

Cooling-off period only applicable in certain instances

By  Adrian Goslett

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Once an offer to purchase has been signed by both the buyer and seller, it immediately becomes a legal and binding sale agreement. In fact, the buyer will generally have already signed the contract before it is presented to the seller, which means that buyers need to be certain that they want to purchase the property before they sign the agreement.



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Many people are under the misconception that the Consumer Protection Act (CPA) gives them a cooling-off period when entering into a sales agreement. However, this is only applicable in certain instances. Sometimes buyers will sign offers on several homes in the hope that one of the sellers will accept, but if more than one offer is accepted they could find themselves in some hot water. It is best to submit one offer at a time and work from there.

R250,000 threshold

The Alienation of Land Act states that residential property transactions of R250,000 or less are subject to a cooling-off period of five working days from the signature of the offer to purchase. The cooling-off period does not apply to residential homes that are sold for more than the R250,000 threshold. Considering that this provision is still in place and not impacted by the CPA, only a very small percentage of property sales will be subject to the applicable cooling-off period.

Regarding the CPA, a purchaser has the right to cancel the purchase of a property within five business days – only if the sale is a result of direct marketing. Direct marketing means that the person has been approached directly either in person, by mail, or by electronic communication for the purpose of promoting or offering to supply goods or services. The cooling-off period will not apply to any sales that are a result of any other type of marketing, such as print advertising and show houses. It will also not apply if the purchase is made by a client that the estate agent is already working with.

The Act offers consumers protection if they enter into a transaction with a supplier in the ordinary course of the supplier's business. However, this excludes regular property sellers who do not earn a living from selling or buying property.

Cancellation extremely problematic

The CPA states that if the cooling-off period does apply, the five days do not start from the date that the offer is signed, but rather the day the property is transferred into the buyer's name. Considering that transfer can take between three and six

months after the offer is signed, cancellation of the agreement at this point could prove to be extremely problematic for all parties involved.

If a buyer has signed an agreement, but would no longer like to purchase the property, it is best for them to be upfront with the seller and let them know as soon as possible, rather than breaching the contract. The seller might be willing to let the buyer off the hook and look for another buyer, rather than drawing out the situation longer than necessary. It is possible for the seller to pursue the matter legally, which could leave the buyer with a very expensive impulse purchase on their hands. Buyers need to be 100% sure that they want the property before signing any contract.

ABOUT ADRIAN GOSLETT

Adrian Goslett is CEO and regional director of RE/MAX Southern Africa. He joined RE/MAX Southern Africa in 2005 as a franchise development consultant, supporting various regions and offices. Throughout his career at RE/MAX he has held various positions. In 2010, after successfully leading 160 offices and over 1500 agents in six countries through the worst years real estate has ever seen in South Africa in 30 years, Goslett was appointed as CEO of RE/MAX Southern Africa.

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