<u>72 Hour Clauses – a few rules of the road!</u>

WHEN DOES ONE ISSUE THESE? Not before: all suspensive conditions in the competing offer are met; and where you have "subject to" deals, ensure that ALL deals are 100% safe <u>and</u> financially secured. If it is a cash deal, first secure a decent deposit, at the very least.

HOW DOES ONE ISSUE SUCH A NOTICE and WHEN DOES THE 72 HOURS START? This depends entirely on the wording of the 72-hour clause. It might refer to 72 hours, excluding weekends and public holidays, and others do not exclude them. Then they will be included. Some again refer to 3 business days. A business day would be an entire business day, so the day of sending would not apply. *It is CRITICAL that the due date be correctly calculated*.

DOES ONE CALCULATE AS FROM "DISPATCH" or "RECEIPT" or "DELIVERY"? Once again, it depends on the wording of the 72-hour clause. If the OTP does not specifically allow dispatch by email, then we are afraid that hand delivery may be required regardless of where the other buyer is situated! By law, actual receipt will override what the contract prescribes but if a purchaser does not check his/her emails regularly, or at all, you will never know when the 72 hours starts. Either way, if there is any dispute or doubt, then the onus will be on the seller to prove that proper notice was given.

WHAT MUST THIS NOTICE CONTAIN? Check the particular wording of the offer you are wanting to put on terms. Some require that the competing offer must be attached with proof of finances being in place, others not.

CAUTIONARY NOTES: A seller is not obliged to send a 72-hour notice. Always first get the seller's express written consent before issuing notices. It is his/her RIGHT to do so not an obligation. It is a condition to the seller's benefit. A seller may even give more than 72 hours or extend it. Or he may elect not send it at all! Remember that the first offer is between the seller and that buyer – the competing buyer has no right to demand that the first buyer be put to terms.