PROPERTY LAW

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How to Deal with Movable Property in Immovable Property Sales

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INTRODUCTION

When concluding the sale of immovable property, sellers and purchasers often wish to simultaneously sell various movable property associated with the immovable property.

The sale of movables are often incorrectly included in and form part of the agreement of sale of the immovable property and the purchase price.

THE CORRECT METHOD OF DEALING WITH MOVABLE PROPERTY

Where the seller and purchaser agree to the sale of movables associated with the sale of the immovable property, these should be clearly identified in a separate annexure and then dealt with in a separate agreement for the sale of movable property.

The movable property agreement should:

- be linked to the immovable property agreement and the two agreements should refer to each other;
- indicate the purchase price of the movables;
- clearly identify the movable property in an annexure;
- provide for the securing of the purchase price of the movables by means of a bank guarantee payable on registration of transfer of the immovable property or by means of a cash payment to the conveyancing attorneys trust account, payable to the seller on registration of transfer;
- provide that the movables are sold voetstoots;
- indicate that risk and ownership only passes from the seller to the purchaser on the date of the registration of the immovable property from the seller to the purchaser in the deeds registry;
- include a clause to the effect of which is that should the sale of the immovable property be terminated for any reason the movable property agreement will likewise automatically terminate;
- be signed by both parties.

THE DISADVANTAGES OF ONE AGREEMENT

The first disadvantage from the purchaser point of view is that the inclusion of the movables and their value in the same agreement is that the purchase price of the immovable property is inflated to the extent of the value of the movable property. The practical consequence of this is that the transfer duty payable to SARS increases resulting in higher costs for the purchaser.

The potential disadvantage for the seller is that save where the property is exempt from capital gains tax (CGT), the seller's CGT exposure is increased by means of the inflated purchase price. Movable property under these circumstances is seldom sold resulting in a capital gain.

MOVABLES SOLD MUST NOT BE FIXTURES AND FITTINGS OR PART OF THE IMMOVABLE PROPERTY

SARS is entitled to the payment of transfer duty based on the fair value of the immovable property. The seller and purchaser should not classify as movables any portion of the property that are in fact part of the immovable property such as fixtures and fittings, this in an attempt to reduce the purchase price of the immovable property and thus reduce the transfer duty payable.

LOW VALUE MOVABLES

This note and the need for a separate sale of movable property agreement should only be used where the value of the movables sold is material. The inclusion of minor movables or movables of low value will not be material and can at the parties discretion be dealt with in the immovable property agreement.

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