**LEAVING ANYTHING IMPORTANT OUT OF YOUR PROPERTY SALE AGREEMENT WILL SINK IT**

“No alienation of land … shall … 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.” (Alienation of Land Act)

Ensure that all the important terms of your sale agreement are recorded in writing and signed.

Leave out anything “material” and, as we shall see from the Supreme Court of Appeal case discussed below, your entire sale could well collapse. At the very least, you face significant legal consequences, delay and cost.

**The omitted term that sank a R4.5m sale (after 7 years’ delay)**

* In 2016, liquidators of a property-owning company sold several pieces of land (including a “private ring road” erf) to a buyer for R4.5m plus vat.
* A saga of delay and confusion followed, including changes to the original sale agreement such as an addendum changing the date of transfer, and another correcting a mistake in the ring road’s erf number.
* Eventually it became clear that a subdivision of the ring road erf would be necessary to save the sale, and the parties started negotiating in an attempt to do so.
* Whilst it was not clear to the Court whether or not the buyer and seller did actually reach any agreement on the matter, the critical issue was that at best there was only an informal arrangement or an oral agreement - “no formal written agreement or addendum was ever concluded and signed by or on behalf of the parties”. Nor was it clear that they were agreed on what exactly was being sold, the buyer claiming to have had no intention of buying the whole ring road erf as set out in the original agreement.
* That rendered the whole sale agreement null and void.

**The formalities required for validity**

* Property sale agreements must be in writing and signed. Whilst generally our laws hold us to even our verbal agreements, there are exceptions where only written agreements are binding. A vitally important one is the sale of land. The Alienation of Land Act requires that the whole contract of sale be reduced to writing and signed by or on behalf of both buyer and seller.
* That written sale agreement must include all “material terms”, incorporating both -
	+ “Essential” terms, which must set out the identity of the parties to the contract, the identity of the land sold, and the amount of the sale price; and
	+ Any other term that is “material … determined with reference to its effect on the rights and obligations of the parties.” That’s an imprecise and wide definition so each case will be decided on its own facts, but for example a subdivision would clearly fall into that net.

In this case, the omission of a subdivision term had created uncertainty about the parties’ rights and obligations concerning the subdivision process, including responsibility for costs and potential consequences if approval was not granted. Their failure to record in writing their agreement on these issues (if indeed they ever reached one) rendered the whole sale invalid.

Note that your written agreement must be clear in itself, sufficiently accurate and comprehensive to avoid any need for oral evidence on any of those critical issues.

**Takeaways**

Even when our law doesn’t require your agreement to be written and signed to be valid, put it in writing! Always insist on a written agreement that covers all the material terms of your sale. That’s make or break with property sales, but in all cases verbal agreements are a recipe for uncertainty and dispute.

Seek legal advice before you sign anything: Engaging an experienced property lawyer upfront will ensure that your interests are protected throughout the process.

Clarify anything important like subdivision: If your transaction involves subdivision (or indeed any other important aspects), make sure that all obligations, cost liabilities, and potential outcomes are clearly stipulated in the written agreement. It’s the only way to ensure the validity of your sale, avoid ambiguity, and reduce the risks of any unforeseen circumstances and dispute.