

M.C. MONTHLY



The newsletter with a difference

Sep/Oct 2014

THE CONSUMER PROTECTION ACT

DIE WET OP VERBRUIKERSBESKERMING

The Consumer Protection Act affords all consumers the right to have documents written in simple and understandable language. As the purchaser and the seller usually make use of the estate agent's pro forma sales contract, estate agents must pay attention to the language used in their agreements.

Although English is dominant as the spoken language in the commercial arena, it is less than 15% of South African's first language. This then leads to the conclusion that we need to be careful as people do not necessarily sign contracts in their spoken language. A party will easily succeed with the common law defence of "iustus error" or rather pardonable error, if the contract is not written in plain language. As a consequence, the parties might not be bound by the contract.

People (especially attorneys) tend to draft documents in such a way that it looks like an attempt to showcase the intellect of the author as opposed to preparing an understandable document which creates a binding agreement between the parties.

We should attempt to omit complex wording from contracts. Unnecessary words and the repetition of particular words to emphasize a statement is actually undoubtedly and unquestionably unnecessary (if you know what I mean!). Rather write the contract in the active than in the passive tense e.g. "The seller will deliver the keys to the buyer" as opposed to "The keys will be delivered to the buyer by the sellers." Try to write the document in the first or second person rather than in the third person. Avoid long sentences with difficult clauses.

And above all, documents should be edited.

Please contact us if we can assist you with reviewing your pro forma agreement. We will gladly assist!



Verbruikers het kragtens die Wet op Verbruikersbeskerming die reg om dokumente wat aan hulle voorgelê word in eenvoudige en verstaanbare taal te ontvang. Aangesien die koper en die verkoper gewoonlik die eiendomsagent se pro forma koopkontrak gebruik, moet eiendomsagente aandag gee aan die taalgebruik in hul ooreenkomste.

Alhoewel dit aanvaar kan word dat Engels dominant is in die kommersiële arena, is dit minder as 15% van Suid-Afrikaners se eerste taal. Daarom moet ons in ons land versigtig wees aangesien mense nie noodwendig kontrakte in hul spreektaal onderteken nie. 'n Kontraksparty sal makliker slaag met die gemeenregtelike verweer van "iustus error" of te wel 'n verskoonbare fout indien die kontrak nie in eenvoudige taal geskryf is nie. Die gevolg sal wees dat die party nie gebonde aan die kontrak is nie.

Mense (veral prokureurs) is geneig om dokumente so op te stel dat dit eerder na 'n poging lyk om die intellek van die opsteller ten toon te stel as om 'n verstaanbare dokument tussen die kontrakspartye daar te stel. Ons moet poog om groot woorde uit kontrakte te verwyder. Onnodige woorde en veral herhalings van woorde om 'n punt te benadruk is werklik ongetwyfeld en onteenseglik onnodig (as jy verstaan wat ek bedoel!) Skryf eerder die kontrak in die aktiewe as in die passiewe vorm bv. "Die verkoper sal die sleutels vir die koper gee" as "Die sleutels sal aan die kopers deur die verkopers gelewer word". Stel die dokument eerder in die eerste of die tweede persoon as in die derde persoon op. Vermy lang sinne met moeilike bysinne.

En bo alles versorg dokumente taalkundig.

Kontak ons gerus as ons jou kan bystaan met die hersiening van jou pro forma ooreenkoms. Ons help graag!

PERSOONLIKE SERWITUTE

'n Persoonlike serwituut verleen aan die houer daarvan in sy persoonlike hoedanigheid die reg om 'n bepaalde handeling op die eiendom van 'n ander persoon te verrig of dit verbied 'n grondeienaar om een of ander bevoegdheid wat hy normaalweg sou hê op sy eiendom uit te oefen.

Hierdie serwitute is slegs gedurende die leeftyd van die reghebbende van toepassing, en mag nie aan 'n ander persoon as die eienaar van die eiendom gesedeer word nie.

