COST INCLUSIVE OFFERS AND BONDS – HOW DOES THIS REALLY WORK?

From time to time we are asked whether it is possible for a buyer to make an offer, on the basis that the seller must then pay the costs? This is usually where the buyer does not have sufficient funds to pay for costs and he/she then applies for a larger bond. The answer is yes, theoretically it is possible but the problem one faces is that the cost inclusive purchase price, is then used to determine transfer duty. Which means the total costs will be more than was anticipated. It is common knowledge that developers will sell new units on the basis that they will pay the transfer costs but that is different because transfer duty is not payable with developments. Banks are also prone to grant loans for such purchases. It is not at all advisable to make offers on normal second-hand properties where the seller must pay costs, because it makes things unnecessarily complicated. There is no reason for the purchaser not to pay costs, given that the selling price will in any event just be increased by the costs. Also, in larger sales, the Seller may have to bridge the Transfer Duty, adding to the overall cost.

Secondly, if a sale agreement is amended to read that a seller must pay the costs, the bank's attention must be drawn to this upon application for the loan – otherwise we have what is known as a "loaded deal" which is not allowed. It is very likely that a bank consultant, when considering a normal loan application, may not see that the OTP was amended to allow for the seller to pay costs and then the bond is granted for the full sum - as if it was "cost inclusive" - whilst it was not applied for as such. Most bond instructions specifically state that bond proceeds may not be used to pay costs. Transferring attorneys are then also asked to sign a confirmatory letter for the bond attorneys, that costs for the transfer have been secured and that there is no "side" or hidden agreement regarding the purchase price. As a result, it is virtually impossible to try and pull the wool over the bank's eyes.,

The only solution is to therefore make a normal asking price offer, and then to make it conditional upon the bank also including costs – a so called 105% loan. However, this is only available to first time buyers and depending on the bank, usually limited to around R1 700 000 maximum purchase price. Also be aware that the extra 5% may not be enough to cover the normal Transfer and Bond costs.