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**With Compliments**

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**July 2015**

**SELLING YOUR HOUSE? CHOOSE YOUR OWN CONVEYANCER**



For most people, your house is your most important asset. So when you sell it (or any other property for that matter), it is absolutely critical to entrust the process to a conveyancer you can trust to act with both speed and integrity.

*The conveyancer's role*

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When you sell property, the conveyancer is the specialist attorney appointed as “transferring attorney” and tasked with carrying out the process of registering the buyer as the new owner. Only suitably qualified attorneys are admitted to practice as conveyancers, and only they can register transfer of ownership (and other property rights like mortgage bonds, servitudes etc) in the Deeds Office.

#### Your risk: What can go wrong?

- First step in the process is normally the appointment of an estate agent to find a buyer for you and, as our regular readers will know, it is vital to have a clear agreement in place with the agent. Neither of you will want disputes to arise over the terms of the mandate or entitlement to commission (you particularly want to avoid risks like having to pay double commission). **Bottom line – get your attorney's advice before you agree to anything.**
- Next comes the actual sale agreement (also referred to as a “deed of sale” or “offer to purchase”). Not only must it be in writing, properly signed, and comply with a whole checklist of requirements, but things can go disastrously wrong if your agreement is in any way unclear, ambiguous, wrongly worded, incorrectly signed etc. It is also critical that you understand exactly what you are committing yourself to – with very few exceptions, our law will hold you to whatever terms and conditions are in the agreement. **Sign nothing until your attorney has checked everything for you!**
- “Time”, as the old saying goes, “is money”, and any delay in the transfer process puts you at risk of substantial loss. Your conveyancer jumps through all sorts of hoops for you before lodging transfer documents in the Deeds Office and whilst some steps in the process need co-operation from third parties like bondholders, SARS and the local municipality, others depend on your buyer's active participation. If the buyer either wants to delay transfer or hasn't got his/her ducks in a row, for example is struggling to come up with a bond or other finance, you need rapid corrective action to be taken. **Choose a conveyancer you can rely on to move the process along with a minimum of delay.**

#### Insist on using your own attorney

The bottom line is that you ultimately carry more risk than the buyer if things go wrong. It is entirely fair therefore that you as seller have the right to nominate your own attorney to attend to the conveyancing, and it is vital that the sale agreement confirms this unambiguously. The fact that the buyer normally pays the conveyancer (as part of the transfer costs) is irrelevant. There is nothing to stop the buyer from appointing his/her own attorney to monitor the transfer process at his/her own cost, although that is seldom necessary. If a buyer pushes for the appointment of another conveyancer on the basis of discounted fees, remember that any such discount benefits the buyer, not you.

**Don't let anyone take away your right to choose your own conveyancer!**

#### EMPLOYERS: IMPORTANT BREAKS FOR SMALL BUSINESSES YOU NEED TO KNOW ABOUT



*“.....we believe that the SME sector is critical in stimulating economic development, and that it is also a pivotal area in terms of innovation, skills development, entrepreneurship, labour-absorption and job-creation” (from a speech by the Deputy Minister of Small Business and Development)*

(Note: As always, be particularly careful to take specific advice on anything to do with our labour laws, they are complex and the penalties for non-compliance are severe.)

Last month we saw how only a defined “small business” can agree with employees that family responsibility leave days will count against their annual leave. This month let's look at the various other provisions of the Basic Conditions of

Employment Act (BCEA) which apply only to small businesses.

### ***Does the BCEA apply to all employers and employees?***

Yes, except to members of the National Defence Force, National Intelligence Agency, South African Secret Service, unpaid volunteers working for a charity, and in a few other specialised situations.

### ***Can you contract out of the BCEA?***

No, the BCEA overrides anything less favourable to employees in an employment contract or other legislation, although some (not all) conditions can be varied by collective agreements and ministerial determinations. That's where the "Ministerial Determination 1: Small Business Sector" comes into play for SMEs.

### ***Are you a "small business"?***

In a nutshell, you will qualify as a "small business" if you employ less than 10 employees, provided you conduct only one business which is not formed by division or dissolution of an existing business. The determination doesn't apply to domestic employees or to the public service, and a bargaining council agreement or another determination may take precedence.

### ***Overtime***

The normal restriction on overtime of 10 hours per week is extended to 15 hours per week.

The standard requirement to pay one and a half times normal wage for overtime is changed to one and a third for the first 10 hours of overtime, and one and a half times only for time over the 10 hours.

### ***Averaging of hours***

You can agree in writing with your employees that, for up to a year, their ordinary hours of work and overtime may be averaged (for example they could agree to work a number of extra hours this week in return for the same number of hours off next week) over a period of up to 4 months, up to a maximum average of 45 ordinary hours and 10 overtime hours a week.

