



dinge die eerste keer reg te doen. Daar is skynbaar altyd tyd om iets oor te doen, maar nooit genoeg tyd om dit in die eerste plek reg te doen nie.

Ons sien gereeld by die firma hoe oënskynlike klein foutjies in kontrakte later tot groot drama, die onnodige vermors van tyd, frustrasie, die gedeeltelike afstaan van kommissie en selfs die verlies van die totale kommissie lei. Baie van hierdie hartseer kon vermy geword het as die betrokkenes net behoorlik hulle aandag op die kontrak toegespits het. As daar net 'n tweede keer gemeet is voordat die hout gesaag is! Maar in baie gevalle kan die plank nie weer gesaag word nie. Ons as prokureurs kan in baie gevalle ook nie die gesaagde plank weer aanmekeer las nie.

Spandeer die ekstra tyd en maak 100 % seker al die aspekte van jou kontrak is reg voordat jy dit finaliseer. Dit gaan jou lewe baie makliker maak.

Measure twice and cut once!
- **Tiaan van der Berg**

In certain instances the banks even consider an agreement whereby a deposit will be paid in installments after registration as a loaded deal. It has become apparent that the parties often conclude such an agreement to "create the illusion" of a larger purchase price to assist the purchaser in obtaining a larger bond, but their actual meaning is that the seller will waive the deposit that is supposedly payable after registration.

Bond Attorneys withholding such arrangements from the bank, stand the chance of being removed from the bank's panel, and should therefore take reasonable steps to inform the bank thereof.
- **Annele Odendaal**



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The Newsletter with a difference

Inspeksie vs Voetstoots?

Daar is reeds baie gesê oor die Wet op Verbruikersbeskerming (WVB) en die toepassingsgebied daarvan.

Die meeste regsgeleerdes is van mening dat die (WVB) nie van toepassing is op die koper-verkoper verhouding in gevalle waar onroerende eiendom nie in die normale loop van die verkoper se besigheid verkoop word nie (sg "once-off" transaksies). Derhalwe is die waarborge wat in die (WVB) vervat word nie statutêr tot die beskikking van die koper nie. In die lig daarvan is die gemeenregtelike posisie ten aansien van gebreke nog van krag.

Onlangs het daar 'n artikel in 'n dagblad verskyn waar 'n persoon wat huisinspeksies doen die mening lug dat die voetstootsklausule geen plek in 'n koopkontrak van onroerende eiendom het nie. Volgens die persoon moet die koper eis dat die voetstootsklausule uit die kontrak verwyder word en verder eis dat daar 'n behoorlik inspeksie (deur die persoon se organisasie) gedoen word.

Die probleem met die stelling is uiteraard dat die inspeksie van die onroerende eiendom en die voetstootsklausule in wese twee verskillende regsaspekte aanraak.

Die doen van 'n inspeksie van die eiendom raak die koper se gemeenregtelike verpligting ten aansien van patente gebreke. Die voetstootsklausule daarenteen beskerm die verkoper teen latente gebreke.

Ten aansien van patente gebreke (gebreke wat sigbaar is of met 'n redelike inspeksie sigbaar is) bepaal die gemeenereg dat die koper 'n regsplig dra om 'n behoorlike inspeksie te doen

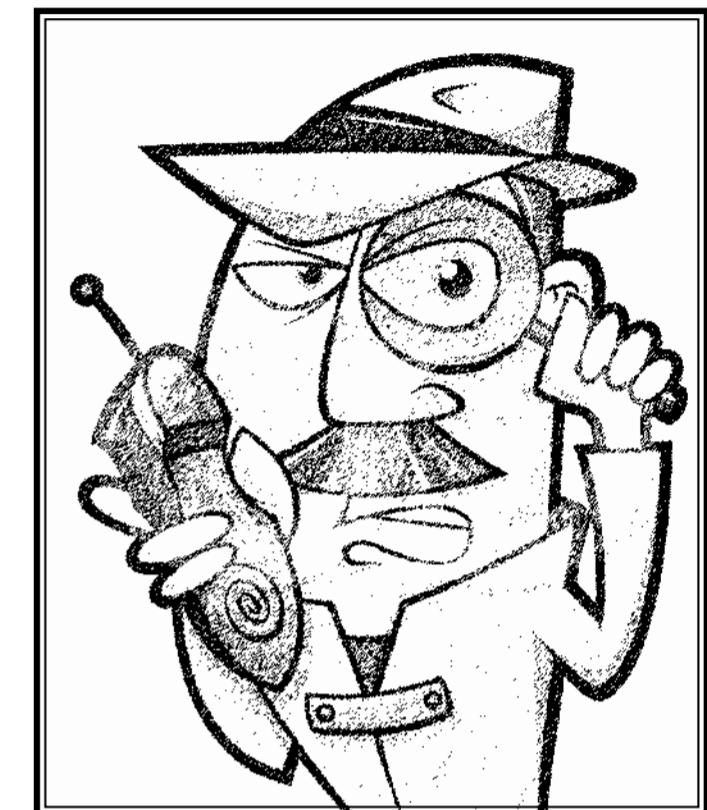
van die eiendom wat hy koop. (die sogenaamde *Caveat Emptor*-reël) Die koper kan dus nie die verkoper aanspreeklik hou vir patente gebreke wat teenwoordig was ten tye van kontraksluiting nie.

