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## Understanding Instalment Sale Agreements

### Introduction

There are many ways in which property ownership can be transferred and this article is going to unpack one of those in a little more detail, the Instalment Sale Agreement. Check out my other article about alternative ways to sell your property.

The average person sells their house by approaching an estate agent, letting the agent market their property, finds a buyer who would then approach a bank to lend them the money for the purchase and then when the deeds office finally transfers the property the seller then gets the money from the buyer/bank (more often than the bulk of it would go towards settling the seller's bond). An instalment sale agreement (ISA) offers an alternative to this more traditional way of selling/buying a property.

So when would an ISA really make sense? Let's create a few scenarios of when ISAs might be of interest:

- If the seller wants to sell his/her property and doesn't want to wait to market their property and hope to find a buyer who qualifies for financing
- If the buyer isn't able to get financing but isn't able to get finance from a finance house and the seller is willing to receive payments over times
- If the seller is looking to control of the property to someone else but still wants the annuity income (regular payments) which could help them with financial planning

ISAs might be a new concept to you, but you've probably heard of them (or even had one) before. Motorcars are normally sold using an instalment sale agreement, so let's talk through ISAs when it comes to motorcars. In the same way that someone looking to buy a car might go to a dealership and pick the car of their dreams. They would probably go to a bank in order to get vehicle finance, they would sign an agreement with the bank which means that the bank pays for the car allowing the buyer to drive away in their fancy new car while paying the bank monthly instalments. Let's say that the agreement is for 5 years, so the bank keeps the car registration papers but only gives those papers to the buyer when the last instalment is paid (in other words, the bank owns the car until the last instalment is paid). ISAs for properties works in the same way, except that there isn't a bank involved. ISAs are regulated by the Alienation of Land Act 68 of 1981 (Alienation of Land Act), the Conventional Penalties Act 15 of 1962 and the National Credit Act 34 of 2005 (NCA), making it an alternative structure with a strong legislative framework.

## The details

In principle the ISA enables the seller to provide goods to the purchaser in terms of an agreement which allows the purchaser to pay those goods off over time, which largely means that the purchaser and seller will have entered into a “credit agreement”. This means that there is a chance that the ISA could be governed by the National Credit Act (NCA). If the agreement falls within the bounds of the NCA then various regulatory requirements are triggered such as the need for the seller to be a registered credit provider. So, long story short, it makes sense for the ISA to be setup in such a way as to fall outside of the National Credit Act to avoid those extra burdens. There are two ways to avoid needing to be a credit provider, namely: The ISA can only provide for the deferment of the payment of capital, and no interest, fees or other charges are levied; or if the amount being considered is greater than R250k. Most deals with MarkBuysHouses would therefore fall outside of that and would therefore be easier to manage. If you’re interested in finding out more please check out the articles detailed below.

So what do you need to know about ISAs? Here are a few things to keep in mind:

- In order for the agreement to be an ISA, the purchase price needs to be paid in 2 or more instalments over a period of not less than 13 months
- The ISA needs to be recorded against the title deed of the property within 90 days of concluding the ISA. A good conveyancing attorney can help with that process. This is to protect the purchaser from the seller agreeing to the ISA but then selling the property on to someone else. Once the ISA is signed, the property cannot be sold to anyone apart from the purchaser
- The transfer duty needs to be paid within 6 months of signature of the agreement.
- In the event of default the Purchaser is to be given 30 days notice to remedy default. If the Purchaser is given 2 such notices in a calendar year, on the third occasion it need only be a 7 day notice. If the purchaser does not remedy the default, the ISA can be cancelled and the purchaser evicted from the property
- In the event of the seller's insolvency:
  - The purchaser can take transfer against payment of the balance outstanding
  - The seller’s insolvency the purchaser has a claim on the proceeds of the property once it is sold on (the seller’s mortgagee still ranks first though).
- If the property is bonded:
  - The monthly instalment should be paid into the seller's bond account.
  - The seller is required to give the Purchaser a detailed statement of account within 30 days of every 12 month period, and the bond account balance details.

