



# Susan B Cohen

*Attorneys, Notaries and Conveyancers*



## WITH COMPLIMENTS

**Susan B Cohen**  
**Attorneys, Notaries & Conveyancers**

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### In this Issue

Property Sellers: Why, How  
and When to Choose Your Own  
Conveyancer

South Africans - Don't Lose  
Your Own Citizenship When  
You Apply for Another!

Employers - Walking the

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Property Sellers: Why, How and When to Choose Your Own Conveyancer

*"A great deal is at stake in the  
transfer of fixed property. It is  
generally the largest single  
asset that a person owns and  
the transaction for the*



*purchase or sale of a fixed property is probably the most important contract undertaken by individuals” (Law Society of South Africa)*



For many of us, our home is our most important asset so when it comes time for us to sell, do everything possible to ensure that your interests are fully protected, that the sale goes through quickly and smoothly, and that you are paid without unnecessary delay.

Appointing the right conveyancer is key here. Let's have a look at the “Why, Who, How and When” of it...

#### ***Why do I need a conveyancing attorney?***

Legal ownership in “immovable” or “fixed” property (that is, land and permanent attachments such as buildings) can only be transferred from seller to buyer through a formal registration process in the Deeds Office. This is carried out by specialist attorneys who have been admitted to practice as conveyancers.

#### ***Who appoints the conveyancer, and how?***

As the seller, it is your right to choose which conveyancer will carry out the transfer.

The agreement of sale (it may be called an “Offer to Purchase”, “Deed of Sale” or similar) should contain a clause specifying the conveyancing (or “transferring”) attorney. Make sure you fill in your chosen attorney's name and details in the space provided, and do not allow anyone else to dictate to you who to use!

You may occasionally come across an offeror/buyer wanting to appoint their own attorney for one reason or another, perhaps with the argument that because they are paying the transfer costs (which include the conveyancer's fees), the choice should be theirs. But the fact is that you carry more risk, and there is nothing to stop the buyer from employing another attorney to monitor the transfer on their behalf if they really feel this necessary.

Bottom line - stick to your guns! **This is your house at stake, so the choice is yours, and yours alone.**

#### ***How to choose the right conveyancer***

Your choice here is critical. You need to appoint someone you can trust to handle the process with the utmost professionalism –

- **Speed** will be important to you (“time is money!”), and whilst a certain amount of delay is inevitable (there are lots of formalities and red-tape requirements involved), a pro-active and committed conveyancer will keep delays to a minimum.
- **Communication:** Progress updates should be regular and timely, keeping you in the loop at every step of the process.
- **Attention to detail** is also vital. Conveyancing is a specialised field, calling for meticulous compliance with a host of rules and regulations. Moreover every sale agreement will be different, and its precise terms and conditions must be complied with.
- **Cybersecurity** has become a major issue in recent years, particularly around the question of email integrity. You will need to play your part here too (to take just one example, don't ever take at face value an email purporting to come from your attorneys “advising you of our new banking details”), but knowing that your chosen firm of attorneys has security protocols in place is critical to resting easy that the purchase price will indeed end up in your account.
- The need for **scrupulous integrity** goes without saying – a lot of your money will be at stake here!

#### ***When should I bring my attorney into the sale process?***

Ideally, from the very start. When you first decide to sell, you will find it invaluable to have your attorney's advice on how to go about it, whether you should speak to an estate agency, how best to market your property, what pitfalls to avoid and so on.

When it comes to the agreement of sale itself, a myriad of things can go wrong if the contract isn't professionally drawn to be clear, concise, legally enforceable and configured to protect your interests. So if you are presented with an offer or agreement drawn by someone else, take legal advice **before** you agree to anything!

## South Africans - Don't Lose Your Own Citizenship When You Apply for Another!

*“... it cannot be said as the applicant suggests that the loss of citizenship takes place without notice and automatically as the citizen in that position has proper notice through the structure of the section of both the opportunity to seek consent to hold dual citizenship and the consequences of acquiring a second citizenship without obtaining such permission. It therefore is not a secret provision but one that every citizen who voluntarily seeks to acquire another citizenship should ordinarily acquaint themselves with” (extract from judgment below)*



**Note:** Many South Africans who need to be aware of this risk will be overseas and/or may not have heard of the High Court decision we discuss below. If you know of any such person, please consider forwarding this to them as soon as possible.

