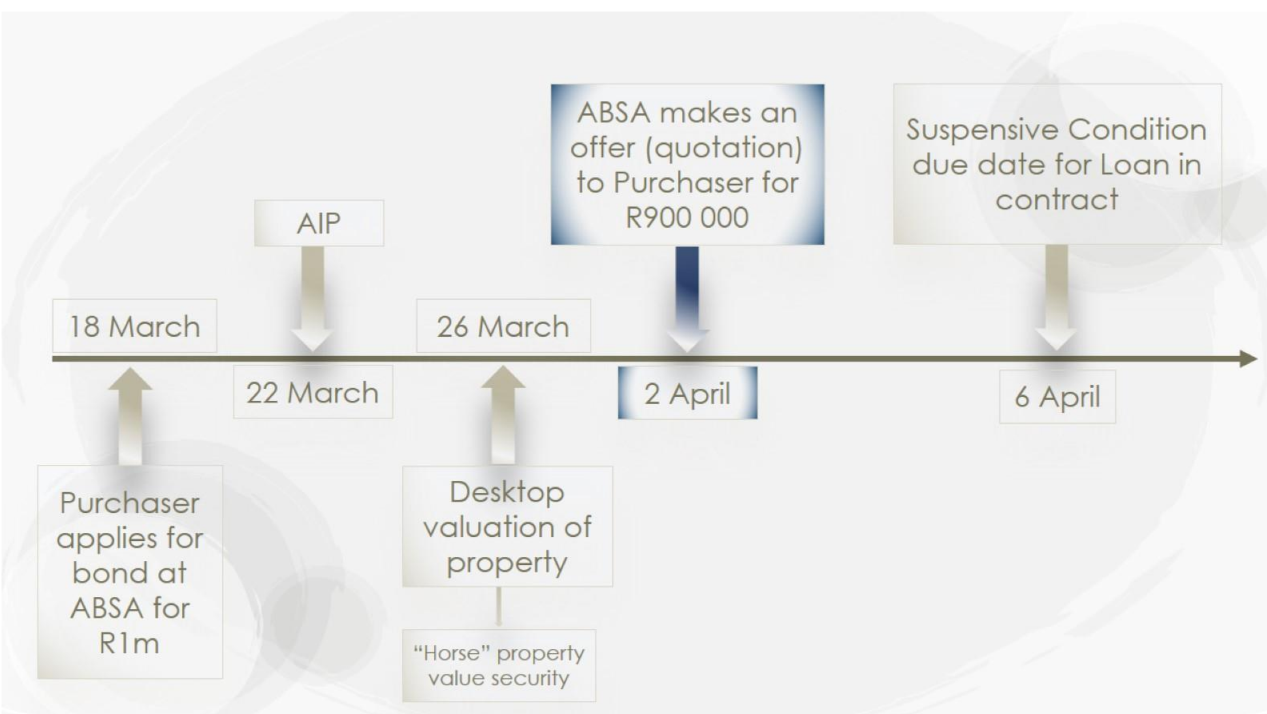
111


Purchase (jockey) Affordability and credit record
AIP
Suspensive Condition due date for Loan in contract
18 March
22 March
6 April
Purchaser applies for bond at ABSA for R1m
Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

