

Buitelanders – Koop en verkoop van eiendom

(Deel 1: Aankoop van onroerende eiendom)

Dis is belangrik om daarop te let dat daar niks is wat 'n nie-inwoner verhoed om onroerende eiendom in Suid-Afrika te koop nie.

Die reg van 'n buitelandse om onroerende eiendom in Suid-Afrika te koop, is deur die Wet op Vreemdelingebeheer beperk. Hierdie beperkings is egter in 2003 opgehef deur die nuwe Wet op Immigrasie en definieer duidelik wie 'n wettige buitelandse is en wie nie. Kortom: 'n wettige buitelandse is 'n persoon wat in besit is van 'n geldige tydelike of permanente verblyfpermit.

Ten einde fondse te bekom om onroerende eiendom in Suid-Afrika te koop, mag 'n buitelandse slegs 'n bedrag tot 'n maksimum van 50% van die koopprys by 'n finansiële instelling leen. Die balans van die koopprys moet uit buitelandse fondse bestaan. Hierdie fondse moet na 'n Suid-Afrikaanse bankrekening oorgeplaas word en die nie-inwoner moet bewys van inkomste verskaf en aan die vereistes van die Wet op die Finansiële Intelligensiesentrum voldoen. Buitelanders wat in Suid-Afrika werk en 'n wettige werkpermit het, word nie deur die Suid-Afrikaanse Reserwebank as "nie-inwoners" beskou nie. Hulle word as inwoners beskou vir die duur van hulle werkpermit en word dus nie beperk tot 'n lening van net 50% van die koopprys nie. Sommige banke kan egter moontlik vereis dat die werkpermit van so 'n nie-inwoner minstens vier jaar duur voor hulle sal oorweeg om 'n verband van meer as 50% aan die persoon te verleen.

Wanneer 'n nie-inwoner fondse van 'n buitelandse bron na 'n Suid-Afrikaanse bankrekening oorplaas, word 'n rekord daarvan deur die Suid-Afrikaanse bank uitgereik wat bekend staan as 'n "transaksie-kwitansie" (deal receipt). Hierdie dokument moet later, wanneer die buitelandse die eiendom verkoop en die fondse weer na die buiteland wil oorplaas, by die Reserwebank ingedien word.

Dit is ook belangrik om kennis te neem van die huwelikstatus van sulke buitelanders. Die Suid-Afrikaanse Wet op Huweliksgoedere 88 van 1984 is nie van toepassing op huwelike wat in die buiteland voltrek is nie en die regstelsel wat op die betrokke huwelik van toepassing is, word bepaal deur die wette van die land waar daardie persoon (man) ten tyde van die huwelik gedomisileer was. Die reg van sodanige land bepaal dan of so 'n buitelandse regsbevoegdheid het om 'n kontrak te sluit vir die koop en verkoop van eiendom in Suid-Afrika met of sonder die bystand van sy of haar gade.

Buitelandse entiteite word ook toegelaat om eiendom in Suid-Afrika te koop. So 'n maatskappy moet as 'n buitelandse maatskappy met 'n kantoor in Suid-Afrika geregistreer word, en indien die aandele deur die nie-inwoner besit word, moet die maatskappy ook 'n openbare beampte aanstel wat 'n Suid-Afrikaanse inwoner is. Indien 'n buitelandse trust 'n koopvoornemens wil aangaan, moet die trust by die Meester van die Hof geregistreer word. Die Meester vereis dat een van die trustees 'n Suid-Afrikaanse burger moet wees ten einde 'n Suid-Afrikaanse domisilie te voorsien wat vir die Meester aanvaarbaar is. Die gewone vereistes ten aansien van trusts is ook in hierdie geval van toepassing.

'n Koper hoef gelukkig nie noodwendig persoonlik in Suid-Afrika teenwoordig te wees om die dokumente te teken wat vir die oordrag van eiendom nodig is nie. Daar is egter formaliteite wat in so 'n geval nagekom moet word en wat vereis dat die dokumente óf voor 'n notaris óf by die Suid-Afrikaanse ambassade in die betrokke land geteken word. Hierdie opsies is gewoonlik duur en tydrowend. Dit is dikwels makliker om volmag te verleen aan 'n vriend, familielid of prokureur om namens die buitelandse op te tree en die nodige dokumente te teken.

