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Attorneys Notaries Conveyancers

1st Floor, 2 Albury Park, Albury Road, Dunkeld West, 2196. Docex 11 Hyde Park. t +27 11 560 7100 f +27 11 759 7960. Stellenbosch Office: t +27 82 287 3173

WHAT IS AN INSTALLMENT SALE AGREEMENT?

1. Is a sale of land agreement where the purchaser pays the purchase price to the seller

- in more than two installments
- over a period exceeding one year
- ii a) Governed by Chapter II of the Alienation of Land Act (68 of 1981)
- b) as well as the National Credit Act 34 of 2005
- consumer credit legislation
- iii 'Land' means any land used or intended to be used mainly for residential purposes
 - excludes agricultural land
 - includes a sectional title unit and in any undivided share in the land
- iv Seller retains ownership of land
- v Contract is recorded against title deed

2. "Is a 'contract' as defined in Section 1 the Alienation of Land Act (68 of 1981) deemed to be a agreement for purposes of the National Credit Act?"

i. When the purchaser/lessee is a juristic person:

Where the consumer is a juristic person with a turnover below R1 000 000,00 and the purchase price/principal debt of the 'contract' is higher than R250 000, 00 the said agreement falls outside the ambit of the National Credit Act. Therefore it is not a credit agreement. The definition of 'contract' in terms of the Alienation of Land Act, will, however, still apply and require that the purchase price be paid in more than two installments over a period longer than a year.

ii. Repayment of purchase price:

Where the owner/seller of the immovable property concludes a "contract" with a buyer (natural/juristic person), and the repayment of the purchase price only, (irrespective of the purchase price agreed upon) is made in more than two installments over a period longer than a year as required by the Alienation of Land Act, the agreement is not a credit agreement as defined in the National Credit Act. Since there is no additional finance charges/interest or other charges levied the agreement is a so-called "cash transaction" which falls outside the ambit of the NCA.

[Note If the parties agree that the purchase price should be higher than the actual and reasonable market price it could be regarded as simulation in order to avoid the consequences of the NCA.]

iii. Repayment of purchase price and finance charges/interest:

Where the owner/seller of the immovable property concludes a contract with a buyer and the purchase price is less than R15 000,00 or the purchase price is more than R15 000,00 and less than R250 000,00 or the purchase price is more than R250 000,00, the parties agree that finance charges/interest is payable and the repayment is made in two or more installments over a period longer than a year as required by the Alienation of Land Act, the agreement is a credit agreement and is therefore governed by the said Act.

[Note The provisions of the National Credit Act will prevail, where Chapter II of the Alienation of Land Act is in conflict with the National Credit Act.]

iv. Where immovable property is leased:

The lease of an immovable property is not a credit agreement as defined by the National Credit Act and therefore falls outside the ambit of the Act.

This information under the heading: "Is a 'contract' as defined in Section 1 of the Alienation of Land Act deemed to be a credit agreement for purposes of the National Credit Act?" has been extracted from Ghostdigest - 26/2/2009 as well as from Ghostdigest – 5/3/2009 – "Contracts and NCA replies."

3. Contents of Agreement (section 6)

An installment sale agreement shall contain, *inter alia*, the following:

- i. Names of seller and purchaser and their residential or business address in RSA (*domicilium* address)
- ii. Description and extent of property
- iii. Amount of purchase price
- iv. Annual rate of interest to be paid on balance of purchase price
- v. Amount of each installment payable
- vi. Due date of each installment (not before recordal)
- vii. Place where payments shall be made
- viii. Occupation date
- ix. Date when risk, profit and loss passes to purchaser (not earlier than occupation date)
- x. Obligation of purchaser to insure property (if any)
- xi. Liability for rates & taxes/levies
- xii. An amount of transfer duty payable and person liable therefore
- xiii. Liability for payment of costs of:
 - drafting agreement
 - recording agreement at Deeds Office
 - transfer of land
- xiv. Right of purchaser to record contract at Deeds Office
- xv. Name and address of existing bondholder (if any)
- xvi. Undertaking by seller that he/she will not encumber/mortgage property before recordal
- xvii. Period within which purchaser is obliged to take transfer of property against payment of all amounts owed by him/her
- xviii. Right of purchaser to accelerate payments and claim transfer of property

Purchaser entitled to choose official language in which contract to be drawn up (section 5)

4. Contract not Substantially Compliant (section 24)

- i. If contract not substantially compliant with section 5 or section 6, purchaser can apply to court to:
 - reduce rate of interest;
 - rectify contract; or
 - declare contract *void ab initio*
- ii. Application to be made within 2 years from date of contract

5. Recording of Contract (section 20)

- i. Seller shall cause contract to be recorded against title deed at deeds office within 90 days
- ii. If not, purchaser can:
 - a. cancel contract; or
 - b. cause contract to be recorded
- iii. Effect of recording:
 - a. no transfer of land unless:

- b. transferee is purchaser under the contract of; or
 - c. recording has been cancelled
- iv. If seller insolvent/land sold in execution, purchaser has preferent claim to proceeds of sale but subject to claim of bondholder if bond registered prior to recording

