

The influence of the Consumer Protection Act on lease agreements

The Consumer Protection Act grants various rights to consumers not previously afforded to them in order to give meaning to a consumer's right of freedom of choice. Section 14 of the Act aims to limit the grip on consumers that fixed term agreements cause.

The Act enables tenants to terminate a lease agreement before the expiry date as set out in the lease agreement. This no longer constitutes breach, but is now a right of the tenant under the Consumer Protection Act.

The tenant may cancel the agreement with twenty business days' notice, without the need to prove breach of the agreement. Regardless of the reason for the cancellation of a fixed term agreement, the tenant will remain liable for any amounts owed in terms of the agreement up to the date of cancellation and not up to the end date of the agreement. The landlord may also cancel the agreement with twenty business days' notice, but needs to prove "material failure" by the tenant to comply with the provisions of the lease agreement and further prove that the tenant was requested to remedy the breach, but failed to do so.

The landlord may impose a reasonable cancellation penalty should the lease agreement be terminated before the end date.

THE CANCELLATION PENALTY IS BASED AMONGST OTHER FACTORS, ON THE FOLLOWING:

1. The rental amount payable;
2. The location of the property;
3. The duration of the lease and the prospect for re-letting;

THE RENTAL AGENT CAN TAKE THE FOLLOWING ACTIONS TO MAKE THE TERMINATION AS PAINLESS AS POSSIBLE FOR THE LANDLORD:

1. Obtain the cancellation notice in writing from the tenant;
2. Ensure the cancellation gives the required twenty business days' notice;
3. Charge rental up to the end of the twenty business days;
4. Should the tenant decide to withdraw the cancellation and remain in the premises, a new lease agreement must be signed. A lease cannot be revived by law;
5. Start advertising the property, the onus is on the agent / landlord to find a new tenant;
6. Keep all invoices for payments made in the effort to secure a new tenant (e.g. advertising costs). These expenses may be added to the calculation of the "reasonable cancellation penalty fee".



It is important to note that the calculation of the penalty fee can only be made once a replacement tenant has been found. One should bear in mind that this reasonable cancellation penalty fee is not to penalise the tenant, but to recover actual loss suffered by the landlord as a result of the cancellation of the lease agreement.

- Nicole Rokebrand

Looney Law-

A small-town lawyer made a modest living until another lawyer moved into his town. Then they both made a fortune.

Employee of the month

Elise Tolmay



Elise Tolmay is sedert 1 Oktober 2010 werksaam by die firma as aktetikster. Sy is 'n ware staatmaker by die firma en een van vele getroue WP-ondersteuners wat ons hier by die kantoor het! Elise is ouma van 'n pragtige dogtertjie en hierdie ouma spog gereeld met die foto's wat uit Engeland aangestuur word.

M.C. Monthly

Issue 12

M.C. van der Berg Incorporated - Your Property Attorneys

April 2013

The Newsletter with a difference

Nee jy kan dit nie saamneem nie!

Male sonder tal word ons as oordragprokureurs gekonfronteer met die vraag of sekere items geag word deel van die eiendom wat verkoop is te wees al dan nie. In sommige gevalle verskaf dit vir ons 'n bron van vermaak soos gevalle waar verkopers ingeboude kluike, elektriese motorhuisdeure, ingeboude jacuzzi's en glo dit as u wil of nie, ingeboude veselglas swembaddens verwyder as hulle trek. In ander gevalle staan ons weer verstom dat kopers meen items soos mikrogolfoonde, yskaste en spieëls vorm deel van die eiendom wat hulle gekoop het.

Die onderskeid tussen die items wat die verkoper kan saamneem teenoor die wat hy moet agterlaat lê in die onderskeid tussen die regsterme "aanhegtings" en "toebehore".

"Aanhegtings" word geag deel van die eiendom wat verkoop is te wees aangesien dit 'n eenheid daarmee vorm. Die verkoper kan dit nie saamneem as hy trek nie. Dit sal items soos motorhuisdeure, ingeboude braaiers, staalhekke, stowe en alarmstelsels insluit.

"Toebehore" daarenteen word geag nie deel van die eiendom te vorm nie. Dit staan die verkoper dus vry om die items saam te neem as hy verhuis. Dit sal items soos meubels, los matte, skilderye asook elektriese toebehore soos yskaste, wasmasjiene en mikrogolfoonde insluit.

