

Short notes on:

## **I WANT OUT! – CANCELLATION CLAUSES IN CONTRACTS**

### ***Introduction***

Cancellation of a contract is an extreme remedy for breach in contract law.

Be that as it may, many contracts nonetheless include cancellation clauses. They dictate the process to be followed should any of the parties to an agreement wish to cancel the contract due to breach or various other reasons.

### ***Is It Important to Include a Cancellation Clause In A Contract?***

Subject to certain limitations, parties have a certain degree of freedom when concluding contracts. Parties to a contract are therefore not necessarily obliged to include cancellation clauses in their contracts. However, there are a couple of factors to consider should they elect not to.

A significant factor in support of the inclusion of cancellation clauses would be contractual certainty. In some instances, the nature or form of a contract may result in that contract being subject to existing legislation. For example, the Consumer Protection Act 68 of 2008 as amended<sup>1</sup>, (hereafter "CPA"), dictates a termination process that will apply to a contract subject to the said legislation. In other words, should such a contract not include a cancellation clause, the cancellation process in the CPA will apply which may not be what the parties to the contract initially intended.

Further to same, cancellation clauses allow for certainty in terms of process. In other words, the parties to the contract, should they elect to cancel, will be confined to a single process as outlined in the contract and will not be able to self-determine a process for cancellation.

Cancellation clauses, in certain instances, allow for the circumstances under which a contract may be cancelled by the parties to be limited.

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<sup>1</sup> Consumer Protection Act 68 of 2008, as amended, Section: 14.

## ***Are Cancellation Clauses Always Beneficial?***

Whether or not a cancellation clause in a contract will be beneficial is highly dependent on the parties' requirements.

Cancellation clauses take many forms, and it is important to consider whether the process for same, envisaged in the contract, works for you.

Certain contracts allow for an automatic renewal of the contract should neither of the parties indicate that they wish the contract to terminate or be cancelled at the end of its initial period. Other contracts include penalty fees for cancellation.

It is, therefore important that parties to the contract are aware of the implications of the cancellation clause in their agreement.

### ***Conclusion***

It is impossible that a contract caters for every factual eventuality that may dictate possible cancellation. However, it is crucial to consider the risks of not having a cancellation clause in a contract prior to signature and further to consider how far those risks may be mitigated by the inclusion of one. This will often be the deciding factor in determining what will be the best fit for you.

Contact an Attorney at Schoemanlaw Inc for your contractual needs!