

# THE NEWSLETTER WITH A DIFFERENCE

# M.C. MONTHLY

Jun/Jul 2017 • Issue/Weergawe: 39 • Tel: 012 660 6000 • E-mail: info@mcvdberg.co.za • Fax: 012 660 6001 • www.mcvdberg.co.za



## Cancellation of a sole mandate

A sole mandate is an agreement between an estate agent and a seller in terms of which the estate agent will have a 'monopoly' to market the sellers' property. The estate agent needs to market the property in terms of the mandate and during the time period allocated in the sole mandate, the seller may not sell or let the property through another estate agent. Should the estate agent find a willing and able buyer for the property at the agreed price, the seller becomes liable for the commission as agreed.

It is important to take note of the impact of the Consumer Protection Act, Act 68 of 2008, and whether a seller can cancel his/her sole mandate.

The seller needs to familiarize himself with the terms and conditions of the sole mandate. In the ordinary course of events the seller cannot revoke the sole mandate for a certain period, however if the agreement is for a fixed period of time and came into existence as a result of a direct marketing campaign, the agreement is then subject to the terms of the Consumer Protection Act.

The Consumer Protection Act provides for a five day cooling-off period that allows any seller to effectively cancel the sole mandate within five days after signature. However, it is important to take note that the five day cooling-off period will only apply if the sole mandate came about as a result of a direct marketing campaign. In other words, if the seller made contact with the estate agent, no cooling-off period will apply once the agreement has been signed, but if the estate agent made contact with the seller, a five day cooling-off period will stand from the day the sole mandate agreement was signed. It is important for estate agents to note that in terms of the Act the estate agent must explain all the implications of a sole mandate to the client and must inform the client of their right to cancel the mandate within five days. If the seller chooses to cancel the sole mandate agreement within the five days cooling-off period, it will not trigger any financial or legal consequences.

In terms of the provisions in Section 14 of the Consumer Protection Act, any fixed period contract (including the sole mandate agreement) may be cancelled by giving 20 business days' notice, but certain penalties will come into play.

The Consumer Protection Act states that this penalty should be reasonable and fair. In terms of good practice, the penalty should be specified in the contract, however the recommended penalty charge is 10% of the gross brokerage fee.

Fixed term contracts will renew automatically on a month-to-month basis after the expiry date, therefore should a client want to cancel the sole mandate agreement, he/she must put it in writing prior to the expiry date.

## Kansellasië van 'n alleenmandaat

'n Alleenmandaat is 'n ooreenkoms tussen 'n eiendomsagent en 'n verkoper waarvolgens die eiendomsagent 'n alleenreg het om die verkoper se eiendom te bemark. Die eiendomsagent moet die eiendom bemark ingevolge die mandaat en die verkoper mag nie gedurende die tydperk, soos in die alleenmandaat toegeken, die eiendom deur 'n ander eiendomsagent verkoop of verhuur nie. Indien die eiendomsagent 'n gewillige en bekwame koper vir die eiendom teen die ooreengekome prys vind, word die verkoper aanspreeklik vir die kommissie soos ooreengekom.

Dit is belangrik om kennis te neem van die impak van die Wet op Verbruikersbeskerming, Wet 68 van 2008, en of 'n verkoper sy/haar alleenmandaat kan kanselleer.

Die verkoper moet homself vergewis van die terme en voorwaardes van die betrokke alleenmandaat. In die normale loop van sake kan die verkoper, vir 'n spesifieke periode, nie die alleenmandaat terugtrek nie, maar as die ooreenkoms vir 'n vaste tydperk is en as gevolg van 'n direkte bemarkingsveldtog ontstaan het, is die ooreenkoms onderworpe aan die bepalings van die Wet op Verbruikersbeskerming.

