PROPERTY SELLERS - CHOOSE YOUR OWN ATTORNEY!

{Image}

When you come to sell your house or other property, you have the right to nominate your own attorney to attend to the conveyancing for you. Insist on doing so –

- It is essential that your rights be protected at all stages of the transfer, choose a conveyancer you can trust to do so with speed and integrity.
- It is irrelevant that the buyer nominally pays the conveyancer (as part of the transfer costs). You carry more risk than the buyer, and there is nothing to stop the buyer from employing his/her own attorney to monitor the transfer on their behalf if they feel this necessary.
- Have your chosen attorney check the deed of sale before you sign anything. Regular readers of LawNews will understand just how easily things can go wrong – badly wrong – if the sale agreement is incorrectly or loosely worded.
- Don’t ever let anyone pressure you into nominating a conveyancer not of your choosing.

THE NEW B-BBEE THRESHOLDS, CODES AND PENALTIES – WHAT YOU SHOULD KNOW

Turnover thresholds up

- Turnover thresholds up
- New penalties pending

IT’S WEDDING SEASON, BUT BEFORE YOU TIE THE KNOT…..

- To ANC or not to ANC? That is the question
- Your choices
  - Marriage in community of property
  - Marriage out of community of property without the accrual system
  - Marriage out of community of property with the accrual system
- Tailored ANC’s and a note for the long-haired

Bad Neighbours, Unlawful Building, and The Demolition Remedy

The November Websites – Your Wedding Planner 101

There is a lot of detail in the new Codes, to which a 12 month transitional period applies from 11 October 2013 - during that time you can if you wish to be measured on the previous 2007 Generic Scorecard, so take advice on specifics. These are the highlights –

- Sector Charters (currently operative in the agricultural, chartered accountancy, construction, financial, forestry, information and Communication Technology, property, tourism and transport sectors) will continue to apply until amended.
- You will be scored now on 5 targeted elements (down from 7) totaling 105 points –
  1. Ownership (20 points)
  2. Skills development (20 points)
  3. Enterprise and supplier development (40 points)
  4. Management control (15 points)
  5. Socio-economic development (5 points)
- Elements 1, 2 and 3 are now “priority elements”. QSEs must comply with element 1 “ownership” and also with either element 2 or element 3. Large Enterprises must comply with all 3.
- “Subminimum” targets are set for parts of the priority elements, and you drop one level if you fail to meet them.

New penalties pending

Amendments to the B-BBEE Act which are at date of writing working their way through the legislative process provide for: trial in any form to carry significant new penalties –

- A fine of up to 10% of annual turnover for offending businesses, and
- Anyone implicated in misrepresentation of B-BBEE status (or of information in order to secure such a status) will risk criminal prosecution and up to 10 years imprisonment.

Also proposed in a new Commission to monitor and evaluate B-BBEE, and to investigate complaints of unfair trading or breaches of the Act.

IT’S WEDDING SEASON, BUT BEFORE YOU TIE THE KNOT….

"Keep your eyes wide open before marriage, half shut afterwards" (Benjamin Franklin)

Whether or not you elect to follow the second part of Ben Franklin’s advice, be sure to follow the first - keep your eyes wide open when choosing which marital regime will apply to your marriage.

To ANC or not to ANC? That is the question

Do you or don’t you need an ANC (“antenuptial contract”)?

Firstly, it’s not an admission that you may divorce, so don’t fall into the trap of thinking “we don’t want to even think about divorce so no ANC for us too”. Not only do our divorce statistics make that a very short-sighted approach, but your choice now also affects you both during your marriage and when one of you dies.

Secondly, familiarize yourself with the three options that our law allows. The guidelines below are simplified and there are many factors to take into account - seek specific advice on the right option for your particular needs and circumstances. And don’t leave to the last minute, you are going to be making important decisions here!

Your choices

1. Marriage in community of property
   - Your assets and liabilities are merged into one “joint estate”. Everything (with only a few specific exceptions) that you bring into, or accrue during, the marriage falls into this joint estate. You will need your spouse’s written consent for any important transactions, so the decision must be taken carefully, and be it known that if you contribute to the marriage, and if one of you runs up debt or gets into financial difficulties, it is the joint estate that must pay. Your joint estate could even be sequestrated – you risk losing everything. So this option is likely to be unavailable for many couples – and because it is the default regime i.e. you will automatically be married in community of property even if you don’t specify otherwise in an ANC executed before you marry.

