

THE NEWSLETTER WITH A DIFFERENCE

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**DIE EFFEK VAN
SEKWESTRASIE OP
ONUITGEVOERDE
KONTRAKTE**

**ETHICAL CODE
– EAAB**

**BONDS/VERBANDE:
FREQUENTLY ASKED QUESTIONS**

**THE PROPERTY PRACTITIONERS BILL
IN A NUTSHELL**

THE PROPERTY PRACTITIONERS BILL IN A NUTSHELL

The Property Practitioners Bill will soon become an act as it has been sent to the President for assent. This act replaces the Estate Agency Affairs Act 112 of 1976.

What do Property Practitioners need to know?

- The act does not only regulate estate agents. The definition of a property practitioner is wide and includes auctioneers, letting agents, bond originators, valuers, home inspectors etc. Attorneys and candidate attorneys are excluded from the definition and it is also possible to apply for exemption from the application of the act.
- The new regulatory body will no longer be the Estate Agencies Affairs Board, but The Property Practitioners Regulatory Board and will be funded by Government as well as the fees paid by property practitioners.
- The Property Sector Transformation Charter Code applies to all property practitioners. The Board must from time to time implement and assess measures to promote an inclusive and integrated property sector, assess the state of transformation and introduce measures to redress imbalances of the past.
- For this purpose the Property Sector Transformation Fund will facilitate the accessibility of finance to historically disadvantaged individuals including women, youth and people with disabilities.
- The Board will appoint inspectors who may, at any reasonable time and without prior notice, enter and inspect the business premises of the practitioner and require that an FFC (Fidelity Fund Certificate) or any book, record or other document be produced.
- The Estate Agents Fidelity Fund will continue to operate but under the name Property Practitioners Fidelity Fund. The aim of the fund remains to reimburse a person who suffers a financial loss as a result of the theft of trust money by a property practitioner or the failure of the practitioner to apply, timeously, for his FFC. A person can't claim from the fund before laying a criminal charge against the property practitioner.
- The property practitioner may not be issued with a FFC if the agency is not in possession of a BEE certificate.
- A conveyancer may not pay any monies to a property practitioner who is not in possession of a FFC.
- The Minister in consultation with the Board must prescribe a code of conduct to be complied with and section 62 sets out sanctionable conduct of property practitioners, *inter alia*, as follows:
 - ✓ in the same transaction the property practitioner acts on behalf of two or more persons whose interests are not in all material respects identical and receive remuneration from both (unless the parties agree thereto in writing);
 - ✓ the failure to pay any money due to the Authority or in respect of the Fund within one month after such monies become due;
 - ✓ a contravention of the code of conduct;
 - ✓ the carrying of an undesirable practice prohibited under section 63;
 - ✓ committing an offence involving an element of dishonesty;
 - ✓ failure to inform the Authority within 14 days of a change in his, her or its contact details;
 - ✓ differentiation or exclusion of consumers directly or indirectly on the basis of their race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth;
 - ✓ committing a criminal offence while performing a function of a property practitioner;
 - ✓ failure to comply with or a contravention of any provision of this act.

- The Minister may after consultation with the Board declare a particular business practice in the property market to be undesirable and prohibited.
- A candidate property practitioner may not draft, complete any document or clause conferring a mandate or relating to the sale or lease of property. If such person is in contravention of this section, that person and the property practitioner who allowed it may not receive remuneration.
- A franchisee property practitioner must clearly and unambiguously in all of his written communications, advertising and marketing materials, declare that he operates in terms of a franchise agreement as well as the name of the franchisor.
- A property practitioner, whether by means of financial and other incentives, may not influence a person who issues a certificate in respect of the condition or defects of electric wiring; the presence of vermin, the presence of water or damp or any other matter or condition provided for in law. Any contravention hereof is an offence.
- Lastly an Ombud will be established to consider, dispose and resolve complaints lodged in terms of this act in respect of the financing, marketing, managing, letting, hiring, sale and purchase of property.

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



BOND GRANT – HAVE I COMPLIED?

Consider the following clause in your deed of sale:

Clause 2:

2.1 The purchaser must obtain a mortgage bond from a financial institution by no later than 23 November upon normal terms and conditions.

2.2 The suspensive condition in 2.1 will be deemed fulfilled upon notification of the financial institution that the bond has been approved regardless of any conditions attaching to such approval.

