

Important New Legislation

Sectional title owners, agents, managing agents and body corporates have to take note of two new acts which will probably be promulgated at the end of 2012 or early 2013.

The two acts are:

1. Community Schemes Ombud Service Act 9 of 2011 (CSOS)
2. Sectional Titles Schemes Management Act 8 of 2011 (STSMA)

Currently the regulations to the aforesaid acts are being drafted and as soon as they are finalised the acts will be promulgated.

The aim of the Community Schemes Ombud Service Act is to provide a dispute resolution mechanism for all community schemes. A community scheme is not only a sectional title scheme but will include share block schemes, home owners associations and housing schemes for retired persons.

The functions of the Ombud Service as set out in the act are:

- To develop and provide a dispute resolution service
- To train conciliators and adjudicators
- To regulate, monitor and control the quality of scheme governance documentation
- To take custody of, preserve, and provide access to aforesaid documentation.

Section 39 of the Act provides for six categories of relief as illustrated in the examples below:

Financial:

the adjudicator can order the body corporate to take out additional insurance should it be lacking

Behavioural:

the noisy midnight parties by the neighbour can be stopped

Governance:

a rule can be declared invalid

Meetings:

the body corporate can be ordered to hold a meeting to deal with specific issues

Management:

to order a managing agent to comply with its contract of appointment.

General and other issues:

The positive effect of this act is that the owners in community schemes no longer have to take the route of arbitration or litigation (which are both time consuming and costly) to resolve the above mentioned type of issues.

The aim of the legislature with the Sectional Title Schemes Management Act (STSMA) is to divide the Sectional Titles Act into two separate acts. The Sectional Titles Act remains operational and contains the law pertaining to registration matters. The Sectional Title Schemes Management Act

MARIE ELS

Marie is sedert Junie 2006 werksaam by die firma. Sy is die vriendelike stem by die skakelbord asook die mooi ontvangsdame wat ieder & elk laat welkom voel.

Marie is getroud met Martin en hul het 'n 13 jarige seun, Martin jnr. Sy is sekerlik die Blou Bulle se grootste ondersteuner!



will now contain all management matters.

Whilst some of the provisions of the Sectional Titles Act were re-enacted in the STSMA others were clarified and innovated.

An example of this is the restructuring and simplification of the definitions for special and unanimous resolutions

A special resolution is defined as a resolution

1. Passed by at least 75% calculated both in value and in number of the votes of the members of the body corporate who are present or represented at a general meeting; **or**
2. Agreed to in writing by members of a body corporate holding at least 75% calculated both in value and in number, of all the votes.

A unanimous resolution is defined as a resolution

1. Passed unanimously by all the members of the body corporate at a meeting at which at least 80% calculated both in value and in number, of the votes of all the members of a body corporate are present or represented and all the members who cast their votes to do so in favour of the resolution; **or**
2. Agreed to in writing by all the members of the body corporate

The practical implication from a conveyancing perspective is seen especially in the opening of new sectional title schemes. The Ombud Service will have to approve the rules applicable to all sectional title schemes and a new scheme will not be opened by the Registrar of Deeds in the deeds office without a letter from the Ombud Service that the proposed rules have been approved.



Secondly the Registrar of Deeds will have to send confirmation that the body corporate is established to the Ombud Service as soon as the first transfer of a unit takes place.

We will update you on the promulgation of these acts as they are very important and ring in a new era in sectional title and homeowners association management and dispute resolution.

- Sonja du Toit

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

10 Minute Sudoku

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

Your Property Attorneys

Tel: 012 660 6000 Fax: 012 660 6001
 info@mcvdberg.co.za www.mcvdberg.co.za

M.C. Monthly

Issue 7

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

October 2012

The Newsletter with a difference

Mandate

Baie eiendomsagente is van mening dat hul eis op kommissie sy boorsprong het in die koopkontrak wat deur hul toetredende gesluit is.

Dit is nie heeltemal die waarheid nie. Alhoewel die agentekommissie klousule in die koopooreenkoms met die maatskappij gepaardgaande agentekommissie addendum die aangeleentheid reguleer en bestuur, sal daar in die afwesigheid van die kontraktuele bepalinge in die koopkontrak nog steeds 'n kommissie eis wees.

Dit is so aangesien die kommissie eis van 'n eiendomsagent teen 'n verkoper geregleer word deur die gemeenregtelike bepalinge van 'n lasgewingskontrak. In die industrie word hierdie lasgewingskontrak gewoonlik ten dele of ten volle (selde) in die sogenaamde mandaatvorm vervat.

