Laaste Kans!!!

Oordrag van u woning vanuit 'n entiteit na u persoonlike naam, met sekere belastingvergunnings.

Die ontvanger verleen tans die vergunning vir die oordrag van u primêre woning vanuit 'n trust, beslote korporasie of maatskappy na u persoonlike name, met vrystelling van oa Hereregte. Dit is egter belangrik dat hierdie vergunning slegs geldig is tot 31 Desember 2012. Dit impliseer dat u kontrak geteken moet wees en alle opskortende voorwaardes aan voldoen moet wees voor 31 Desember 2012, al vind registrasie eers daarna plaas.

Die vereiste dat die eiendom u primêre woning moet wees is selfs verder uitgebrei en sluit ook 'n vakansie woonstel of tweede woning in, mits die eiendom nie vir meer as vyftig persent van die tyd uitverhuur word nie.

Die ontvanger het verder hul direktief uitgebrei om die klas van oordragnemers uit te brei. Oordrag kan nou geneem word deur enige belanghebbende party wat verband hou met die entiteit. Dit sluit bv. nou begunstigdes van trusts ook in.

Neem kennis dat sodra oordrag plaasgevind het, die entiteit ontbind moet word. Die trustakte of stigtingsdokumente sal bepaal hoe dit gedoen moet word, maar gewoonlik is 'n resolusie voldoende. Indien daar 'n verband oor die eiendom geregistreer is, sal die verband gekanselleer word en 'n nuwe verband geregistreer moet word of 'n vervanging van skuldenaar moet gedoen word.

Die ontvanger het hierdie vergunning uitgestel vanaf 31 Desember 2011 tot 31 Desember 2012.

Moet nie hierdie geleentheid laat verby gaan nie. Kontak ons gerus sodat ons u behoorlik hieroor kan adviseer.

- Nicole Rokebrand

FUNNY THINGS CLIENTS SAY

Typist: "Where were you married"
Client: "In the backyard of my Grandmother's house"!

INA JANSEN

Ina is een van ons firma se aktetiksters. Sy is welbekend en geliefd onder baie van die agente in die dorp. Ina werk nou al amper 6 jaar by ons firma.

Ons admireer haar vir haar gewilligheid om met alles te help en almal by te staan. Ina is gebore op 7 November 1979 te Welkom en het gematrikuleer te Mafikeng. Sy is getroud met Heinrich en het twee pragtige dogtertjies, Anke en Ilana.

Looney Law-

A man walked into a bar with a crocodile and asked, "Do you serve lawyers here?"
"We sure do," the bartender answered.
"Good. I'll have a beer, and my croc will have a lawyer."

'n Wed is 'n Wed...

Tiaan het die onverantwoordelike en ondeurdagte ding gedoen en Jonathan Buckley van Fine & Country in Centurion gewed dat die Sharks nie die Bulls in die Super 15 sal wen nie. Die weddenskap het behels dat die verloorder 'n dag lank die ander span se trui moet dra en dat 'n foto van die geleentheid in die MCMonthly moet verskyn. Wel die geskiedenis is bekend. Die Bulls het verloor en ek kom my weddenskap na. Baie geluk Sharks – Julle het verdien om te wen.

M.C. Monthly

Issue 6 M.C. van der Berg Incorporated - Your Property Attorneys September 2012

The Newsletter with a difference

Cancellation of an agreement

The Latin phrase dictates: "Pacta servanda sunt" – contracts must be honoured.

One of the many frustrations in the property market is that some people have a total disregard for the obligations that they have imposed upon themselves in terms of an agreement. It can undoubtedly be regarded that the intention of parties to an agreement was that the obligations imposed by the terms of the agreement must be performed. If the obligations are not performed at all, or performed late, or performed in the wrong manner, it is said that the person on whom the obligation rested to perform, has committed breach of contract.

It is important to take note that it is not necessarily true that the contract is automatically discharged / cancelled purely because the one party committed a breach.

One has to keep in mind that time as an element is common to all agreements. Our law employs the concept of "mora" – (default) when deciding what the consequences will be of failure to perform a contractual obligation within the appropriate time.

A debtor (party in breach) is in mora in respect of a particular obligation when 3 elements are present:

1. The specific obligation must be enforceable against the specific debtor;
2. The performance must be due;
3. The debtor must be or deemed to be aware of the nature of the performance required of him and the fact that it is due.

With reference to the question when performance is due, it is necessary to distinguish between two scenarios. The first scenario is circumstances where the performance is due in terms of the contract itself in other words, the contract stipulates the date on which performance is due - e.g. "guarantees must be delivered within 30 days from date of acceptance of this agreement." The second scenario is where the contract does not fix the date for performance (party not in breach) - e.g. "the seller must paint the garage."