Ten aansien van latente gebreke (gebreke wat nie sigbaar is of met 'n redelike inspeksie sigbaar is nie) beskerm die voetstootsklausule die verkoper teen eise vir skade wat ontstaan uit latente gebreke indien hy nie daarvan bewus was nie. Die verwydering van die voetstootsklausule uit die kontrak het die gevolg dat die verkoper afstand doen van die beskerming wat hy in hierdie opsig geniet. Seer sekerlik nie 'n wyse stap nie.

Om dus voor te stel dat die kontraktuele verpligting om 'n buite instansie te kontrakteer om 'n behoorlike inspeksie te doen die voetstootsklausule moet vervang is onsinig. Selfs al doen die betrokke inspekteur 'n deeglike inspeksie sal daar nog steeds latente gebreke wees wat nie sigbaar is nie. (vandaar die definisie daarvan) en waarvoor die verkoper beskerming nodig het.

Indien die partye kontraktueel ooreenkom dat 'n buite instansie 'n inspeksie van die eiendom sou doen ontstaan die vraag of die instansie dan die gemeenregtelike verpligting van die koper oorneem al dan nie. Wat sou die gevolg wees as die buite instansie 'n patente gebrek miskyk. Neem hulle dan die aanspreeklikheid daarvan oor? Seer sekerlik verander die aanstelling van 'n buite instansie om die inspeksie te doen nie die regsplig wat gemeenregtelik op die koper rus nie.

Die vraag bly bloot of dit nou



nodig geword het om regsbeginsels wat deur die eeue heen deurtrap en verfyn is skielik met die spreekwoordelike badwater uit te gooi.

Die voetstootsklausule het myns insiens nog steeds 'n plekkie in die son in gevalle waar die eiendom nie in die normale loop van die verkoper se besigheid verkoop word nie. Dit sou dus onwys van die verkoper wees om in te stem dat die voetstootsklausule uit die kontrak verwyder word.

Alhoewel die aanstelling van 'n buite instansie om 'n inspeksie te doen 'n sinvolle voorstel is, moet die regsstatus en trefwydte daarvan met versigtigheid bejeën word.

Koper doen of laat doen 'n deeglike inspeksie van die eiendom want dit is jou verpligting in terme van die gemeenereg om self die patente gebreke vas te stel. Verkoper voeg die voetstootsklausule in ten einde jou te beskerm teen eise vir latente gebreke.



- **Tiaan van der Berg**

Loaded Deals

The following agreement would constitute a so called loaded deal:

The purchase price of a property is R1 000 000.00, but the parties agree that the price be increased to R1 050 000.00 (so as to include transfer and bond registration costs). The seller then initially pays the costs on behalf of the purchaser, but is reimbursed with the R50 000.00 upon registration of the property.

An agreement such as the above would constitute a fraudulent transaction if not disclosed to the bank granting the purchaser's bond. When considering a bond application, the banks take into account the value and the purchase price of the property. In the above scenario the parties basically agree to "load" the purchase price with costs. The bank is induced to grant a bond on a false representation of the purchase price of the property.

Hannelie Lewis

Hannelie is 'n senior aktektster by die firma.

Sy het in 1988 haar loopbaan in Ellisras begin. Hannelie het in 2002 vanaf die platteland na Pretoria verhuis en op 1 Desember 2002 by MC van der Berg prokureurs aangesluit. Sy sal vanjaar 'n dekade lank by die firma wees!

Nie net is Hannelie 'n baie lojale werknemer nie maar is sy die ma van twee kinders en trotse ouma van twee kleinkinders.

