

STANDARD OFFER CLAUSES AND THEIR BASIC MEANING

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STANDARD OFFER CLAUSES AND THEIR BASIC MEANING

Purchase Price

2. PURCHASE PRICE

The purchase price is R _____ [_____
_____] payable as follows :

This indicates the full value for which you intend to make the offer.

Initial Payment / Deposit

A deposit of R _____ [_____
_____] to the conveyancers on signature hereof to be retained in a special interest bearing trust account for the benefit of the Purchaser until registration of transfer with all interest thereon to accrue to the Purchaser. At such time the accrued interest will be paid to the Purchaser and the remaining capital [if any] shall be paid to the conveyancers.

Initial payment can also be called a deposit. There is no standard percentage for a deposit, in fact you do not need a deposit to purchase a property. It does however make the seller feel more comfortable. The seller does not get to keep this deposit if you are not able to fulfil any suspensive condition you have put in the offer (a bond). If you fail to get your bond your deposit is paid back to you, unless you breach the agreement of sale.

Balance

The balance/full purchase price to be paid in cash to the conveyancers against transfer of the property into the name of the Purchaser to be secured by a banker's or other guarantee[s] approved by the conveyancers which guarantees[s] must be delivered within 14 [FOURTEEN] days of acceptance of this offer or fulfilment of all suspensive conditions [if any] whichever date occurs last.

The balance is the purchase price minus the deposit. The balance can come from three places, in cash, from a bond or from the sale of a property you are selling. It is important to note where the money is coming from as they are then suspensive conditions and protect you if one of them cannot be fulfilled.

Mortgage Bond

MORTGAGE BOND

This agreement is subject to the suspensive condition that a bank grant in writing on its normal terms and conditions a loan or loans secured by a mortgage bond or bonds over the property and totalling R_____ by no later than the _____ day of _____

The Purchaser shall be liable to ensure that all reasonable steps are taken to enable the loan to be timeously granted.

This condition shall be deemed to have been fulfilled on the date upon which the financial institution issues a written loan quotation to the purchaser on the terms hereinabove stated.

If a mortgage bond is required, then this clause is where you would say the bond you would require and by when you would get the bond by. The standard is 14-21 days, if you are buying as an entrepreneur you will need a little longer.

Sale of Property

2.1.3 Proceeds from sale of PURCHASER'S property
situated at
to be sold within days of SELLER'S signature hereof: R

2.5 If the PURCHASER needs to sell his existing property (refer to clause 2.1.3) then this entire AGREEMENT is subject to the suspensive condition that before the time limit specified in clause 2.1.3 expires, the PURCHASER is able to conclude an agreement for the sale of the PURCHASER'S property for the amount specified.

If you need to sell a property to purchase this property, ensure that a clause similar to this is one is included. Even if your property has already been sold but is still going through the transfer process. Anything could happen!

Voetstoets

VOETSTOOTS

The Seller warrants to the Purchaser that at the time of sale there are no latent defects in the property known to the Seller. Save for this, the property is sold VOETSTOOTS and subject to all the conditions and servitudes mentioned, referred to or contained in the title deed thereof, and any lease thereof, and in the condition and the extent such as it now lies.

This is a vitally important one. If you are not buying from a developer this applies! Please read the next downloadable PDF on our check list which is all about this, but in essence, the responsibility is on you as the consumer of a second-hand item to look for and find any hidden (latent) or obvious (patent) defects in the property. Request a defects disclosure list from the estate agent.

Transfer vs Occupation

OCCUPATION

Vacant occupation / occupation subject to existing tenancies *[delete appropriately]* of the property shall be given to the Purchaser on the _____ day of _____

If the date of occupation does not coincide with the date of registration of transfer, the party enjoying occupation of the property, whilst registered in the name of the other party shall pay to such party a rental of R _____ per month payable from date of occupation monthly in advance at the conveyancer's office. Pending registration of transfer only the Purchaser and immediately family members of the Purchaser shall be entitled to occupy the property and no alterations of any nature may be made to the property.

TRANSFER AND COSTS

Transfer shall be effected by the Seller's conveyancers ["the conveyancers"] as close to the date of occupation of the property as possible / as close as possible to *[delete appropriately]* _____. The Purchaser shall on demand pay all transfer costs, transfer duty, loan application costs, mortgage bond costs, stamp duty and all charges incidental hereto and shall on demand sign all transfer, loan applications and mortgage bond registration documents.

Transfer is an unpredictable date; it is a moving date because transfer is handled by the deeds office which is a government department. The transferring attorneys can often get very close to the date requested if you do set a date for transfer, but there is no guarantee that they will get it spot on. The **occupation** date is a set date. Which means no matter when transfer happens you will have access to the new property on the occupation date. If you do take occupation before transfer, you will be responsible for occupational interest (a type of rent) set out above and you will not be allowed to do any alterations to the property until full transfer, unless agreed upon by both parties.

Property with a lease

Be aware if there is a lease on the property then the lease agreement comes before the sales agreement “Huur gaat voor koop”. What this means is that the lease agreement takes precedence over the sales agreement. Meaning any rights the tenant has remains even if the property is sold.

Breach and Notice

BREACH

In the event of the Purchaser committing any breach of any of the terms or conditions of this agreement and thereafter failing to remedy any such breach within 7 [SEVEN] days of receipt by him of a written notice calling upon him to remedy such breach, then the Seller shall be entitled without further notice and without prejudice to any other rights which he may have:

- 9.1 to cancel this agreement and claim damages and interest; or
- 9.2 to cancel this agreement and retain all monies already paid by the Purchaser in terms hereof as agreed pre-estimated liquidated damages and claim further damages should the Seller's damages exceed such monies already paid; or
- 9.3 to sue for the full purchase price and interest thereon and damages.

