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INSTALMENT SALE AGREEMENTS IN TERMS OF THE ALIENATION OF LAND ACT – AN OPTION

With the current recession and difficult times South Africa is facing, it is becoming more and more difficult for prospective home owners to purchase property of their own. The Alienation of Land Act, 68 of 1981 (“the Act”) comes in as a saving grace to such prospective purchasers by affording them the opportunity to acquire property by way of an Instalment Sale Agreement in terms of the Alienation of Land Act (“Instalment Sale Agreement”).

An Instalment Sale Agreement can shortly be defined as a transaction whereby the purchase price is paid by the purchaser to the seller in more than two instalments over a period not less than 1 year but not exceeding 5 years. Of course one has to bear in mind that certain exclusions do apply in terms of Section 1 of the Act and that there are various other potholes to consider; therefore it is imperative that the parties to the Agreement consult with an Attorney, to ensure that the specific transaction does indeed fall within the ambit of the Act.

There are three major obstacles to consider when concluding an Instalment Sale Agreement:

- Firstly, once the agreement has been signed by all parties, Section 20 of the Act requires that the Seller shall cause the agreement to be recorded by the Registrar of Deeds within 90 days from the date at which the agreement was entered into or the land becomes registerable. Should the seller fail to do so within 90 days, the purchaser has the right to cancel the agreement or have the contract recorded himself. The effect of such recordal is that the Registrar will not register the transfer of the land in question unless the transferee is the purchaser under the agreement, an intermediary or the recording has been cancelled. The costs of such recordal will be for the account of the purchaser.
- Secondly, it is important to note that transfer duty, if any, is payable to the South African Revenue Services, by the purchaser, within 6 months from the date on which the agreement was concluded, failing which penalties will be payable.



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- The third aspect to take into consideration, is whether or not the seller would have to register as a credit provider. As a result of the recent changes to the National Credit Act (“NCA”) it is important to ascertain whether or not the Instalment Sale Agreement would be deemed to be a credit agreement in terms of the NCA. In terms of section 8(4)(f) of the NCA, an agreement will amongst others, be a credit agreement should payment in terms of such agreement be deferred **and** any charge, fee or interest is payable. The result of the aforementioned being that, should there be no charge, fee or interest on the deferred payment, the NCA will not be applicable. However, should the parties collude and agree to increase the purchase price to an amount higher than the actual and reasonable market value, this could be interpreted as a manner to avoid the application of the NCA and will result in higher transfer duty and costs being payable by the purchaser.

In conclusion, an Instalment Sale Agreement is definitely considered an option to the prospective home owners, who are not able to obtain the necessary finance. However, it is important that both parties bear in mind the necessary procedures and costs associated thereto. The seller should also take into consideration that he will not be able to charge any fees or interest on the purchase price whatsoever or increase the purchase price unreasonably. Should the seller wish to charge any fees or interest, he will have to register as a credit provider and do proper financial vetting on the purchaser. In the event that the seller is not registered as a credit provider, the sale may be considered voidable.



Attorneys

notaries

conveyancers

