

## THE “VOETSTOOTS” CLAUSE

We often hear about people who purchase a second-hand home and move in, only to find many things that are not right with the property. Added to this the purchaser was totally unaware of these problems at point of sale.

In the offer to purchase (OTP) it states that one is purchasing the property “**Voetstoots**”, which means that the property is sold “as is” and one have no claims against the seller for defects at a later stage. There are however exceptions to this – when a severe defect is discovered after the property has been transferred, the law will determine whether the fault is a patent or latent defect and the following will apply.

A **patent defect** is something that is blatantly visible upon inspection of the property, such as a crack in a wall or a broken door/window (you have seen the defect and are aware of it). A **latent defect** is a defect that you are unaware of when viewing the property, such as a faulty geyser, a leaking roof or damp that has been deliberately concealed behind furniture or a fresh coat of paint.

The seller is required by law to disclose all defects, both patent and latent, and will only be free of blame if the latent defect is proven to be something the seller was not aware of. Of course, proving the seller knew about such a defect and tried to conceal it is not easy to achieve.

When repairs or routine maintenance on the house have been done, the seller should supply all relevant receipts and supporting documentation on transfer of the property. It remains the buyer’s responsibility to ensure that he is aware of patent defects, as it will be difficult for the buyer to claim later.

If at a later stage a latent defect is discovered that was “knowingly” hidden, the buyer has recourse against the seller for concealment or misrepresentation.