Die Wet op Verbruikersbeskerming maak voorsiening vir 'n afkoelperiode van vyf dae wat enige verkoper in staat stel om die alleenmandaat effektief te kanselleer binne vyf dae na ondertekening. Dit is egter belangrik om kennis te neem dat die vyf dae afkoelperiode slegs van toepassing sal wees indien die alleenmandaat ontstaan as gevolg van 'n direkte bemarkingsveldtog. Daar sal dus geen afkoelperiode van toepassing wees indien die verkoper kontak gemaak het met die eiendomsagent nie, indien die eiendomsagent egter kontak gemaak het met die verkoper, sal 'n afkoelperiode van vyf dae van toepassing wees vanaf die dag waarop die alleenmandaat onderteken is. Dit is belangrik vir eiendomsagente om daarop te let dat die eiendomsagent ingevolge die Wet op

Verbruikersbeskerming alle implikasies van 'n alleenmandaat aan die kliënt moet verduidelik en die kliënt in kennis stel van hul reg om die mandaat binne vyf dae te kanselleer. Indien die verkoper besluit om die alleenmandaatooreenkoms binne die vyf dae afkoelperiode te kanselleer, sal dit geen finansiële of regsgevolge vir die verkoper in hou nie.

Kragtens die bepalings van Artikel 14 van die Wet op Verbruikersbeskerming kan enige vaste termyn kontrak (insluitende die alleenmandaatooreenkoms) gekanselleer word deur slegs 20 besigheidsdae kennis te gee, maar sekere boetes sal van toepassing wees.

Die Wet op Verbruikersbeskerming verklaar dat hierdie boete redelik en regverdig moet wees. Dit is goeie praktyk om die boete in die kontrak te spesifiseer, maar die aanbevole boete is 10% van die bruto makelaarsfooie.

Vaste termynkontrakte sal na die vervaldatum outomaties hernu op 'n maand tot maand basis. Indien 'n verkoper die alleenmandaatooreenkoms wil kanselleer, moet hy/sy dit voor die vervaldatum op skrif stel.



Written by/Geskryf deur: Nicole Alberts

## Customary Marriages

The Recognition of Customary Marriages Act 120 of 1998 regulates Customary Marriages in South Africa. A Customary Marriage is a marriage concluded according to the customs of the indigenous people of South Africa (often referred to as "lobola marriages").

It is often very difficult for the conveyancer to ascertain the marital status of the parties who are to be married in terms of customary law.

It may be that the parties are still in the process of finalising the marriage and as such are not married yet.

The Act attempted to bring clarity to the uncertainty by requiring the parties to register the customary marriage at the Department of Home Affairs. Should the marriage not be registered at the Department of Home Affairs the marriage is however still a valid marriage.

Where the marriage is not registered the conveyancer will advise the parties to go to the Department of Home Affairs and register the marriage. If the parties aver that the marriage is not concluded yet, a declaration by the families are usually sufficient.

The deeds office insists on a registration certificate or a court order to prove the validity of the customary marriage.

It will delay the transaction if the parties have not registered the marriage. It is advisable that agents enquire about the status of the marriage and advise clients that they should see to registration early in the process (preferably whilst they are still viewing properties and have not signed an offer to purchase).

The Masters Office will accept a family meeting resolution in the form of a MBU16 to prove the validity of unregistered customary marriages, which simplifies matters in case of deceased estates.



Written by/Geskryf deur: Sonja du Toit

## Ethical Code- EAAB

### No estate agent shall –

3.5 accept a sole mandate which also confers upon him a power of attorney to act on behalf of the person conferring the mandate, unless the intention and effect of such power of attorney is fully explained in the document;

3.6 include any clause in a contract of sale or lease of immovable property negotiated by him, whereby a sole mandate is directly or indirectly conferred upon him to sell or let at any time after the conclusion of the said contract.

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## REFUSAL OF MUNICIPAL SERVICES DUE TO HISTORIC DEBT

It has become common practise by the Municipalities to refuse to open a new account for a purchaser if there are any historical debt still owing to them. The clearance certificate they issue for the registration of the property, certifies that all amounts owing for the last 2 years have been paid in full. The clearance certificate does not include historical debt, and it may well be that there are outstanding amounts, older than 2 years, due to the Municipality that was incurred by a previous owner. The Municipality then refuses to open a utility account for the new owner, until the historical debt is paid.