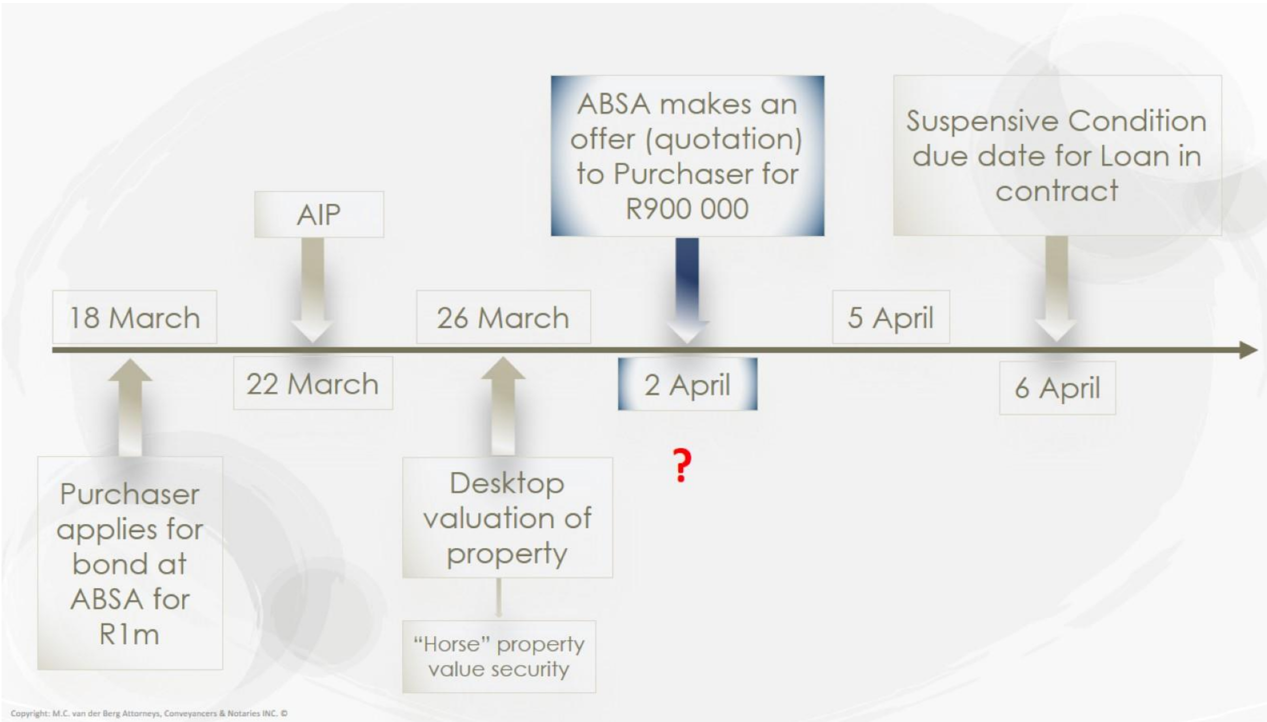
112


Suspensive Condition due date for Loan in contract
AIP
18 March
26 March
22 March
6 April
Purchaser applies for bond at ABSA for R1m
Desktop valuation of property
"Horse" property value security
Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

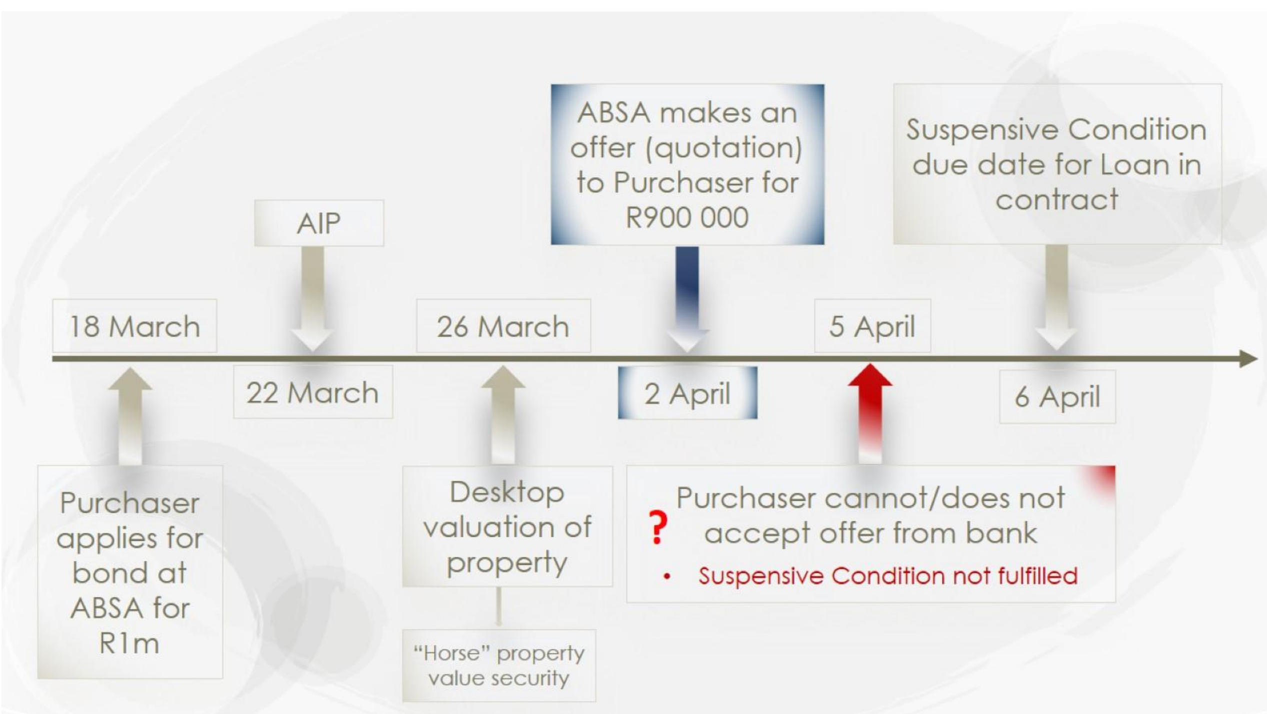
113


ABSA makes an offer (quotation) to Purchaser for R900 000
Suspensive Condition due date for Loan in contract
AIP
18 March
26 March
22 March
2 April
6 April
Purchaser applies for bond at ABSA for R1m
Desktop valuation of property
"Horse" property value security
Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

