



**WITH COMPLIMENTS**

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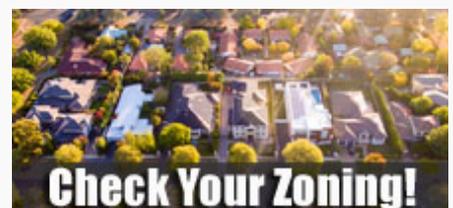
**March 2020**

Running a Business in a Residential Area – Check Your Zoning First!

Budget 2020: Good News for Property Sellers and Buyers, and Some Useful Tax Calculators

**Running a Business in a Residential Area – Check Your Zoning First!**

*“It is unquestionable that an owner of land is not permitted to perform activities which contravene the restrictive title conditions or the zoning restrictions” (extract from judgment below)*



You decide to open a home business. or perhaps you are

... about to open a home business, or perhaps you are about to buy a house in order to run a business from it. You apply for rezoning but the council is taking forever to decide (although it has happily started charging you rates and taxes on the business tariff), your immediate neighbours are supportive, you won't cause any nuisance, you know of many other businesses operating undisturbed “under the radar”, and anyway the suburb's residential character has been eroding for years. Surely you are safe to just go ahead and open your business?



On the other side of the coin, perhaps you bought your dream house in a leafy suburb, secure in the knowledge that its residential character is protected by strong and effective zoning laws. Then businesses start moving in - what can you do about it?

A recent High Court decision addresses both questions directly...

### ***A suburban office and the interdict application***

- A construction company opened an administrative office in a suburban area, manned from 8 am to 4.30 pm on weekdays by a staff of four (with the occasional visitor).
- Three complainants in the suburb, objecting strongly to this move, applied to the High Court for an interdict against the running of any business on the property. They had, they said “acquired their properties with a keen expectation of residing in a residential suburb with amenities that are consistent with a residential suburb and with a residential character” – sentiments which will no doubt resonate with many other home-buyers.
- Critically, one of the restrictive conditions in the offending property's title deeds read *“this erf shall be used for residential purposes only and no trade or business or industry whatsoever shall be conducted thereon”*. That, said the Court, rendered the property's usage illegal. Full stop.

### ***All the defeated defences***

The property owner and the business (let's refer to them together as “the business” for simplicity) raised a series of defences to the interdict application, all of them rejected by the Court on essentially the same ground that **“the use or continuation to use the property for any business or trade other than for residential purposes constitutes an illegal act”** -

- The suburb's character had been changing over the years with businesses moving in, including a large shopping mall. Not relevant.
- The business had applied to the local council for re-zoning and removal of the title deed restriction over a year before, no objections had been received and it had in fact been supported by at least one neighbour. Not relevant.
- Although the rezoning application had yet to be granted or declined, council was already collecting rates and taxes payable by business and commercial properties. Not relevant.
- The office caused no nuisance to anyone in the area. Not relevant.
- Other property owners in the area were also in contravention of the law. Not relevant.

### ***Who can object and who can't?***

The business also argued that only property owners living “in close proximity” to the office had any right to object. That, it said, excluded not only the complainant who was not an owner (she lived with her parents) but all three of the complainants because they all lived about a kilometer away from the office.

No problem, said the Court, “the essence of town planning schemes is conceived in the interest of the community to which it applies” and the complainants lived “in an area affected by an applicable zoning scheme”. All the complainants had “protectable interests” and therefore locus standi (in plain English, the ‘right to bring a legal action’) and were entitled to enforce their rights under the planning scheme.

### ***The interdict and the request to suspend it***

“Once it is accepted”, quoted the Court from an earlier judgment “that the nature of the right in question is a public right, then it must follow ... that **for continuing infringements of that right the only effective remedy is an interdict**, all the more so where such infringements amount to an offence.” Final interdict granted with costs.