In die gemeneereg is daar geen formaliteitsvereistes vir 'n lasgewingskontrak nie en kan 'n verkoper in die lig daarvan 'n mandaat mondelings aan 'n agent gee. Uit die aard van die saak is dit swak sake praktyk om op mondelingse mandate te werk en kan die bestaan al dan nie van 'n mondelingse mandaat 'n bewysregtelike probleem vir 'n agent raak.

Soos in baie ander gevalle is die gemeenregtelike beginsels hierbo in die etiese kode van eiendomsagente gewysig deurdat daarin bepaal word dat 'n alleenmandaat op skrif moet wees en deur die verkoper geteken moet wees.

In praktyk bestaan daar vyf tipes mandate, die voor- en nadele wat vir doeleindes hiervan nie ter sprake is nie.

1. **Oop mandaat:** Dit is gevalle waar verskeie agentskappe deur die verkoper gemagtig word om die eiendom te bemark. Die agent wat die effektiewe oorsaak van die verkoopstransaksie is, is dan geregtig op kommissie. Die verkoper mag ook self sy eiendom verkoop.
2. **Deel mandaat:** Dit is gevalle waar die verkoper aan 'n beperkte hoeveelheid agentskappe die magtiging verleen om die eiendom te verkoop. Die agentskap wat die effektiewe oorsaak van die transaksie is, sal geregtig wees op die kommissie. Die verkoper sal ook hier die eiendom self kan verkoop.
3. **"Multi listing" mandaat:** Dit is gevalle waar die verkoper die eiendom aan 'n bepaalde agentskap (alleen, deel of in 'n oop mandaat) gee

A woman's right to change her surname

It has always been the understanding that once a woman assumes her husband's surname, she must retain that surname until death or divorce unless it is changed by the department of Home Affairs.

Upon a closer look of Section 26(1) of the Births and Death Registration Act 51 of 1992 it would appear that this assumption is incorrect. This section stipulates that no person shall assume or describe themselves under any other surname other than the surname indicated in the population register, unless the Department of Home Affairs authorized a name change. This section shall however not apply in the following three instances:

1. Where a woman after her marriage assumes the surname of the man with whom she concluded such a marriage or after having assumed his

surname, resumes the surname which she bore at any prior time;

2. A married or divorced woman or a widow resumes the surname which she bore at any prior time;
 3. A woman whether married or divorced or a widow adds to the surname which she assumed after the marriage, any surname which she bore at any prior time.
- It is therefore evident that a woman may assume or describe herself under a surname other than that under which she has been included in the population register.

Ter afsluiting is dit noodsaaklik om in gedagte te hou dat die Etiese kode van Eiendomsagente benewens die vereistes van opskrifstelling en ondertekening by alleen (en eksklusiewe) mandate ook verdere vereistes neerlê soos dat 'n bemerkingsplan daarby ingesluit moet word. Daarbenewens word die diensverhouding tussen agent en verkoper ook deur die bepaling van die Verbruikers Beskermings Wet geraak en sal daar ook aan die vereistes voldoen moet word in die mandaat, soos bv. dat dié mandaat in eenvoudige taal moet wees.



U moet u mandaat vorms noukeurig laat na gaan aangesien dit die kern van u onderneming is.

- Tiaan (M.C.) van der Berg



- Nicole Rokebrand

First National Bank: Quick Sell Properties

There are three types of Quick Sell Properties:

1. Quick Sell Private Sale

In these cases the customer appoints the bank to market his / her property on his / her behalf through approved and accredited estate agents.

FNB offers Purchasers up to 100% bonds on such properties, and Purchasers receive a 50% discount on the transfer and bond registration costs (provided that both the transfer and bond registrations are attended to by the FNB appointed Attorney).

Only Attorneys on FNB's Quick Sell Panel will be appointed to attend to the transfer of the property and the registration of the bond, and only estate agents appointed by FNB will be permitted to market the property via a sole mandate.

The properties are sold voetstoots ("as is"), and the Seller will be liable for payment of the clearance figures to the Municipality and levy clearance figures to the Body Corporate and / or Home Owners Association (if applicable), which will include all outstanding amounts.

2. Quick Sell Repossessed Properties

A property becomes a property in possession (PIP) or bank repossessed property once a customer has defaulted and the bank's reserve price was not achieved at an auction.