114


ABSA makes an offer (quotation) to Purchaser for R900 000
Suspensive Condition due date for Loan in contract
AIP
18 March
26 March
5 April
22 March
2 April
6 April
?
Purchaser applies for bond at ABSA for R1m
Desktop valuation of property
"Horse" property value security
Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

115


ABSA makes an offer (quotation) to Purchaser for R900 000
Suspensive Condition due date for Loan in contract
AIP
18 March
26 March
5 April
22 March
2 April
6 April
Purchaser applies for bond at ABSA for R1m
Desktop valuation of property
"Horse" property value security
? Purchaser cannot/does not accept offer from bank
• Suspensive Condition not fulfilled
Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

116

117

Approval of Mortgage Loan

2.3. Notwithstanding the provisions of clause 17.2:

2.3.1 If the purchaser's mortgage loan is not approved in time, the seller has the right to unilaterally postpone the fulfilment date by giving written notice to the purchaser before the mortgage loan fulfilment date.

2.3.2 If the purchaser fails to obtain a mortgage loan or receives a quotation from a bank for a lesser amount than required in clause 2.1, but he/she is in the financial position to supplement the deposit or to pay the full purchase price and wishes to proceed with the transaction, he/she must, before the fulfilment date:

2.3.2.1 accept the quotation from the bank and confirm, in writing to the transferring attorney, that a quotation for a lesser mortgage loan amount was accepted; and/or

2.3.2.2 waive the condition in clause 2.1, in full or in part, by unilateral written notice to the transferring attorney. It will then be deemed that the suspensive condition is fulfilled.

2.3.2.3 The purchaser must pay the balance between the initially required mortgage loan and the granted mortgage loan (or the full purchase price) to the transferring attorney on demand

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

118

Non-contractual conditions in Mortgage loan

- Sam Seller sells property to Pam Purchaser
- Subject to a mortgage loan R1 000 000 by 6 April 2020
- Contract contains no terms relating to:
  - Seller must provide building plans
  - Purchaser must first sell her property (subject-to)

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

119

Non-contractual conditions in Mortgage loan

- Sam Seller sells property to Pam Purchaser
- Subject to a mortgage loan R1 000 000 by 6 April 2020
- Contract contains no term relating to
  - Seller must provide building plans
  - Purchaser must first sell her property (subject - to)
- Pam obtains mortgage loan R1 000 000 5 April
- Mortgage loan contains 2 pre-registration conditions
  - Seller must provide Building plans
  - Purchaser must first sell her property

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

120

Non Contractual conditions in Mortgage loan

- Question
  - Did Pam Purchaser fulfil the suspensive condition?

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

121

Non-contractual conditions in Mortgage loan

Questions

- Did Pam Purchaser fulfil the suspensive condition?
- If we say yes, it means the agreement became Perfecta and is now enforceable against Sam Seller
- But transaction can't register because of two pre-registration conditions
- Pam can't place Sam Seller on terms for breach if he doesn't want to comply
- Can't argue that conditions imposed by bank is enforceable on Sam Seller
- Answer is that mortgage loan has only been approved provisional