A recent High Court judgment has confirmed that you will lose your South African citizenship if you apply for citizenship of any other country without **prior** Ministerial permission.

It is irrelevant whether you are South African by birth or not. It is also irrelevant why you want to acquire dual citizenship - perhaps you are living/working overseas, perhaps you want a second passport just to make travelling easier, perhaps you have financial reasons.

### ***How and why you lose your South African citizenship***

Dual citizenship itself is allowed, but our Citizenship Act provides that if “by some voluntary and formal act” you acquire citizenship or nationality of another country, you are deprived of your South African citizenship. And Home Affairs is interpreting that to mean that you have voluntarily given up your South African citizenship by your own “formal act” of applying for foreign citizenship.

### ***You are exempt only if ...***

This loss of citizenship does not apply to –

1. Minors (under 18 years of age) and
2. Acquisition of another country's citizenship by marriage.

### ***How to retain your South African citizenship***

The good news is that you can apply through Home Affairs for authority to retain your SA citizenship – but your application must be approved **before** you acquire your second citizenship.

The bad news is that it takes time, so **don't leave it to the last minute!** Even before the pandemic, processing time was given as “3 to 6 months” and media reports suggest that delays are now much longer, although perhaps the publicity surrounding the High Court case in question will assist in improving the situation. If you are overseas, you should find the necessary forms and instructions on your local SA Embassy/Mission/Consulate website.

### ***You've lost your citizenship – what now?***

This is very much second prize, but you can still apply to get your citizenship back -

- If you were a **citizen by birth or descent** you can apply for reinstatement only if you have returned to, or are living in, South Africa permanently (you still have permanent residence, you just aren't a citizen).
- If you were a **citizen by naturalisation**, you must re-apply for permanent residence or apply for exemption thereof, before you can be considered for resumption of citizenship.
- If all else fails, consider taking the legal route. As we discuss below, the High Court has recently held that the relevant provisions of the Citizenship Act pass Constitutional muster, but there is talk of a possible appeal.

#### ***High Court: Choose how important your citizenship is to you, and know the law***

There has always been speculation that this section of the Citizenship Act could be held to be unconstitutional. However, in rejecting a recent application to that effect by the Democratic Alliance, the High Court has confirmed that it passes constitutional muster and is not "irrational".

The High Court's reasoning was that "It is ultimately a matter of personal choice what weight each of us attaches to the idea of our citizenship", and that this is not a case of automatic loss of citizenship without notice but rather it "is really about personal and individual choices people make about their future and often choices come with consequences."

The section in question, held the Court, is "not a secret provision but one that every citizen who voluntarily seeks to acquire another citizenship should ordinarily acquaint themselves with ... while it may be arguable that citizens cannot be expected to know every feature of the law, those citizens involved in migration and relocation to other countries with the possibility of acquiring citizenship there must surely be expected to acquaint themselves with the law in that area of activity they are involved in."

There is talk of an appeal but for now at least, if you have already lost your citizenship your options are limited to those set out above.

#### ***P.S. Never let your SA passport lapse!***

Although you can travel freely around the world on your second passport, **you must enter and depart from South Africa on your valid SA passport**. Keep renewing it!

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### **Employers - Walking the "Compulsory Covid-19 Job" Tightrope**

***"Employers should find a reasonable resolution that accommodates all parties where employees refuse to be vaccinated for medical and constitutional grounds"  
(Ministry of Employment and Labour)***



As the Covid-19 pandemic continues to wreak havoc around the world, an increasing number of businesses find

themselves walking a tightrope between their obligations to, on the one hand, both protect the public and provide a safe and healthy workplace, and on the other hand to respect the individual constitutional rights of employees to make their own choices in matters of bodily and psychological integrity, religion, belief and opinion.

These deeply conflicting rights and obligations have left employers asking themselves questions like: "Must we insist on our employees having the vaccination to protect their colleagues, our visitors, our customers and the public at large?" and "If so, can we actually force unwilling employees to get jabbed or are we in for unfair practice or

wrongful dismissal claims?"

### ***The Minister's "Amended Consolidated Direction"***

On 11 June 2021 the Minister of Employment and Labour issued an "Amended Consolidated Direction on Occupational Health and Safety Measures in Certain Workplaces" under the National Disaster Regulations in an attempt to address those questions.

