

THE NEWSLETTER WITH A DIFFERENCE

M.C. MONTHLY

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**OPTION TO
PURCHASE VS RIGHT
OF FIRST REFUSAL****ETHICAL CODE
– EAAB****BONDS/VERBANDE:
FREQUENTLY ASKED QUESTIONS****LIABILITY FOR INCOME TAX ON A
PROPERTY TRANSACTION**

- WHAT YOU NEED TO KNOW

THE BUILDING PLAN PROBLEM

As most property professionals are aware, the non-compliance with regulatory measures e.g. the absence of approved as-built plans is increasingly becoming a hurdle in the successful finalization of property transactions.

The seller's property might be priced right and from a structural, aesthetical, decorative and landscaping view be an attractive investment for any prospective purchaser, but unfortunately certain compliance constraints may very well hamper the successful sale and/or registration of the property.

Legislation, contractual conditions entered by the purchaser or pre-registration bond conditions imposed by the purchaser's bank may introduce and result in compliance issues not envisaged by the seller.

Non-compliance matters can frustrate your transaction, often at a late stage with huge financial and practical consequences, causing inconvenience and lengthy delays.

In most cases it requires a multi-disciplinary team of attorneys, draughtsmen, engineers, surveyors, and town planners to custom make a solution and get the as-built plans approved.

M.C. van der Berg Inc. saw the need to, together with the professionals mentioned above investigate, assess and resolve non-compliance issues proactively and so icompli2sell was born.

icompli2sell assists the client in avoiding the frustration and unwanted consequences of non-compliance with their unique vetting and consulting solution.

ICOMPLI2SELL OFFERS THE FOLLOWING UNIQUE COMBINATION OF SERVICES:

- icompli2sell will obtain a copy of the building plans on record (if available) from the relevant local authority and inspect the property to establish whether the current structures and/or improvements reflect on the approved building plans.
- icompli2sell will thereafter either issue a:
 - ✓ compliance certificate confirming compliance; or
 - ✓ report setting out the non-compliance matters that need to be addressed, the estimated timeframes as well as the estimated cost implication.
- If the property is found to be non-compliant in more complicated aspects e.g. aspects which may prompt certain town-planning or zoning related applications, icompli2sell will do a comprehensive property compliance vetting and deliver a report on the way forward.

WHAT YOU CAN EXPECT

icompli2sell will assist the property owner to resolve the non-compliance issues by rendering the following services:

- ✓ Obtain quotes from the various professionals;
- ✓ Facilitate the appointment of the professionals;
- ✓ Liaise and co-ordinate with the local authority and professionals;
- ✓ Follow up and gather any reports and/or documentation necessary to complete the process as quickly as possible;
- ✓ Facilitate processes to obtain the necessary approvals; and
- ✓ Obtain statutory compliance certificates, for example the electrical compliance certificate.

Once the property meets the compliance requirements, icompli2sell will issue an icompli2sell certificate setting out the level of compliance which in turn gives the seller, purchaser or the financial institution the necessary peace of mind.

Should you need assistance contact icompli2sell on 086 006 1062 or at helpme@icompli.biz.



Written by/Geskryf deur: Tiaan (M.C.) van der Berg - Director/Direkteur

LIABILITY FOR INCOME TAX ON A PROPERTY TRANSACTION

It is trite that income tax becomes payable in the year of assessment in which the income is received. With a property transaction it has to be determined when exactly the income is received, or deemed to be received, in order to determine the income tax payable for the year of assessment.

In the case of *M v the Commissioner of SARS*, this question was examined. In this case 25 sale agreements were signed between the taxpayer and various purchasers in the 2013 year of assessment. The taxpayer held the view that because the transactions only registered in the 2014 year of assessment, the income was received in 2014, and the argument of SARS that it was deemed to be received in 2013 was incorrect.

SARS relied on section 24 of the Income Tax Act 58 of 1962 which stipulates:

"Subject to the provisions of section 24J, if any taxpayer has entered into any agreement with any other person in respect of any property the effect of which is that, in the case of movable property, the ownership shall pass or, in the case of immovable property, transfer shall be passed from the taxpayer to that other person, upon or after the receipt by the taxpayer of the whole or a certain portion of the amount payable to the taxpayer under the agreement, the whole of that amount shall for the purposes of this Act be deemed to have accrued to the taxpayer on the day on which the agreement was entered into."

The court determined that even though some of the agreements' suspensive conditions only had to be fulfilled in the next year of assessment and despite the fact that the income was only received in the 2014 year of assessment, it was bound to Section 24 of the Income Tax Act as well as a previous Appeal court's decision that the income of such taxpayer is **deemed** to be received in the year of assessment in which the sale agreement was entered into.