Your purchaser obtains bond approval on 13 November subject to the following conditions: 1) cancellation of the purchaser's existing bond. The purchaser will therefore have to sell his existing property. The purchaser is not satisfied with this condition as he indicated that he intends to enter into a rental agreement and utilize the property for investment purposes. The bond originator refers the bond back to the bank to reconsider. In the meantime no extension addendum is signed and finally the bank removes the condition and grants an amended loan on 4 December. The purchaser unfortunately lost interest in the property and is not bound by the agreement as the suspensive condition was not complied with.

This scenario often occurs as in the case of *Lategan and Another v Leslie Mildenhall Trollip [2011] A 297/10 (A)*. The court held that the agreement had lapsed as the mortgage bond was not granted as envisaged in the agreement. The mortgage bond was granted after the due date with no extension addendums signed. The initial conditions in the first quotation namely the sale of the purchaser's existing property could also not be regarded as normal terms and conditions, this was regarded as a special condition and was not fulfilled. Normal conditions would typically involve the completion of a debit order, insurance, FICA etc.

Attorneys should take proper care and study the bond quotation as failure might result in a possible negligence claim and loss of your agents' commission. The attorney should ensure that:

- The bond is granted within the time period as stipulated in the agreement. Should timing be a problem rather extend the period;
- Upon receipt of the quotation, examine the conditions to distinguish between normal and special conditions;
- Determine who is responsible for the fulfilment of the special conditions and obtain confirmation in writing, before the bond due date.

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



Ethical Code- EAAB

6. Duties in respect of offers and contracts

6.1 No estate agent -

- 6.1.1 who has a mandate to sell or purchase immovable property shall wilfully fail to present or cause to be presented to the seller or purchaser concerned, any offer to purchase or sell such property, received prior to the conclusion of a contract of sale in respect of such property, unless the seller or purchaser (as the case may be) has instructed him expressly not to present such offer;
- 6.1.2 who has a mandate to sell immovable property, may present competing offers to purchase the property, in such a manner as to induce the seller to accept any particular offer, without regard to the advantages and/or disadvantages of each offer for the seller;
- 6.1.3 shall amend any provision of a signed offer, prior to rejection thereof, or a written mandate or any contract of sale or lease, without the knowledge and express consent of the offeror or the parties to the contract, as the case may be.



Written by/Geskryf deur: Lorraine Beukes - Conveyancer

FREQUENTLY ASKED BOND QUESTIONS/ GEREELDE VERBAND VRAE

HOMEOWNER'S INSURANCE: SECTIONAL TITLE PROPERTIES

Sectional title properties (other than duets) are insured in terms of homeowner's insurance obtained by the body corporate. The purchaser will not be required to obtain their own homeowner's insurance and the premium will be included the purchaser's monthly levy. The purchaser therefore only pays their levy to the body corporate and does not pay the insurance company directly. The relevant insurance company issues an insurance certificate to the body corporate. Upon transfer of the property, the bond registration attorney will then request the insurance certificate, which verifies that the unit is insured.

HUISEIENAARSVERSEKERING: DEELTITEL EIENDOMME

By deeltitel eiendomme (behalwe duette) word die huiseienaarsversekering deur die beheerliggaam uitgeneem. In hierdie geval hoef die koper nie persoonlik versekering uit te neem nie en die premie van die huiseienaarsversekering word by die maandelikse heffings ingesluit. 'n Eienaar betaal hierdie heffings direk aan die beheerliggaam in plaas daarvan om 'n versekeringsmaatskappy te betaal. Die relevante versekeringsmaatskappy reik dan 'n versekeringsertifikaat aan die beheerliggaam uit. Tydens oordrag van die eiendom sal die verbandregistrasieprokureur die versekeringsertifikaat aanvra wat verifieer dat die eenheid verseker is.



Written by/Geskryf deur: Chanél Ferguson - Conveyancer

The good news is that we have finalized our pro forma lease agreement in collaboration with colleague and rental expert Marlon Shevelew. We believe that the new MC-lease agreement is a well-balanced, fair, updated, informative and user friendly document.

The property professionals that use the MC member page will find the lease agreement on their member pages. The rest of our clients are welcome to email us at liza@mcvdberg.co.za and we will forward you a copy.

We have also launched our MCRentalGuide, which is available on our website. This guide sets out and explains the intricacies relating to rentals. It will not only inform the landlord and the tenant about an array of aspects relating to rentals, but will also protect the rental agent. The property professionals using our member page have the facility to email the guide to all of their rental clients.

