

Be careful what you put in writing – Part 1

This week, we start a series of posts that will deal with **the legalities and requirements relating to contracts**.

In terms of the Alienation of Land Act 68 of 1981, Section 2(1) of the Act says as follows:

2; (1) No alienation of land after the commencement of this section shall, subject to the provisions of section 28, be of any force or effect unless it is contained in a deed of alienation signed by the parties thereto or by their agents acting on their written authority.

In simple terms what this means is as follows:

1. Firstly, "alienate" is defined as a sale, donation or exchange. The reason why these activities are included, is that previously, people would enter into a contract of exchange for example, to avoid paying transfer. I will exchange my property with you in return for a certain amount of money and hence there is no transfer duty as it is not a sale of immovable property. The definition of the word "alienate", closes that loophole.
2. Secondly, an agreement of sale of immovable property must contain four things, which we refer to as the 4Ps:
 - a. Parties – details of the buyer and the seller;
 - b. Property – a description of the property which allows it to be identified;
 - c. Price – the price needs to be identified; and
 - d. Prescribed formalities – a contract of sale of immovable property must be in writing and signed by the parties or their appointed agents.

The case of *Dold v Bester* 1984 (1) SA 365 (D) is probably one of the most interesting cases in this regard.

1. John Dold bought a piece of land from Sheryl Bester.
2. They wrote down the terms of their agreement on a scrap piece of paper from a notebook, along the following lines:

"The seller is Sheryl Bester. The buyer is John Dold. The property is 123 Lemon Tree Lane. The price is R15 000 payable in instalments. An estate agent will draw up a formal contract."

Both the buyer and seller signed the agreement. The seller was offered a higher price by an unrelated third party and told the buyer that she was no longer selling him the piece of land. His response was that they had a valid contract of sale.

In the subsequent court case, the seller argued that the contract (scrap of paper), did not comply with Section 2(1) of the Alienation of Land Act. The timing of the payment of the purchase price in instalments was vague and therefore any purported agreement was invalid. After some technical argument, the judge decided that the purchase price had been identified and that the buyer was able to make payment of the purchase price in full, if need be, and therefore the contract was not invalid per the seller's argument.

The second point raised by the seller, was the scrap of paper was a contract to enter into another contract and therefore the scrap of paper was not enforceable as a contract of sale of immovable property. As the parties had not entered into a formal contract drawn up by an estate agent, there was no agreement of sale of immovable property between the parties. The judge said that the scrap of paper complied with all the requirements of Section 2(1) of the Alienation of Land Act. The scrap of paper identified the parties (buyer and seller), the property (the address had been written down), the price (R15 00) and the piece of paper had all these details in writing and it was signed by the buyer and seller. The judge ruled that the scrap of paper was a valid agreement of sale of immovable property and the seller was bound to comply. Mr Dold had indeed succeeded in buying the piece of land.

This is a very interesting case which clearly demonstrates that one does not need an agreement of sale that is many pages in length. This case also shows us, that one needs to understand that if you put something in writing and sign it, you will be bound!