Finally, the Court rejected a request by the business to suspend the application of the interdict. The

business had been continuing to act in an unlawful manner for at least fifteen months, it was “hell-bent to do so without the necessary relaxation of the restrictive conditions” and to suspend the interdict would be to support or give approval “to an ongoing illegality which is also a criminal offence ... tantamount to the subversion of the doctrine of legality and undermining of the rule of law”. The business “must be brought into line immediately when such matters are brought to the attention of the court.” Interdict effective immediately.

**Owners - must you always rezone?**

Have your attorney check what title deed restrictions your property is subject to, what your current zoning is and what it allows and doesn't allow. Your local town planning scheme may perhaps let you run a small scale “home enterprise” or “micro business” either without any municipal consent (there will be conditions attached) or with a municipal permit. Or you may need to formally apply for rezoning and removal of title deed restrictions. **Every local authority will have its own rules on this and the important thing is to comply with them or risk unhappy neighbours applying to close you down.**

**Budget 2020: Good News for Property Sellers and Buyers, and Some Useful Tax Calculators**

*“To support the property market, the threshold for transfer duties is adjusted” (Finance Minister Tito Mboweni)*



**Transfer Duty Exemption Up**

Some good news for property sellers and buyers in particular is the increase in the transfer duty exemption to R1m. See the table below for details and note that with all the brackets being adjusted upwards, buyers at every level will save – for example the buyer of a R2.5m house will save R17,000.

**Transfer Duty**

Transfer duty is payable at the following rates on transactions which are not subject to VAT:

**Acquisition of property by all persons:**

Value of property (R)	Rate
1 – 1 000 000	0%
1 000 001 – 1 375 000	3% of the value above R1 000 000
1 375 001 – 1 925 000	R11 250 + 6% of the value above R 1 375 000
1 925 001 – 2 475 000	R44 250 + 8% of the value above R 1 925 000
2 475 001 – 11 000 000	R88 250 +11% of the value above R2 475 000
11 000 001 and above	R1 026 000 + 13% of the value exceeding R11 000 000

(Source: [National Treasury](#))

**Some useful Tax Calculators for you**

- **How long will you work for the taxman today?**

Input your salary into the [2020 Tax Clock calculator](#) and find out how many hours you will spend today working for the taxman, and at what time precisely you will finally start working for yourself (warning – it's not pretty!).

- **How will your income tax change?**

Put your monthly taxable income into Fin24's Budget 2020 [Income Tax Calculator](#) to find out.

- **How much extra will your sin taxes cost you this year?**

Work out how much more you will be shelling out for spirits, wine, beer and cigarettes (or how much you will be saving if you don't indulge!) with Fin24's Budget 2020 [Sin Tax Calculator](#).

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## Watch What You Say on WhatsApp – The Case of the R20m Lottery Win and the R1m “Offer”

### *“Engage brain before hitting send” (Anon)*

WhatsApp comes with a host of business and personal benefits, and its use is growing exponentially here as in the rest of the world. Which brings us to a possible downside – binding yourself to a legally-enforceable agreement without really meaning to.



### **First principles: Offer + Acceptance = Contract**

What makes for a binding contract? In the most simplistic sense, all you need is for one person to make an offer and for another to accept that offer.

There are of course many other requirements – *consensus ad idem* (‘true agreement’ or ‘meeting of minds’), lawfulness, capacity to contract, compliance with any formalities, certainty of terms, possibility of performance and the like. Lawyers and legal academics love to wax lyrical on the finer ins-and-outs of these and of related concepts like “quasi-mutual assent” (more on that below, it’s actually an important concept), but the core principle applicable in the vast majority of cases remains this: Offer + Acceptance = Contract.

And of course, with only a few exceptions (such as property sales, wills and ante-nuptial contracts), even verbal agreements are fully binding, and the binding effect of electronic messages has been established both by legislation (most importantly the ECTA or Electronic Communications and Transactions Act) and by a series of modern court decisions.

