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*Attorneys, Notaries and Conveyancers*



**WITH COMPLIMENTS**

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**December 2021**

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**Selling Your Home: How to be Lucky this Holiday Season**

**When Can a Shop Be  
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a Customer Falls?**

*“Luck is what happens when preparation  
meets opportunity” (Lucius Annaeus  
Seneca the Younger, Roman philosopher)*

**Don't Let Delays in  
the Master's Office**

History has not recorded whether Seneca himself was  
“lucky” in the property market of his time (Rome's land



registration records from two millennia ago have unfortunately not survived the ravages of time and Imperial collapse) but his wise words are as true today as they were then.



### ***The two key elements of a “lucky” sale***

To be “lucky” in finding the right buyer at the right price you need two key elements –

1. **Opportunity:** Our Holiday Season is always a prime time to find the perfect buyer, and with our current low interest rates and reports of house prices soaring globally, December promises to provide plenty of opportunity to sellers; and
2. **Preparation:** We have some useful tips for you here, both from a legal standpoint and from a practical one...

### ***How to prepare for a “lucky” house sale in 12 steps***

First prize is of course a quick sale at a good price, followed by a smooth transfer process. Here are some thoughts on how to achieve exactly that –

1. **The sale agreement - avoiding the legal pitfalls:** Your house is probably one of your most important assets, so be aware of and prepare for the many legal pitfalls which may await you. Falling into any one of them could instantly convert your “lucky” sale into a disaster!

Note firstly that as seller you have the right to choose your own conveyancing attorney. Do not fall into the trap of giving that right up! Pick someone you trust to carry out the transfer (the formal registration in the Deeds Office of the property into the buyer’s name) quickly and professionally.

You will be bound by all the terms and conditions in the sale agreement you sign, and there are far too many potential pitfalls here to list in one article. So have your own attorney prepare the offer/sale agreement for you, and if you happen to be presented with an offer on someone else’s offer form, at least have your attorney check it for you **before** you sign anything.

Every term and every condition, no matter how “standard” it may seem, must be scrutinised to confirm that it suits your particular sale and your particular needs. Common things to go wrong include badly worded “voetstoots” and “bond clauses”, uncertainty over payment provisions, confusion over the authority of company directors and trustees of trusts to sign agreements and so on.

2. **Well in advance...** Pick your attorney’s brain on a few preliminary (but deeply important) aspects like which estate agent/s to use, what sale prices are being achieved in your area and who is buying, and so on. Ask also for a list of what your costs are going to be, when you are likely to get paid the purchase price etc so you can prepare a cash flow forecast. Get a start with all your compliance certificates and provide for the cost of any remedial work needed (normally on the electrical and plumbing side). You may also have to give up to 90 days’ notice of cancellation of your home loan to your bondholder to avoid an early termination fee – check with your bank.
3. **Time it right:** If you are selling a house – “holiday home” or not – in a traditional “holiday” area, the Festive Season will likely be your prime selling time. Sunny weather, everyone relaxed and in the holiday spirit, an influx of holiday makers from other cities – they all set the scene for you to show off your home to best advantage and to the best audience. Which brings us to...
4. **Describe and target your “perfect buyer”:** Sit down with your family/friends/professional advisors and brainstorm who your “perfect buyer” is. Who will want your house the most? Who is going to pay you the most for it? Perhaps for example you come up with a spec like “Our perfect buyer is a young upwardly-mobile family looking for work-from-home-space, good schools in the area, and a separate flatlet for Granny.” Use that spec to inform your “market targeting” – how you plan to reach that target market, how you will tell it just how perfect your home is for them, and so on.
5. **Set the right asking price!** A very common mistake, and an easy one to make, is overpricing. Maximise buyer interest and engagement by asking for a reasonable, market-related price. With of course a margin for negotiation. Get good independent advice here – we tend to be very emotionally invested in our own “home-sweet-home” and it’s not easy to be objective about its attractiveness and value to outsiders.
6. **Advertising:** Your first challenge is to get “feet through the front door” so unless you are very confident indeed of your own ability to find the right marketing channels and formats, professional advice and guidance is essential here! Remember that “a picture paints a thousand words” so bringing in a professional photographer is a no-brainer. You could seriously damage your home’s image in the public mind if you take a chance and get any of

this wrong at the start.

