



## ESSENTIALS OF REAL ESTATE CONTRACTS

Real Estate contracts are binding legal documents. They form the bases of the sale and buying of a property. The wishes or rather the agreements, terms and conditions of the buyer and a seller in the purchase are reflected in a contract. This is a very crucial document to the extent that if a thing is omitted or not pointed out or overlook can make the whole experience a nightmare leaving you with a very bitter test.

The following is a general overview of some of the more common areas of legal interest when selling a home.

### **Authority**

Obviously you must have the legal authority to sell the home. This generally means that if there are 2 or more people on title, they all must agree to sell and will generally all need to sign the contracts. If an owner is incapacitated or otherwise unable to sign documents there are options such as Powers of Attorney that can occur. These are more complicated and will require bringing in a lawyer.

### **Goods**

Unless otherwise stated, anything “attached” to the house (such as a ceiling fan) or property (such as a fence) is assumed to be included with the home and anything not attached (such as the furniture) is assumed to be excluded. Therefore if there is something you don’t want to sell that is attached, be sure it is written clearly into the contract. Items that are not clearly defined such as fridges with water connections, built in dishwasher, etc.. should always be specified as included or not in the contract to avoid confusion and lawsuits.

### **Warranties**

When someone buys a house, they expect everything to work properly and for the property to be free of major problems unknown to them, and in a typical contract you will promise just that. The principle of buyer beware takes effect here that if you are to buy a house you ought to know that you have to do your research on the property. If you are aware of something major, such as a leaky roof or an environmental problem then point it out to the seller before signing the contract. The risk of encumbrances is on the purchaser who must satisfy himself by a full investigation of title before completing the purchase.

Some questions can be asked in order to obtain constructive notice. These include:-

- (1) Name and address of purchaser /vendor.
- (2) Name and address of purchaser’s /vendor’s solicitors (if known).



(3) Sale price.

(4) Whether the sale price include any chattels, e.g. carpets, curtains, gas or electricity heater, cookers, etc. which are separately valued?

(5) In whose possession or custody are the title deeds? If the property is in mortgage, the name and address of the mortgagee and account number. (if any).

(6) whether the sale dependent on the purchase of another property?

(7) Approximate completion date intended.

(8) Any boundary walls or fences maintained during your period of ownership? If no such maintenance has been carried out, which walls or fences do you believe to be yours?

(9) Whether there has been any disputes as to rights of way, boundaries, etc?

(10) Any shared facilities with adjoining owners such as right of way, joint drive-in, etc?

And many more.

Hence in any real estate purchase you should put an eye on the above. On the next issue we will continue to point out on more consideration to take upon.

### ***About the Author***

**Sunday Godfrey Ndamugoba -LLM(UK),LLB (Tz),TIArb,YIArb is an Associate with ABC ATTORNEYS of Dar-es-Salaam, Tanzania and an Arbitrator with the Tanzania Institute of Arbitration and Young International Arbitrators (YIAG)-London.For more articles please visit [www.abccattorneys.co.tz](http://www.abccattorneys.co.tz) or contact the author at [info@abccattorneys.co.tz](mailto:info@abccattorneys.co.tz)**



## ESSENTIALS OF REAL ESTATE CONTRACTS

*Materials presented herein are for information purposes only and are not intended to constitute legal advice, to be a legal opinion or create an attorney client relationship for the reader or any specific person. Real Estate is a fact specific and requires consultation with a legal advisor before undertaking any course of action.*