### **A R20m lottery windfall and a R1m WhatsApp “offer”**

- A father was paying R1,000 p.m. child maintenance to the mother of one of his seven children.
- Shortly after becoming the lucky recipient of a National Lottery windfall in the form of a prize of R20.8m, he met with the mother, told her that his health had deteriorated, that he could no longer be employed (by SARS) and that he would get about R600,000 in pension benefits.
- He offered R100,000 out of these pension benefits in full and final settlement of his child maintenance obligations, which the mother accepted and which was paid to her for the child's benefit.
- At a meeting with the maintenance officer he denied having won R20m but the mother, after getting proof of his win, sent a WhatsApp message to the effect that she knew about it. He replied – also on WhatsApp - “if I get 20m I can give all my children 1m and remain with 13m. I will just stay at home and not driving up and down looking for tenders”.
- The mother sued the father for R900,000 on the basis that he had contracted to pay her R1m and had only paid R100,000. The father denied liability, saying that his WhatsApp message was just to “get rid of” the mother and that he had no intention to make an offer to contract.

### ***When is an “offer” not an offer? The “intention to contract” factor***

The mother won in the High Court but lost on appeal to the Supreme Court of Appeal (SCA), which held that the father wasn't bound because on the facts his message was a denial of having won R20m and it “related what [he] could possibly do in the hypothetical future event of him receiving R20 million. It set out what the [he] might do if he received R20 million ... the message clearly did not contain an offer that could on acceptance thereof be converted into an enforceable agreement.”

On the facts of this case, the father “subjectively had no intention to contract and the message did not suggest otherwise.” His “morally reprehensible conduct” lost him his claim for legal costs, but it did not affect his lack of intention to contract. So in this case our WhatsApping father is off the hook and gets to keep his R1m.

### ***But... before you hit send***

On slightly different facts his WhatsApp message could easily have been held to have been a valid offer, binding him on acceptance. For example, the concept of “quasi mutual consent” which we mentioned above, means that even if you don't actually intend to make a binding offer, our law can hold you to it if your actions or conduct lead the other party “as a reasonable person” to believe that you did intend to enter into a contract. **So you may not intend your message to be a real offer but if the recipient reasonably thinks it is, you are in trouble.**

The lesson for us all is this - all users of electronic communications, whether via WhatsApp, Facebook, email or any of the many other electronic messaging channels open to us, face the very real danger of inadvertently making a promise in haste which down the line a court will hold us to.

**Think before you message!**

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### **POPIA's One Year Deadline to Start Running on 1 April?**

Will the main provisions of POPIA (the Protection of Personal Information Act) really commence on 1 April 2020 as media reports suggest, or is this just another case of Crying Wolf? This time it seems it may be the real thing, with the Information Regulator having formally requested the President to declare the commencement date.

If that does indeed happen (still unclear at date of writing), any organisation that needs to comply with POPIA will have a one year transitional period expiring on **31 March 2021** to get their house in order.

Watch this space...



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### **Website of the Month: South Africa in the 2020s – High Road or Low?**

***“Will the 20s roar like they did in the last century or will the outcome be different?”  
(Clem Sunter)***

What exactly is in store for us South Africans in the Twenty-Twenties? It's a vital question not only for business and for investors, but for us all on the most personal level.

Of course it's also a question that's a lot easier to ask than



to answer. As Nobel Prize winning physicist Niels Bohr put it: "Prediction is very difficult, especially if it's about the future" - witness the new COVID-19 coronavirus scare which has suddenly popped up with its game-changing impacts on the world and world economies.

Nevertheless as Clem Sunter (well known for his "High Road or Low Road?" speeches in the late Eighties) reminds us, we can and should still use scenario planning to ready ourselves for any one of a whole variety of possible futures. And in his article "The world and South Africa in the 2020s" (read it on Leader.co.za [here](#)) he discusses all the major global and local flags and scenarios to watch out for.

Let's hope that his concluding "**I give a return to the High Road trajectory, with all the flags I talked about turning green, a heads-up with a probability of 80%**" holds true!

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