## A working example

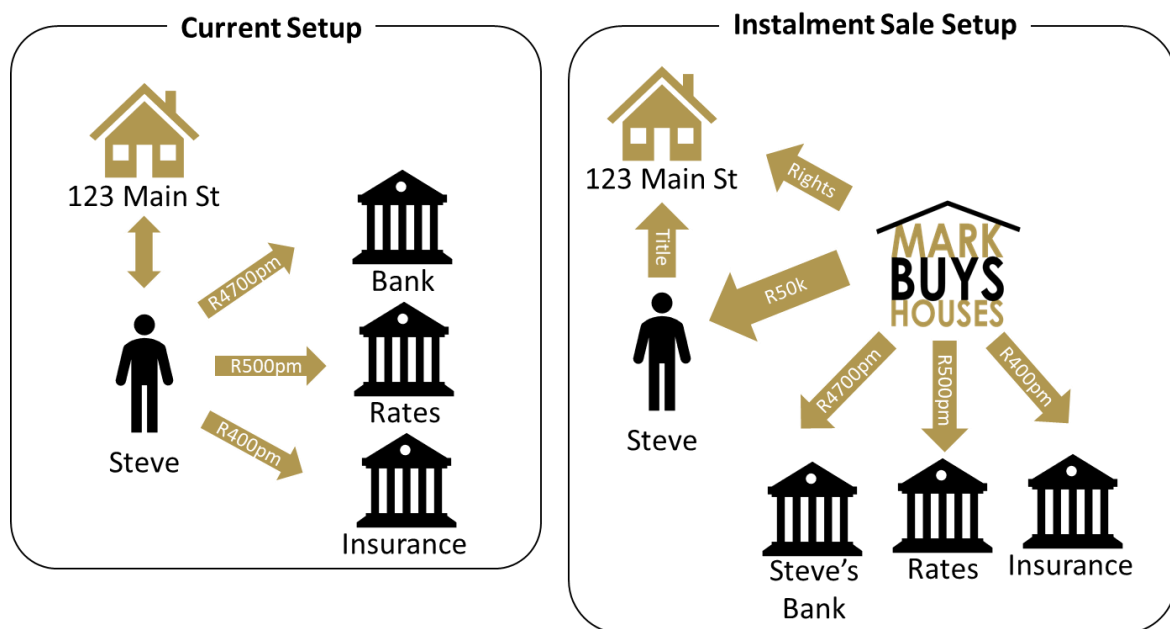
Let’s, for the sake of an example, assume that Steve the seller is looking to sell his property at 123 Main Street. It’s a nice property and is probably worth about R1mil. Steve has a bond on his property with an outstanding bond amount of R600k and he needs to sell quickly so he approaches MarkBuysHouses. Right now Steve has a few monthly costs as a result of the property which are really weighing him down:

Monthly amount	Detail
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Monthly bond instalment	R4 700	Assuming 7% interest on the R600k for 240 months
Rates & Taxes	R500	
Insurance	R400	
	<hr/>	
	R5 600	

So Steve and MarkBuysHouses agree to a deal which gives Steve R50k upfront as a form of deposit, then MarkBuysHouses pays the remaining balance (R950k in this case) over 200 equal monthly payments (R4750 pm). The monthly amount is paid over to Steve’s bank to settle the monthly bond instalment. MarkBuysHouses takes on the responsibility of the Rates & Taxes as well as the costs of insurance on the property which means that Steve’s costs of the property have been taken over completely. So Steve is happy because he has R50k to help him with his immediate cash needs, no longer needs to worry about the costs of the property and is able to move on with his life.

Here’s a quick visual summary of the relationships:



### Next steps

Naturally this could all be a lot to take in. Also, you’re never really sure who to turn to. Having said all of that, if you would like to discuss anything more or if you’d like to unpack your options in more detail then please feel free to contact me on 083 692 6576 or send me a mail on [mark@markbuyshouses.co.za](mailto:mark@markbuyshouses.co.za).

### Sources and links?

- Check out this article to find out more details about why ISAs aren’t included under the NCA: <https://www.cliffedekkerhofmeyr.com/en/news/publications/2019/Real/real-estate-and-finance-and-banking-alert-25-november-2019-how-instalment-sale-agreements-could-provide-a-creative-finance-solution-for-deals-banks-turn-away.html>
- This is another article about the bounds of the NCA: <https://www.omplaw.co.za/NewsResources/NewsArticle.aspx?ArticleID=2058>

- Template of a basic instalment sale agreement:  
<http://conveyancing24.co.za/index.php/example-installment-sale-agreement>