Thank you for all your support.



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

DIE EFFEK VAN SEKWESTRASIE OP ONUITGEVOERDE KONTRAKTE

Dit is belangrik om te verstaan wat die gevolge sal wees indien een van die partye tot 'n koopkontrak gesekwestreer word tydens die oordrag van 'n eiendom.

Die Insolvensie Wet 24 van 1936 reguleer die situasie waar 'n skuldenaar se laste sy bates oorskry en hy gevolglik nie sy skuld kan betaal nie. Die insolvent verloor beheer oor sy boedel en die beheer oor die boedel vestig in 'n kurator wat aangestel word deur die Meester van die Hoë Hof. Aangesien sekwestrasie 'n persoon se handelingsbevoegdheid opskort, kan so 'n persoon nie kontrakte aangaan sonder die skriftelike toestemming van die aangestelde kurator nie.

In die saak van *Bryant & Flanagan (Pty) Ltd v Muller & Another* is daar beslis dat indien 'n koopkontrak reeds geteken is, maar volle prestasie nog nie voltooi is nie, en 'n persoon word dan gesekwestreer, gaan die onuitgevoerde kontrak nie outomaties tot niet nie. In so 'n geval sal die belange van die skuldeiers as geheel voorkeur geniet bo die belange van enkele individuele skuldeisers. Die kurator wat aangestel word om die sake van die gesekwestreerde persoon te behartig kan besluit om voort te gaan met die kontrak of om die kontrak te repudieer.

Wanneer 'n verkoper gesekwestreer word en die kurator besluit om die kontrak te repudieer, sal dit kontrakbreuk daarstel, en sal die koper 'n eis teen die insolvente boedel kan instel as konkurrente skuldeiser vir die teruggawe van die koopprys of enige gedeelte daarvan wat reeds betaal is. Indien die kurator besluit om voort te gaan met die koopkontrak is beide partye verplig om prestasie te lewer.

Wanneer 'n koper gesekwestreer word en die kurator besluit om die kontrak te repudieer, sal die verkoper skadevergoeding kan eis van die insolvente boedel. Weereens as die kurator besluit om voort te gaan met die kontrak, moet beide partye prestasie lewer ten einde registrasie van die eiendom te bewerkstellig.



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

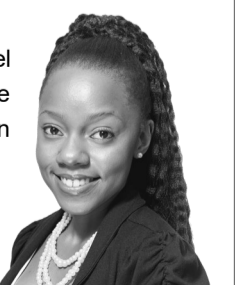
WHAT OUR CLIENTS HAVE TO SAY / WAT ONS KLIËNTE SÊ

- ◆ We would also like to thank your staff at reception for their friendliness whenever we visited your offices. Overall we found everyone at MC van der Berg to be highly professional and friendly and would definitely recommend anyone to your firm.
- ◆ I must compliment you and your team on being the best lawyers I've dealt with when selling property. Your communication is excellent and your updates at each step of the way are very useful.
- ◆ I would definitely recommend your team to others.
- ◆ It is indeed absolutely necessary and appropriate to express our sincere thanks to you for a job well done. Factually, you were highly instrumental in this settlement, applying the right pressure at the right time. I would like to commend you on a job well done. You are truly a great attorney and certainly very efficient. I would continue to use your services and recommend you extensively.
- ◆ Hiermee wil ek graag my opregte dank en waardering aan jou en jul maatskappy toeswaai. Ons was van dag een af baie beïndruk met jul toegewydheid en jul professionele benadering. Julle dienste is top klas en julle het al ons vrae en versoeke in rekord tye hanteer en uitsorteer. Dit wil gedoen wees hoor!!! My seënswens is dat julle maatskappy sal gaan van krag tot krag en dat julle altyd enige kompetisie uit sal stof met vlieënde vaandels. God's rykste seën van nou af tot in alle ewigheid.
- ◆ 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.

Werknemer van die maand

Keneilwe Mogale is in Julie 2017 aangestel as administratiewe assistent in ons bemerkingsafdeling.

Met haar vriendelike en minsame geaardheid het sy gou in die MC-personeel en kliënte se harte ingekruip. Kenny, soos ons haar noem, is tans die fasiliteerder by MCademy en is sy daagliks in kontak met ons kliënte en agente.



Keneilwe Mogale - MCademy Fasiliteerder