FNB offers Purchasers up to 100% bonds on such properties, and no transfer duty is payable by Purchasers. Unfortunately no discount is granted on transfer and bond registration fees in these cases.

Only Attorneys on FNB's Quick Sell Panel will be appointed to attend to the transfer of the property and the registration of the bond.

These properties are sold voetstoots ("as is"), and the sale agreements may not contain any suspensive conditions. All clearance figures due to the Municipality and levy clearance figures due to the Body Corporate and / or Home Owners Association up until date of registration will be paid by FNB.

It is the responsibility of the Purchaser to obtain an electrical compliance certificate, and the bank does not warrant that the Purchaser will obtain vacant occupation of the property on date of registration.

3. Quick Sell Insolvent Estates

A property becomes an insolvent estate property where the estate of an owner has been sequestrated / liquidated and the Master of the High Court has appointed a trustee / liquidator to manage and administer the estate. An offer to purchase such a property is subject to the approval of the Master of the High Court.

Where the purchase price is between R1.00 and R750 000.00 a 10% deposit must be paid into the trust account of the trustee, and where the purchase price is higher than R750 000.00 a 5% deposit is required.

Once again only Attorneys on FNB's Quick Sell Panel will be appointed to attend to the transfer of the property and the registration of the bond. Unfortunately no discount is granted on transfer and bond registration fees in these cases.

These properties are sold voetstoots ("as is"), and the sale agreements may not contain any suspensive conditions.

Risk, possession and occupation of the property passes to the Purchaser on date of confirmation of the Sales Agreement by the trustee / liquidator, and occupational rent is payable monthly to the estate at the rate of 1% of the purchase price.



It is the responsibility of the Purchaser to obtain an electrical compliance certificate, and guarantees for the full purchase price must be delivered within 30 days of confirmation of the Sales Agreement by the trustee / liquidator.

- Annelé Odendaal



Tiaan se

MCademy skop af!

Ons lank beloofde opleidings akademie het toe op 20 September 2012 afgeskop. Ons is dankbaar dat ongeveer 200 agente die oggend bygewoon het. Te midde van 'n kragonderbreking was die oggend 'n reuse sukses.

Vanaf 4 Oktober 2012 het ons begin om elke Donderdagoggend lesings MCademy se fasiliteite aan te bied. Wees op die uitkyk vir die by advertensies en bespreek u plek.

- Tiaan van der Berg

MCademy

The mission of MCademy is to bring relevant property related information to our business partners in a comprehensible, fun way, free of charge in order to make you more competitive and thereby showing our gratitude for your loyal support.

During the month of November MCademy will conduct the following topic:

Give us a break – a tax break:

A discussion on the new Capital Gain's Tax rates, How Capital Gains tax works. The lecture will have specific reference to the tax break available until the end of 2012.

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

'n Huweliksvoorwaardekontrak met 'n belofte, en die vereistes van die Wet op Vervreemding van Grond

Artikel 2 van die Wet op Vervreemding van Grond, wet 68 van 1981 lees as volg:

"Geen vervreemding van grond na die inwerkingtreding van hierdie artikel is, behoudens die bepalings van artikel 28, is van krag nie tensy dit vervat is in 'n vervreemdingsakte wat deur die partye daarby of deur hulle agente, handelende op hulle skriftelike gesag, onderteken is."

In 'n onlangse uitspraak in die Suid Gauteng Hooggeregshof (Johannesburg) in die saak Bath v Bath [2012] JOL (GSJ) voor 'n volbank regters, was die vraag:

As 'n party die belofte maak om 'n aandeel in 'n onroerende eiendom aan 'n voornemende gade met huweliksluiting by wyse van 'n Huweliksvoorwaardekontrak, is dit voldoende en voldoen dit aan die wetlike vereistes?

Die hof het die Huweliksvoorwaardekontrak ontleed en na die bewoording en letterlike interpretasie daarvan gaan kyk. Dit het gelees:

"That of Daniël Hugo Bath to be: 1/3 share of Erf 59 Honeyhills Township – R120,000.00"

Dit het die veronderstelling gegee dat formele transport van die aandeel nog nie gegee is nie (that to be). Dieselfde Huweliksvoorwaardekontrak het die volgende bepaling ten opsigte van die vrou gehad:

"That of Joy Moonjean Usswald 2/3 share [of] Erf [59] Honeyhills Township – R240,000.00"

Dit het egter die verwagting geskep dat die man nog die 1/3 aandeel sal kry, en dat 2/3 reeds in die naam van die vrou geregistreer is. Verder het Meneer Bath ook vir die bestaan van die huwelik 1/3 van die verband paaient bygedra op grond van die verwagting dat hy 1/3 aandeel van die eiendom besit.