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

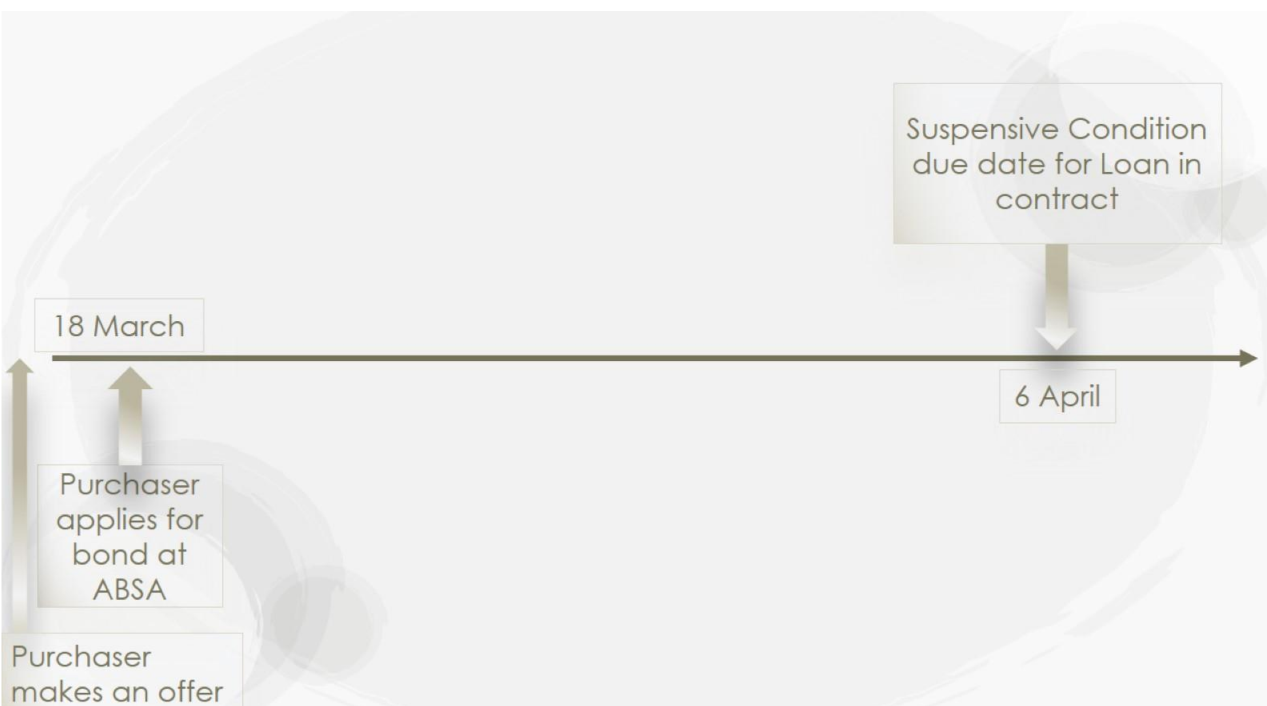
122

Non-contractual conditions in Mortgage loan

- Conveyancer needs to regulate the position properly
- Conveyancer must determine if Sam Seller is willing to incorporate 2 conditions into agreement
  - If not – Pam Purchaser did not fulfil suspensive condition
  - If Sam Seller is willing to incorporate the conditions
    - The terms must be negotiated; and
    - Conveyancer must incorporate it with an addendum

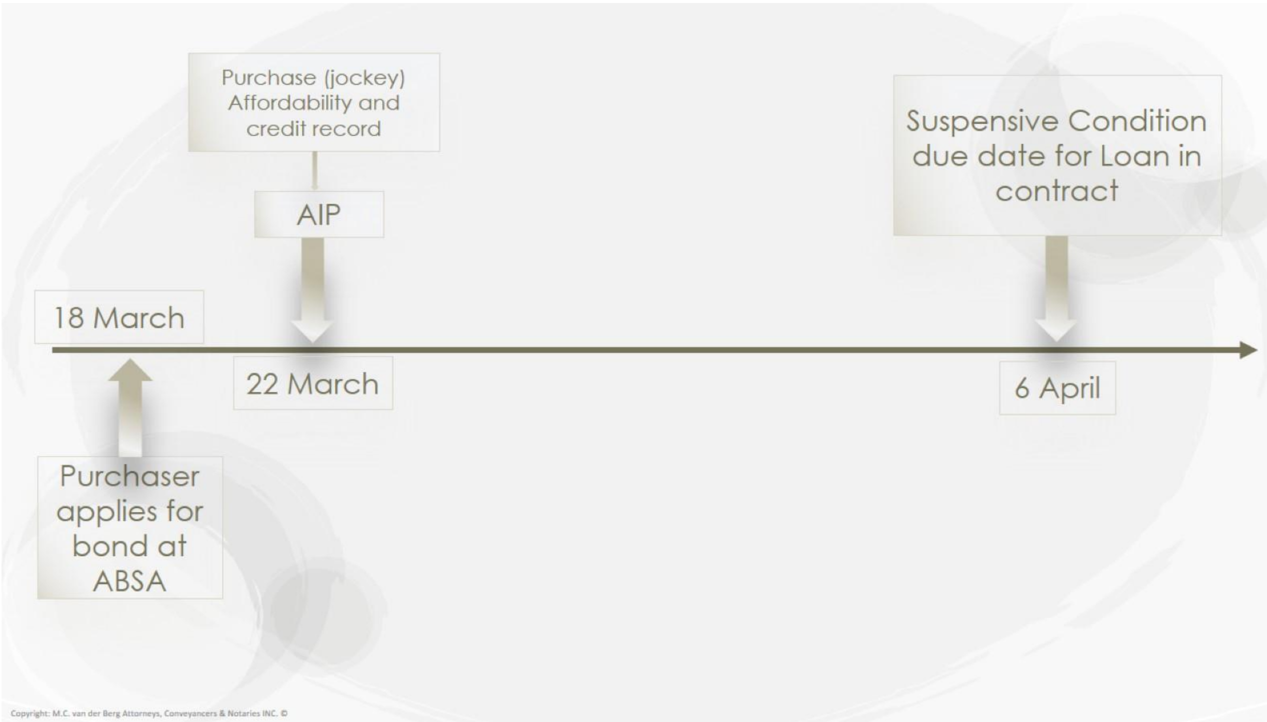
Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

