

What is the effect of a suspensive condition in an agreement of sale?

In an agreement of sale between a buyer and a seller for the acquisition of a property, there may be suspensive condition clauses. Until all the suspensive conditions have been met, the sale cannot proceed. Thus it is very important to understand the power of suspensive conditions in a deed of sale. These are conditions written into the agreement by buyer or seller which must be fulfilled for the agreement to become a Deed of Sale, that is, unconditional and legally binding on all parties. These clauses in an agreement of sale allow the buyer or seller to cancel the agreement, restoring both parties to the position they would have been in, had the agreement not been signed. Therefore the agreement lapses and becomes null and void and none of the parties will have any claims against each other if a suspensive condition is not met.

Suspensive conditions normally cover the following:

* Approval of a Loan

This clause allows for the purchaser to obtain a mortgage bond for a specific amount within a specific time period. This condition will only be met if approved by a specific bank or financial institution.

* Sale of Purchaser's Property

Very often, purchasers have to sell their property in order to finance a new property. The clause must then state the exact procedure that has to be carried out, that has to include a specific time period. Remember that the sale cannot proceed until the buyer has sold his house by the specified date and that all the conditions attached to his sale are met.

In addition to the above remember that any clause beginning with the words "This offer is subject to...." is a suspensive condition.