6. Other Obligations of Seller

- a. Seller to furnish purchaser with:
 - i. certificate by bondholder (if applicable) indicating cancellation figure and rate of interest levied by bondholder, within 30 days of contract (section 7)
 - ii. copy of contract free of charge within 30 days (section 13)
 - iii. statement of account every 12 months (section 16)

7. Rights of Purchaser

- i. Purchaser entitled to:
 - a. make a payment before due date
 - b. make larger payments
 - c. tender payment of all amounts owing and claim transfer of land (section 17)
- ii. Purchaser may require bondholder to furnish certificate indicating cancellation figure and rate of interest
 - a. not more than three times in a calendar year(section 9)
- iii. If seller fails to pay bondholder, purchaser may pay bondholder directly instead of seller (section 11)

8. Obligations of Purchaser

- i. If during contract, seller arranges a loan on behalf of purchaser (which loan is to be secured by mortgage bond), purchaser shall:
 - a. complete loan application and furnish seller with completed application and necessary information within 14 days
 - b. If loan granted, forthwith sign bond registration documents
- ii. Loan to be for all outstanding amounts as well as transfer and bond costs
- iii. Seller entitled to cancel contract if purchaser does not comply with the above

9. Who need to register as a credit provider?

- i. In terms of the National Credit Act, credit providers need to register with the NCR with effect from 1 June 2006.
- ii. The following persons need to register as a credit provider:
 - a. Credit Providers who have entered into at least 100 agreements or have a total outstanding book of credit of more than R500 000,00
 - b. Are juristic persons and individuals
 - c. Have a commitment to combating over-indebtedness
- iii. The following persons are excluded from the above registration process: (sections 39 - 53 of the NCA)
 - a. Has fewer than 100 agreements, or a total outstanding book of credit equal to or less than R500 000,00
 - b. Provides incidental credit as a result of outstanding transactions
 - c. Where the consumer is a juristic person with an annual turnover or asset value that exceeds the prescribed threshold value as set by the Minister (R1 million), or consumer is the state or an organ of state

- d. A large agreement in terms of which the consumer is a juristic person with annual turnover/asset below the threshold (R1 million) set by the Minister
- e. The credit provider is the SA Reserve Bank
- f. The credit provider is situated outside the RSA (consumer must apply to the Minister for this exemption to apply)

IMPORTANT: A person may not enter into a credit agreement or extend credit if he should have registered but did not register, as any such agreement entered into is unlawful and void.

Visit www.ncr.org.za and download the document: [Form 2: Application for registration as credit provider](#) in terms of Section 40 of the National Credit Act 34 of 2005.

10. What is a credit transaction?

A Credit Transaction is the following:

- a. An Installment Agreement
- b. A pawn or discount transaction
- c. An incidental credit agreement
- d. A mortgage agreement or secured loan
- e. A lease of movable property
- f. Any other agreement that is not a credit facility, but in terms of which payment is deferred and a charge, fee or interest is payable (including an interest bearing loan).

11. Reckless Credit and Over-indebtedness and Debt Review

- If a consumer is over-indebted at the time that the parties conclude an agreement, that agreement would constitute reckless credit.
- In order to curtail the granting of reckless credit, the Act requires that the credit provider must, prior to concluding an agreement make an assessment of the consumer's financial position as well as whether the consumer understand the risks and obligations to be undertaken in terms of the agreement.
- In the event that the consumer is over-indebted OR reckless credit has been provided, the courts are empowered to do certain things (and consumers are provided with certain relief) which affect the enforcement of such credit agreement.
- Credit providers are prohibited from entering into a reckless credit agreement.

Definition of Over-indebtedness:

A consumer is over-indebted if he/she will not be able to satisfy in a timely manner all the obligations under all the credit agreements to which he/she is a party.

Definition of Reckless Credit:

A credit agreement would be marked as reckless credit when:

- a. the credit provider failed to conduct the required assessment in terms of section 81,
- b. the credit provider did the assessment but entered into a credit agreement when the preponderance of information available to him indicated that the consumer did not appreciate the nature of the obligations, risks and costs of entering into the agreement, or

- c. the credit provider did the assessment and entered into the agreement, but conclusion of the agreement would make the consumer over-indebted.

A credit provider must take reasonable steps to assess a prospective consumer's:

- a. general understanding of the risks and costs, obligations and rights of the proposed credit agreement
- b. debt repayment history under other agreements
- c. existing financial means, prospects and obligations, and
- d. if a consumer has a commercial purpose for applying credit, whether there is a reasonable basis to conclude that such purpose may prove to be successful

Debt Review

- a. A consumer may apply to a debt counselor to have the consumer declared over-indebted.
- b. If the debt counselor finds the consumer to be over-indebted, the debt counselor may recommend that the Magistrates Court make an order that one or more of the consumer's credit agreements are declared to be reckless and/or that one or more of the consumer's obligations be re-arranged.

Visit www.ncr.org.za and download the document: [Form 16: Application for debt review](#)