123

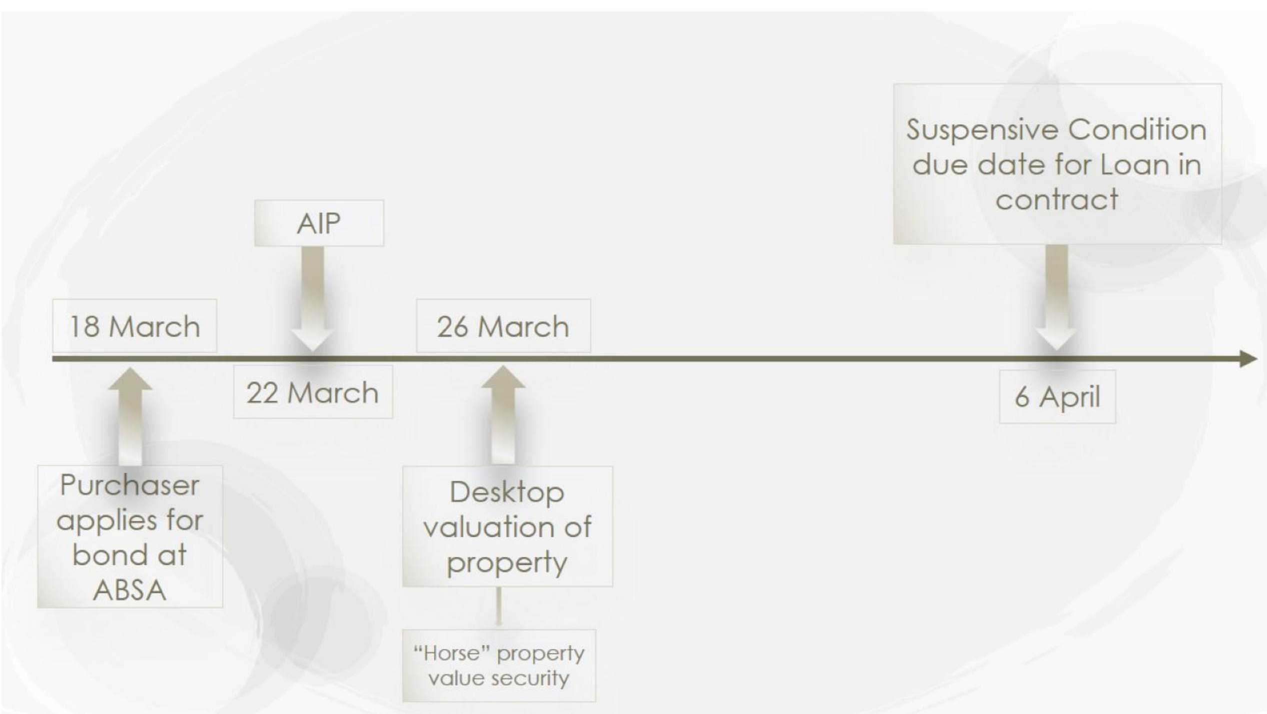


Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

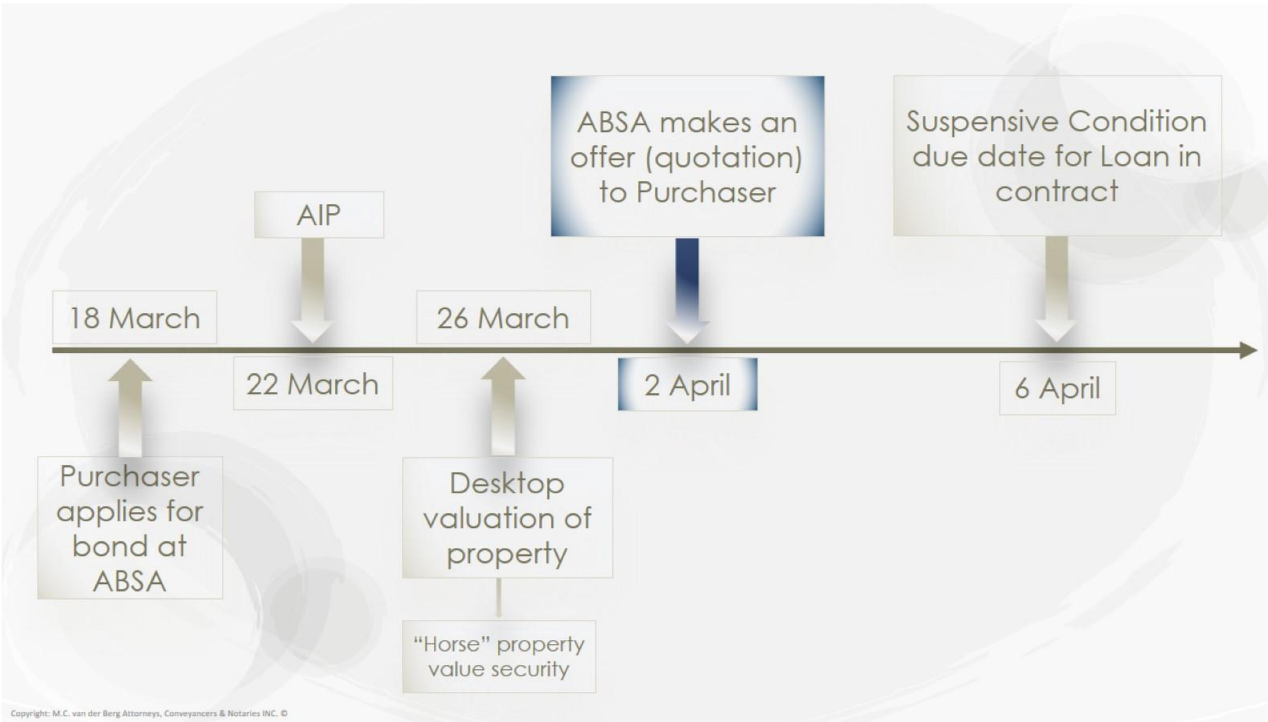
124


Purchase (jockey)
Affordability and
credit record
AIP
Suspensive Condition due date for Loan in contract
18 March
22 March
6 April
Purchaser applies for bond at ABSA
Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

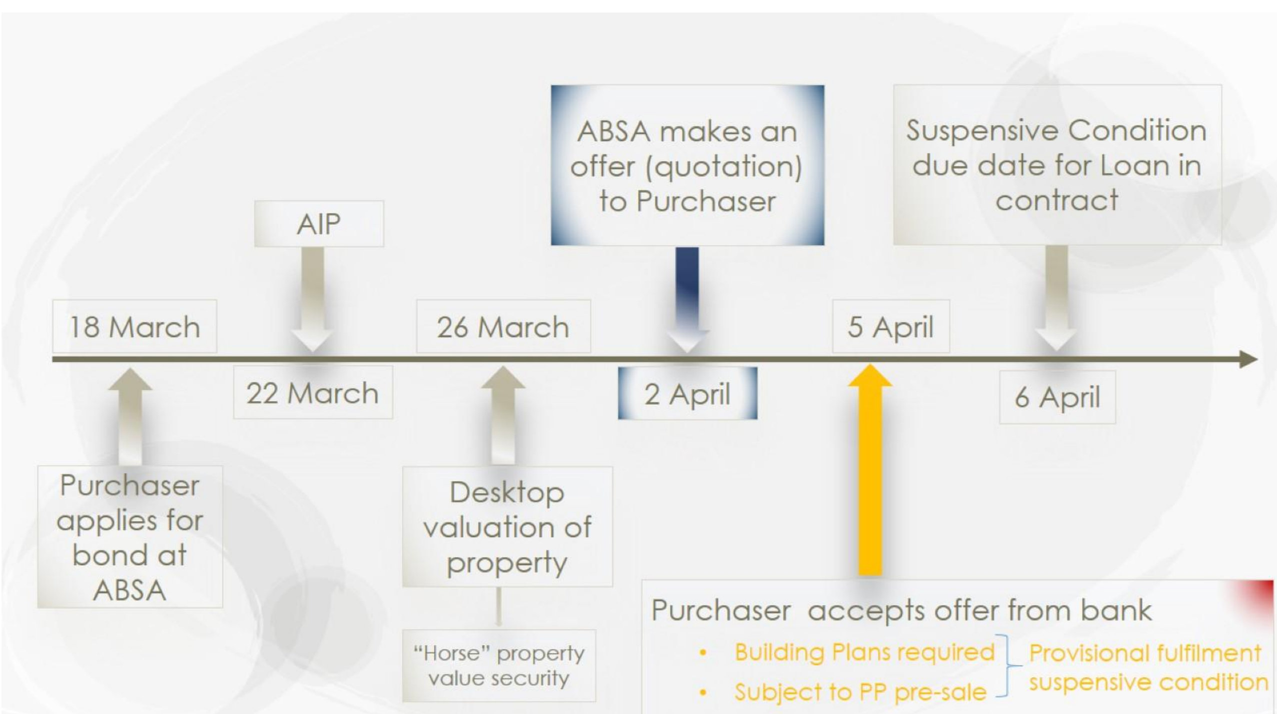
125


Suspensive Condition due date for Loan in contract
AIP
18 March
26 March
22 March
6 April
Purchaser applies for bond at ABSA
Desktop valuation of property
“Horse” property
value security
Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