Ons is dankbaar om iemand met haar ervaring as deel van ons span te hê!



Looney Law-

FRASIER: *I hate lawyers.*

NILES: *I do too, but they make wonderful patients. They have excellent health insurance and they never get better.*

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Evictions and Sale in Execution

Where your property is illegally occupied by a tenant who is not paying your rent or who is refusing to vacate the property after the lease agreement has expired you will have to apply to court to evict the tenants in terms of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE)

If the property has been occupied for a period of longer than six months you will have to look at section 7 of the said act sets out the factors the court will consider before granting an eviction order: "If an unlawful occupier has occupied the land in question for more than six months at the time when the proceedings are initiated, a court may grant an order for eviction if it is of the opinion that it is just and equitable to do so, after considering all the relevant circumstances, including, except where the land is sold in a sale of execution pursuant to a mortgage, whether land has been made available or can reasonably be made available by a municipality or other organ of state or another land owner for the relocation of the unlawful occupier, and including the rights and needs of the elderly, children, disabled persons and households headed by women."

In a recent case of Ives v Rajah 2012 the appellant appealed against an eviction order that was granted against her. The respondent

bought the property from the Sheriff and continued to allow the appellant to rent the property. After failing to pay her rent and to vacate the property Rajah evicted her in terms of the aforementioned act.

On appeal to the High Court the court found that where there is a sale of mortgaged property in execution, the question of alternative land is excluded as a relevant consideration but the rights of the elderly and so forth must still be taken into account.

Because Ives was also disabled, the evicting court also had to consider her rights in this regard. Although having to consider whether a disabled person will have somewhere suitable to go after the eviction, the court upheld the policy of the lawmaker, namely that execution sales of mortgaged properties are intended to result in the buyer obtaining vacant occupation. Therefore the question of alternative accommodation should not necessarily receive the same weight as it might have if the disabled person was occupying the property that had not been sold in execution. - **Wimpie Ackhurst**



- **Wimpie Ackhurst**



- **Bennie Reynders**

Egskaidings & Eiendomsoordragte

Na 'n egskaiding is daar dikwels 'n eiendom wat in beide gades se name aangekoop is, waarmee gehandel moet word.

Die skikkingsooreenkoms tussen die partye bepaal gewoonlik dat die een party sy aandeel in die eiendom sal oordra aan die ander party of dit bepaal dat die eiendom verkoop sal word en die opbrengs uit die verkoop, verdeel sal word.

In die geval waar die een gade sy aandeel in die eiendom oordra aan die ander gade is daar twee noemenswaardige aspekte.

Eerstens sal daar met die verband gehandel moet word. Die verband wat op beide gades se naam geregistreer is, sal gekanselleer moet word en 'n nuwe verband sal in slegs een gade se naam geregistreer moet word.

Tweedens is daar in die geval van egskaidings, mits die skikkingsooreenkoms korrek bewoord is, geen hereregte betaalbaar waar een gade sy aandeel of die volle eiendomsreg aan die ander gade oordra nie.

Kontak ons gerus as ons u kan bystaan met u egskaiding.

- **Bennie Reynders**

Extension of a sectional title unit

Often owners make additions to their sectional title units, for example by enlarging or adding a room or veranda and they think that they only need approved building plans to do this.

A few years later they sell the unit and usually the valuator then establishes that the extent on the sectional title plan and the true extent of the unit are not the same.

Owners should be aware that not only do they need approved building plans but also amended sectional title plans which indicate the new extent of the unit.

The amended sectional title plans are drafted by a land surveyor and submitted to the Surveyor Generals office for approval. This process can take approximately 1 to 3 months depending on the volumes that the Surveyor Generals office has to process. The approved sectional title plans and

an application for extension of the unit is lodged at the deeds office for registration.

Should the extension of the unit result in the participation quota of the unit increasing by more than 10% all the other owners as well as the bondholders consents have to be obtained before the extension can be lodged in the deeds office.

To avoid undue delays in the transfer agents should, when listing a property, enquire if extensions have been made, and if there has, establish whether an amended sectional title plan is in place.



- **Sonja du Toit**

Master of the High Court: Trusts

Trusts are governed by the provisions of the Trust Property Control Act 57 of 1988. There are 2 types of trusts; an inter-vivos trust and a testamentary trust. An inter-vivos trust is created between living persons and a testamentary trust derives from a will.

A trust is a creature of document, unlike a company that is a creature of statute. This means that the powers of the trustees will differ from trust to trust. It is therefore imperative for us as conveyancers to read every trust document to ascertain whether a particular trustee acted in his / her powers signing a deed of sale.

