

Cancellation of a property sale agreement. What are the implications?

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Once an offer to purchase has been signed by the buyer and accepted by the seller, it becomes a legally binding agreement. It may happen that once the agreement has been concluded, one or both of the parties decide that they no longer wish to proceed with the transaction. The seller may, for instance, decide that he no longer wants to sell the property or the buyer may decide that he no longer wants to buy the property. Are there any implications for such a decision?



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The short answer is “yes”, the provisions of the agreement and the circumstances under which the agreement was cancelled can have financial implications for either or both parties.

The non-continuation of an agreement does not always bring about financial implications. For instance, an agreement which contains a suspensive condition and which is not fulfilled will have the effect that the agreement lapses and the parties’ legal position is restored as if the agreement has never been entered into.

Examples of suspensive conditions are the requirement that the buyer should secure mortgage finance from a bank for a certain amount or that the buyer should sell his existing property. Suspensive conditions should be fulfilled within a specified period, failing which the agreement lapses.



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Financial implications to consider

As alluded to above, there can be instances where there are financial implications for either or both of the parties involved when an agreement is cancelled, even if the parties agree amicably not to proceed with the transaction. Legal fees and estate agent commission come to mind.

Once the agreement has been signed, a conveyancing attorney is appointed to attend to the registration of the transfer of the property into the buyer’s name. Similarly, if the buyer is purchasing the property through bank finance, the bank will appoint an attorney to attend to the registration of a mortgage bond over the property which will serve as the bank’s security for financing the transaction.

Both attorneys would be entitled to claim what is known as “wasted costs” for the work that they have done since receiving instructions up to the point of being informed of the cancellation. The recommended tariff issued by the Legal Practice Council provides for the percentage of wasted costs which should be charged, calculated on the normal fees, depending on

the stage at which the transaction was when it was cancelled.

Where an estate agent was the effective cause of a transaction, commission can be claimed, irrespective of whether the transaction was successfully completed. Sellers and buyers should take care of the provisions of an agreement in this regard. It is not uncommon for agreements to provide that commission may be recovered from the party who was the cause of the cancellation.

If an agreement required the seller to fix certain defects on the property prior to registration and the buyer subsequently elects to renege on the agreement, then the seller will be entitled to recover the expenses incurred for the repairs from the buyer.

Of concern to a purchaser should be the possibility of forfeiting a deposit paid when the terms of the agreement are not being complied with. The default provisions of the agreement should be carefully considered in this regard.



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Read the terms and conditions

In as much as it is possible to cancel an agreement of sale without attracting any financial implications, it is important for parties to understand that there may be instances where the cancellation of the agreement may leave one out of pocket.

It is equally important for parties to read the terms and conditions of their sale agreement in order to understand under which circumstances they would be allowed to cancel the agreement without dire consequences. It will be prudent to consult with a property law expert to obtain proper legal advice before signing a sale agreement.

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