Dismissals

With the introduction of the "unfair labour practice "jurisdiction" into our labour law, the law and principles pertaining to dismissals have undergone significant changes.

Two distinct requirements for a fair dismissal have crystallised to ensure a fair dismissal, namely the requirement of substantive fairness and procedural fairness.

Substantive fairness relates to a valid and fair reason to dismiss, while procedural fairness refers to the well known rule of natural justice – *audi alteram partem* – in terms of which an employee must be afforded an opportunity to defend himself before he is dismissed.

Because misconduct is prevalent in every workplace and its consequences may have far reaching implications, an employer has to adopt measures to curb misconduct. This is done by implementing disciplinary rules in the form of a disciplinary code, or code of conduct.

An employer is best advised to adopt a positive approach to discipline in that the disciplinary action must be aimed to corrective measures rather than mere penalisation. Counselling, advice and verbal warnings may in many instances achieve the required goal, rather than meeting out disciplinary sanctions for every infraction. However, some forms of misconduct are simply so serious that stringent measures, including dismissal, have to be applied. A sophisticated code of conduct will cater for the whole range, making counselling possible, thereafter providing for progressive discipline in the form of written warnings and, ultimately dismissal.

Vandaar het die hof tot die slotsom gekom dat die man se gedeelte nog getransporeer moet word. Die hof het dit ook baie duidelik gestel dat die bewoording van 'n Huweliksvoorwaardekontrak duidelik en ondubbelsinnig moet wees. Iets wat duidelik nie in Meneer en Mevrou Bath se geval gebeur het nie.

Meneer Bath beweer verder dat daar mondelings ooreengekom is, met sluiting van die Huweliksvoorwaardekontrak, dat die 1/3 aandeel aan hom oorgedra sal word. Die hof het voet by stuk gehou dat artikel 2 van die Wet op Vervreemding van Grond duidelik en ondubbelsinnig is oor hoe daar met onroerende eiendom gehandel moet word: Deur die partye of hul gevolmagtigde agente op skrif gestel is, en onderteken is. Die hof stel dit duidelik dat die primêre hoofsaak van die wet is om dit verpligtend te maak dat enige vervreemding van grond op skrif gestel moet word, en dat die nie-nakoming daarvan gestraf word deurdat die "ooreenkoms" as ongeldig beskou word.

Dit het die gevolg gehad dat alhoewel daar 'n skriftelike belofte deur die een party aan die ander gemaak is om 1/3 van die eiendom aan Meneer Bath oor te dra, nie-voldoening aan die wetlike aspekte van die vervreemding van grond die gevolg het dat daar geen ooreenkoms is nie.



Die partye was besig om te skei en Meneer Bath het vir jare 1/3 van die verband paaient betaal, met geen basis om sy sekuriteit af te dwing nie. Ons behoort almal hieruit te leer dat die bewoording van 'n Huweliksvoorwaardekontrak duidelik, ondubbelsinnig en spesifiek moet wees.

- Rich Redinger

Several basic rules apply to any code of conduct:

The code must be:

- Comprehensive,
- Accessible and understandable
- Fair
- Provide appropriate sanctions for the different forms of misconduct
- Consistently applied

In addition to the code of conduct, a disciplinary procedure should also be implemented. The procedure must determine the persons responsible for discipline, the steps of a disciplinary hearing and appeal hearing, the rights of an employee during these hearings and appropriate sanctions.

Discipline is a managerial prerogative and a channel of communication used by management to inform employees of unacceptable behaviour. In the same way that management requires a channel to communicate to its employees any unacceptable behaviour, the employees require a channel of communication to notify management of any unhappiness or grievances. Thus, it is only fair to also introduce a grievance procedure. The grievance procedure must allow an employee to air any grievance within a stipulated time and to have that grievance addressed and rectified. Should this fail, a dispute may be declared and the internal dispute process, if any, is triggered.

Should you have any enquiries as to the correctness of your disciplinary process, do not hesitate to contact your attorney in order to avoid any unnecessary costs should you not follow the correct procedures.

- Bennie Reynders