

Short notes on:

WHAT HAPPENS IF YOU BUY A PROPERTY AND THE OWNER DIES BEFORE THE TRANSFER IS COMPLETE?

With the excitement of buying a new home comes a lot of known and unknown stress, but one risk we cannot sometimes foresee is the death of a Property Owner / Seller in a Sale Agreement.

So what happens to you, a Purchaser, when the Owner/Seller passes away before an immovable property has been legally transferred into your name?

Is The Sale Agreement Valid?

The death of a Property Owner/Seller does not invalidate a Sale Agreement, nor does the agreement lapse. As long as it can be shown that the agreement was validly concluded and that all the requirements of a valid contract are met, the agreement will remain in place and the Executor of the deceased estate will have to ensure enforceability.

The Executor Of An Estate:

When the Owner/Seller dies, the Sale Agreement of the Immovable property must be halted, the owner's Estate must be reported, and the Master of the High Court must appoint an Executor.

The Executor will need to ascertain if the Estate is Solvent and if the Sale Agreement is valid and binding. Then, the Executor will obtain a certificate from the Master proving that no objections to the property exist. For instance, if the owner had existing debt.

Power Of Attorney In Favour Of The Conveyancing Attorneys.

At the stage before registration or if the matter has already been lodged at the Deeds Office, the Power of Attorney signed by the Seller in favour of the Conveyancer/ Transferring Attorneys will become invalid.

After the Estate has been reported to the Master, the Executor must sign a new Power of Attorney in favour of the Conveyancer/ Transferring Attorneys to proceed with the Sale Agreement. A Power of Attorney must also be endorsed by the Master of the High Court in terms of Section 42(2) of the Administration of Estates Act 66 of 1965.¹

Heir Consent:

With a Sale Agreement of the Deceased Estate's immovable property, all heirs must consent to the sale of the property. However, in the case of the Seller dying before registration and there is a valid and binding Agreement, consent of their heirs is no longer needed. If the heirs object to the Sale Agreement, you may go to court to enforce the Sale Agreement.

Conclusion

If you find yourself in a situation where you have purchased an Immovable property, and the owner dies, don't worry, the Sale Agreement is still valid and binding, but it may take a bit longer to finalise.

Contact an attorney at SchoemanLaw Inc for your property law needs!

¹ Administration of Estates Act 66 of 1965