You want to highlight your property's strengths, particularly those likely to appeal directly to your target market (identified above), so think of all the easily-overlooked things like borehole water, irrigation systems, solar power, inverters, fibre, special security features, herb garden space – the list is endless.

7. **Prioritise kerb appeal:** If you get the above steps right, sooner or later your perfect buyer will be arriving at your street address. Critical here is kerb appeal - the "attractiveness of a property and its surroundings when viewed from the street". Don't drop the ball on this one! "You never get a second chance to make a good first impression" said Will Rogers, and the same holds for your house. Ask some friends to drive down your street with a fresh pair of eyes – what jumps out to them as appealing? What could put a potential buyer off?
8. **Now comes "front door appeal":** So your perfect buyer now stops the car, decides to give your property a look-over, and parks – great going! Into your front garden we go – is the lawn cut and lush, trees and shrubs tidy, flower beds bursting with colour? Is the house exterior attractive, the paint job and roof in good condition? Does your entrance/front door shout "come on in"?
9. **Light, clean and airy sets the scene:** We're inside, now what's the first thing your potential buyer will see? A bright, spacious, airy feel could seal the deal right there and then, whilst even the slightest trace of dim, musty airlessness could kill it stone dead. Whatever issues you identify, there is a treasure trove of advice on the internet about how to address them – lighter wall paint and curtains, more natural light from outside (a big seller!), sparkling windows, more interior lighting, a few mirrors to give a feeling of light and space, de-cluttering, re-arranging the furniture – your own house's strong and weak points will be unique to it. Finish off with a really deep clean, calling in the professionals particularly if the house is old, if you have pets or have just got rid of old dust-gathering clutter.
10. **Deal maker kitchens and bathrooms:** Your kitchen and bathrooms could be deal-makers, or they could be deal-breakers. More than perhaps any other area of your house, they are worth spending money on if they haven't got immediate appeal already.
11. **Work-from-home office space:** Depending on who you have identified as your "perfect buyer" in step 2 above, this could be critical. If you don't have an office/study already set up, identify a space for one and be ready to answer questions like "do you have fast fibre?" and "how noisy are your neighbours?"
12. **The DIY factor:** Unless your plan is to sell a "fixer-upper with huge potential and in need of a little TLC", have a good look around for all the "little things" that need fixing (we're outside as well as inside the house now) – cracked tiles, broken fittings, leaking taps, a grubby swimming pool - anything really that a prospective buyer might notice and think "I wonder what else is wrong here?"

Bottom line – make your own luck!

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## When Can a Shop Be Sued for Damages If a Customer Falls?

*"... it is by now long established in our law that the owner or other person or entity in control of a shopping mall has a legal duty to take reasonable steps to ensure that its premises are 'reasonably safe' for those members of the public who might frequent them ... What such steps may be will depend on the circumstances." (Extract from judgment below)*



The Festive Season is once more upon us, cueing shops, shopping centres and malls packed with ever-growing crowds of shoppers.

What happens if you fall while shopping and hurt yourself? Our law reports are full of cases where shops are sued for damages following "slips" and "trips", and a recent High Court case confirms once again that as a general rule shops and malls are liable to keep their visitors from harm.