### ***Family responsibility leave***

As we saw last month, you can agree in writing with your employees that their family responsibility leave days be deducted from their annual leave entitlement.

## **BUSINESS RESCUE – IS IT TOO LATE AFTER LIQUIDATION? THE SUPREME COURT OF APPEAL SPEAKS**



An important new SCA (Supreme Court of Appeal) decision recently addressed the following scenario -

- A close corporation runs a business renting out its commercial properties.
- The properties are bonded to a bank.
- The close corporation was placed into final liquidation by the High Court despite contending that it should rather be placed under business rescue.
- 5 months later it applied again for business rescue, but the High Court concluded that once a final liquidation is granted against a company (the

same business rescue provisions apply to close corporations as to companies), it is too late to apply for business rescue.

- On appeal however, the SCA held the opposite, in other words that you can apply for the business rescue of a company even after a final liquidation order is granted against it.

***This is significant for you if .....***

As the Court noted, the circumstances of a liquidated company could improve radically, even after liquidation, such that it would become profitable if allowed to trade. It could, for example, be awarded a contract for which it had earlier tendered, secure funding for future projects, or have a major creditor offer to subordinate its claim.

This decision could have a major impact on you if you are –

- A creditor, supplier or customer of the company
- An employee
- A director, shareholder or surety
- Anyone else with a stake in the outcome.

***Uncertainty and disruption?***

If, held the Court, business rescue proceedings will yield a better return for shareholders and creditors and jobs will be retained, there is no reason to deny business rescue only because the company is in final liquidation.

But this raises concerns of uncertainty and disruption. On liquidation, control of the company moves from the directors to liquidators, whose duties include making decisions which would impact on ongoing and new contracts, continued trading etc. One can imagine the potential mess and practical problems if liquidators have to operate with the knowledge that they could at any time be removed from office and control of the company returned to the directors.

“The simple answer” to those concerns, said the Court, “is that a court can dismiss any application for business rescue that is not genuine and bona fide or which does not establish that the benefits of a successful business rescue will be achieved.”

***Liquidators – your fees and expenses***

Remember that you are just a creditor of the company for anything due to you for remuneration and expenses incurred before the commencement of business rescue proceedings.

**SARS: (TAX) CRIME DOESN'T PAY!**



***“The income tax created more criminals than any other single act of government” (Barry M. Goldwater)***

SARS it seems retains a much higher enforcement capability than some recent media speculation has suggested. It has announced a 92% conviction rate in cases handed over for prosecution in tax and customs-related crimes, mostly involving high net-worth individuals, fraudulent VAT refunds and Income Tax fraud.

Per SARS: “Over the 2014/5 financial year, there were 256 individuals/entities convicted in cases involving R196 million, with fines totalling R9.6 million issued. An effective 555 years of imprisonment, 258 months of correctional supervision and 2,480 hours of community service were handed down to those convicted.”

## THE JULY WEBSITE: DRONES – FLY THEM LEGALLY AND SAFELY FROM 1 JULY



The new Regulations applicable to all drones (RPAs or “Remotely Piloted Aircraft”) from 1 July are the subject of much confusion and a slew of media reports, many of them extremely misleading.

For some clarity, and hyperlinks to the new Regulations themselves, see the Safe Drone website with content from industry experts–

- Links to the **Regulations online** on the Home Page [www.safedrone.co.za](http://www.safedrone.co.za)
- A simplified summary of laws relating to **commercial, hobby and corporate/non-profit** drone pilots at [www.safedrone.co.za/new-cao-regulations-simplified](http://www.safedrone.co.za/new-cao-regulations-simplified)
- More on **commercial** drone operations at [www.safedrone.co.za/how-to-operate-drones-legally](http://www.safedrone.co.za/how-to-operate-drones-legally)
- More for **hobby drone** pilots at [www.safedrone.co.za/hobby-drone-pilots](http://www.safedrone.co.za/hobby-drone-pilots)
- Basic drone **safety** at [www.safedrone.co.za/basic-drone-safety](http://www.safedrone.co.za/basic-drone-safety)
- “**No drone zones**” at [www.safedrone.co.za/no-drone-zones](http://www.safedrone.co.za/no-drone-zones)
- Lots more in the panels “CAA and Legal” and “Quick Questions” on the right hand side of each page.

**Note:** The Regulations themselves are extremely complex and failure to comply carries substantial risk of both civil liability and criminal penalties – take detailed advice in any doubt!

***Have a great July, and don't forget to do your bit for Nelson Mandela Month! See how at [www.gov.za/nelson-mandela-month-2015](http://www.gov.za/nelson-mandela-month-2015).***

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