126


ABSA makes an offer (quotation) to Purchaser
Suspensive Condition due date for Loan in contract
AIP
18 March
26 March
22 March
2 April
6 April
Purchaser applies for bond at ABSA
Desktop valuation of property
"Horse" property value security
Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

127


ABSA makes an offer (quotation) to Purchaser
Suspensive Condition due date for Loan in contract
AIP
18 March
26 March
5 April
22 March
2 April
6 April
Purchaser applies for bond at ABSA
Desktop valuation of property
"Horse" property value security
Purchaser accepts offer from bank
Building Plans required
Subject to PP pre-sale
Provisional fulfilment suspensive condition
Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

128

129

Approval of Mortgage loan

2.4. If any condition in the purchaser's mortgage loan agreement places non-contractual or legally unenforceable obligation(s) on the seller, it will not be construed as usual terms and conditions as set out in clause 2.1.

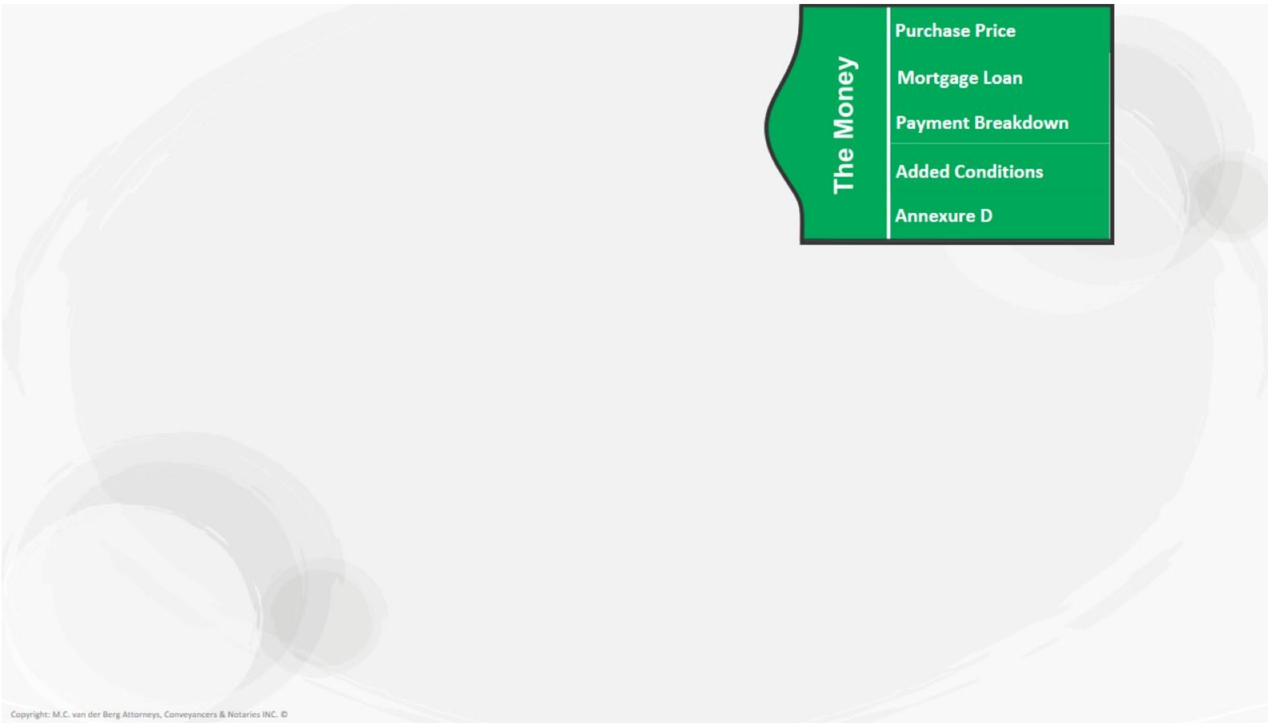
Such condition renders the mortgage loan approval provisional. To ensure that the suspensive condition is fulfilled, the seller must reject or, in principle, accept the inclusion of such obligation(s) in this agreement, in writing, within 2 (two) days from the transferring attorney's written request.