NOTICE

For all purposes of, relating to or arising from this agreement [which shall include, but not be limited to, the service of any notices or processes of court], the Seller and the Purchaser each chooses as his respective *domicilium citandi et executandi* the residential address as reflected above.

Any notice in terms of this agreement shall be deemed to have been received by the party to whom it is addressed and the contents thereof to have come to the knowledge of such party within 5 [FIVE] days after the posting of such notice by pre-paid registered mail to such party's *domicilium citandi et executandi* or upon the same day as delivery of such notice if delivered by hand to such party's *domicilium citandi et executandi*, or upon the same day if faxed to the fax number [if any] or emailed to the email address reflected in the personal information schedule annexed to this agreement [subject however to the sender retaining and producing on demand proof of successful transmission] as the case may be.

This one is self-explanatory my only note would be to be aware that any offer can become a binding sales agreement, so be aware of what you are agreeing to. Your offer is not retractable once made until the expiry date or the owner responds in writing.

Compliance Certificates

There are 5 types of Compliance Certificates.

Beetle

- With the beetle inspection they are only able to inspect all the accessible portions of the property for wood boring beetle. In other words, they will not lift fitted carpets to inspect underneath.

Water installation certificate (Mainly in the western cape) (Sometimes called the plumbing certificate which it is not)

- This was in line with the Western Capes drive to save water and will mostly look at water loss before use, in other words, any wastage of water but will not inspect the plumbing for blockages or anything like that.

Electrical wiring compliance certificate

- This certificate, issued by a registered electrician, confirms that the electrical installation in the property meets the safety standards. It ensures that the electrical wiring, distribution boards, plugs, and switches are safe but not that any fixed appliances like geysers are working.

Electric fence Compliance certificate

- If the property is equipped with an electric fence, a registered installer needs to issue a compliance certificate. It confirms that the electric fence is installed according to the legal requirements.

Gas Compliance certificate

- If the property has a gas installation, such as a gas stove or a gas-powered water heater, a registered gas practitioner must issue a gas compliance certificate. It ensures that the gas installation complies with safety standards and regulations.

Expiration

REVOCAATION

This offer is irrevocable until _____ on the _____ day of _____ at which time unless it has been accepted in writing and such acceptance communicated to the Offeror or the Offeror's Agent it will be deemed to have been withdrawn. It is specifically recorded that the production of a counter offer by the party to whom this offer is made shall not be deemed to be a refusal of this offer and the offer shall accordingly remain irrevocable until expiry of the period herein above stated.

Expiration is the length of time your offer will be valid for, keep in mind that your offer is irrevocable until this expiry period. Obviously the sooner the expiry, the less time the owners have to think about it, the longer the period the more time the owners have to find another offer.

Fixtures and Fittings

FIXTURES

The property is sold inclusive of all fixtures and fittings of a permanent nature including all existing electric light fittings, television aerials, satellite dishes, pool cleaning equipment and furthermore _

But excluding _____

In South Africa property is sold with all fixtures and fittings. The best way to determine what is included if you don't want to ask, is to imagine flipping the house upside down and anything that would fall off the owners can take anything bolted down they can't, if you are unsure about anything write it into the agreement.

72 Hrs continue Marketing Clause

72 HOURS

Prior to the fulfilment of all suspensive conditions, the Seller has the right to continue marketing the Property. Should the Seller at any time prior to the fulfilment of the suspensive conditions referred to receive another offer to purchase his/her property ("the competing offer"), which competing offer is not subject to the sale by that Purchaser of that Purchaser's property, alternatively if the competing offer is so subject where all suspensive conditions contained in the competing offer have been fulfilled, and which competing offer the Seller finds more acceptable and wishes to accept, then the Purchaser/Agent herein shall be notified of such fact in writing and the purchaser shall have 72 (seventy two) hours (including Saturdays, Sundays and public holidays) time, calculated from the time such notice is sent by or on behalf of the Seller, to comply with all suspensive conditions contained in this agreement OR to waive in writing the benefit of all suspensive conditions in the current Agreement. Should the Purchaser fail to comply with the aforementioned within the stated time, the Seller shall be entitled to proceed with the competing offer, and this Agreement will lapse and be of no further force or effect once the Seller accepts the competing offer.

This has many names such as, the continue marketing clause or 72 hours clause. It entitles the sellers of the property to find another offer, an offer which they wish to accept other than yours. In the event that they do find a better offer, they will have the right to give you 72 hours in which to fulfil or cancel any suspensive conditions in your offer (bond for example) failure to do so will render your agreement null and void in which case the new offer takes your place.

Right of Extension

REAL RIGHT TO EXTEND

In the event of the property being part of a sectional title complex then the attention of the Purchaser is drawn to the fact that the original developer of the sectional title complex of which the unit herein purchased forms a part, has reserved to himself in terms of Section 25 of the Sectional Title Act, the right to erect and complete a further building or buildings or extensions to existing building/s upon the common property.

This is exclusively for sectional title / apartment blocks. The developer can register a right of extension over a new development, meaning he will be able to build on new units later on, either by extending the buildings height or by erecting another apartment block in the garden space. This right of extension has a limited time period.