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Attorneys, Notaries and Conveyancers



WITH COMPLIMENTS

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BUY THAT HOUSE! YOU'RE OFF THE HOOK FOR THE SELLER'S MUNICIPAL DEBTS

*"Why should a municipality be entitled to visit the sins of a predecessor in title upon innocent third parties when there is no relationship or connection between that party and the debts in question?"
(Extract from judgment below)*

A recent Pretoria High Court judgment has come to the rescue of property buyers being pressured by the local municipality to pay the previous owner's debts.



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When you buy a property, the municipality won't issue the seller with a "clearance certificate" – necessary for the transfer of the property to you - until all rates and taxes, water and electricity accounts etc due for the 2 years prior to transfer have been paid in full.

But there's a problem when the seller's debts are older than 2 years. The municipality cannot force the seller to pay those historical debts by holding back transfer.

Relax; you're no longer the soft target

And - until this latest judgment - you were the softest target for the municipality's debt collection department. It could cut off your electricity and water. It could threaten to have your property sold in execution. And you could end up shelling out a lot of money to settle someone else's debts – R6,5m was claimed from one of the buyers in this matter.

If fear of that happening to you held you back from buying a house, relax - that's all changed. Holding that "In the absence of an agreement to that effect, a new or subsequent owner is not liable for the payment of historical debts incurred by previous owners or occupiers", the Court declared the provision allowing such action by the municipality to be constitutionally invalid. It seems likely that this will be confirmed by the Constitutional Court and adopted by all the other High Courts.

GETTING MARRIED? DON'T FORGET THE LEGAL CONSEQUENCES

"A good wife always forgives her husband when she's wrong" (Rodney Dangerfield)



With Wedding Season in full swing, here's a timely reminder – take legal advice on choosing one of the three "marital regimes" available to you in our law before you actually tie the knot.

That's important because if you don't specify otherwise in a pre-marriage ANC (antenuptial contract), **you will automatically be married in community of property**. Which, as we discuss below, may well be a poor choice for you. And although you can usually change your regime after marriage it's a lot easier and cheaper to get it right up front.

Your 3 choices

1. Marriage in community of property: This is the default regime that will apply if you don't specify otherwise in your ANC. With only a few exceptions, everything you own, everything you owe, and everything you accrue while married fall into one "joint estate". Your spouse must consent in writing to certain transactions. On divorce or death your joint estate will usually be 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 and may be sequestrated - you could lose everything.
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 yours, and yours alone, to do with as you wish. You aren't liable for your spouse's separate debts and if your spouse's estate is sequestrated your separate assets will be released to you (against proof that they are indeed yours). This may be the right choice for you, but be aware that without accrual the poorer spouse (usually a spouse whose contribution to the marriage was more on the home-making side rather than financial) risks being left destitute after many years of marriage.
3. Marriage out of community of property with the accrual system: As with the previous option, your own assets and liabilities remain yours and under your sole control, and you can protect your assets from your spouse's creditors. On divorce or death however, with only a few exceptions you share equally in the "accrual" (growth) of your estate. Although this is a fair and popular option for modern marriages, it is not necessarily the best choice for your particular circumstances, and proper advice is essential.

You have some important decisions to make. All three choices have their own advantages and disadvantages, what is set out above is of necessity just a general summary of your choices, and whichever regime you opt for you should ask your lawyer to tailor your ANC to suit your particular circumstances. **So don't leave it to the last minute!**

EMPLOYERS: YOUR EE REPORT DEADLINE AND THE R1,5M FINE RISK

Failure by “designated” employers to lodge their employment equity reports on time risks severe penalties, with first offenders risking a fine of the greater of R1,5m or 2% of turnover (increasing to the greater of R2,7m or 10% of turnover for serial offenders).

Lack of enforcement in the past (apart from a few high-profile exceptions) has perhaps lulled non-compliant employers into a false sense of security but the Labour Minister has threatened a major crackdown and if you missed the 3 October 2016 deadline for manual/postal submission, you would be well advised to remedy that immediately.



Follow the process for electronic submission by the online deadline of Sunday 15 January 2017. Go to the Department’s “Employment Equity Online Reporting for 2016” <https://ee.labour.gov.za/dmiso/> page for details.

Must you report?

Reports must be submitted by all employers who fall into either of these categories –

- All employers with 50 or more employees or
- Employers with fewer than 50 employees who are designated in terms of the turnover threshold applicable as per the following table -

TURNOVER THRESHOLDS	
Sector or sub-sectors in accordance with the Standard Industrial Classification	Total annual turnover
Agriculture	R6m
Mining and Quarrying	R22.5m
Manufacturing	R30m
Electricity, Gas and Water	R30m
Construction	R15m
Retail and Motor Trade and Repair Services	R45m
Wholesale Trade, Commercial Agents and Allied Services	R75m
Catering, Accommodation and Other Trade	R15m
Transport, Storage and Communications	R30m
Finance and Business Services	R30m
Community, Special and Personal Services	R15m

(If the tables above do not display correctly, please see the “online version”)

Getting this wrong could cost you dearly. Seek advice in any doubt.

