What are the most important legal principles in respect of suspensive conditions?

Most contracts of sale of houses contain a suspensive condition that the purchaser has to obtain a loan for a certain amount within a certain period of time. What are the most important legal principles in this regard?

The general rule is that the contract lapses if the loan is not granted to the purchaser within the time period stipulated.

2. As the suspensive condition is in the agreement for the benefit of the purchaser, he can however renounce this benefit by giving notice to the seller before the expiry of the time period mentioned in the suspensive condition, for example where the purchaser finds other funds to finance the transaction and no longer wants to use a bank loan.

3. Even if the contract does not stipulate this, there is a duty on the purchaser to take all reasonable steps to obtain the loan. Should he fail to do this the seller could still enforce the agreement, even if the loan is not granted, based on the doctrine of fictional fulfilment. The suspensive condition is therefore not a back door for the purchaser to get out of the agreement.

4. Whether the estate agent is entitled to still claim estate agent's commission even if the condition is not fulfilled depends on the wording of the estate agent's commission clause. Some agreements stipulate that an estate agent is in any event entitled to the commission even if the condition is not fulfilled. Most contracts, however, stipulate that the estate agent can only claim commission once the suspensive condition has been fulfilled. The doctrine of fictional fulfilment would also be applicable in respect of estate agent's commission where the loan is not granted, i.e. the estate agent will be able to claim the commission if the purchaser fails to take reasonable steps to obtain the loan.

5. It is also important not to just look at the date or time frame stipulated for the granting of the loan and accept that the contract has lapsed on the date stipulated. Some contracts provide for automatic extension of the time frame.