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Title: The OTP Decoded: 6 Crucial Elements Every Property Seller and Buyer Must Know

Buying or selling a home is one of the most significant financial milestones in a person's life. In the South African property market, this journey truly begins with a single, powerful document: the **Offer to Purchase Agreement (OTP)**.

Once signed by both the buyer and the seller, this document is no longer just "paperwork"- it becomes a legally binding contract known as a sale agreement. Neither party can withdraw without facing potential penalties. With a decade of experience navigating property law, we understand that a well-structured OTP is the difference between a smooth transfer and a costly legal dispute.

Below is an educational guide on the crucial elements you must understand before you put pen to paper.

1. The Power of "Wet Ink" and Legal Validity

In South Africa, the **Alienation of Land Act** is the governing law for property sales. It strictly mandates that all agreements for the sale of land must be in writing and signed by both parties.

Crucially, property transactions in South Africa require **"wet ink" signatures**. Unlike many other modern contracts, OTPs cannot be signed electronically to be valid. If the seller is a company or a trust, ensure the person signing has the documented authority to do so, such as a formal resolution.

2. The Four "Ps" of a Valid OTP

For an OTP to be enforceable, it must clearly define four essential pillars:

- **Parties:** Full names and ID numbers of the buyer and seller, their legal capacities, physical addresses and contact detail.

- **Property:** A clear description of the property, typically matching the details in its title deed.
- **Price:** The agreed-upon price, deposit requirements, and whether the price is inclusive of VAT.
- **Possession:** The specific date the buyer will move in and any **occupational rent** payable if this happens before the transfer is registered.

3. Understanding Suspensive Conditions

Most property sales are "suspended" until certain conditions are met. These are known as **suspensive conditions**. If they aren't fulfilled by the deadline, the contract automatically lapses.

The most common examples include:

- **Bond Approval:** The buyer securing a home loan within a set timeframe, typically 30 days.
- **Sale of Current Home:** When the purchase is contingent on the buyer successfully selling their existing property.

4. The "72-Hour Clause" (The Escape Clause)

To protect sellers from being "stuck" while a buyer waits for a bond, a **72-hour clause** is often included.

If the seller receives a better, unconditional offer from a second buyer while the first deal is still conditional, the seller can give the first buyer 72 hours (typically excluding weekends and public holidays) to either waive their conditions or fulfill them. If the first buyer cannot do so, the seller can move forward with the second offer.

5. Defects and the "Voetstoots" Clause

In private sales, properties are generally sold **voetstoots**, a Dutch term meaning "as is". This means the buyer accepts the property with all its existing faults.

However, there is a vital distinction:

- **Patent Defects:** Visible flaws, like a cracked window. The buyer is responsible for spotting these during inspection.
- **Latent Defects:** Hidden flaws, like a leaking roof hidden by fresh paint. If the seller knew about a latent defect and intentionally hid it, they can still be held liable, regardless of the voetstoots clause.

Expert Tip: Always insist on a **Mandatory Disclosure Form**. Under the Property Practitioners Act, it is now compulsory for sellers to sign a comprehensive defects list, ensuring transparency for the buyer.

6. Fixtures and Fittings: Avoiding the "Mirror Dispute"

Disputes often arise over what stays and what goes - such as pool pumps, bathroom mirrors, or custom curtains.

The general rule is that "fixtures" (items permanently attached to the land or building) remain, while "fittings" go with the seller. To avoid conflict, we always recommend including an **inventory annexure** that explicitly lists which items are included in the sale price.

Final Thoughts: Better Safe Than Stuck

An OTP is more than just a document - it is a complex legal roadmap. Once you sign, you are committed. Before you commit to your next move, ensure your interests are protected with a professional legal review.

This article is for educational purposes and does not constitute legal advice. For a formal review of your property agreement, contact our firm to schedule a consultation.