

Real Estate Law

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KENYA

Seller's grief: An emerging category of risk in real estate



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Seller's grief: An emerging category of risk in real estate

An idea that has long eluded real estate buyers and their legal representatives is the profound impact of the emotional undercurrent that can be understood through a concept we might call "*seller's grief*." To put it plainly, *seller's grief* represents what is at stake when the experience that a seller has been through, leading to them disposing of their property, negatively informs the seller's attitude in a real estate transaction.

Grief is frequently linked to the sorrow we feel when we lose someone with whom we had a deep connection, but it extends beyond that. It has a way of creeping into other aspects of our lives, often where we least expect it, such as in the involuntary sale of a treasured property.

Involuntary sales occur in circumstances where external pressures or personal challenges compel someone to sell. These situations include financial hardship, health issues, anticipated death, mandatory relocations for employment, significant life changes, divorce settlements or market pressures. While the transaction is formally initiated by the owner, it is driven by circumstances that render the sale obligatory, rather than a deliberate choice or personal preference.

Various risks can impact the success of a transaction or investment in real estate, making a thorough assessment during the due diligence process essential to identify potential issues and develop strategies to mitigate them. Some of the key real estate risks include market fluctuations, financial risks such as interest rates and liquidity, legal and regulatory risks related to property titles and zoning regulations, environmental risks like contamination and natural disasters, political and economic risks, and construction and development risks. Among these, seller's grief is an often-overlooked risk.

Some properties are more than just physical structures. They embody a personal history and a sense of identity that can make parting with them feel like a profound loss. When facing the involuntary sale of such a property, sellers may experience significant emotional strain where their attachment to the property comes into tension with their legal obligations in the sale contract. This grief is more than a passing feeling or quiet rebellion; it is a tangible risk that can influence the course of real estate transactions in unexpected ways.

Seller's grief can lead to unpredictable behaviour, including changes of heart, disputes over seemingly settled terms, reluctance to complete the sale, delays in closing, or last-minute complications affecting the transaction's timeline and outcome. While it may not always be possible to fully predict seller's grief during due diligence, direct questions, if asked sensitively through requisitions, can sometimes reveal important emotional factors that may affect the sale. The goal is to gauge the potential of seller's grief, assess the impact of the risk, and craft a more sensitive and strategic approach to the transaction.

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Identifying indicators

There are certain indicators that can help assess the likelihood of seller's grief becoming an issue. During initial discussions, the buyer can ask the seller about the reasons for selling. Emotional reasons, such as those highlighted above can indicate a higher risk of seller's grief. If the seller is highly involved in the details of the sale, particularly regarding sentimental aspects of the property, this could be a red flag. Likewise, if a seller is resistant to making reasonable concessions during preliminary negotiations or demonstrates overly defensive reactions to routine inquiries, this might suggest an emotional attachment that could complicate the process later. Family members being too involved in the sale, either as decision-makers or as interested parties, or the seller being deeply concerned about what will happen to the property after it is sold can also be indicative of the seller struggling with the emotional difficulty of selling. Another sign is that the seller might take longer to make decisions or might frequently change their mind during the negotiation process. Disposing of a long-time family home combined with the uncertainty of finding a new place, and the need for post-sale occupancy, can as well suggest the likelihood of seller's grief.

Understanding that this is a real phenomenon with potential effects can help buyers navigate the pit of seller's grief. In the same way that we employ our best efforts to detect the standard potential risks early allowing for proactive measures, integrating seller's grief into the due diligence process is essential for ensuring the integrity of real estate transactions. This approach of acknowledging the human factors at play that can impact a transaction

would elevate what might seem like an abstract concern into a measurable risk, managed with the same strategic foresight that underpins effective legal and real estate practice.

This is a nuanced area that requires a delicate balance of empathy, emotional intelligence, and professionalism. Nonetheless, we should be keen to ensure that each transaction is handled constructively to prevent issues related to this concept from escalating into more serious conflicts. In legal practice, recognising seller's grief as a potential factor in real estate transactions can inform the drafting of contracts, the structuring of dispute resolution clauses, and the overall management of the transaction to lessen the intensity of the risk and facilitate a smoother process.

It is time to embrace a fresh perspective on the emotional factors at play in property sales and position them as a specific category of risk in the transaction process.

More importantly, we should elevate our perspective by looking at the bigger picture in order to respond thoughtfully to these emotional dynamics, rather than reacting purely from a legal mindset. Real estate advocates would especially benefit from this early insight because it would enable them to acclimatise to the underlying psychological terrain of the deal, integrate awareness, and navigate the transaction with greater wisdom and effectiveness. By doing this, they can avoid unforeseen disruptions that could affect not only negotiations, but also the overall progression and outcome of the transaction.

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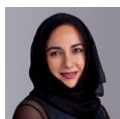
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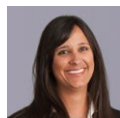
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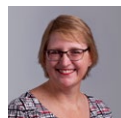
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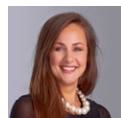
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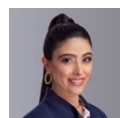
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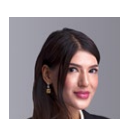
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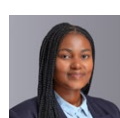
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Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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