(Sien asseblief in ons toekomstige uitgawe vir Deel 2: Buitelanders – koop en verkoop van onroerende eiendom)

- Nicole Rokebrand

MCademy

Practical training by practitioners

During the month of February the following topic will be presented at MCademy:

Subject to transactions

- When is it necessary?
- Financial aspects.
- How to co-ordinate various transactions.
- Use of the so-called "escape clause".
- How must the escape clause be worded?
- Are you risking your transaction unnecessary?

Thursday 6 Feb:
09:00 – 10:00 English
11:00 – 12:00 Afrikaans

Thursday 13 Feb:
09:00 – 10:00 Afrikaans
11:00 – 12:00 English

Wednesday 19 Feb:
09:00 – 10:00 English
11:00 – 12:00 Afrikaans

Thursday 27 Feb:
09:00 – 10:00 Afrikaans
11:00 – 12:00 English

The following topics will be repeated during March 2014:

Wednesday 5 March:
09:00 – 10:00 English – The transfer procedure
11:00 – 12:00 English – Financial aspects

Monday 10 March:
09:00 – 10:00 English – 10 Deadly sins
11:00 – 12:00 English – Capital Gains Tax

Certificates for acknowledgment of attendance are supplied for your portfolio of evidence or logbook.

Book your seat at: mcademy@mcvderberg.co.za

Social Media



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ATTORNEYS, CONVEYANCERS & NOTARIES

Your Property Attorneys

Tel: 012 660 6000
info@mcvderberg.co.za

Fax: 012 660 6001
www.mcvderberg.co.za

M.C. Monthly

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

January 2014

The Newsletter with a difference

MCares - Drie Van Die Bestes

Most of our clients are aware of our firm's involvement with Huis Remme-Los – a self-care centre for quadriplegics.

We have undertaken to support the eight residents of this centre emotionally and financially, and as friends. The government is supposed to look after the residents, because they are no longer able to do so themselves. However, the funds paid by the Lotto to the centre, fall far short of what is needed.

Our friends in Huis Remme-Los have special needs and are dependent on the fulltime help of caregivers.

In order to supplement their funds, on 4 March 2014 M.C. van der Berg Incorporated is sponsoring a concert at the Atterbury Theatre in aid of Huis Remme-Los. Every cent from the ticket sales will be donated to the centre.

We hereby invite all our clients to buy tickets to this concert and together with us make a difference to the lives of Huis Remme-Los's residents.

- M.C. (Tiaan) van der Berg



Mathys Danie Kevin
DRIE VAN DIE BESTES

Aangebied deur

M.C. VAN DER BERG INC
PROKUREURS, AKTEVERVAARDIGERS & NOTARISSE

U Eiendomsprokureurs



ten bate van
Huis Remme-Los

4 MAART 2014 19h30

Atterbury Teater

Besprekings by Sarie
012 660 6000 of sarie@mcvderberg.co.za

MCares - Drie Van Die Bestes

Die meeste van ons kliënte is bewus van ons firma se betrokkenheid by Huis Remme-Los – 'n selfsorgsentrum vir kwadrupleë.

Ons het ons daartoe verbind om die agt inwoners in hierdie sentrum emosioneel, finansiële en as vriende by te staan. Die regering is veronderstel om na hulle om te sien, aangesien hulle nie meer self daartoe in staat is nie. Die fondse wat deur die Lotto aan die sentrum betaal word, skiet egter ver te kort.

Ons vriende in Huis Remme-Los het spesiale behoeftes en is volledig afhanklik van hulpwerkers.

Ten einde Huis Remme-Los se fondse aan te vul, borg M.C. van der Berg Ingelyf op 4 Maart 2014 'n konsert by die Atterbury Teater ten bate van Huis Remme-Los. Elke sent van die kaartjieverkope vir hierdie konsert sal aan die sentrum geskenk word.



Ons nooi hiermee al ons kliënte om kaartjies vir hierdie konsert te koop en saam met ons 'n verskil aan die lewens van Huis Remme-Los se inwoners te maak.

- M.C. (Tiaan) van der Berg



First I would like to wish everyone a successful and prosperous 2014.

I am convinced that this year will be a wonderful year for all of us in the property market. I think everyone agrees that things are looking increasingly bright.

As a firm, we intend to launch a variety of new initiatives during the course of the year.