### ***A broken elbow from a slip on a wet mall floor***

- A shopper visited a mall to draw money from an ATM on a rainy day. Rain carried into the mall by other shoppers on their rain jackets, umbrellas and shoes had left the floor wet and slippery, and she saw a yellow 'wet floor' warning sign on the tiled floor.
- 14 metres from the mall entrance her feet suddenly gave way from under her and she fell, extending her right arm to break her fall and shield the baby she was carrying. She was left with a fractured elbow.
- She successfully sued both the mall's owner and its management company for damages, a "Full Bench" of the High Court ordering the two companies to pay "jointly and severally" whatever damages she can prove.
- "Thus, in summary" held the Court, "the owner or person or entity in control of a mall will only potentially be liable for harm or danger which would have been foreseeable to the hypothetical reasonable man in its position, and is obliged to take no more than reasonable steps to guard against such harm occurring ... Whether the steps that were taken in a particular case are to be regarded as reasonable or not depends upon a consideration of all the facts and circumstances, and merely because harm which was foreseeable did eventuate does not mean that the steps which were taken to avoid it were necessarily unreasonable. Ultimately the inquiry involves a value judgement on the part of the Court."
- The Court found that the "legal duty to take reasonable steps to safeguard the [shopper] from harm that day ... was one which fell primarily and squarely" on the owner and its management company.
- It rejected the defence raised that the mall's cleaning contractors were the liable party with the comment "It would be a startling state of affairs if independent cleaning contractors in shopping malls who are only contracted to keep floors clean became saddled with a duty to safeguard those who frequent the mall premises, and became liable to them on this basis in the event that they failed to comply with their contractual cleaning duties."

### ***What about "enter at your own risk" disclaimer notices?***

Another defence raised was that there were "enter entirely at your own risk" type disclaimer notices "prominently displayed" at all entrances to the mall. The shopper denied having noticed any such notices either on the day in question or on previous visits to the mall, and the Court found that the mall owner and manager had failed to prove that –

1. Such a notice was displayed at the time, and
2. The shopper had read and accepted the terms of the notice "or at the very least that they had taken 'reasonably sufficient' steps to ensure that the notice would come to her attention in the ordinary course".

### ***The bottom line for shop and mall owners***

Take all reasonable steps to keep your visitors from harm, and ensure that you have adequate and prominent disclaimer notices displayed at all times. Keep these notices updated – one of the mall owner's problems in this case was that the disclaimer notices were old and still in the name of a previous owner.

### ***The bottom line for shoppers***

As this judgment shows, you have to jump through a number of loops to establish a claim. Besides, shops and malls by their very nature present dangers to the unwary – spillages, items dropped on the floor, wet and slippery surfaces and the like are common and if you don't keep your eyes open and your wits about you, you run the risk of a court holding you fully or partially liable for your own misfortune. In that event it could dismiss your claim or at most only award you part of your damages on the basis of your "contributory negligence".

Worse, you could have no claim at all if a court finds you bound by an "enter at your own risk" disclaimer sign.

**So - enjoy your Festive Season shopping, but Safety First!**

## Don't Let Delays in the Master's Office Leave Your Family in Financial Distress

*“Someone's sitting in the shade today because someone planted a tree a long time ago” (Warren Buffett)*

Whilst the first and most important step in your estate planning is always to have in place a professionally drawn and regularly updated will (“Last Will and Testament”), there is another aspect which demands your urgent attention, particularly now...



### ***What will your family live on while an executor is being appointed?***

It is essential that you provide for your family's ongoing financial needs during the process of winding up your estate, because all your bank accounts will be frozen as soon as the bank learns of your death, pensions and the like take time to transfer across, and your assets generally will be tied up in your estate and inaccessible to your loved ones.

The executor of your deceased estate does have the power, provided of course that your estate is solvent and has sufficient funds, to release money to your dependents and to make advances to your heirs – but only after being formally appointed. Which brings us to...

### ***Delays in the Master's Office are getting worse***

No matter how professional and efficient your nominated executor may be, he or she is powerless to act until the local Master of the High Court (“Master's Office”) issues the necessary “Letters of Executorship” (“Letters of Authority” in smaller estates), so applying for them is always a priority for those nominated.

The issuing process has never been a quick one, but delays have worsened substantially in the past few years with media stories abounding of major problems in Master's Offices around the country and reports of “unprecedented backlogs” and “an almost total breakdown in services”.

The recent ransomware attack on the Department of Justice and Constitutional Development is just the latest in a litany of woes afflicting these offices – pandemic-related lockdowns, office closures and remote working, staff shortages and a surge in the number of deaths, a Special Investigating Unit investigation into allegations of misconduct and corruption in some offices (with two officials suspended so far and many others reportedly in the firing line) – the list goes on.

Nominated executors are complaining of inordinate delays in being appointed, and of extreme difficulty in communicating with Master's Office officials by phone, email or even by personal office visits.

