BOND CONDITIONS THAT REQUIRE PLANS OR OCCUPANCY CERTIFICATES - WHO MUST PAY?

We have noticed an increased trend by the banks who grant bonds to make it a condition of the bond that there must be approved building plans and/or occupancy certificates in place for any improvements, even where the purchaser bought the property voetstoets and did not make either of these documents a condition of sale. This raises a thorny question: If a seller does not have these documents in his possession, who is then liable to pay for the costs that need to be incurred in order to comply?

Given that the property was bought voetstoets and given that these requirements form part of the bond conditions, there is no reason why the seller should be held liable for such costs. If a purchaser accepts a bond with such conditions, then they should be warned that any such costs will be for their account, and not the seller's.

This is not the end of the matter though. What must a purchaser do in these circumstances if they cannot afford to pay for the approved plans or for the work required to obtain the occupation certificate? In both cases the costs can run into thousands upon thousands of Rand because the local authorities might want all sorts of certificates, inspections and reports to be done. Purchasers should therefore be very careful before they hurriedly accept bonds which have such conditions, else they commit themselves and realise later on, that they actually cannot afford this.

Luckily, the vast majority of contracts will make the sale conditional upon a bond being granted on a bank's standard or normal terms and conditions. We do not believe that a term like this, making the registration of the bond conditional on the production of approved plans or an occupational certificate, should be viewed as standard or normal.

What this means is that a bond like this will not need the requirements of the bond clause in the deed of sale. The purchaser may therefore refuse to accept the bond and the sale will then lapse for want of fulfilment of the bond clause. This would then give the purchaser the opportunity to try to renegotiate the terms of the sale with the seller and possibly come to an arrangement where either the seller will agree to provide these documents at their cost or where the costs could be shared, or the purchase price can be altered to make provision for this.

Please bear in mind that the process to have plans approved, or an occupancy certificate issued, can be lengthy. It would therefore always be advisable to get a professional opinion on how long it will take for this process before finalising timeframes for transfer, if a purchaser does accept a bond on such terms.

Lastly, if the bond clause provides that a bond is deemed to be granted when it issues a quote, for example, “on such terms and conditions as the bank deems appropriate”, then a purchaser may very well find himself in the unenviable position that regardless of such conditions being imposed, he is bound to the contract, whether or not he can, or wants to pay for these additional requirements! In such a case, the purchaser has agreed to accept the bond, regardless of any conditions imposed. Bond clauses like this operate unfairly against purchasers and we do not recommend them.

This article should serve as a reminder to estate agents to be familiar with the terms of their sale agreements and the duty that rests upon them, as per the Code of Conduct, to discuss all the material terms of the contract with the purchasers. Purchasers must be educated to understand the potential risks, especially if the bond clause allows the bank to impose any conditions it wants. Purchasers should also be advised to read their bond grant carefully, and to look for hidden conditions, before accepting any bond which has been approved.