

# **COOLING-OFF CLAUSE**

Presented by Meumann White Attorneys

**The cooling-off clause came into effect from 27 November 1998.**

The cooling off clause is entrenched in the Alienation of Land Act and not in the Estate Agents Act as originally proposed.

**The cooling-off clause applies to all purchasers EXCEPT:-**

Persons who buy land which is NOT used or intended to be used mainly for residential purposes (ie. Commercial, industrial or agricultural properties);

Persons who buy land at a price exceeding R250 000,00;

Persons who buy land in the name of a Company, Close Corporation or trust;

Persons who buy land at a publicly advertised auction;

Where the Seller and Purchaser have previously entered into an agreement of sale of the same land on substantially the same terms (this is to prevent purchasers enjoying multiple opportunities to cool off in respect of the same property);

Where the Purchaser has the right in the agreement to nominate or appoint another person as purchaser (this is to prevent a situation where a Company, Close Corporation or trust uses a natural person as a front to buy land);

Where the Purchaser purchases the land by the exercise of an option, which was open for exercise for a period of at least 5 days (this is to prevent an additional cooling-off);

The written notice which the Purchaser must deliver to the Seller or his agent will only be effective if:-

It is signed by the purchaser or his agent acting on his written authority;

It identifies the offer/agreement that is being revoked/terminated;

It is unconditional.

All monies received by the Seller, an estate agent, an attorney or any other person in respect of the offer/sale must be refunded to the Purchaser within 10 days of the delivery of the written notice.

No person is entitled to claim damages or remuneration in respect of the offer/sale, which has been revoked/terminated.

Any agreement by the Purchaser to pay a fee or penalty for exercising the cooling-off right or any waiver of the cooling-off right will be VOID.

A Purchaser who signs an offer/agreement (hereinafter referred to as "the later transaction") within 5 days after having signed an offer/agreement in respect of other land (hereinafter referred to as "the earlier transaction" and before he has exercised his right to cool off in respect of the earlier transaction shall:-

On signature of the later transaction be deemed to have exercised his right to revoke/terminate the earlier transaction; and

Forthwith after signature of the later transaction in writing notify the Seller in the earlier transaction of the

revocation/termination of that transaction. Any person who willfully or negligently fails to comply with this shall be guilty of an offence.

This clause does however not apply to a Purchaser who bona fide intends to purchase both properties.

The purpose of this provision is to ensure that Purchasers are not able to monopolize the market by buying all the properties that are for sale in a particular area, and in effect obtain options on all those properties, making it impossible for other purchasers to enter into enforceable sale agreements in respect of those properties before the cooling off period has expired.

This period of five days excludes the day he signed and any Saturday, Sunday or Public Holiday.

Where a Seller has counter signed an offer from a purchaser, his counter signature now constitutes a counter offer and the original offer is effectively killed off. Consequently when the purchaser accepts the counter offer the five day cooling off period will commence from the day after the purchaser's acceptance of the counter offer excluding a Saturday, Sunday or Public Holiday.

### **DRAFT CLAUSE**

The clause which we suggest be incorporated in your standard sale agreement/offer to purchase is as follows:-

"If the purchase price for the property does not exceed R250 000,00 then the Purchaser is, in terms of Section 29A of the

Alienation of Land Act, 1981 , as amended , entitled , within 5 (FIVE) days after signature hereof by the Purchaser , to revoke this offer or , in the event of the offer having been accepted by the Seller , terminate this deed of alienation , by delivering to the Seller or his/her agent written notice to that effect in the manner prescribed in the said Act. The period of 5 days shall be calculated with the exclusion of the day upon which the offer or deed of alienation was signed by the Purchaser, and of any Saturday, Sunday or public holiday."