Wanneer dit by die items hierbo kom is dit oor die algemeen vir meeste van ons duidelik in welke kategorie die items sal val, maar wanneer dit egter by verskeie ander items soos gordyne, gordynreëlings, blinders,

tv antennes, DSTV skottels en swembad toerusting kom, om maar net 'n paar te noem, is die onderskeid nie so duidelik nie.

Hierdie onsekerheid lei uit die aard van die saak tot konflik en eise tussen die verkoper en die koper. Alhoewel daar reeds verskeie hofuitsprake gelewer is oor die vraag of sekere items aanhegtings of toebehore is, is daar bloot sekere regsbeginne neergelê wat kan help om items te klassifiseer en het die howe nie 'n volledige lys uiteengesit waarin alle items geklassifiseer word as aanhegtings of toebehore nie.

Aanvaar as uitgangspunt dat kontrakspartye ter goeder trou oor die klassifikasie van items gaan verskil. Die oplossing vir hierdie dilemma is om 'n inventaris by die koopkontrak te voeg waarin alle items wat moontlik 'n argument mag veroorsaak te klassifiseer as "aanhegtings" of "toebehore". Sommige eiendomsagente se pro forma kontrakte bevat reeds 'n lys items wat geag word deel van die eiendom te vorm (aanhegtings). Gaan hierdie lys noukeurig na aangesien dit bloot 'n ter goeder trou poging van die agent is om die kontrakspartye by te staan en nie noodwendig 'n ware weergawe van u transaksie is nie.

Spandeer die tyd om hierdie aangeleentheid uit te klaar voordat u die kontrak teken aangesien dit na die tyd gewoonlik op 'n onaangenaamheid uitloop.

- Tiaan (M.C.) van der Berg

You are cordially invited

M.C. van der Berg Inc cordially invites you to a seminar and panel discussion on: Building- and sectional plans, zoning, building regulations, subdivision and consolidation.

- Ever wondered whose responsibility it is to ensure that building plans are in place?
- How does rezoning work?
- Is it better to subdivide a property or to open a sectional title scheme?
- What to do if your seller built over a servitude or building line?
- Why must a sectional plan be registered?
- What is the NHBRC and how does enrolment work?

All this and many other related issues will be discussed by a panel of experts.

When: 24 April 2013
Time: 09:00 – 12:00
Where: Kiepersol Community Centre
Address: C/o Saxby and Alan roads, Eldoraigne, Centurion
 Precise Geocode: -25.8367000, 28.1493000

SPEAKERS:
Tiaan van der Berg (Director M.C. van der Berg)
Sonja du Toit (Director M.C. van der Berg)
Lydia Lewis (Town Planner - Velocity)
Tertius Horak (Professional Senior Architectural Technologist)
Eamon Swart (Surveyor – SVR Surveyors)
Douglas Donald (Chief Building Inspector, Centurion)

*The seminar will be conducted in English
 Coffee, tea and refreshments will be available afterwards.
 Opportunity for questions and discussion is provided for.*

RSVP: 19 April at mcademy@mcvdberg.co.za or Sarie at 012 660 6000

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10 Minute Sudoku

MCSudoku

M.C. VAN DER BERG INC
 ATTORNEYS, CONVEYANCERS & NOTARIES

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Die finansiële posisie van die beheerliggaam

Dit is 'n vereiste van alle banke dat daar huiseienaarsversekering ten opsigte van die gebou / struktuur waaroor 'n verband geregistreer staan te word, moet wees. Aangesien die versekeringspremies ten opsigte van deeltiteleiendomme by die heffings ingesluit is wat maandeliks aan die beheerliggaam betaalbaar is, is dit van kardinale belang om vas te stel wat die finansiële posisie van die beheerliggaam is alvorens u besluit om 'n eiendom in 'n kompleks aan te koop.

Indien u van plan is om die koopprys van die eiendom deur middel van 'n verband te finansier, sal die betrokke bank in die meeste gevalle nie net 'n versekeringsertifikaat vanaf die betrokke beheerliggaam versoek nie, maar ook die finansiële state. Die rede waarom die bank hierdie state aanvra, is om vas te stel of u as eienaar, sowel as die bank as finansierder, in 'n kompleks belê wat onder goeie bestuur en finansiëel stabiel is. Die ontleding van die finansiële state vorm 'n belangrike deel van die risiko-evaluasie proses, en is tot voordeel van uself en u bank.