Die drie bekendste persoonlike serwitute is:

Usus

- Verskaf die reg aan die reghebbende om die eiendom van 'n ander persoon vir sy eie behoeftes te gebruik;
- Die reghebbende mag slegs die vrugte (opbrengs) van die eiendom wat aan sy basiese lewensbehoefes sal voldoen neem;
- Die reghebbende mag nie die vrugte verkoop nie.

Usufructus

- Verleen die reg aan die reghebbende om die eiendom van 'n ander persoon vir sy eie behoeftes te gebruik;
- Reghebbende is op alle vrugte wat die eiendom afwerp geregtig.

Habitatio

- Verleen die reg om die eiendom van 'n ander persoon te bewoon;
- In hierdie geval mag die reghebbende wel die eiendom verhuur en die huurinkomste vorder (anders as in die geval van "gebruik").

Bovermelde serwitute kleef dus aan die persoon, waar 'n grondserwituut weer 'n serwituut is wat een eiendom oor 'n ander eiendom het.



PERSONAL SERVITUDES

A personal servitude grants the holder thereof the right, in his personal capacity, to perform a specific act on the property of another or it prohibits the property owner from exercising a power in terms of the property which he would normally possess.

These servitudes are only applicable during the lifetime of the holder thereof, and may not be ceded to any person other than the owner of the property.

The three most popular personal servitudes are:

Usus

- The holder is granted the right to use the property of another for his own needs;
- The holder may only take the fruits (proceeds / return) of the property to fulfil his basic life needs;
- The holder may not sell the fruits or lease the property.

Usufruct

- The holder is granted the right to use the property of another for his own needs;
- The holder is entitled to all fruits the property may bear and may lease the property.

Habitatio

- The holder is granted the right to occupy the property of another;
- In this case the holder may rent out the property and collect the rental income (which is not the case with "use").

The above servitudes are therefore attached to the person, where a praedial servitude is a servitude one property possesses over another property.

Written by/Geskryf deur: Annelé Odendaal

MCADemy TRAINING

At our training facility, MCademy, we regularly host various training sessions and relevant legal updates.

In Centurion our new training facility is nearing completion and we will be able to accommodate larger groups and host more than one session at a time.

MCademy has a turn-over of approximately 500 estate agents per month and gives up-to-date information on industry related topics. Those of you who saw the Carte Blanche insert on historical municipal rates and feel a bit hysterical should indeed attend the court cases, new legislation and trends seminar for an in-depth discussion on the topic.

The dates and subjects of all the lectures are available in the M.C.Monthly and also on our website at www.mcvdberg.co.za.

Lectures are presented in both English and Afrikaans and bookings are essential.

Bookings can be done at MCademybookings@mcvdberg.co.za or contact Liza Louw on 012 660 6000.

MCademy

Practical training by Practitioners

During the month of September and October the following topics will be presented:

Centurion

18 Sept 2014	09:00 to 11:00	ENG	The Transfer Procedure
	09:00 to 11:00	ENG	Subject - To Transaction
02 Oct 2014	09:00 to 11:00	ENG	Capital Gains Tax
	09:00 to 11:00	ENG	Defects, Risks, Warrantees, CPA & Building Plans

Pretoria East

23 Sept 2014	09:00 to 11:00	ENG	Court cases, new legislation and trends in the Real Estate Industry
--------------------	----------------------	-----	---

Midstream

28
Oct
2014

09:00 to 11:00

ENG

Defects, Risks, Warrantees, CPA and Building plans

NON-PAYMENT OF LEVIES AND THE DISCONNECTION OF SERVICES.

Owners of sectional title units sometimes default on monthly levy payments.

This leads to severe financial restraints on the cash flow of a body corporate and many trustees or managing agents revert to taking the law into their own hands and disconnecting the water and electricity supply. Some body corporates even incorporate these actions in their rules. Unfortunately this is not only a disregard of an owner's constitutional rights to access to services, but also contrary to the Sectional Titles Act, Act 95 of 1986.

Section 37(2) of the Sectional Titles Act clearly states that trustees must approach the court by means of an application in order to recover the levies and other legal costs.

