



SABERA SINGH & ASSOCIATES

ATTORNEYS - NOTARIES - CONVEYANCERS

Information brochure: Formalities for a Valid Sale Agreement

Formalities

In terms of section 2 of the Alienation of Land Act 68 of 1981 (ALA), an agreement of sale in respect of immovable property must be:

- contained in a deed of alienation; and
- in writing.

Definition of deed of alienation

Section 1 of the ALA defines a “Deed of Alienation” as “a document or documents under which land is alienated”.

The definition of “alienation” as defined by the ALA means “to sell, exchange or donate, irrespective of whether such sale, exchange or donation is subject to a suspensive or resolute condition”.

Therefore, any written document that records the names of the parties, the description of the property and the purchase price, will fall within the definition of a deed of alienation.

In writing

Section 2 of the ALA is clear that the agreement must be in writing. If the parties agree on the material terms, but write down only some of those terms, the result will be an agreement that is partly oral and partly in writing. This will not suffice to meet the requirements of the ALA and the agreement will not be a valid sale agreement.

Residual terms

Any term of the agreement that is necessary for the implementation of the transaction, and which has not been agreed by the parties (either expressly or by implied or tacit agreement) will be regulated by law. That is to say, the common law (or legislation, if relevant) will determine how these issues are to be resolved. Such terms are known as residual terms.

In allowing the residual terms to apply to the agreement, the parties have not violated the requirement that the agreement must be in writing, and the agreement will be a valid sale agreement.

Negotiations complete at time of signing

The parties cannot agree that further terms will be agreed at a future date. The parties are at liberty to reduce to writing the terms on which they have reached agreement, but so long as they intend to negotiate further terms, that agreement will not reflect their final agreement and is therefore not a valid sale of land.

If they have not yet agreed on the final terms of the transaction, then they have not yet reached the point that the legislature had in mind when it laid down that the contract for the sale of land must be embodied in a deed of alienation.

Validity of an electronic signature

Since the promulgation of the Electronic Communications and Transactions Act 25 of 2002 (ECTA), most contracts are now valid and binding if there is an electronic signature. However, schedule 1 of ECTA provides a list of sections in ECTA which are excluded in terms of certain legislation. Schedule 1 of ECTA confirms that when dealing with contracts concluded in terms of the ALA, the following sections of ECTA are excluded:

- section 12 of ECTA which deals with when a document would be in writing in terms of ECTA; and
- section 13 of ECTA, which deals with the legalities behind an electronic signature.

The formalities regarding the sale of immovable property must be met in compliance with the ALA.

Oral amendment

If a written sale agreement has been concluded, and the parties later decide to amend a material provision of that agreement, the amendment must be recorded in writing.

If the signed sale agreement places an obligation on a party to perform within a specific period of time, and the parties agree to extend that period, or to waive compliance with that obligation, the agreement to extend the time period or waive compliance does not have to be in writing. It is however recommended that all amendments be reduced to writing and be signed by the parties.