

Alienation of Land Act 68 of 1981

In summary the Alienation of Land Act 68 of 1981 provides:

1. That contracts for the sale of immovable property or rights in immovable property must be in writing and signed by the parties or their duly authorised representatives in order to be enforceable. The Act therefore is the source of the law in South Africa that verbal agreements for the sale of immovable property are unenforceable.
2. That the material terms applicable to a sale of immovable property must be in writing, namely the description of the land sold, the identity of the parties to the contract and the purchase price. If any one of these material terms are not specifically provided for in a written document which is signed by the contracting parties or persons who are authorised by such contracting parties in writing the contract is void and unenforceable.
3. For the sale of land on instalments defining such a contract as one where land is sold against payment by the purchaser to the seller of an amount of money in more than two instalments over a period exceeding one year. The provisions which govern the sale of land on instalments are intended to cover land used or intended to be used mainly for residential purposes and, inter alia, exclude agricultural land as defined in Section I of the sub-division of Agricultural Land Act 1970.
4. Extensive rules which dictate the contents of a contract for the sale of land on instalments and the omission of certain clauses and/or information from a deed of alienation can in certain circumstances render the contract unenforceable.
5. In Section 6 and in precise terms the provisions which have to be included in a contract and which are compulsory and no estate agent should attempt to negotiate the conclusion of a contract for the sale of land on instalments without being fully apprised of the legal requirements or being satisfied that the standard contract form being used is in fact a form which complies fully with the provisions of the Act as the consequences of non-compliance can be serious.
6. For special protection to a purchaser under a deed of alienation (a sale of land on instalments) and in summary that protection incorporates:
 - 6.1 The right of a purchaser to take transfer of the land where the seller is rendered insolvent or defaults in terms of any mortgage bond which the seller may have registered over the land. In essence provided the purchaser is in a position to secure payment of the balance of the purchase price which is unpaid there is no risk of loss of the property as would normally be the case in insolvency.
 - 6.2 At any time during the life of the contract the purchaser can demand that the land be transferred to him or her against the registration of a mortgage bond which provides for terms of repayment and interest no more onerous than as are provided for in the deed of alienation.
 - 6.3 Powerful restrictions on the right of a seller to cancel a sale and take back the land. These restrictions are embodied in provisions against cancellation prior to a 30 day written notice of breach delivered in a prescribed manner. In other words the normal common law provisions relating to breach and cancellation of contracts and the standard 7 day notice clause as provided in most deeds of sale or offers to purchase are excluded and purchasers are given serious protection on default.
 - 6.4 The requirement that deeds of alienation are to be recorded in the deeds registry by the seller, or in certain circumstances by the purchaser, and such recordal has the effect of endorsing the title deed of the property and thereby properly protecting a purchaser. The nature of the recordal is similar to that of an interdict which precludes the transfer of the property by the registered owner to any one other than the bona fide purchaser under the deed of alienation and in such a manner gives substance to the protection of the purchaser for which the Act is designed.