In the recent matter of *Jordaan and Another v The City of Tshwane Metropolitan Municipality* (2017) the constitutionality of Section 118 (3) of the Municipal Systems Act 32 of 2000 was attacked. Section 118 (3) provides the Municipality with security for repayment of an unpaid debt in respect of rateable property and enjoys preference over any mortgage bond registered against the property. The following was decided by the court:

- \* In some instances Section 118(3) could result in loss of ownership, and this amounts to a deprivation that is prohibited in section 25(1) of the Constitution.
- \* It was further held that the deprivation was substantial and drastic, especially in view of the fact that the new owner could not take steps to reduce his risk with regard to historic debts, and the fact that the Municipality has the means to collect outstanding debts.
- \* The form of security afforded by Section 118(3) affects not only the property owner incurring the debts, but also all his successors in title.
- \* The court found that a Municipality has sufficient means and legal remedies to recover outstanding debts from the owners incurring the debts without it becoming the problem of the new owner.

In summary the court concluded that municipalities are not allowed to refuse municipal services to new owners as a result of historical debts still outstanding on the property. New owners will thus be able to open new utility accounts, even if there are historical debts outstanding.



Written by/Geskryf deur: Ramona Michael

## SUDOKU

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## Boereraat – Wyn



- ◆ Gooi dadelik sout op die vlek of gooi witwyn oor die vlek.
- ◆ Sodawater of wit asyn haal gewoonlik hardnekkige vlekke soos rooiwyn uit matte uit.

## What our clients have to say / Wat ons kliënte sê

- ◆ It has been an absolute pleasure working with you and your team, the efficiency, dedication and communication process was phenomenal. Thank you for treating my first bond experience with such grace. This truly was a blessing and I am happy to have embarked on that journey with you.
- ◆ Your service delivery is commendable and the best that we have experienced. (We have bought or sold 5 times in the last 5 years – so this is a real compliment!).
- ◆ Weet jy wat is vir my as agent lekker? Om te weet ek werk met Prokureurs wat ek kan vertrou, wat kyk na my kliënte, wat my op die “hand sal slaan” as ek “droog” maak, wat my leer en saam my werk.....dit is MC vd Berg! Vir julle wil ek bitter baie dankie sê vir puik diens veral met die moeilike transaksies! Wens ek kon die ander waarmee ek sukkel ook by julle gehad het!

## FREQUENTLY ASKED BOND QUESTIONS/ GEREELDE VERBAND VRAE

### WHY DOES THE BANK INSURE THE PROPERTY FOR A HIGHER AMOUNT THAN THE VALUE / PURCHASE PRICE?

The bank can request that the property be insured for an amount in excess of the purchase price or value. This is due to the fact that the bank makes provision for inflation and growth over the loan period. The bank may in certain cases accept the client's proposal for a lower insurance amount but will then request the client to confirm in writing that the client accepts liability for the difference between the insured amount and the claim amount should an insurance claim be instituted.

### WAAROM VERSEKER DIE BANK DIE EIENDOM VIR MEER AS DIE WAARDE / KOOPPRYS VAN DIE EIENDOM?

Die bank kan versoek dat die eiendom verseker word vir 'n bedrag hoër as die koopprys of waarde. Die bank maak voorsiening vir inflasie en groei oor die leningstydperk. Die bank kan in sekere gevalle die kliënt se voorstel vir 'n laer versekeringsbedrag aanvaar, maar sal dan die kliënt versoek om skriftelik te bevestig dat die kliënt aanspreeklikheid aanvaar vir die verskil tussen die versekerde bedrag en die eisbedrag indien 'n versekeringsseis ingestel moet word.



Written by/Geskryf deur: Chanèl Ferguson

## Werknemer van die maand



Montjary Chatwind

Montjary het op 5 Januarie 2015 by die firma aangesluit as kandidaat prokureur.

Met haar sonnige, vriendelike geaardheid het sy gou in die personeel en kliënte se harte ingekruip.