Written by/Geskryf deur: Ramona Michael - Director/Direkteur

OPTION TO PURCHASE VS RIGHT OF FIRST REFUSAL

We often deal with clients that wish to enter into a lease agreement with the option to purchase the property at a later stage. The parties may then agree to sign an option agreement. An option should however not be confused with a first right of refusal.

In the case of an option to purchase, the seller gives the purchaser an option to purchase his/her property at a certain price, which is granted for a specific time period in which the property cannot be sold to any other purchasers. The seller undertakes to keep the option open for a particular period of time in which the purchaser must exercise such option. The seller cannot withdraw from the option before the agreed period has lapsed. It is not a requirement for the prospective purchaser to sign the option, but he must sign acceptance of the option when he exercises his option. The seller is compelled to sell the property to such purchaser if the option is exercised. An option to purchase cannot be registered against the title deed of a property.

A right of first refusal is a contractual right that gives its holder the first right to purchase a property should the seller wish to sell. A right of first refusal must be in writing and signed by both the parties.

Bear in mind that the owner is not obliged to sell the property, but if he does intend to do so, the grantee must be given the first opportunity to purchase the property.

A right of first refusal can be registered against the title deed of a property.

We strongly advise our clients to contact us in order to assist with these requests and not merely add these as conditions to a sale.



Written by/Geskryf deur: Nicole Alberts - Director/Direkteur

FREQUENTLY ASKED BOND QUESTIONS/

GEREELDE VERBAND VRAE

WHAT IS A INITIATION FEE?

The initiation fee is an administrative fee levied by the bank. It is possible to pay the fee upfront or to incorporate it into the loan amount and finance it over the loan term.

It is important to establish whether the fee will be paid upfront or incorporated into the loan amount when the bond application is submitted. Should you be uncertain, please discuss with your personal banker or bond originator.

WAT IS 'N INISIASIEFOOI?

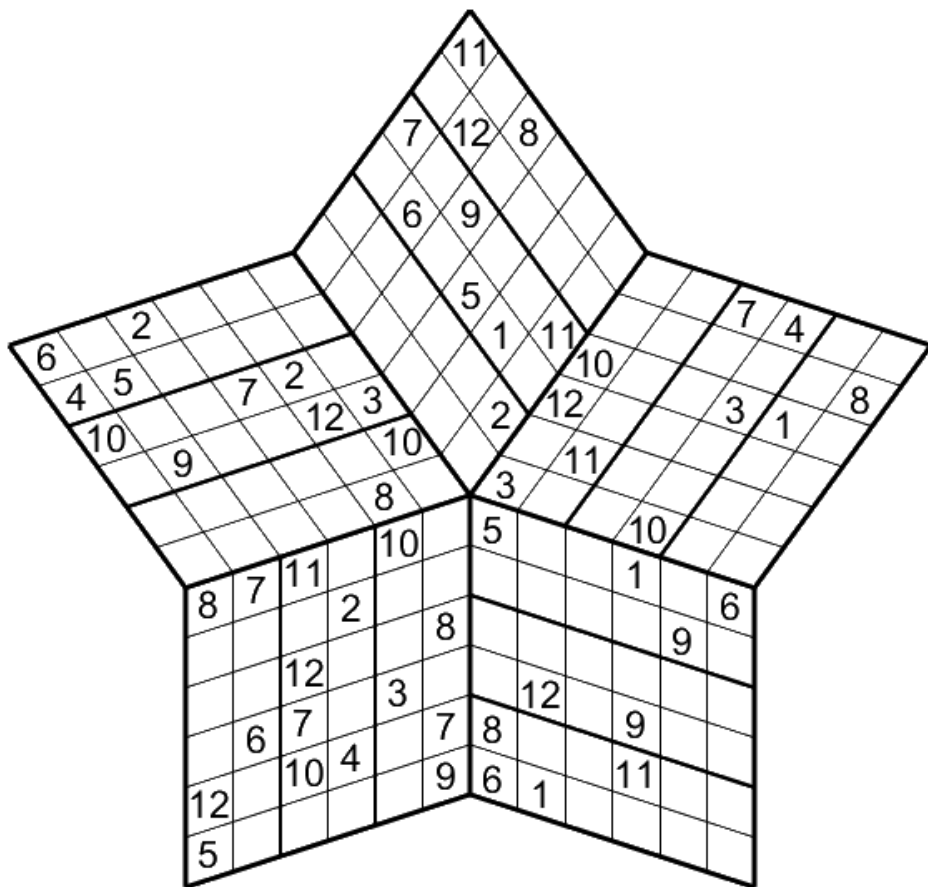
Die inisiasiefooi is 'n administratiewe fooi wat deur die bank gehef word. Dit is moontlik om die fooi vooraf te betaal of by die leningsbedrag in te sluit en te finansier oor die leningstydperk.

