

# Property purchases: what constitutes a breach of contract

When a transfer of a property is to take place, it is through the offer to purchase (OTP) (or sale agreement), which has to be in writing that all the conditions of the sale are named and made binding.



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This is according to Nelio Mendes, marketing manager of estate agency SAProperty.com, who explains that by having all the details of the transaction in writing, little room for uncertainty is left and the conditions of the sale or other important aspects of the deal are listed so that both buyer and seller know what their rights and obligations are, e.g. bond approval, repair of certain items in the home, beetle or electrical compliance, etc.

This contract is a binding document once signed, and if either the buyer or seller were to want to cancel or act to cause breach, they could be held accountable for the breach of contract and could be penalised if the opposing party were to claim damages, warns Mendes.

## Considering the aggrieved party's situation

If there is no legal reason for the contract to be cancelled, both buyer and seller can be compelled to fulfil its obligations and complete the transaction, as this is what SA law dictates. Immovable property transfers are governed by South African legislation (the Land Alienation Act soon to be replaced by the Property Transactions Bill) to protect all the parties involved. While it may not seem logical to compel someone to fulfil the contract, the aggrieved party's situation needs to be considered, said Mendes.

If the seller for instance has already bought somewhere else and is expecting money from this transaction to pay for the future residence, or the buyer has vacated his property and moved from afar in anticipation of moving to his new home, these changes set in motion cost and the party who is not at fault should be compensated for his loss or damages suffered. The deposit held in trust by the agency or the conveyancer is often the 'safety net' in cases such as these, as this can be claimed to compensate the party who is adversely affected.

## Suspensive conditions

The only instances an OTP can legally be cancelled without the risk of penalty is if one or more of the suspensive conditions could not be met (bond approval or sale of property) or if the contract stipulates that either party is allowed to

cancel the contract within a stipulated period of time (72-hour clause).

Any other reasons for cancelling the deal are seen as breaches of the contract, in which case the party who is in breach will in all likelihood lose a sizeable sum of money.

“It is, therefore, very important to consider carefully what it is you’re committing to, and not enter into a contract lightly or hastily. If at all possible, take time to read through the contract with your estate agent or consultant an attorney and ask questions if there is anything that you don’t understand before signing,” said Mendes.

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