In circumstances where the contract fixes the date for performance as in scenario 1, no demand would be necessary (in the absence of a so called breach clause). The creditor will automatically be in the position where he can make use of his legal remedies viz cancellation, specific performance and/or damages.

In circumstances where the contract does not fix the date for performance as in scenario 2, it will be a requirement for the non-defaulting party (creditor) to demand performance from the defaulting party (debtor). A reasonable time for performance will have to be given. What a reasonable time is in a specific situation depends on a number of factors not discussed here. Only after such a reasonable time given in the demand has lapsed, will the non-defaulting party be entitled to make use of its legal remedies (in the absence of a so called breach clause).

It is however important to keep in mind that in most contracts a "breach clause" is entered. A breach clause normally dictates in what manner and for what period a defaulting party must be given written notice in case of default. In terms of such a clause it becomes compulsory to demand performance from the defaulting party regardless whether the date for performance is fixed or not.

It would therefore be a legal requirement in cases where the date for performance has not been fixed in the contract to first give the defaulting party reasonable notice to duly perform, where after an additional notice in terms of the breach clause has to be given before the non-defaulting party can make use of its legal remedies.

After all is said and done, there are two important aspects that you should always keep in mind: Firstly you have to make sure that the date for all (or at least the important) obligations are fixed in the agreement. Secondly the question whether a contract has been cancelled legally might in itself give rise to civil litigation; therefore you as client or agent should rather leave it to the attorneys.

- Tiaan van der Berg

Word your deposit clause carefully...

Much too often pro forma agreements are hastily completed without much or any notice given to the exact wording of the deposit clause.

As a standard, it is expected that the deposit will be refunded if mortgage finance is not obtained within the specified time, or, it is specifically agreed that it will be a non-refundable deposit paid. A catastrophic situation occurred out of the wording of the deposit clause in Rademeyer v Viljoen [2010] ZASCA 189 in so much that the purchaser lost his deposit. The clause read:

> *"The purchaser shall pay a deposit of 20% (twenty per cent) of the purchase price in cash on the day of the sale, the balance against transfer, however, to be secured by an acceptable bank guarantee to be approved by the seller's attorney and to be furnished to the said attorney within 30 days from date of confirmation."*

It seems unambiguous in so much that a deposit should be paid on the day of sale and the balance secured within 30 days to the sellers attorney. The High Court (as court of first instance) interpreted the clause above as to have reference to two payments: - (1) the deposit; and (2) the balance of the purchase price. The second payment is manifestly to be made to the seller directly. The clause was poorly drafted as it draws no distinction between the recipient of the deposit, or the balance purchase price. The court held that logic dictates that both should be made to the seller directly on the time specified. In the same contract a stipulation was inserted that the sale was conditional that no land claims were made against the properties. Should that transpire to be the case, the sale will be cancelled and all monies should be repaid to the purchaser. The court held that this presupposes the recipient of the money as the seller right from the start. The purchaser proceeded to pay the deposit (R900,000) on the date of sale. The deposit was paid to the auctioneers (as agent for the seller) whom deposited it directly into the sellers account. The purchaser sought relief to cancel the transaction and claim his deposit back when he learned that a land claim was indeed made against the properties. It transpired that the deposit was already paid out to the sellers creditors and that the seller was practically insolvent.

Further injury to the purchaser's predicament was that when he claimed his deposit, which was granted to him by an earlier court order, the seller's sequestration order was granted on the very same day. This forced him to claim his money from the seller's insolvent estate which brought in only R200,000 of his initial deposit as a concurrent creditor. The purchaser then proceeded with action against the auctioneer (as agent for the seller) to recover the rest of his lost deposit. The court rejected these claims and found that there was nothing sinister in paying the deposit directly to the seller, as the purchase agreement's wording logically dictated that.

All parties to an agreement should be attentative to the wording of such clauses; it can easily become a huge dispute if monies are paid out directly where the agreement is not specific about where it should be kept or if it should be invested. There is furthermore always the thorn of insolvency that lures which can derail the purchasers attempt to recover his money, even in the instances where it should be repaid to him. The best advise would be to specify in your agreement that any deposit should be either paid directly into the estate agent's trust account, or directly into the attorney's trust account, and be kept in there until date of registration. This will safeguard the purchaser's deposit against all the alarming situations that transpired out of the Rademeyer case.

- Rich Redinger

Foreigners and immovable property

Agents and owners may want to lease or sell their property to a foreigner, and often they are unsure if this is permissible, and if it is permissible what are the requirements.

