

A FRESH PERSPECTIVE ON INSTALLMENT SALE AGREEMENTS WITH RESPECT TO FIXED PROPERTY

THE INSTALLMENT SALE SOLUTION

Embrace Change?

The property market has changed and will continue to do so for some time to come. Our capacity to adapt to these changes will determine the measure of our successes going forward.

Elements that contribute to this market shift?

- Slow down in property sales due to market pressures.
- Purchasers find it difficult to access adequate funding due to strict NCA loan criteria.
- Purchasers more often than not cannot raise the deposit required by the financial institutions.
- Purchasers, after having been able to raise a deposit, cannot afford paying further transfer fees, bond registration fees and costs.
- "Troubled Sellers" cannot get their properties sold at market related prices and are left with no option but to face foreclosure.
- Purchasers with adverse credit records cannot access the market and are forced to consider the rental option this amid the fact that these Purchasers may have the financial means.

Alienation of Land Act, Act 68 of 1961 / An effective property sales solution

How does purchasing fixed property via Installment Sale Agreement (ALA Act 68/81) work?

- A. Seller, prospective Purchaser and Agent meet with Attorney to attempt to reach an agreement on the following terms:
1. Purchase price (usually the Seller wishes to escalate the purchase price as registration will only take place at a later date).
 2. Initial Deposit (if any).
 3. Installment Sale agreement term (any period between 12 – 60 months).
 4. Agent's Commission and how it is to be paid.
 5. Occupational rental payable.
 6. Date of occupation.
 7. Who will be liable for Rates and Taxes and on which date will risk relating to the property pass to the Purchaser.
 8. Capital installments over term.(Attempt to get to a 20% deposit over term).



- B. Once the parties have reached an agreement on these terms, the Attorney drafts an agreement that meets the criteria as set by the Alienation of Land Act 68/81 (Please take note that the attorney will make sure that the specific transaction does in fact fall within the ambit of the said ALA Act).
- C. Once the said ALA agreement has been signed the Attorney will, amongst other duties as laid down by the Act, inform the existing bond holder of the conclusion of the said ALA Agreement and request that the said bondholder issue a certificate in terms of the ALA Act within 21 days from request. The said certificate indicates and confirms the amount that the bondholder requires to be paid for the discharge of the said bond, as well as the rate of interest which the bank shall levy from time to time on the property.
- D. If the said amount owing to the existing bondholder under said certificate exceeds the purchase price payable under the ALA Agreement, the said ALA Agreement shall lapse and will be of no further force and or effect.
- E. Once the attorney has received the Title Deeds form the existing bondholder he/she will proceed to effect the endorsement of the said Title Deed in terms of Section 20 of the said ALA Act. The said endorsement must be registered before the Seller receives any capital from the Purchaser. The Sec 20 endorsement is registered in order to protect the purchaser's right to take transfer.

Practical Implications?

- Seller remains owner of the property.
- Bondholder has no right to refuse conclusion of agreement save for as stipulated in D above .
- Purchaser takes occupation on agreed date and pays Seller occupational rental
- Purchaser usually liable to pay rates and taxes from date of occupation.
- Seller receives the deposit, together with all capital installment on due dates on condition that Section 20 endorsement is registered against the Title Deed of the property, thus creating cash-flow.
- Purchaser takes transfer at the end of the agreement term, but may elect to take transfer sooner on condition that full purchase price is secured to Seller.
- Purchaser may sell property at any time during the currency of the ALA agreement on condition that sellers' purchase price is secured and paid on transfer date.
- Agreement has no suspensive conditions relating to purchaser having to have effected approval of a bond by a certain time .
- ALA agreement does not fall within the ambit of the NCA legislation and therefore the Purchaser does not have to adhere to strict lending criteria to be able to conclude the agreement. In practice though, we do execute a vetting process to ensure that the Purchaser can afford to purchase the property.
- Purchaser usually accumulates a 20% deposit over the term making it easier to get bond approval at the end of the term of the ALA Agreement .
- Purchaser with adverse credit record can utilize term of agreement to rectify their credit status if they wish to apply for a bond to be able to take transfer.



Benefit to Seller?

1. Seller now increases his/her chances of actually getting the property sold.
2. Seller generates "cash-flow" by receiving both rental and capital over the term of the ALA Agreement .
3. Purchaser usually pays Rates and Taxes if so agreed by the parties
4. Purchaser who has taken occupation of the property is an even better Tenant as he/she is committed to the transaction by payment of capital to the Seller before registration of transfer and tends to take good care of the property as the Purchaser has a vested interest.
5. The agreement, once concluded is not subject to suspense conditions so the purchaser is committed to take transfer.
6. "Troubled Seller's" now have the option to utilize the ALA to manage their existing debt with the bondholder and by doing so to prevent foreclosure.

Benefit for the Purchaser?

1. All Purchaser can now acquire property
2. No deposit required unless parties agree that a deposit needs to be paid
3. Purchaser utilize term of installment agreement to rectify any adverse credit record issues and to accumulate his/her deposit.
4. Purchaser can sell the property at any time during the course of the ALA Agreement.
5. Purchaser can attempt to purchase property by ALA at current value and if he/she succeeds would make for an even better proposition at the end of the term.
6. Purchaser need not apply for a bond on conclusion of the ALA Agreement.

Benefit of the Agent?

1. Generate sales.
2. Earns commission which is paid in installments over term of agreement if so agreed.

Benefit to Banks?

- "Troubled Sellers" can now by utilizing the ALA agreement be empowered to manage their obligations to the Bank without having to foreclose
- As the Sellers is selling their properties at market related values the Banks no longer face the prospect of having to sell property at a loss
- Bank now has mechanism whereby the Bank can assist its clients to manage their obligations to the Bank and in doing so to create good publicity for the Bank.
- All ALA Purchasers collectively form data base that Bank could manage and empower to qualify for a bond at the end of the term of the agreement when the Purchaser has paid his deposit and cleared all adverse credit record issues.



In closing I wish to recommend that you do not implement the ALA agreement without the assistance of your Attorney.

You are more than welcome to contact me or my offices to schedule a consultation if you require advice and or assistance in the implementation of the ALA strategy.

Yours faithfully,

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