Trustees or managing agents should therefore have prompt debt collection procedures in place rather than taking the law into their own hands.



UITSTAANDE HEFFINGS EN DIE AFSLUITING VAN VERBRUIKE

Eienaars van deeltitel eenhede raak soms agterstallig met die betaling van hul maandelikse heffings.

Dit lei tot geweldige finansiële komplikasies vir die kontantvloeï van 'n beheerliggaam en trustees of bestuursagente neem die reg in eie hande deur die opsetlike afsluiting van water en elektrisiteit. Sekere beheerliggame inkorporeer selfs hierdie sanksie in hul reëls. Nie alleen is hierdie toedrag van sake 'n direkte inbreuk op 'n eenaar se grondwetlike reg tot toegang tot basiese dienste nie, maar oortree dit ook die Deeltitelwet, Wet 95 van 1986.

Artikel 37(2) van die Deeltitelwet bepaal dat trustees die hof moet nader en 'n aansoek moet bring vir die invordering van heffings en ander gepaardgaande regs-kostes.

Trustees of bestuursagente moet verseker dat hul 'n stiptelike invorderingsproses in plek het en dit vermy om reg in eie hande te neem.

Written by/Geskryf deur: Nicole Rokebrand

BONDS - FREQUENTLY ASKED QUESTIONS

IT IS A CONDITION OF THE BANK THAT I MUST OBTAIN LIFE INSURANCE FOR MY BOND. WHY?

Sometimes, the bank will require that the mortgagor obtains life insurance to cover the loan amount in the event of death. The life insurance policy will then cover any outstanding debt on the property.

WHAT IS A FLEXI FACILITY?

The basic principles of the flexi facility is that you can deposit any additional funds over and above your monthly repayment amount into the facility. This will save you interest, and the additional funds will also be available for withdrawal, should you wish to do so. The terms and conditions that apply to your facility will vary, depending on which bank granted the flexi facility.



Written by/Geskryf deur: Vernée Roets

ONS PERSONEEL

Monica Pienaar is by die firma werksaam vanaf 1 September 2011 as verbandtikster. Sy is deeglik en pligsgetrou en dit wys ook in die terugvoer wat ons ontvang van haar kliënte.

Sy is getroud met Willem en is woonagtig in Centurion.



WAT ONS KLIENTE SÊ

- I just wish other companies would give this kind of fantastic service.
- Vir toekoms doeleindes- ek is baie beïndruk met jou en M.C. van der Berg se uitstekende diens! Is dit moontlik dat ek met verkoop van my onroerende eiendom en ook met toekomstige aankope van jou en jul dienste gebruik kan maak?
- We really appreciate your patience and the great service you have given us.
- Baie dankie vir die vinnige en akkurate aanbieding van die ondertekenings proses
- Thanks very much for all that you have done and the service was outstanding!
- I was happy with the service I received during the transfer of the ERF that is why I am coming back to you.

William Arthur Ward spoke these wise words: "The pessimist complains about the wind, the optimist expects it to change, the realist adjusts the sails".

How do you approach your career and even everyday life? Do you complain about South Africa, about your boss, about how bad the property market is, or do you tell everyone who wants to listen that you will be successful as soon as conditions start improving? Realistically we should adjust our sails, stop worrying about the economy, about Julius Malema and about how other people treat us, and focus on what we can control.

What is worrying is that often we refuse to adapt just for the sake of not wanting change. For example; as an agent you might be dead set against the Consumer Protection Act, but have you ever read the act or attend a seminar on the subject? Being fully informed often makes change easier.

If you are stuck in a rut read the Sales Bible, which Rich reviews in this edition, or join us for training on changing case law and legislation, it might just give you the tools necessary to realistically adjust those sails!



RICH'S REVIEW:

"You don't get great at selling in a day. You get great at selling day by day." - Jeffrey Gitomer

All of us have bought a self-improvement book with the title in the following vein "The Seven Sins of Sales" or "Ten Things Successful People Do" – only to realise between pages 24 and 29 that the book is actually an epilogue to the author's last book – the autobiography. Everything the author has done to make him brilliant and you looking like a loser!