The Aliens Control Act regulates the position and determines that a property may be leased or sold to any person who is recognised under the act as a legal foreigner. A legal foreigner is a person in possession of a temporary or permanent residence permit issued by the Department of Home Affairs. It is important to note that South African banking institutions will only finance 50% of the purchase price.

However, foreigners with a legal work permit are not regarded as non-residents by the South African Reserve Bank. For the duration of the work permit they are not restricted to a loan of 50% of the purchase price. (In practice most banks still will not grant a substantially higher bond)

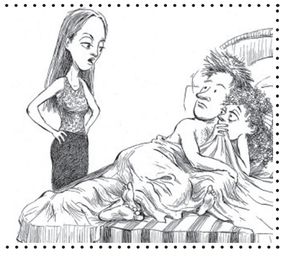
Selling or leasing your property to an illegal foreigner is classified as aiding and abetting an illegal foreigner and as such a criminal offence.

It is thus imperative to determine, from the onset of the transaction, if the foreigner has a temporary or permanent residence permit and to keep the restrictions on financing in mind.

- Sonja du Toit

Looney Law-

After hearing that the lesser charge of manslaughter was defined as a killing under the influence of sudden passion, a prospective juror replied, "You're kidding. I found my first husband in bed with another woman and all I did was divorce him. I had no idea I could have shot him."



Die "addisionele bedrag" tot die leningsbedrag

Wanneer daar aansoek om 'n verband ten opsigte van onroerende eiendom by enige van die banke gedoen word, sal die leningsooreenkoms vir 'n sogenaamnde "addisionele bedrag" voorsiening maak. Hierdie bedrag vorm nie deel van die leningsbedrag nie, en word daar dus ook nie rente op sodanige bedrag gehef nie. Hierdie bedrag dien slegs as sekuriteit vir die betrokke bank in die geval waar die lener nalaat om sy verpligtinge in terme van die leningsooreenkoms na te kom. Indien dit vir die bank nodig is om dan regstappe teen sodanige lener in te stel, is die bank daarop geregtig om beide die uitstaande leningsbedrag, sowel as die sogenaamde addisionele bedrag vanaf die lener te verhaal. Die addisionele bedrag dien dan om die bank se regskostes in so 'n geval te dek. Die addisionele bedrag is normaalweg gelykstaande aan 20 – 25% van die leningsbedrag.

- Annele Odendaal

Looney Law-

ACTUAL NEWS HEADLINES
"Juvenile Court to Try Shooting Defendant"
"Drug Firm Ordered to Supply Women"
"Suicides Asked to Reconsider"

Privilege arising from marital status

In our previous newsletter we dealt with the privilege between an attorney and client. In this article we would like to elaborate on the issue of privilege and more specifically the privilege arising out of one's marital status.

In terms of section 198 of the Criminal Procedure Act a husband shall not at criminal proceedings be compelled to disclose any communication which his wife made to him during the marriage, and the wife shall not at criminal proceedings be compelled to disclose any communication which her husband made to her during the marriage.

The relevant section in the criminal procedure act also applies to any communication made during the subsistence of a marriage or punitive marriage which has been dissolved or annulled by a competent court.

The aim of section 198 which deals with the privilege out of a marriage is that it is in the interest of society that the spouse is not compelled to disclose communication and events which took place during the marriage. The marriage as an institution as well as the privacy of the marriage must be protected.

A further question in respect of this privilege is who is entitled to this privilege. The spouse who received the communication is entitled to the privilege, in other words the person to whom the statement/ communication had been made. The spouse can refuse to betray the trust of the other spouse. The spouse who made the communication does not enjoy any privilege. His disclosure will not violate the other spouse's trust in him. However, any person can relinquish the privilege. If the privilege is relinquished, the witness is then obliged to disclose the communication to the court.

It is interesting to note that a 3rd person who overheard the communication between a husband and his wife may testify as to what he heard. A further example is when a man wrote a letter to his wife and this letter is intercepted by a 3rd person the contents of this letter may then be disclosed.

- Bennie Reynders

10 Minute Sudoku

MCSudoku

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

Dis heerlike lente en die winter is verby! – lui die ou volkswysie. Ons is vol vertroue dat dit nie net die natuur se seisoen is wat aan die verander is na meer positiewe dinge nie, maar ook die ekonomie. Orals waar ek kom getuig syfers dat dinge stadig maar seker besig is om te verbeter. Ek dink dit was Langenhoven wat gesê het dat die enigste plek waar die son die heeltyd skyn is die woestyn.

Ons bly positief en hou aan om ons beste te gee vir u en u kliënte – ongeag die seisoen.

- Tiaan van der Berg