TWO MINUTES TO A SWIMMING POOL TRAGEDY AND A R62M DAMAGES CLAIM

***“There’s no tragedy in life like the death of a child”
(Dwight D. Eisenhower)***

A recent High Court decision highlights once again both the personal tragedy and the legal consequences of failing to protect



children from the dangers of swimming pools and other hazards.



The facts

- The property in question had both a swimming pool (fenced, with two entrance gates) and a koi pond (neither fenced nor covered)
- The 2½ year old child at the centre of this case usually accompanied her mother to weekly cell group meetings held at the house
- The gates were protected with double latches which the child could not have opened herself, but on at least five occasions before the tragedy the gate had been left open. Critically, the mother had pointed this out to the owner's wife, who had undertaken to ensure it was kept closed in future
- On the day in question the mother was unexpectedly distracted and out of sight of her daughter for only 2 to 3 minutes. Unfortunately that's all the time it took for the child to fall in the pool, where she was found floating face down. She was resuscitated but suffered severe brain damage
- The child's parents sued the homeowner (and his wife as the person in control of the property at the time) for over R62m, both on behalf of their daughter and in their personal capacities
- Faced with conflicting evidence, the Court found on the probabilities that the gate had in fact been left standing open. If there had been a self-latching spring on the gate (a subject of dispute) it had been insufficient to latch the gate.

Who's liable?

Negligence, held the Court, was, on the particular facts of this case, shared between -

1. The property owner, aware of the risk to small children and negligent for failing to ensure that the gate was properly secured with a self-latching spring or padlock
2. His wife, negligent for failing to ensure that the gate was kept closed as promised
3. The mother of the child on the other hand was guilty of contributory negligence for leaving her child unattended when aware of the dangers posed by the swimming pool. So the homeowner and his wife are liable for whatever damages the parents can prove. The mother's personal claim will be reduced by 30% to reflect her contributory negligence, but the child's proven damages will be 100% payable.

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DOMESTIC WORKERS' WAGES UP 1 DECEMBER

This year's new minimum wages for all domestic workers are set out in the table at the end of this article.

Who is covered?

- All domestic workers in South Africa working in a private household
- People employed by employment services
- Independent contractors who are doing domestic work
- A person doing gardening in a private home
- People who look after children, sick or old people and people with disabilities in a private home
- A person driving for the household



But excluding –

- Domestic workers employed on farms
- Domestic workers employed in activities covered by another sectoral determination or bargaining council agreement (such as contract cleaning workers).

Are you in Area A or Area B?

Area A includes most major metropolitan areas; Area B is all other areas. See the full lists on the Department of Labour [website](#).

WAGE TABLE FOR DOMESTIC WORKERS FROM 1 DECEMBER 2016

Domestic workers who work more than 27 ordinary hours per week		
	A: Major Metro Areas	B: Other Areas
Hourly Rate	R12.42	R11.31
Weekly Rate	R559.09	R508.93
Monthly Rate	R2,422.54	R2,205.17
Domestic workers who work 27 ordinary hours or less per week		
Hourly Rate	R14.54	R13.35
Weekly Rate	R392.58	R360.54
Monthly Rate	R1,701.06	R1,562.21

(If the tables above do not display correctly, please see the “online version”)

YOUR DECEMBER WEBSITES: A MIXED BAG FOR THE FESTIVE SEASON

Let’s say goodbye to 2016 with some sites to get us into the holiday mood. Whether you are entrepreneur or employee, captain of industry or middle manager, nine-to-fiver or happy homebody, this is your chance to relax, unwind a bit, and indulge yourself and your loved ones Have fun!



How to enjoy your break

There’s no better way to re-charge your batteries after a long year than a really good holiday. Make the most of it with the Telegraph’s ‘The science behind having a happy family holiday’ on its [website](#).

The perfect gift

Are you struggling to find the perfect gift for a really special client or family member? If you’re not all thumbs tackle one of the projects in ‘Give the Perfect Handmade Gift with These DIY Projects’ on [LifeHacker](#).

Is that hotel review fake?

Before you book into Hotel Le Swank on the basis of its brilliant 5 star online reviews, check the reviews for authenticity by running them through [Review Skeptic](#). It’s based on research at Cornell University that uses machine learning to identify fake hotel reviews with “nearly 90% accuracy”.

Your dog’s New Year bedtime story

If your canine companions are terrified of New Year fireworks, try playing them the audiobook bedtime story on the Daily Record’s ‘Calm canine nerves this Bonfire Night with bedtime story for dogs’ [webpage](#) - it uses

“proven animal psychology tips and tricks, communicative signals, bioacoustics and years of research into dog behaviour”. It might soothe your nerves as well. Plus you can have fun testing it on the cat.

Record those memories! Tips for great cell phone videos

Capture the happy times forever with a home movie shot on your smart phone. “Make Great Videos with Your Phone” on lifewire.com shows you how. Finish it off with a video editing app – find the best at “10 best video editor apps for Android” [here](#) or “5 of the nicest video editing apps for iOS” [here](#).

Dipping into the dictionary

“**Wifty**”, adj. – “Vague, imprecise; (of thinking, argument, etc.) unclear; muddle-headed, scatter-brained; fuzzy.”

**Thank you for your support in 2016.
Have a Wonderful Festive Season, and a
Happy and Prosperous 2017!**



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