- Annele Odendaal

Die finansiële posisie van die beheerliggaam sal ook 'n rol speel indien u in die toekoms vir verdere verbande aansoek wil doen ten einde verbeteringe aan te bring, of selfs vir persoonlike gebruik aan te wend, of indien u u eiendom wil verkoop.

Die bank sal die jaarlikse finansiële state van die beheerliggaam aanvra wanneer u vir 'n verband aansoek doen. Neem kennis dat u, as eienaar, ook op die finansiële state geregtig is, en dat u na elke jaarlike algemene vergadering genooi moet word. Indien u nog nie in besit van die finansiële state is nie, kan u dit van die beheerliggaam aanvra.

Legalities surrounding divorce proceedings

The breakdown of any relationship is stressful. The termination of a marital relationship by divorce is a highly traumatic experience, not only for the husband and wife, but also for the children, family and friends.

More often than not, uncertainty about the party's rights and obligations are one of the major factors contributing to the stressfulness of the divorce. In the next few issues of MC Monthly I am going to attempt to set out the basic legal principles relating to divorce in the hope that a better understanding will help to lessen the trauma.

In this issue I am going to deal with the grounds for divorce, custody of the children and maintenance and in the next issues I will be dealing with the property of the spouses and costs.

GROUNDS FOR DIVORCE

There are a number of grounds for divorce, the main ground being the irretrievable breakdown of the normal marriage relationship. Section 4 (1) of the Divorce Act 70 of 1979 provides that a court may grant a decree of divorce on the grounds of irretrievable breakdown of the marriage, if the court is satisfied that the marriage relationship has reached such a state of disintegration that there is no reasonable prospect to restore a normal marriage relationship. If it appears to the court that parties may become reconciled by means of marriage counselling, treatment or reconsideration, the court may postpone divorce proceedings to enable the parties to attempt reconciliation.

Guilt or innocence need not be proven by the parties. The fault principle on which divorces were heard before 1979, has been replaced by the breakdown principle as set out above.

CUSTODY OF CHILDREN

As primary guardian of minor children, the court in granting a decree of divorce, may pass any order it deems reasonable regarding primary place of residence, contact, guardianship and maintenance of children born from the marriage or adopted by the parents. The court will always use as a guiding principle, the best interests of the child as opposed to the interests of the parents. All relevant factors including the child's cultural and religious environment, the ability of the custodian parent to support and provide a home and loving environment, the maintenance of an ongoing relationship

with both parents with proper access, non-separation of siblings, consideration of the wishes of an older child and effective discipline, are considered by the court.

MAINTENANCE OF THE CHILDREN

Once the court has made a decision on the issue of primary place of residence and contact, an appropriate order regarding maintenance will be made. The normal rule is that the parent in whose care the children are placed, will be entitled to maintenance for the children from the other parent, if the circumstances warrant such an order. Both parents are responsible for the maintenance of their children. Maintenance includes, but is not limited to medical expenses school fees, food, clothing, spending money, gifts, excursions, fuel, rent, water and electricity and even holidays.

MAINTENANCE OF THE PARTIES

Upon divorce the reciprocal duty of spouses to financially support each other ends. As there is no longer a "guilty" or "innocent" spouse, an order for maintenance may be made in favour of either party. The factors which the court will take into account in reaching a decision include the existing or prospective means of the parties, their respective earning capacities, financial needs and obligations,



the age of each party, the duration of the marriage, the standard of living of the parties prior to the divorce as well as any other factor which the court thinks should be taken into account.

Kindly contact us should you need assistance in this regard.

- Bennie Reynders

Looney Law-

A doctor told his patient that she only had six months to live. The distraught patient asked the doctor what she could possibly do to have more time. The doctor advised, "Marry a lawyer. It will be the longest six months of your life."

Praktiese oorwegings by die koop van eiendom uit 'n bestorwe boedel

Eiendomsagente word dikwels die mandaat gegee om eiendom te verkoop waar die eienaar of een van die eienaars oorlede is.

Dit bring verskeie praktiese oorwegings (veral met betrekking tot tydsraamwerke) mee wat die agent en koper in gedagte moet hou.