2.4.1 If the seller rejects, or neglects to indicate that he/she accepts the conditions it is deemed that the provisional mortgage loan does not fulfil the suspensive condition in clause 2.1.

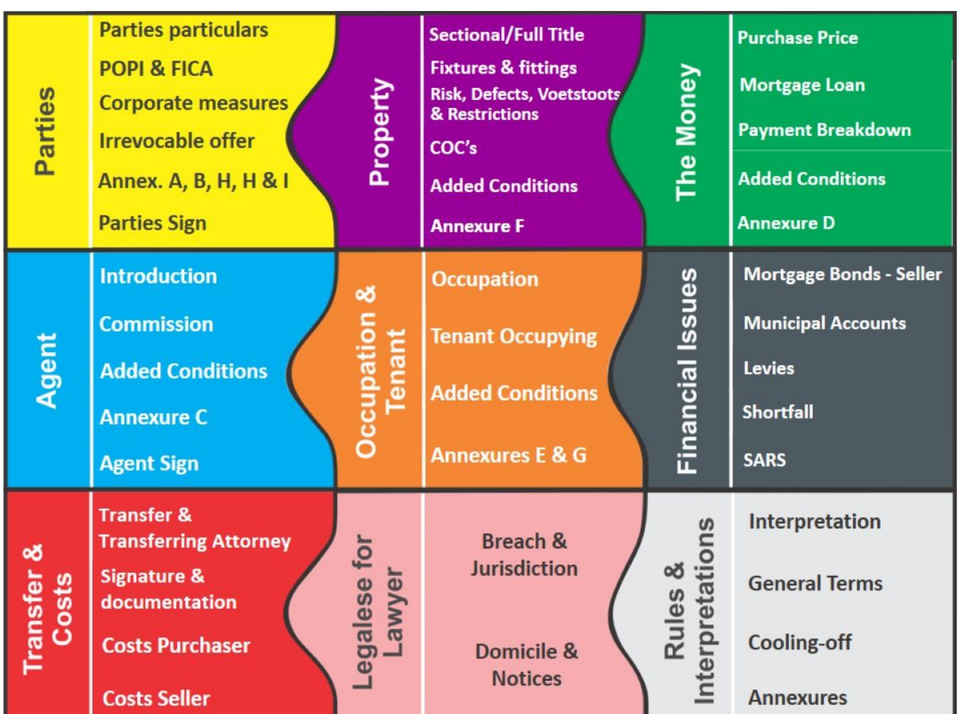
2.4.2 If the seller accepts these conditions in principle, the parties must, within a further 3 (three) days after acceptance thereof, agree on the terms of the incorporation thereof as set out in clause 17. 2. Failure to do so has the effect that the mortgage loan does not fulfil the suspensive condition in clause 2.1.

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

130


The Money
Purchase Price
Mortgage Loan
Payment Breakdown
Added Conditions
Annexure D
Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

131


Parties
Parties particulars
POPI & FICA
Corporate measures
Irrevocable offer
Annex. A, B, H, H & I
Parties Sign
Property
Sectional/Full Title
Fixtures & fittings
Risk, Defects, Voetstoots & Restrictions
COC's
Added Conditions
Annexure F
The Money
Purchase Price
Mortgage Loan
Payment Breakdown
Added Conditions
Annexure D
Agent
Introduction
Commission
Added Conditions
Annexure C
Agent Sign
Occupation & Tenant
Occupation
Tenant Occupying
Added Conditions
Annexures E & G
Financial Issues
Mortgage Bonds - Seller
Municipal Accounts
Levies
Shortfall
SARS
Transfer & Costs
Transfer & Transferring Attorney
Signature & documentation
Costs Purchaser
Costs Seller
Legalese for Lawyer
Breach & Jurisdiction
Domicile & Notices
Rules & Interpretations
Interpretation
General Terms
Cooling-off
Annexures

132

How can we assist?

M.C. VAN DER BERG ING INC
ATTORNEYS, CONVEYANCERS & NOTARIES
Your Property Attorneys

Tiaan (M.C.) van der Berg
Founder and Director
E-mail: tiaan@mcvdberg.co.za
Cell: 083 709 8899

Tabea Ramarumo
Director
E-mail: tabea@mcvdberg.co.za
Cell: 071 355 9713

Retha Beukes
Marketing Consultant
E-mail: retha@mcvdberg.co.za
Cell: 082 605 6828

Berna Beukman
Marketing Consultant
E-mail: berna@mcvdberg.co.za
Cell: 071 609 5421

Copyright: M.C. van der Berg Attorneys, Conveyancers & Notaries INC. ©

133