You can rest assured of our ongoing attempts to deliver outstanding service and to support you in all areas so that you are able to carry out your business successfully.

Eerstens wil ek almal 'n suksesvolle en voorspoedige 2014 toewens.

Ek is daarvan oortuig dat hierdie jaar vir almal van ons in die eiendomsmerk 'n wonderlike jaar gaan wees. Ek dink almal stem saam dat dinge toenemend rooskleurig lyk.

As firma beoog ons om 'n verskeidenheid nuwe inisiatiewe in die loop van die jaar van stapel te stuur.

U kan verseker wees van ons voortgesette poging om uitnemende diens te lewer en om u op alle gebiede by te staan sodat u u besigheid uiters suksesvol kan volvoer.

- Tiaan (M.C.) van der Berg.

Aanhegtings en Toebehore

Alle kontrakte ten aansien van die verkoop van onroerende eiendom behoort 'n klousule te bevat oor aanhegtings en toebehore. Dit lyk of daar in sommige gevalle verwarring is oor wat presies by die definisie van aanhegtings en toebehore ingesluit behoort te word.

Alle items wat permanent vasgeheg is aan die grond of aan die geboue wat op die eiendom opgerig is, is oor die algemeen óf aanhegtings en/of toebehore.

Die grootste oorsaak van geskille tussen verkopers en kopers oor aanhegtings en toebehore is wanneer aanhegtings en toebehore vaag in 'n koopkontrak beskryf word en eenvoudig verklaar dat die eiendom voetstoots verkoop word en alle verbeterings, asook aanhegtings en toebehore van 'n permanente aard insluit. In sulke gevalle is dit belangrik om vas te stel wat as permanent van aard beskou word. In hierdie verband moet mens die volgende vier vrae vra:

1. Wat is die aard van die item en vir watter doel is dit aangeheg? Die item moet vasgeheg wees aan die grond of aan die struktuur wat op die grond opgerig is. Dit moet permanent van aard wees of bedoel wees om altyd die grond te dien.
2. Hoe en in watter mate is die item aangeheg? Dit moet voldoende geheg wees sodat dit deel word van die grond of die struktuur. Indien die verwydering van die item aansienlike skade aan die struktuur sal veroorsaak, moet dit as permanent beskou word.
3. Wat was die eienaar se bedoeling toe die item aangeheg is? As die eienaar se bedoeling was om die item permanent aan te heg, moet dit ook in aanmerking geneem word. Om verwarring te voorkom, adviseer ons die verkoper gewoonlik om alle items wat hy/sy wil verwyder in die koopkontrak uiteen te sit.
4. Vorm die item en die gebou/struktuur 'n "eenheid"? Byvoorbeeld: 'n "Creepy crawly" kan nie deur die verkoper verwyder word nie, aangesien dit saam met die swembad 'n eenheid vorm.

Die aard van 'n item word as permanent beskou indien dit aan die grond/strukture/geboue op die grond geheg word deur wortels, ingebou is, permanent daarop rus of permanent daaraan geheg word deur middel van sement, pleister, spykers, boue of skroewe.

Wendy-huise en pergolas of ander soortgelyke strukture word as permanente strukture beskou. As hierdie strukture nie spesifiek in die koopkontrak uitgesluit word nie en op die eiendom bly, moet hierdie strukture op die bouplan aangedui word.

Hier volg 'n paar voorbeelde van misverstande tussen verkopers en kopers ten aansien van aanhegtings en toebehore:

- Dit is altyd belangrik om te onthou dat die koper die eiendom koop soos dit staan. As die eiendom byvoorbeeld bemark word met 'n tuinlig in die binnehof, is die verkoper nie daarop geregtig om so 'n lig voor registrasie van die eiendom te verwyder nie. Die verkoper mag byvoorbeeld nie die tuinlig verwyder om 'n elektriese in staat te stel om 'n geldige elektriese sertifikaat uit te reik. Die installasie en bedrading van die lig moet herstel word sodat die elektriese 'n geldige sertifikaat daarvoor kan uitreik. Die verkoper moet natuurlik hiervoor betaal.
- Die verkoper moet die koper van minstens een volle stel sleutels en afstandbeheerders (indien van toepassing) voor okkupasie/registrasie van die eiendom voorsien. Indien een of meer van die sleutels (en/of afstandbeheerders) ontbreek, is die verkoper aanspreeklik vir die koste vir die vervanging van die sleutel/s en/of slot (wat ook al die geval is) en/of afstandbeheerder/s.

