

17 interesting facts and tips on sale of land agreements

1. A contract of sale of land signed by the seller and the purchaser is valid even if no witnesses signed the contract.
2. A contract of sale of land can be concluded on behalf of a company to be registered.
3. A contract of sale of land cannot be concluded on behalf of a trust to be registered – a so-called contract for the benefit of a third party can, however, be used to achieve the same result.
4. A contract of sale of land concluded orally is not valid.
5. A contract of sale of land is valid and enforceable even if the contract does not stipulate when the purchase price has to be paid as long as the parties, the purchase price and the property to be sold are in the agreement.
6. A contract of sale of land lapses if the purchaser fails to obtain a loan within the time described in the agreement as a condition precedent, for example, 30 days. The purchaser cannot revive the contract by giving notice to the seller that he still wants to proceed with the transaction after the said 30 days. The purchaser and the seller will have to sign a new agreement.
7. Regulation 29 of the Alien and Invasive Species Regulations gazetted in terms of the National Environmental Management: Biodiversity Act, 2004 obliges the seller of land to notify the purchaser in writing of any invasive species on the land.
8. Where the seller is a farmer, registered for VAT, who sells a house, he owns in town no VAT is payable in respect of the transaction.
9. Where the purchaser of a residential dwelling converted the dwelling into a commercial property and uses it for his VAT enterprise the purchaser can claim back 15% deemed input VAT on the purchase price – in other words, not just the Transfer Duty amount that he might have had to pay on the purchase price.
10. The purchaser of a house can still claim damages from the seller despite there being a voetstoots clause in the agreement if the purchaser can prove that the seller was aware of the latent defects, such as a leaking

roof or hidden cracks in the walls.

11. It is normally safer for the seller to let the purchaser occupy the property only after the registration date or at least after the purchaser has paid the purchase price in trust or delivered bank guarantees to secure the payment of the purchase price.
12. Where agricultural land, occupied by farmworkers, is sold the agreement should in detail deal with the future employment of the farmworkers and also their possible eviction if relevant.
13. Any payments by a purchaser into the trust account of the transferring attorneys would normally be invested so that interest is earned on the funds pending the transfer of the property.
14. Where selling land is part of the seller's business, for example, where the seller is a property developer or a speculator, the Consumer Protection Act, 2008 applies to the transaction which amongst others nullifies any standard voetstoots clause contained in the sale agreement. In such a case only a voetstoots clause, catering for the purchaser accepting specific latent defects in the property, would be enforceable.
15. Any amendment of a contract of sale of land must be in writing and signed by both parties.
16. A contract of sale of land signed by only one spouse, married in community of property, is invalid, except if the conclusion of the agreement is performed by such a spouse in the ordinary course of his or her profession, trade or business (Section 15 of the Matrimonial Property Act, 1984).
17. The Electrical Installation Regulations, 1992, framed under Act no 6 of 1983, as extended by Act no. 85 of 1993 pertain to an electrical certificate for the house on the land sold and also to any electrical fence on the land; in other words, a so-called COC ("certificate of compliance") has to be obtained for the house and the electric fence.

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