

NEWSFLASH

INSTALMENT SALE AGREEMENTS CHAPTER II OF THE ALIENATION OF LAND ACT, 1981

NOTE! IT IS STRONGLY ADVISED THAT YOU CONTACT AN ATTORNEY OR CONVEYANCER SPECIALISING IN THE SALE OF IMMOVABLE PROPERTY AND RELATED TRANSACTIONS SUCH AS DYKES VAN HEERDEN INCORPORATED SITUATED IN YOUR AREA, FOR ASSISTANCE AND ADVICE REGARDING EACH AND EVERY INSTALMENT SALE AGREEMENT CONSIDERED BY PROSPECTIVE CLIENTS AS THE INFORMATION CONTAINED HEREIN IS INTENDED AS A GENERAL GUIDELINE AS TO THE INFORMATION REQUIRED TO DRAW AN INSTALLMENT SALE AGREEMENT TOGETHER WITH A VERY BRIEF EXPLANATION AS TO THE CONCEPT IN LAW.

The term Act refers to the Alienation of Land Act, 1981

DEFINITION:

An instalment sale agreement is an agreement of sale of **land** as defined in terms of the Alienation of Land Act, 1981 used or intended to be used mainly for residential purposes and in terms of a **contract** as defined in terms of the Alienation of Land Act, 1981 in terms of which the purchase price is paid to the seller by way of more than 2 (two) installments over a period of longer than 1 (one) year. If the land is not held under a separate title deed at the point of entering into the contract the period of repayment in terms of the contract, may not exceed 5 (five) years.

EXCLUSIONS

Chapter II of the Act shall not apply in respect of any contract where the Seller is

- The State;
- A Community Development Board (Act 3 of 1966)
- The National Housing Commission; or
- A Local Authority.

Furthermore

- ❖ Agricultural land;
- ❖ Land held by the State or the Minister in trust on behalf of any person

POINTS TO NOTE

- The purchase price is to be paid to the seller over a period of time, in instalments, which should ideally be sufficient to cover the seller's bond repayments.
- The purchaser should ideally pay a deposit, sufficient to cover at least the estate agent's commission.
- The agreement is registered against the title deeds in the Deeds Office by way of Section 20 of the Act recordal, registered within 90 days of signature of the agreement. This implies that the seller would not be able to register any further bonds over the property, or sell the property without the consent of the purchaser.
- The payments should be made over a period of no less than one-year.
- Instalments can only be paid once the agreement has been registered against the title deeds of the property.
- Transfer duty and costs should be paid by the purchaser to SARS within six months from the date of conclusion of the sale agreement otherwise the Transfer Duty shall attract penalties calculated at 10% per annum of the amount outstanding towards SARS.

- The seller retains ownership of the property.
- Should the purchaser fail to effect any payment in terms of the agreement timeously, all payments made by him, will be forfeited towards damages suffered and the property will revert back to the seller. This is subject to review by a court of law in terms of the Conventional Penalties Act.
- In the event of the seller's estate becoming insolvent, the purchaser shall hold a preferent claim as opposed to a concurrent claim in respect of the **proceeds** of the sale of the property.

INFORMATION REQUIRED

"The purchaser elected the language in which the agreement is drawn as":

"THE SELLER" is:

"THE PURCHASER" is:

The Seller's address is:

The Purchaser's address is:

"The property" is:

"The extent" of the property is:

"The purchase price":

"The rate of interest":

"The date of payment of the first instalment" is:

"The date of payment of subsequent instalments":

"The transfer duty":

" Payable by no later than":

"The date of occupation":

"The date of passing of possession" is:

"The Seller's Conveyancers" are:

Dykes van Heerden Inc.

"The Mortgagee" is:

_____ (i.e. BANK)

"The Mortgagee's address" is:

"The final date of payment" is:

IMPLICATIONS OF THE NATIONAL CREDIT ACT?

In terms of Section 8(3) of the NCA, an instalment sale agreement as referred to in terms of Chapter II of the Act will be a credit agreement governed by the NCA in circumstances where:

- The purchase price is paid in instalments and any charge, fee or interest is payable to the seller.

If no interest, fees or other charges are paid to the Seller the NCA will not apply.

REMEMBER – That inflation of the purchase price over and above the market value of the property may be viewed as a charge rendering the NCA applicable.

- ✓ If credit in excess of R500 000,00 is granted, the credit grantor (seller) will have to register as a credit provider before any credit is extended.
- ✓ The buyer can raise the defense that the credit provider (the seller) should never have extended credit in the first place or raise the defense that the lending was done recklessly, even when less than an amount of R500 000 is granted in credit.
- ✓ In order to counter such a defense the seller will have to show that the seller had taken all reasonable steps and conducted a proper investigation into the buyers' ability to service the debt.
- ✓ The court may then:
 - suspend the working of the agreement; or
 - set aside all or part of the borrower's (buyer's) obligations in terms thereof; or
 - Reduce the interest rate charged; or
 - Adjust the terms of the agreement or even adjust the installments.

It is clear that the risk remains with the Seller while the Purchaser can request debt counseling at any given point in time and cannot be precluded from approaching a debt counselor.

OPTIONS

LEASE TO BUY DELAYING BOND APPROVAL

- Beware of penalties on transfer duty as well as the wording of the agreement;
- Assure that the rental amounts covers the bond repayments which is pro Seller;
- This may allow for a recovery period to the purchaser in order for his finances to improve which is pro Purchaser;

LEASE WITH AN OPTION

- This solves the penalty on transfer duty problem as the transfer duty will only be due on exercise of option but assure that the purchase price is already agreed to.

CIRCUMVENT THE NCA BY PURCHASING PROPERTY AS A JURISTIC PERSON

- The NCA does not apply to Juristic Persons being CC's Trusts and Companies;
- The **proviso** applies that the asset value or turnover of the juristic person (together with the asset value or annual turnover of all related juristic persons), **SHOULD** exceed the threshold amount of R1m WHICH IS SUBJECT TO CHANGE.
- The down side of this is that transfer duty is calculated at 8%, which is higher than that of a natural person.

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