14 May 2021

<u>WHEN DOES AN INSTALMENT IN TERMS OF AN INSTALMENT SALE AGREEMENT OF IMMOVABLE PROPERTY BECOME PAYABLE:</u>

The Alienation of Land Act 68 of 1981 (ALA) regulates instalment sale agreements, which agreements are defined as: the sale of a property where the purchase price is paid by the purchaser in two or more instalments over a period longer than one year.

The Act requires the seller to record the agreement with the Registrar of Deeds and the title deed is endorsed to reflect that the instalment sale agreement has been concluded between the seller and the purchaser. The registration provides protection to the purchaser, as it prevents the seller from alienating the property to a third party without the consent of the purchaser.

In the Constitutional court judgement of Amardien and Others v Registrar of Deeds and Others it was found that:

- There is an obligation on the seller to record the agreement at the Deeds Office within the stipulated time as specified in the ALA;
- The instalments only become due and payable when the agreement has been registered at the Deeds Office, and the Seller is not entitled to any payments until the recordal has been registered.
- If the agreement has been registered late by the seller, the seller cannot claim payments retrospectively.
- It will not be a valid cancellation if the seller exercises the remedy of cancelation when the purchaser has fallen into arrears under an agreement which was not recorded with the Registrar of Deeds.

It is therefore pertinent that an instalment sale agreement be recorded at the Deeds Office as soon as possible after signature of the agreement.