The power of a trustee derives from a letter of authority issued by the Master of the

Looney Law-

A judge opened court with this announcement: "The lawyer for the defense has paid me \$15,000 to decide for his client.

The lawyer for plaintiff paid me \$10,000 to hold favorably for the case she made.

In the interest of a fair trial, I am returning \$5,000 to the defence"

High Court. This document is issued on date of registration of the trust but can later be changed.

The question whether a particular trust can be altered or whether beneficiaries can be changed or substituted depends on the requirements and criteria of each and every trust.

- **Nicole Rokebrand**



Bringing customary marriages on par with civil marriages.

* Please see Setswana translation at the bottom left

We are used to parties either being married in or out of community of property but there are also other "types" of marriages we have to take note of.

In terms of South African Legislation, dating back as far as 1927, black marriages were never regarded as being "legal". Until 1988 we referred to it as "customary unions". Wives were often left out in the winding-up of these estates, to their detriment. An array of changes were made to legislation in 1988 recognising these marriages and stipulating that these marriages will automatically be in community of property.

The South African Legislature introduced the much needed Recognition of Customary Marriages Act that came into operation on 15 November 2000. This act recognised indigenous people's marriages as a customary marriage but created serious problems with the matrimonial systems thereof, i.e. whether it will be regarded as in or out of community of property. The Constitutional Court ruled in 2011 in the Gumedde case that all customary marriages shall be regarded as in community of property if there is one wife and the parties have not entered in to an ante nuptial contract.

Often parties indicate that they are married out of community of property. This can only be true if the parties entered into an antenuptial agreement before concluding the marriage, or applied to court for the change of the matrimonial system after the marriage was concluded.

Where parties indicate that they are married in accordance with customary law, we need:

- A marriage certificate confirming the marriage;

- A copy of the registered Antenuptial Contract if they indicate that they are married out of community of property.



- **Rich Redinger**

3 Minute Sudoku

MCSudoku								
2	8	5	4	9	7	1	6	3
7	3	9	1	2	6	8	5	4
4	6	1	5		8	2	7	9
8	4	7	3	6	2	5	9	1
1	2	3	9	7	5	4	8	6
5	9		8		4	7	3	2
6	7	4	2	5	3		1	8
9	5	2	6	8	1	3	4	7
3	1	8	7	4	9	6	2	5

TEKATEKANO YA MANYALO A SETSO LE A SEENG.

Go le gale batho ba nyala ka tlhakanelo ke la tlhakanelo kgotsa kwa ntle ga tlhakanelo ya dithoto, le fa ele gore go nale manyalo a mangwe.

Ka molao wa Afrika Borwa go tloga ka ngwaga wa 1927, manyalo a batho bantsho a ne a sa tsewe tsiya semolao. Go fitlha ka ngwaga wa 1988 a ne a bidiwa kgolagano ya setso. Bomme ba ne basa ungewe go tswa mo manyalong ao. Diphetogo di ne tsa tlise-wa ke molawana wa 1988, mo eleng gore dikgolagano tseo di ne tsa tsewa tsiya jaaka manyalo le gore fa go sena tumalano eo tlhalosang ka tsela nngwe kgolagano eo e tse-wa jaaka lenyalo la tlhakanelo ya dithoto.

Palamente ene ya tlisa molawana o bidiwang "Recognition of Customary Marriages Act ka ngwaga wa 2000. Molawana o, o ne wa tseya tsiya manyalo a setso, mme wa tlisa mathata a gore a lenyalo

ke la tlhakanelo kgotsa kwa ntle ga tlhakanelo ya dithoto.

Kgotlatshekelo ya molatheo mo kgetsing ya ga Gumedde ka ngwaga wa 2011 e ile ya re manyalo a setso a amogelesega jaaka a tlhakanelo ya dithoto fa go nale mosadi a le mongwe. Go le gale batho ba tlhalosa gab a nyalane kwa ntle ga tlhakanelo ya dithoto mme seo se tlhomamisiwa ka tumalano ya lenyalo eo e bidiwang antenuptial agreement pele ga lenyalo kgotsa ba kopa kgotlatshekelo go fetola lenyalo la bone gaba setse ba nyalane.

Ga batho bare ba nyalane ka setso go tlhokagala

lekwalo la lenyalo tumalano eo tlhalosang gore ba nyalane kwa ntle ga dithoto

- **Motlatsi Seleke**

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