Sy is op 21 Oktober 2016 toegelaat as prokureur en op 16 Januarie 2017 as aktevervaardiger en notaris. Montjary is werksaam in die ontwikkelings afdeling van M.C. van der Berg Ingelyf.

## BOOK REVIEW - BRAINWASH

By Dominic Streatfeild - (*The secret history of mind control*)

The author is a writer and documentary maker who specialises in military and security issues. With access to formerly classified documentation and interviewees from M15, M16, the CIA, US Army, British Intelligence Corps, Brainwash traces the evolution of the world's most secret psychological procedure, from its origins in the Cold War to the height of today's war on terror. Praise to Dominic for the depth of the research which is staggering. The content is perfectly communicated and utterly terrifying ... because it is real.

This sets out a collection of attempts by governments and cults to mould the human mind to obtain information from captured soldiers and change the way people think. It reads like fiction, but for one small detail ... it's real and scary. The author delivers all the details in a matter of fact way, and is after all writing down facts about real life attempts to master the human mind, going back to before the Second World War, up to the present. The author gives us the questions and in some cases answers about what really happened and what may happen to anyone unlucky enough to land in the hands of some of these people. Perhaps the most shocking part is that the methods had to be tested. The ethical implications of penetrating the human mind to simply determine what is possible before your enemies do is a terrifying thought.

This book portrays a secret world which contains declassified historic and scientific information that will interest a balanced reader.

A splendid read, indeed.

Written by/Geskryf deur: Elbè Coetzee

ISBN 978-0-340-83161-8

Ek het onlangs die voorreg gehad om na die VSA te reis saam met my gesin.

Benewens die feit dat daar heeltemal te veel mense is, was dit ook besonder warm in Florida.

Na 'n 15 uur lange vlug vanaf Dubai in 'n sitplek wat nie gebou is vir 'n rugbyspeler nie, maar vir die gemiddelde Chinees, land ons uiteindelik in Orlando op 'n Saterdagmiddag. Moeg en geïrriteerd word ek en die ander 489 passasiers op die Boeing 777- 300 gekonfronteer deur die doeane-beamptes van die magtige VSA. Iemand in die VSA het die insig gehad om drie en twintig doeane werkstasies te installeer. Ongelukkig het die wysgeer nie die boodskap oorgedra aan die doeane beamptes nie aangesien slegs 3 van die werkstasies beman is. Ek dink hulle het daardie oggend 'n kompetisie uitgeloof tussen die drie vir wie die stadigste kan werk. Want daar is net absoluut geen haas van enige aard nie. Ek is ook honderd persent oortuig dat een van die vereistes om 'n VSA doeane-beampte te wees, is dat jy geen vriende op skool mag gehad het nie. Ek het in my ganse lewe nog nie sulke ongeskikte mense gesien nie. Hulle kyk, bekyk en bejeën elke passasier asof jy die een is wat die oorsaak was van 9-11. Elkeen het die uitdrukking op sy gesig van “wat kom maak jy hier”. Dit neem my en my medepassasiers toe ongeveer twee en 'n half ure om deur doeane te gaan. Ek voel dus toe nie vreeslik welkom in die land van die groot hamburgers en oorgewig mense nie.

Twee weke later en ons is oppad terug na ons eie land hier aan die Suid van Afrika. Dinge is nie enigsins beter op die vliegtuig nie aangesien ek nie juis kleiner geword het gedurende die vakansie nie en die sitplekke nie groter geword het nie. So land ons net voor middernag op 'n Sondag op OR Tambo. Ek herroep die frustrasie van die doeane in Orlando en sien in my geestes-oog hoe ek tot sonsopkoms in die terminaal gaan bly soos Tom Hanks in die fliëk - The Terminal.

Maar groot was my verrassing! Agtien van die 22 werkstasies is beman deur uiters vriendelike personeel. Almal wens ons welkom in Suid-Afrika met groot glimlagte. Binne vyftien minute is ek en al die passasiers deur die Suid-Afrikaanse doeane.

Ons oordeel baie maklik, maar dalk is dinge nie altyd so vrot hier as wat ons dink nie.