- Indien daar 'n waterfontein in die tuin is, word die pomp van so 'n fontein vanselfsprekend as deel van die aanhegting ingesluit en mag dit dus nie verwyder word nie.
- 'n Wasgoedlyn wat in die grond ingeplant is, is ook 'n aanhegting en die verkoper mag dit dus nie verwyder nie.

Dit is belangrik om te verseker dat die koopvooreenkoms tussen die verkoper en koper alle aspekte van die transaksie dek om te verseker dat niks oorgelaat word aan interpretasie deur enige van die partye nie. Nie een van die partye nie, en ook nie die eiendomsagent of die oordragprokureur, kan op enige mondelinge ooreenkomste staatmaak nie. Alles waarop die partye ooreengekom het, moet deel van die koopvooreenkoms uitmaak. Die oordragprokureur kan slegs uitvoering gee aan daardie aspekte wat deel van die koopvooreenkoms uitmaak.



- Annele Odendaal

Fixtures and Fittings

All contracts relating to the sale of immovable property should contain a clause relating to "fixtures and fittings"; however, it would seem that sometimes there is confusion about what exactly is included in the definition of fixtures and fittings.

All items that are permanently attached to the land or buildings erected on the property generally constitute either fixtures and/or fittings.

When it comes to fixtures and fittings, the greatest cause of disputes between sellers and purchasers are usually the result of a vaguely drafted sale agreement, which simply states that the property is sold "as is" or "voetstoots", and includes all upgrades, and fixtures and fittings of a permanent nature. In cases such as these it is important to determine what is regarded as permanent in nature. Four questions should be asked in this regard:

1. What is the nature of the item and for what purpose was it attached? The item must be attached to the land or the structure erected on the land. It should be of a permanent nature or intended to always serve the land.
2. How and to what degree has the item been attached? It should be sufficiently attached so as to become part of the land or structure. If removing the item will cause substantial damage to the structure, it should be considered permanent.
3. What was the intention of the owner when attaching the item? If the intention of the owner was to attach the item permanently, then that should be taken into consideration. In order to avoid confusion, we advise the seller to list all items that he wishes to remove in the deed of sale.
4. Does the item and the building/structure form a "unit"? For example, a creepy crawly cannot be removed by the seller as it forms a unit with the pool.

An item is deemed to be of a permanent nature when it is attached to the land by roots, or is imbedded in, or permanently resting upon the land/structures/buildings, or is permanently attached to the land/structures/buildings by means of cement, plaster, nails, bolts, or screws.

Wendy houses and pergolas and other similar structures are regarded as permanent structures. If these structures are not specifically excluded from the sale agreement, and will remain on the property, they should be indicated on the building plans.

Here are a few examples of misunderstandings relating to fixtures and fittings that can arise between sellers and purchasers:

- It is always important to remember that the purchaser purchases the property as it is. Should the property be marketed with a garden light in the courtyard for example, the seller is not entitled to remove such light prior to registration. If, for example, the light is malfunctioning, the seller cannot, remove it to enable the electrician to issue a valid electrical compliance certificate. The installation and wiring of the light will have to be rectified so as to enable the electrician to issue a valid certificate. This will of course be at the seller's expense.
- The seller must provide the purchaser with at least one full set of keys and remotes (if applicable) prior to occupation/registration of the property. Should one/more of the keys (and/or remotes) be missing, the seller will be liable for the costs relating to the replacement of the key(s) and/or lock (whatever the case might be) and/or remote(s).
- Should there be a water feature in the garden, the pump of such feature is obviously included as part of the fixture, and may therefore not be removed.
- A washing line which has been planted into the ground also constitutes a fixture and may therefore not be removed by the seller.

It is important to ensure that the sale agreement between the seller and purchaser covers all aspects of the transaction to ensure that nothing is left to interpretation by either party. Neither of the parties, nor the estate agent nor transferring attorney can rely on any verbal agreements. Everything to which the parties have agreed should form part of the sale agreement. The transferring attorney is only able to execute that which forms part of the sale agreement.

