

## **INSTALMENT SALE AGREEMENTS** **(another way of selling property)**

1. Section 4 to 25 of the Alienation of Land Act applies to the sales of immovable property in instalments.
2. The important features of such a sale are:
  - 2.1 The Purchase Price is paid in 2 or more instalments over a period of not less than 13 months.
  - 2.2 The Purchaser must take transfer within 5 years.
  - 2.3 The Sale Agreement is recorded against the Title deeds of the property within 90 days of signature of the Sale Agreement.
  - 2.4 The Sellers mortgagee (bank) is advised in writing of the sale and given an address for the Purchaser.
  - 2.5 Transfer duty is to be paid within 6 months of signature of the Agreement.
  - 2.6 In the event of default the Purchaser is to be given 30 days notice to remedy default.

If the Purchaser is given 2 such notices in a calendar year, on the third occasion it need only be a 7 day notice.
  - 2.7 If the Purchaser does not remedy the default, the Agreement can be cancelled and the Purchaser evicted from the property.

All payment will be forfeited to the Seller.... BUT a Court could deem the amount forfeited out of proportion to the prejudice suffered by the Seller.

### 3. **INSOLVENCY**

In the event of the Seller's insolvency:

- 3.1 The Purchaser can take transfer against payment of the balance outstanding; or if he cannot or does not want to do so.
- 3.2 The Purchaser has a preferent claim to the proceeds of the property once it is sold on (mortgagee still ranks first though).

### 4. **EXISTING MORTGAGE BOND**

- 4.1 If the property is bonded, the monthly instalment should be paid into the Seller's bond account.
- 4.2 The Seller is required to give the Purchaser a detailed statement of account within 30 days of every 12 month period, and the bond account balance details.
- 4.3 The balance outstanding on the bond MUST always be less than the balance of the amount outstanding by the Purchaser, if not, the Purchaser can regardless of the Agreement, pay the instalments into the bond account.

### 5. **N.C.A.**

- 5.1 Instalment Sales were last used in the late 1990's when interest rates were 26%.
- 5.2 With the recent credit crunch, Purchasers are again experiencing difficulty in obtaining finance from the banks and hence the revival of the Instalment Sale.
- 5.3 However now we have the National Credit Act to contend with which applies to **all** credit agreement with few exceptions.
- 5.4 Section 8 (4)(f) states that amongst others, a Credit Transaction includes:

"any..... agreement..... in terms of which payment of an amount owed by one person to another is deferred, and any charge, fee or interest is payable to the credit provider in respect of:

- i.the agreement; or
- ii.the amount that has been deferred."

#### 5.5 **Exceptions**

- 5.5.1 Juristic persons (again certain exceptions apply, e.g. if the turnover or asset value of a CC or Company is below

R1 million NCA applies)

- 5.5.2 Where the parties are not at arms length.
- 5.5.3 Where the credit provider (Seller) is outside RSA.
- 5.5.4 The State is the Purchaser.

## **5.6 Registration of Seller as a Credit Provider**

- 5.6.1 A Seller must register as a credit provider if he has done 100 credit transactions or the principal debt in respect of the outstanding Agreements exceeds R500 000.00
- 5.6.2 A Seller must apply within 30 days of sale for registration as a credit provider failing which the transaction is void.
- 5.6.3 Certain disqualified persons may not register as a credit provider.

## **5.7 Pre-contract Requirements**

- 5.7.1 A Seller must *before* concluding the sale give the potential purchaser:
  - 5.7.1.1 Pre-agreement statement
  - 5.7.1.2 Quotation in prescribed form
- 5.7.2 *After* giving a quotation:
  - 5.7.2.1 A seller is bound for 5 days unless:
  - 5.7.2.2 The sale = reckless credit
  - 5.7.2.3 The quote stated subject to availability

## **5.8 Reckless Credit Assessment**

Applied only if the Purchaser is a natural person, and if he is the Seller must take reasonable steps to assess the Purchaser's:

- 5.8.1 Understanding of costs of sale, risks, rights and duties
- 5.8.2 Debt re-payment history
- 5.8.3 Financial position
- 5.8.4 If credit is linked to a financial venture, the Purchaser's chances of success.
- 5.8.5 The Agreement is reckless if:
  - a) No assessment is done
  - b) The assessment shows the purchaser is over-indebted, and does not understand the risk, costs or duties.

And then if reckless:

- c) No assessment or understanding?

The Court may set aside the purchaser's duties or suspend the Agreement until future date.

- d) The Purchaser is over-indebted as a result of the credit?  
The Court may suspend the agreement until future date and restructure the purchaser's obligations under the transaction.

**BUT REMEMBER SECTION 8 ONLY APPLIES IF:**  
**"any charge, fee or interest is payable to the credit provider"**

So, if there is no **charge, fee or interest is payable to the credit provider** on the principal debt....

the NCA is of no application to the Sale on Instalments.

The only thing left to determine is what the Seller and Purchaser are prepared to accept and pay for the Transaction!

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