YOU SIGNED A PROPERTY SALE AGREEMENT, CAN YOU STILL ACCEPT A BETTER OFFER?

You put your property on the market and an acceptable but not-perfect offer comes in. On the “a bird in the hand is worth two in the bush” principle you want to accept the offer even though it’s not ideal.

Perhaps it’s not perfect because it’s subject to a suspensive condition - common ones give the buyer time to sell his/her current house or to obtain a bond. In both scenarios your sale will fall through if the buyer is unsuccessful within the stated time, and if that happens you are back to square one after a long and fruitless delay. Bear in mind that that delay could be a protracted one depending on what your sale agreement actually provides – normally no less than 30 days to get a bond, sometimes several months to sell an existing house. That’s a lot of very valuable marketing time lost – and you’ll never know for sure whether you just missed out on that “perfect offer”.

The “72-hour clause” and what it does

This is where the “72-hour”, “continued marketing” or “escape” clause comes in handy.

In a nutshell, it allows you to continue marketing your property until suspensive conditions are met. If your marketing pays off and an unconditional offer does come in, you can give your existing buyer 72 hours’ notice to match it. So the buyer would have an opportunity to make the sale unconditional - either by waiving (abandoning) the condition or by fulfilling it.

If the buyer fails to do whatever the clause requires within the 72 hours, you are clear to accept the new offer. If on the other hand the buyer does perform in time, the existing sale immediately becomes fully binding and the transfer process can get underway.

A note for buyers

The clause is usually there for the seller’s benefit so perhaps avoid it when you can. But if it’s a choice between your offer being accepted or not, bear in mind that having a signed sale agreement at least gives you a solid base for a full bond application and/or a concerted effort to finalise your own house sale.

Just be ready to react quickly if the seller does indeed give you the 72 hour notice – you don’t want to be rushing around in a last-minute panic.

Buyers and sellers - check the wording!

Although 72-hour clauses are common in standard sale agreements, the exact wording can vary substantially, and may need tailoring to meet your specific needs. You might for example want to be given proof of availability of funds together with a bond clause waiver, or proof that the sale of the buyer’s house is a viable one – every situation will be different.

Apart from everything else, make sure that:

* The 72 hour period specifically excludes Saturdays, Sundays and Public Holidays (religious holidays too if important to you),

* You can extend the 72 hours by mutual agreement if you want to,

* There are clear requirements for the method and timing of giving notice and of waiving conditions, and

* You aren’t binding yourself to anything else that could turn around and bite you down the line.

Delete the clause if it doesn’t apply.

As always, have your lawyer check it all for you before you sign anything!