PROPERTY SELLERS - CHOOSE YOUR OWN ATTORNEY!

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 –

1. 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.
2. It is irrelevant that the buyer normally 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.
3. Have your chosen attorney check the deed of sale before you sign anything. Regular readers of LawDotNews will understand just how easily things can go wrong – badly wrong – if the sale agreement is incorrectly or loosely worded.
4. 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

Every South African business will be affected by the pending new amendments to the B-BBEE (Broad Based Black Economic Empowerment) Act, and by the new Codes of Good Practice. The benefits of complying are as great as the risks of not complying, so take advice in any doubt.

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
Turnover thresholds up

- **Exempt micro-enterprises (EMEs):** the annual turnover threshold for EMEs has doubled to R10m from R5m. If you qualify (to be confirmed annually by an affidavit as to both annual total revenue and level of black ownership), you are deemed to be a Level 4 contributor (100% recognition level). You will go up to Level 1 (the highest level) if you are 100% black owned, and to Level 2 if you are 51% black owned.

- **Qualifying Small Enterprises (QSEs):** the threshold for QSEs has been increased to R50m from R35m.

- **Large Enterprises:** Over R50m you are a “Large Enterprise”.

**The Codes**

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 elect 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) totalling 105 points –
  1. Ownership (25 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 fronting 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 is a new Commission to monitor and evaluate B-BBEE, and to investigate complaints of fronting or other 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 got 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 thanks”. 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, familiarise 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 it 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 some important transactions. On divorce or death the joint estate is split equally between you, regardless of what each of you contributed to the marriage. And if one of you runs up debts 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 unsuitable for many couples - and beware it is the default regime i.e. you will automatically be married in community of property 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 without the accrual system.
Before you do anything else, take legal advice as suggested in the article “It’s Wedding Season, But Before You Tie The Knot…..” above.

1. Go to “A 13 step guide to planning your wedding” at http://www.hitched.co.za

2. Tailored ANCs, and a note for the long-married

- Regardless of which regime you choose, take advice on tailoring your ANC to meet your particular needs.
- If you were married before 1 November 1984, different laws apply – take advice for details.
- If you are already married and want to change from one regime to another, you may be able to – take advice on your specific circumstances.

3. Marriage out of community of property with the accrual system

Firstly, 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 them, 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 –

![Example: Asset split under the accrual system](image)

(Tailored ANCs, and a note for the long-married)

BAD NEIGHBOURS, UNLAWFUL BUILDING, AND THE DEMOLITION REMEDY

“Bad neighbour is as great a calamity as a good one is a great advantage” (Hesiod, 700 BC)

Bad neighbours 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 neighbour (loss of a sea view perhaps) 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 illegal one for want of approved building plans, the court – once satisfied that the relevant statutory prohibitions have indeed been breached – has no discretion and must 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 to be demolished in this case being worth some R8 m). 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 the Court, “statutorily and morally duty bound to approach the court….. for a demolition order in order to uphold the law” – insist that your local council 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 “neighbour” 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


**Have a Great November!**

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