I received Jeffrey Gitomer's Sales Bible – The Ultimate Sales Resource (New Edition) as a gift and decided to give it a go. This book makes you think from page one, and clearly sets out what prompts a successful sale (I immediately recognised my car-dealer in there).

"Everyone wants to succeed at sales. Most people don't. It's not that they can't. It's just that they don't know how."
– Jeffrey Gitomer

I've always been interested in the way estate agents do business – from how to get a listing to closing the deal. Does dustbin-adds work better than roadshows? Do you "stage" a property and how do you deal with a hoarder?

This book came as a revelation to me. I recognised all the characteristics of all the successful people I know – in all spheres of life, not just those who sell!

This book is a must-read, reread, reference read and a resource.

"As a salesperson, you're the most important person in the world of business!"
Jeffrey Gitomer's Sales Bible: the ultimate sales resource, including the 10.5 commandments of sales success. ISBN 978-0-06-137940-6

Liefdadigheids Projekte

Huis Rimmelos, ons vriende by die tehuis vir kwadrupleë in Germiston het onlangs hul jaarlikse fondsinsameling gehou. Die fondsinsameling is gehou by Stone Cradle restaurant op 27 Augustus 2014. Huis Rimmelos het daarin geslaag om 'n fantastiese aand te reël met lekker kos en goeie vermaak.

Die gaste was onder andere vermaak deur 'n kulkunstenaar sowel as 'n komediant, by afsluiting van die aand was daar 'n skilderyveiling gehou, waarvan die fondse ook aan die tehuis gaan.

Huis Rimmelos ontvang weinig finansiële hulp van die staat en die jaarlikse fondsinsameling vorm deel van hul hoofbron van inkomste. Die funksie was nie slegs gehou om fondse in te samel nie maar ook om dankie te sê aan hul borge wat hul deur die jaar bystaan.

As jy hul wil ondersteun, kontak Elizabeth by remme-los@absamail.co.za

Looney Law

ATTORNEY: How was your first marriage terminated?

WITNESS: By death...

ATTORNEY: And by whose death was it terminated?

WITNESS: Take a guess.

Boereraad:
Sit gras se gô uit
 Giet wit asyn oor ongewensde gras tussen plaveistene en krake op betonoppervlaktes om dit dood te maak. Dis goedkoop, veilig en nie giftig nie.



ADVERTENSIE



Coquis
 Mansuistrusters / Mens Outfitters
 Mens Wear - Coquis Centurion Mall, Shop number 11 – Tel: 012 663 8077

ETHICAL CODE

6.2. An estate agent shall –

6.2.2 if he knows that an offer submitted by him as an estate agent to any party has been accepted, or has not been accepted by the expiry date thereof, forthwith notify the offeror of such fact;

WHAT MAKES US UNIQUE?

At M.C. van der Berg Incorporated we acknowledge the fact that most of our clients are not necessarily informed of all the pitfalls and challenges when it comes to the sale of immovable property or the transfer process. We have found that clients' frustration in general mostly stems from this unfamiliarity.

This is an explosive situation if we keep in mind that it has been said that relocating is one of the five big stressors in life together with divorce, death, getting fired and changing your job. Not only do we therefore understand the potential risk and frustration but we believe it is our professional obligation to ensure that clients are well informed and kept abreast of development regarding the transfer process.

Information is only of value if it is relevant at that specific time, contextualized and communicated to the correct person, through the correct medium in an understandable format.

We are proud of the fact that we are at the forefront in the property industry when it comes to the supply of information. Not only do we have a number of guides available i.e. **MC SellersGuide**, **MCPurchasersGuide**, **MC BondGuide** and the **MC QuickGuide** but we have also walked the extra mile to convert two of our guides into Videos i.e. **MC SellersVideo** and the **MCPurchasersVideo**.

All of these MCTools are available on our website www.mcvdberg.co.za or on our Mobisite www.mcvdberg.mobi.

SUDOKU

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