Dit is belangrik om vas te stel of die fooi vooraf betaalbaar is of ingesluit sal word by die leningsbedrag wanneer die verbandaansoek ingedien word. Indien u onseker is, bespreek die aangeleentheid met u bankkonsultant of verbandbemiddelaar.

Written by/Geskryf deur: Chanél Ferguson - Professional Assistant



SUDOKU



WHAT OUR CLIENTS HAVE TO SAY / WAT ONS KLIËNTE SÊ

- ◆ Thank you so much for making this process smooth for me and always being available to answer my questions. You are an asset to the firm and I hope they are aware of this. I will certainly be using MC v.d Berg in the near future for my notary contracts, the level of professionalism experienced with your firm is outstanding.
- ◆ Inge and I just wanted to say that we appreciate the manner in which you have handled our process with the bond etc and really feel that you have gone the extra mile in assisting us. Thank you for the professional support thus far. Please extend this to your superior as we would really like your company to know the great service you have provided. Much appreciated.

Werknemer van die maand

Danéle Meintjes het haar loopbaan by M.C. van der Berg Ing. begin in Januarie 2017 as kandidaatprokureur.

Op 10 April 2019 is sy toegelaat as prokureur, aktevervaardiger en notaris.

Danéle is tans in die ontwikkelingsafdeling by die firma en is ons seker dat sy 'n groot sukses van haar loopbaan hier gaan maak!

Danéle Meintjes - Professional Assistant



Ethical Code- EAAB

DUTY NOT TO MAKE MISREPRESENTATIONS OR FALSE STATEMENTS OR TO USE HARMFUL MARKETING TECHNIQUES

No estate agent shall:-

- inform a seller or purchaser, or prospective seller or purchaser, of immovable property in respect of which he has been given a mandate to sell or purchase, that he has obtained an offer in respect of the property from a purchaser or the seller (as the case may be), unless such a offer –
 - is in writing; and
 - has been signed by the offeror; and
 - is to the knowledge of the estate agent concerned, a *bona fide* offer;
- affix any board or notice to immovable property indicating that such property is for sale or hire or has been sold or let unless –
 - the seller or lessor (as the case may be) has given his written consent to do so; and
 - the estate agent concerned in fact has a mandate to sell or let the property, or in fact has sold or let the property, as the case may be.

Written by/Geskryf deur: Lorraine Beukes - Professional Assistant



Boereraat verbruikers-wenke: Waterbesparing

- * 'n Druppende kraan (een druppel per sekonde) kan tot 30 liter water per uur mors - wat 10 000 liter per jaar se vermorsing kan beteken!
- * 'n Bad gebruik gemiddeld 160 liter water - 'n stort wat vyf minute duur gebruik ongeveer 60 liter. Stort eerder as om te bad, gebruik 'n kleiner bad of bad saam.
- * Om seker te maak dat water nie in jou toilet uitlek nie, gooi 'n paar druppels voedselkleursel in die waterbak. As die kleur in die bak uitlek, is daar 'n lekplek. 'n Toilet wat lek kan tot 30 liter water per uur mors!
- * Indien jy 'n ouer model wasmasjien gebruik, wat nie water bespaar nie, is dit wys om seker te maak dat jou wasmasjien of skottelgoedwasser heeltemal vol is voordat jy dit gebruik. Elke druppel water wat ons spaar beskerm ons voortbestaan.



South Africa

So you can't think of anything positive to say about South Africa right now? Well, I am not surprised, but let's not panic. If we step back and shift our focus away from load shedding and the elections there are quite a few positives.

- South Africa cares!
It's true. Despite our reputation for crime and violence, the average South African cares so much that 93 percent of us give donations of our money or time to charitable organizations. As individuals we donate R12 billion each year.
- South Africa has it all!
With our massive cultural, geographical and biological diversity and natural beauty, we are home to eight world heritage sites. To top it all we have wonderful weather!
- Everyone loves our wine!
Millions of litres of South African wines are sold offshore annually!
- We have world-class writers
Nadine Gordimer and JM Coetzee have both won the most coveted literature prizes in the world: The Nobel prize for literature and the Booker prize.
- We've got beautiful voices
In January 2019 the Soweto Gospel choir scooped its third Grammy award.

On a serious note, there is not much that we can do about politics, load shedding and crime, but we can endeavour to adopt a positive attitude and adapt to the circumstances.

Without positivity success will not follow!

Written by/Geskryf deur: Sonja du Toit - Director/Direkteur



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

Your Property Attorneys

WE CAN ASSIST YOU WITH:

Transfer of properties • Registration and cancellation of bonds • Estate planning
Administration of deceased estates • Registration of companies • Purchase agreements
Rental agreements • Trusts • Wills • Antenuptial contracts • Notarial services