### ***Here's how to fund your loved ones in the interim***

The bottom line is that you will leave your grieving family dealing with financial worries at the worst possible time if they have to wait for your chosen executor to be appointed.

You need to find another way of giving them immediate access to funds, enough to cover their living expenses and any new expenses like funeral costs.

There are a few tried and tested ways of providing this cash flow, with separate bank accounts and investments being probably the simplest and most quickly accessible options. Consider also other assets in family members' own names, family trusts, businesses held in entities that will survive your death, and so on. Another popular choice is life/endowment policies, TFSA's (Tax Free Savings Accounts) based on a life product, living annuities and the like - be sure to nominate beneficiaries for these products otherwise they will fall into your estate and not be paid out to your loved ones direct. Be certain that your loved ones know what measures you have taken and how they can access these funds quickly and easily.

Your own situation will be unique and you need to structure everything correctly, so there is no substitute for professional advice here!

## Time?

*“A man who procrastinates in his choosing will inevitably have his choice made for him by circumstance.” (Hunter S. Thompson)*

Since 2005 businesses have been repeatedly told “get your PAIA (Promotion of Access to Information Act) manual sorted now, the deadline is approaching”. And every 5 years since then, those (mostly smaller) businesses temporarily exempted from lodging manuals have been given yet another extension – usually at the very last minute.



### **“Crying Wolf” again?**

With government “Crying Wolf” so often, small business owners can certainly be forgiven for treating this whole process with a great deal of scepticism. Perhaps though this deadline is one to take seriously, particularly since the related POPIA (Protection of Personal Information Act) is now fully in place and new PAIA Regulations have been promulgated to tie in with POPIA.

### **What businesses are currently exempt?**

PAIA itself requires all public and private bodies to prepare, lodge and publish (including on any website you have) a PAIA information manual. Every business operation, no matter how small, falls into that net - the definition of “private body” includes any person or partnership who carries on or has carried on “any trade, business or profession”, together with any “former or existing juristic person” and political parties.

**In other words, all businesses of all types and sizes must have a PAIA manual once the current exemption comes to an end.**

You are probably currently exempt if you are a smaller business, specifically a “private body”, including any private company.

But the exemption does **not** apply to any non-private company, nor to any private company in any of the business sectors listed below with **either** -

- 50 or more employees, **or**
- An annual turnover of or above specific thresholds – see the table below for details.

<b>PAIA Exemption Extension Threshold until 31 December 2021</b>	
<b>Business Sector</b>	<b>Annual Turnover Threshold</b>
Agriculture	R 6 million
Catering, Accommodation and other Trade	R 15 million
Community, Special and Personal Services	R 15 million
Construction	R 15 million
Mining and Quarrying	R 22.5 million
Manufacturing	R 30 million
Electricity, Gas, Water	R 30 million
Transport, Storage and Communications	R 30 million
Financial and Business Services	R 30 million
Retail, Motor Trade and Repair Services	R 45 million
Wholesale Trade, Commercial Agents, and Allied Services	R 75 million

### **Do your Manual now anyway!**

Even if the deadline is once again extended, you will almost certainly still have to comply somewhere down the line, and at least by getting this done now you have got rid of one annoying little red tape item from your Action List. Procrastinating, as Hunter S Thompson pointed out, just means having the choice made for you down the line.

**Prepare your PAIA manual now; if you already have one, update it regularly.**

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## Your Website of the Month: How to Find and Remove Spyware from Your Cellphone

Our cellphones have, for most of us, become integrated into virtually every aspect of our lives.

Take a moment now to think of how much damage a cybercriminal, or an industrial spy, perhaps even a malicious stalker or vengeful ex-employee, could do both to you personally and to your business if they succeed in getting spyware onto your phone.

Concerned? Firstly be aware that “spyware on your cellphone” is a real threat, and then act immediately to protect yourself.



A good start is this guide to –

- What spyware is,
- What the warning signs of infection are, and
- How to remove it from your mobile devices

Read “How to find and remove spyware from your phone” on [ZDNet](#).



*Thank you for your support in 2021.*

*Have a Wonderful Festive Season, and a Happy and Prosperous 2022.*

*Enjoy the Break!*

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