

# CANCELLATION OF AN OFFER TO PURCHASE

## *AND ITS CONSEQUENCES*

ONLINE SHORTS

2020

ONLINE SHORT SERIES

---



THESE ONLINE SHORTS ARE BROUGHT TO YOU BY THE FUTURES LAW FACULTY  
IN PARTNERSHIP WITH THE INSTITUTE OF LEGAL PRACTICE DEVELOPMENT  
AND RESEARCH



## INTRODUCTION

An Offer to Purchase is governed by the Alienation of Land Act and law of contract. Section 2 of the Alienation of Land Act reads “No alienation of land [...]shall [...] be of any force or effect unless it is contained in a deed of alienation, signed by the parties thereto or by their agents acting on their written authority”. A “Deed of Alienation” is defined in the Alienation of Land Act as “a document under which land is alienated” which for purposes of these notes will be described a contract of sale. Once a valid contract of sale is concluded between a Seller and a Buyer an offer to purchase will be binding unless a valid and legal ground for cancellation exist in the offer to purchase.

## BINDING VALIDITY

Before the question of cancellation of an offer to purchase can be addressed it is important that one first determines, whether the offer to purchase is valid and binding.

Requirements for a valid concluded offer to purchase:

1. Offer to purchase must be in writing and signed by both parties or their respective authorised agents:
  - a. If agents signed on behalf of the parties their authorisation to act as an agent must be in writing and attached to the offer to purchase.
2. The parties to the offer to purchase must have capacity to act:
  - a. If one of the parties is a natural person and is married in community of property, such a person’s spouse is to consent to the purchase.
  - b. If one of the parties is a juristic person such as a company, the relevant party must be authorised by written resolution to conclude the purchase.
  - c. If one of the parties is a trust, not only must a letter of authority be issued by the Master of the High Court authorising all trustees to act , but additionally the trustees must have signed a written resolution to affect the purchase.
3. The *essentialia* of the offer to purchase must be contained in the agreement:
  - a. The purchase price must be clearly set out.
  - b. The parties must be properly identified.
  - c. The property must be clearly described.

Where the requirements for a valid offer to purchase has been met, it is deemed to be a valid and legally binding agreement between the purchaser and seller, which means that there are only specific instances where cancellation of the offer to purchase will be accepted.

GROUNDS OF CANCELLATION:

COOLING OFF RIGHT

Should the purchase price be R250 000 or less, the buyer has the right, in terms of section 29A of the Alienation of Land Act, to revoke the offer to purchase within five days after signature.

#### CANCELLATION CLAUSE

Should an offer to purchase have a valid cancellation clause a party may cancel the contract in terms thereof, however it should be noted that an offer to purchase seldom makes provision of cancellation.

#### BREACH OF CONTRACT

Should either party breach a material contractual term in the offer to purchase, the innocent party may cancel the offer to purchase in terms of the breach clause by placing the defaulting party in breach. The defaulting party may be liable for contractual damages, estate agent commission and attorney fees.