The Direction is long, detailed and complex, setting out a host of "minimum measure" requirements for workplace safety during the pandemic, so **specific professional advice is essential here**. But in a nutshell there is now an official guideline for employers wanting to make vaccination compulsory or partially compulsory. At a minimum, comply with all these specified obligations -

#### **1. Undertake a risk assessment**

This risk assessment (supposed to have been completed by 2 July 2021) was to determine (a) whether vaccinations were to be made mandatory considering the "operational requirements of the workplace" and if so (b) who was to be compulsorily vaccinated, taking into account the risk of transmission to employees through their work and their risk for severe Covid-19 disease or death due to their age or co-morbidities.

In assessing whether or not your particular workplace needs a mandatory vaccination policy, include factors such as the ongoing requirement to enable employees to work from home where possible (still applicable even under Adjusted Level 1), the nature of the work in question, whether adequate ventilation is possible, whether adequate social distancing measures are possible and so on – the list is endless.

As regards that 2 July deadline, it seems likely that many (perhaps most) employers missed it. If you are in that boat, what should you do now? There is no clear guidance on that, but the consensus of expert opinion seems to be that you should still comply, as soon as possible.

#### **2. Develop or adjust a vaccination and protective measures plan**

Based on the risk assessment, this plan must outline both what protective measures you have in place, and what vaccination measures you intend to implement.

#### **3. Consult on the risk assessment and plan**

Consultation must be with any representative trade union and any health and safety committee or representative. We should discuss under this heading also the questions of communication, education and training. We all know that together with some rational and valid concerns, there is an avalanche of fake news around Covid-19 and vaccinations. Inform your employees fully of their rights, help them to distinguish fact from fake, address their individual fears and concerns, explain the benefits of your plan to everyone, and strive for consensus.

#### **4. Make the plan available**

The plan must be available to an Occupational Health and Safety Act inspector and to the person/s listed in point 3 above.

#### **5. Other requirements and factors**

No list of this nature can ever be comprehensive but consider factors such as paid time off and transport to vaccination sites, sick leave for employees who suffer side-effects, counselling for "vaccine hesitant" employees and the like. There are also defined procedures to be followed when employees raise medical or ethical objections to being vaccinated (for example, the employer may need to try to find an alternative position in the business for such an employee).

And of course every workplace will be different, which leads us to ...

### ***The bottom line***

There is talk of workplace vaccination being officially made compulsory either across the board or in certain sectors, whilst media reports suggest that an increasing number of large employers are already implementing compulsory vaccination policies on the basis of legal advice received. There is also much speculation that our courts will support dismissal of employees who refuse vaccination in appropriate cases, and there is even a report of a High Court Judge insisting on either proofs of vaccination or negative PCR tests “for the general well-being of all parties in attendance at court”.

Bear in mind however that every situation, every workplace, and every employee will be unique – and with the high stakes involved, **tread with extreme care and only after taking professional advice.**

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## **What SARS Says About Crypto Assets and Tax**

***“The future of money is digital currency” (Bill Gates)***

If you are thinking of buying – or have bought - any “crypto asset” such as a cryptocurrency like Bitcoin, Ethereum, Polkadot, Solana (or any of the many other crypto currencies springing up all over the place), be aware of the tax implications.



As a start, read the new SARS webpage “Crypto Assets and Tax” [here](#), first published on 27 August 2021 and providing guidance on (at date of writing – expect this webpage to evolve!) these questions -

- What is it?
- How did we get here?
- Do I need to pay tax on crypto assets?
- How will it work? (With an example of the ITR12 Income Tax Return for the 2020/21 tax year)
- How is SARS tracing crypto asset transactions?

**There are still grey areas here – and many pitfalls - so be sure to take specific professional advice!**

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## **Your Website of the Month: The Best Age to Launch a Successful Startup Is...**

The Companies and Intellectual Property Commission reports (see Moneyweb article [here](#)) a record 510,000 new companies registered in 2020 - 32% up from 2019. Clearly the challenges and opportunities presented by the pandemic and its associated economic disruption are at play here. For some, retrenchment has meant having to become an



entrepreneur in order to survive financially. Others are taking advantage of new opportunities to disrupt and to innovate.



Perhaps you are considering such a move and wondering if you could be too young, or too old, to get into the game. Wonder no longer – read “Science reveals the best age to start a thriving business” on [Leader.co.za](#).

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