

# Can You Cancel a Property Purchase After Signing? Understanding the Cooling-Off Period

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## INTRODUCTION

It is a common misconception that the execution of an agreement for the sale of immovable property renders the transaction irrevocable. However, *Section 29A of the Alienation of Land Act 68 of 1981* (the "ALA") provides a notable exception in the form of a "cooling-off period", which affords certain purchasers the right to rescind or revoke the agreement within a prescribed period following signature of the agreement.

## THE COOLING-OFF RIGHT

s29A(1) ALA provides that a purchaser or prospective purchaser may revoke an offer to purchase land or terminate a deed of alienation within five days after signing the agreement, by delivering written notice to the seller or the seller's agent.

In terms of **s29A(2) ALA**, this period excludes:

- the day in which the agreement was signed (begins the day after date of signature); and
- Saturdays, Sundays and Public holidays.

## WHO THE RIGHT APPLIES TO

The cooling-off right is not absolute; it does not apply to every property transaction. s29A(5) of the ALA provides that the right does not apply in circumstances where:

- the purchase price or offered price of the land exceeds R250 000 or such higher amount as the Minister may prescribe in order to counter the effect of inflation;
- the purchaser is not a natural person (e.g. is a trust or company);
- the property is purchased at a publicly advertised auction;
- the seller and purchaser have previously entered into a deed of alienation of the same land on substantially the same terms;

- the purchaser reserved the right to nominate or appoint another person to take over the purchaser's rights and obligations under the offer or deed of alienation;
- the purchaser acquires the land by exercising an option to purchase and which option was open for exercise for at least five (5) days.

In practice, this means the protection generally applies to individual purchasers acquiring lower-value residential property, with a value of less than R250 000.

## REFUND OF MONEY PAID

In terms of s29A(4) ALA, If the purchaser of property cancels the agreement within the cooling-off period, any person who received money in respect of the agreement must refund the full amount within ten(10) days after the Notice was delivered.

## CASE LAW IN TERMS OF S2(2A) ALA:

In the *Sayers* case, the Court confirmed that the cooling-off period did not apply because the purchaser's right to cancel the agreement was not included in the Deed of Alienation, as required by s2(2A) ALA.<sup>1</sup> However, in *Dolphin Coast*, the seller relied on the absence of the cooling-off clause in the Deed of Alienation to escape the contract. The Court held that s2(2A) does not automatically invalidate the agreement, especially where the purchaser seeks to enforce the sale.<sup>2</sup>

## CONCLUSION

In conclusion, s29A serves as an important statutory safeguard, affording eligible purchasers a defined period within which to reconsider their commitment to a property purchase, prior to the property sale agreement becoming legally binding.

*Please note: this article is for general public information and use. It is not to be considered or construed as legal advice. Each matter must be dealt with on a case-by-case basis and you should consult an attorney before taking any action contemplated herein.*

<sup>1</sup>Sayers v Khan 2002 (5) SA 688 (C)

<sup>2</sup>Section Three Dolphin Coast Medical Centre CC and Another v Cowar Investments (Pty) Ltd 2006 (2) SA 15 D



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