2. Marriage out of community of property without the accrual system
   - Your own assets and liabilities, both what you bring in and what you accrue during the marriage, remain solely yours to do with as you wish. You don’t need your spouse’s consent for any transactions relating to them. You are not liable for your spouse’s separate debts and if your spouse’s estate is sequestrated you can claim your separate assets back (you will however need to prove that they are indeed yours). Note that if you want to exclude the accrual system your antenuptial contract must specify accordingly. Excluding accrual will be the right choice for some, but be aware that without
3. Marriage out of community of property with the accrual system

Finally, although this is generally regarded as the fairest and most popular option for modern marriages, it is not necessarily the best choice for everyone.

As with the previous option, your own assets and liabilities remain solely yours. You don’t need your spouse’s consent for any transactions relating to you, and you can protect your assets from your spouse’s creditors. On divorce or death however, you share equally in the “accrual” (growth) of your assets (with a few exceptions) during the marriage, as the table below illustrates:

<table>
<thead>
<tr>
<th>The calculation process</th>
<th>Your estate</th>
<th>Your spouse’s estate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assets at date of divorce/death valued at a total of R4.5m</td>
<td>R3,000,000</td>
<td>R1,500,000</td>
</tr>
<tr>
<td>Less: Assets brought into the marriage</td>
<td>R2,000,000</td>
<td>R800,000</td>
</tr>
<tr>
<td>+ Accrual/growth (value during marriage)</td>
<td>R1,000,000</td>
<td>R900,000</td>
</tr>
<tr>
<td>Difference in accrual</td>
<td>R1,000,000</td>
<td>R900,000</td>
</tr>
<tr>
<td>Split 50/50</td>
<td></td>
<td></td>
</tr>
<tr>
<td>= Balance you pay to your spouse</td>
<td>R50,000</td>
<td></td>
</tr>
<tr>
<td>(i.e. You each get R950,000 accrual)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The Bottom Line
The final split of the R4.5m total value at divorce/death:
- R2,000,000 (what you brought in) + R950,000 (your 1/5 share of the accrual) = R2,950,000
- R800,000 (what your spouse brought in) + R900,000 (your spouse’s 1/5 share of the accrual) = R1,750,000

a. Values adjusted by the average increase in CPI

If the table above does not display correctly, please see the “online version” – link above the complements ring.

BAD NEIGHBOURS, UNLAWFUL BUILDING, AND THE DEMOLITION REMEDY

“Ad bad neighbor is as great a calamity as a good one is a great advantage” (Hesiod, 790 BC)

Bad neighbors have it seems been troubling us since at least the days of ancient Greece. If two and a half thousand years later you are unlucky enough to have one, and if the particular calamity visited upon you by said neighbor (no pun intended) results from his/her unlawful building operations, take heart. Our law has a strong and effective remedy for you – a demolition order.

In an important new decision, the Supreme Court of Appeal has held that, where the structure in question is an inseparable part of the owner’s land, the court is entitled to order demolition. To do otherwise, held the Court, “would amount to the sanctioning of an on-going illegality and criminal offence” regardless of the financial and other distress a demolition order may cause the owner (the house was being worth some R1bn). The only escape route for an owner seems to be to show that demolition would infringe on his or her constitutional right of access to “adequate housing” – a factor not applicable, held the Court, to the “luxury home” in this case.

Moreover the local authority in this case was held in contravention of the “public law” duties to operate in good faith. Only that your local authority assists you by doing just that.

Note that a court will still have a discretion between ordering either demolition or some other remedy – for example an award of damages for an encroachment on your property – where “private” or “negative” law applies, as opposed to the “public law” illegality applicable to this case. The distinction can be a fine one, so take advice on the particular facts of your matter.

THE NOVEMBER WEBSITES – YOUR WEDDING PLANNER 101

1. Before you do anything else, take legal advice as suggested in the article “It’s Wedding Season, But Before You Tie The Knot...” above
2. Go to “A 13 step guide to planning your wedding” at [http://www.hitched.co.za/weddings/13steps.aspx](http://www.hitched.co.za/weddings/13steps.aspx)
5. If you have a limited budget read “Planning a budget wedding with only R50,000” at [http://www.theweddingdirectory.co.za/planners/budget-questions-and-answers/plan-a-weddng-with-only-R50000-and-can-i-still-be.original](http://www.theweddingdirectory.co.za/planners/budget-questions-and-answers/plan-a-weddng-with-only-R50000-and-can-i-still-be.original)

Have a Great November!

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