Eerstens moet die eksekuteur eers aangestel word en 'n eksekuteursbrief deur die Meester van die Hoë Hof uitgereik word. Die eksekuteur is die persoon getaak met die afhandeling van die boedel. Gewoonlik word die persoon in die testament benoem, en as daar geen testament is nie kan die erfgename gesamentlik 'n eksekuteur benoem, by gebreke waarvan die Meester self 'n eksekuteur sal aanstel.

Die aanstelling en uitreiking van die magtigingsbrief neem gewoonlik lank, enersyds omdat erfgename soms nie die boedel dadelik na die afsterwe rapporteer aan die Meester nie en andersyds omdat die Meesterskantore huidiglik teen 'n slakkepas funksioneer. Die erfgename kan nie intussen 'n kontrak teken vir die verkoop van die oorledene se eiendom nie, sodanige kontrak sal nietig wees. Die eksekuteur moet na uitreik van die magtigingsbrief, die kontrak teken.

Die transportprokureur kan ook nie transportdokumente opstel vir ondertekening deur die eksekuteur en kopers alvorens hul die magtigingsbrief ontvang nie.

Dit is dus uiters belangrik dat die agent reeds wanneer die eiendom gelys word bevestiging kry dat die boedel aangemeld is en die magtigingsbrief uitgereik is.

Die volgende aspek in die oordragproses wat verdragings kan meebring is die goedkeuring deur die Meester van die verkoping. Dit is 'n vereiste dat die volmag om transport te gee (soos deur die eksekuteur onderteken) deur die Meester geëndosseer moet word alvorens indiening van die transportdokumente in die aktekantoor kan plaasvind.

Sodra die endossement bekom is kan die dokumente ingedien word in die aktekantoor en sal dit binne die normale omdraaity registreer.

Die laaste punt waarop gelet moet word is hoe daar met die opbrengs uit die verkoping gehandel moet word.

Baie erfgename of langselewende gades meen hulle sal direk na registrasie die opbrengs in hul persoonlike rekening ontvang. Dit is egter nie moontlik nie. Die opbrengs moet in die boedelrekening inbetaal word. Die eksekuteur sal eers uitbetalings (indien enige) maak nadat alle boedelskulde betaal is en die likwidasie en distribusie rekening goedgekeur is deur die Meester en geadverteer is. Dit kan in praktyk gebeur dat erfgename eers maande na registrasie die opbrengs ontvang.



Dit sal dus die agent baat om reeds by aanvang van 'n transaksie waar daar uit 'n boedel verkoop word, die kopers en erfgename bewus te maak daarvan dat die registrasie op die koper se naam nie binne die gewone tydsraamwerke van 'n gewone eiendomsoordrag sal plaasvind nie.

- Sonja du Toit

MC Academy

Verskeie mense het ons versoek om sekere aspekte uit hulle kontrakte te bespreek op MC Academy.

Ons gaan dus die maand van Mei die lesings aanbied oor 'n Capita Selecta van sekere kontraktuele beginsels.

Ondermeer sal ons weer die volgende bespreek:

- Die Voetstoots en Risiko scenario.
- Die effek van die Wet op Verbruikersbeskerming op koopkontrakte.
- Die effek van die Nasionale Kredietwet op finansiering.
- Hoe om 'n behoorlike onderhewige en uitklim klousule te bewoerd.
- Die effek van die sg. Eiendomsverslag.

Bespreek u plek by: mcademy@mcvdberg.co.za of kontak Sarie by 012 660 6000

Opleidingskediule:

9 Mei :	09:00 – 10:00 English
(Donderdag)	11:00 – 12:00 Afrikaans
16 May:	09:00 – 10:00 Afrikaans
(Thursday)	11:00 – 12:00 English
22 Mei :	09:00 – 10:00 English
(Woensdag)	11:00 – 12:00 Afrikaans
30 May:	09:00 – 10:00 Afrikaans
(Thursday)	11:00 – 12:00 English

Tiaan Sê

Die skoolvakansie en Paastyd is verby. Ons beplan 'n baie interessante en insiggewende seminaar vir die 24ste April. Alles wat 'n agent behoort te weet oor bouplanne, bouregulasies, deelplanne, sonering ens. sal bespreek word deur 'n paneel deskundiges. Woon gerus hierdie gratis seminaar by. Sien die volledige besonderhede elders in hierdie koerant.

- Tiaan (M.C.) van der Berg