- Annele Odendaal

Foreigners – Buying and selling of property (Part 1 – Purchase of immovable property)

It is important to note that nothing prohibits a non-resident from purchasing immovable property in South Africa.

In South Africa, the right of a foreigner to purchase immovable property was previously restricted by the Aliens Control Act. These restrictions were, however, lifted in 2003 by the new Immigration Act, which clearly defines who a legal foreigner is and who is not. In short, a legal foreigner is a person in possession of a valid temporary residence permit or a permanent residence permit.

When securing funds to buy immovable property in South Africa, a foreigner may only borrow up to a maximum of 50% of the purchase price from a financial institution. The balance of the purchase price must be made up of foreign funds. These funds need to be transferred to a South African bank account and the non-resident will need to provide proof of earnings and comply with the Financial Intelligence Centre Act. Foreigners working in South Africa with a legal work permit are not regarded as "non-residents" by the South African Reserve Bank, but are considered residents for the duration of the period of their work permit and are therefore not restricted to a loan of only 50% of the purchase price. Some banks may require a work permit of at least four years before they will consider a bond of more than 50%.

When a non-resident transfers funds from a foreign source into a South African bank account a record known as a "deal receipt" is issued by the South African bank. This document needs to be submitted to the Reserve Bank if, in future, he sells the property and wishes to return the funds to the foreign country.

It is also important to take note of the marital status of such foreigners. Our Matrimonial Property Act does not apply in respect of foreign marriages and the legal regime is determined by the laws of the country where such person (male) was domiciled at the time of the marriage. The

FAQ's Bonds :

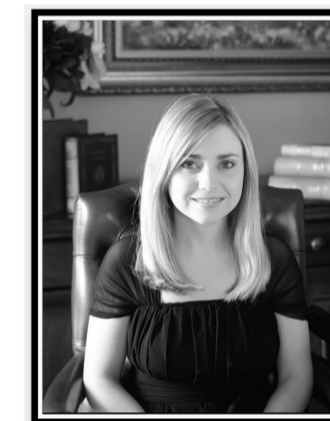
1. **I have been approved for a loan by my bank. May I appoint any conveyancer to register my bond?**
No. The bank will have a specific local panel of conveyancers which is authorised to register bonds. Find out if your preferred conveyancer is on the panel of conveyancers before you request the bank to send the instruction to the conveyancer.
2. **I have to sign an "authority to pay". What is this document?**
This document instructs the bank to issue guarantees and to make payment of the borrowed funds on the date of registration.

Verbande:

1. **My bank het my lening goedgekeur. Mag ek enige aktevervaardiger aanstel om die verband by die Aktekantoor te registreer?**
Nee. Elke bank het 'n spesifieke paneel van aktevervaardigers wat op instruksie van die betrokke bank verbande mag registreer. U moet eers uitvind of u gekose aktevervaardiger op u bank se paneel is voordat u die bank versoek om die instruksie na daardie aktevervaardiger te stuur.

2. **Ek moet 'n leningsdebetmagtiging teken. Wat behels hierdie dokument?**
Wanneer u hierdie dokument onderteken, gee u opdrag aan u bank om waarborg uit te reik en om die bedrag wat u by die bank leen op die datum van registrasie van die eiendom in u naam aan die koper uit te betaal.

- Vernee Roets



law of such country will then determine whether such foreigner has the legal capacity to enter into a contract for the purchase and sale of property in South Africa with or without the assistance of their spouse.

Foreign entities are also allowed to acquire property. The company will have to register itself as a foreign company with a registered office in South Africa and if the shares are owned by the non-resident, the company must in addition appoint a public officer who is a South African resident. In order for a foreign trust to enter into a sale agreement, the foreign trust has to be registered with the Master of the High Court. The Master requires that one of the trustees must be a South African citizen in order to provide a South African domicile that is acceptable to the Master. The normal requirements relating to trusts are also applicable.

Fortunately, a purchaser need not necessarily be personally present in South Africa to sign the documents that are required for the registration of transfer. However, there are formalities that must be complied with in such a case, requiring that the documents be signed either before a notary or at the South African Embassy in the foreign country. These options are usually costly and time consuming. It is thus often easier to execute a power of attorney and appoint a friend, family member or attorney who will be able to act and sign on the foreigner's behalf.

(Please follow our future edition for Part 2 Foreigners – Selling of immovable property)

- Nicole Rokebrand

