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December 2019

Dear Client / Geagte Kliënt

Newsletter

Botsende Doelstellings / Conflicting Goals: (NCA vs ALA)

Die doel waarom daar voorsiening gemaak was vir die verkoop van grond op afbetaling in hoofstuk II van die Wet op Vervreemding van Grond, 68 van 1981 (Alienation of Land Act - ALA) was om in die eerste plek te verseker dat kopers van eiendom in sodanige gevalle spesifieke beskerming geniet, indien die verkoper bankrot verklaar sou word, terwyl die eiendom nog in sy naam geregistreer staan.

As further reason for the specific regulation, ALA transactions was to provide a vehicle for purchasers to acquire property under circumstances where bank loans were not readily available, or where strict lending criteria by banks and other financial institutions made the sale of a property virtually impossible for persons with limited income.



Die ALA wetgewing word hoofsaaklik gebruik vir die aankoop van residensiële eiendomme waar die koopprys aan die verkoper betaal moet word in meer as twee paaiemente oor 'n periode van langer as een jaar. Waar die betrokke eiendom nog nie onder 'n afsonderlike titelakte gehou word ten tyde van die aangaan van die ALA kontrak nie, mag die terugbetalingstydperk in die kontrak nie langer as vyf jaar duur nie.

The introduction of the National Credit Act (No. 34 of 2005 - NCA) has, however, to a large measure nullified some of the legislator's intentions with the ALA legislation, since section 8(3) of the NCA stipulates that an ALA sale agreement 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 by the purchaser to the seller.

Waar daar egter geen voorsiening gemaak word in 'n ALA kontrak vir die betaling van enige fooi, rente of ander kostes deur die koper aan die verkoper nie, sal die transaksie nie onderhewig wees aan die krediet-wet (NCA) nie. Daar moet egter altyd in ag geneem word dat enige skema om rente, koste of fooie klandestien te verhaal, deur byvoorbeeld die koopprys dienooreenkomstig kunsmatig te verhoog bo die markwaarde, maklik geïnterpreteer kan word, as sou die ooreenkoms, binne die kader van die NCA val.

If the transaction does fall under the NCA it would mean that the credit grantor (seller) will have to register as a credit provider as provided in the NCA. Failure to register may provide the buyer in the event of a claim by the seller in case of non-payment by the purchaser with the opportunity to raise the defence that the credit provider (the seller) should never have extended credit in the first place or that the lending was done recklessly.

Indien die koper so 'n verweer sou opper sal die verkoper moet aandui dat hy alle redelike stappe geneem het en 'n behoorlike ondersoek gedoen het na die koper se vermoë om die paaieement te betaal. 'n Hof of Tribunaal sou onder sulke omstandighede kragtens die NCA by magte wees om te gelas dat:

- die werking van die ooreenkoms op te skort, of
- die verpligtinge van die lener (koper) ingevolge die ALA ooreenkoms geheel of gedeeltelik tersyde stel, of
- die rentekoers verlaag; of
- die bepalings van die ooreenkoms aanpas, of
- selfs die paaieemente aanpas.

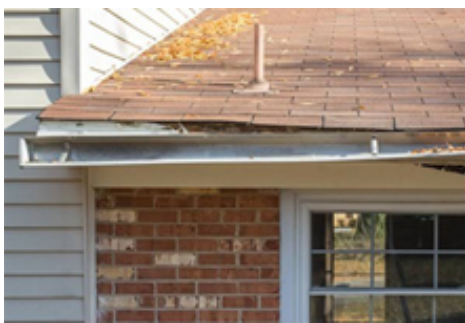
From the above it should be more than clear that since the promulgation of the NCA the risk relating to ALA transactions has totally shifted to the Seller whilst nothing stops a Purchaser from applying to be placed under debt counselling whilst still occupying the property.

Gegewe die voormelde moet verkopers baie seker maak dat die koper finansiëel in 'n baie sterk posisie is alvorens hul dit enigins behoort te oorweeg om 'n ALA transaksie ten opsigte van 'n eiendom aan te gaan.

Groete, seënwense en lekker uitrus vir 2020! Greeting, blessings and enjoy the break and best wishes for 2020!

Regards / Groete

Hennie, Eberhard en Cheryl-Anne | Directors



Patent And Latent Defects And The Offer To Purchase

Buying a property for the first time is probably one of the biggest decisions you will have to make in your life. It is therefore important to make an informed decision when making an offer to purchase a property and that you ensure that your offer is made after identifying any possible defects as these defects will most likely have an impact on the purchase price you will offer for the property.

But before we go into the different types of defects, we need to take a step back and first look at the concept of 'voetstoots'.....

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Eiendomstransaksies en Trusts: Dring aan op skriftelike bewys van die Trustees se Magtiging

Daar is 'n besondere risiko daaraan verbonde om eiendom aan 'n trust te verkoop. Hoewel hierdie risiko maklik vermy kan word, word verkopers steeds dikwels onkant gevang.

Dit is belangrik om seker te maak dat die trustee/s wat 'n aanbod om te



koop/kooporeenkoms onderteken, gemagtig is om dit te doen. Versuim om hierdie aspek na te gaan kan jou dalk die kooptransaksie kos. Ons illustreer hierdie vereiste aan die hand van 'n onlangse uitspraak van die Hoogste Hof van Appèl. In hierdie saak is die verkoper se eis van R3 miljoen verwerp, omdat slegs een van die twee trustees 'n kooporeenkoms namens die koper onderteken het.

Ons sluit af en oorweeg of 'n ongemagtigde trustee in so 'n geval persoonlik vir skadevergoeding aanspreeklik gehou kan word.

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Property Owners, Buyers and Agents: Lost Title Deeds and Bonds - Don't Delay!

Without your original title deeds you cannot pass transfer of your property to a buyer, and whilst obtaining a certified copy of a lost deed has until now been relatively quick, simple and cost-effective, that changes for the worse on 1 January next year.

We discuss what a title deed is and give you details of the new procedures, with suggested courses of action for all property owners (not just active sellers), buyers, estate agents and bondholders.

Item 1 on your action list will be to make sure you know exactly where the title deed is. If it is lost, Item 2 will be to approach your attorney urgently for help in getting a replacement before your local Deeds Office closes for the December break.

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