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October 2014

## Houses – Transfer Trumps Intention

*“Experience is a hard teacher because she gives the test first, the lesson afterward” (Vernon Law)*

Never assume that you have any rights to a property just because the owner says that he/she intends to give you ownership, even if a sale agreement is signed. Make sure that you actually do take ownership via registration in the Deeds Office.



That's the hard lesson learnt recently by a mother and her children who will now be evicted from "their" home.

### *The relationship that soured*

- Mr A intended to marry Ms B, who lived with her children in a home owned by Mr A's company
- Mr A it seems intended to donate the home to Ms B and he accordingly signed a sale agreement (the "first agreement") selling it from his own company to Ms B's Company C (she being the sole director and shareholder)
- Transfer was never effected to Company C
- Mr A then left Ms B and married someone else instead
- Mr A signed another sale agreement (the "second agreement") in terms of which he sold the home from his company into his own personal name. The property was duly transferred into Mr A's name

- Mr A died, leaving the home in his will to his new wife
- Ms B, still living in the home but threatened with eviction by the executor of Mr A's deceased estate, asked the High Court to order transfer of the property to her Company C per the first agreement.

### ***A hard lesson from the law***

The High Court held against Ms B, confirming that ownership of immovable property only passes on registration of transfer in the Deeds Office.

The parties must both have had the intention of respectively passing and accepting ownership of the property from the seller to the buyer, and on the facts of this case Mr A's intention was clearly that ownership pass in terms of the second agreement, i.e. into his personal name.

Moreover Ms B had failed to prove that the first agreement was in existence or enforceable (in cases of "double sale", the second sale can be set aside if the second buyer is shown to have had prior knowledge of the first sale).

### ***The mistake she made***

Ms B should have pushed for transfer to her Company C as soon as the first sale agreement was signed. She seems to have assumed that the agreement itself was all she needed – a fatal mistake.

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## **Mixed Use Properties: What Rates Must You Pay**

Municipalities may levy rates on properties by valuing them and then applying a rate to them based on categories of permitted or actual usage, with "residential" properties traditionally attracting lower rates than "commercial", "business" and "industrial" properties.



What happens though when you own a mixed use property?

Property owners will welcome a recent Supreme Court of Appeal ruling in a dispute around the rates levied on a 10 storey building zoned and used for multiple permitted uses, and which had 9 residential floors above some shops on the ground floor.

The municipality's rates policy allowed it to levy rates according to "permitted" usage, and it accordingly levied rates on the total valuation of the building under its higher "business" rate without making allowance for the actual residential usage of much of the building.

The Court, confirming that the Valuation Appeal Board had been correct to change that and rather make an apportionment of the building valuation, held that –

1. Where a property is being used for "multiple permitted purposes", the municipal valuer must categorise the various uses and apportion the market value of the property between them,
  2. The municipality must then apply the tariffs for those categories to the apportioned values.
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## Directors – Environmental Law And Your Increased Personal Liability Risk

Government and our courts are serious about protecting the environment, and NEMA (the National Environmental Management Act) is being strictly enforced.



A new amendment to NEMA provides that directors (and members of CCs) are now **jointly and severally liable** “for any negative impact on the environment, whether advertently or inadvertently caused by the company or close corporation which they represent, including damage, degradation or pollution”.

### ***Your risks are high***

You risk **both** personal liability in a monetary sense (including the cost of remedial action which could well be substantial) and criminal prosecution, for which the penalties are severe – fines of up to R10m and/or 10 years’ imprisonment.

Note: NEMA also provides strong protection for whistle-blowers – see the next article “Whistle(Blowing) While You Work” for more.

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## Whistle(Blowing) While You Work

***“The fostering of a culture of disclosure is a constitutional imperative as it is at the heart of the fundamental principles aimed at the achievement of a just society based on democratic values” (Labour Appeal Court, case below)***



The “Whistle-blower’s Act” (more correctly the PDA or Protected Disclosures Act) encourages employees to disclose unlawful or irregular conduct by their employers or fellow employees (in both the public and private sectors), without fear of reprisal.

### ***What the Act requires***

The full requirements for protection as set out in the PDA are complex so it is essential to take specific legal advice, but in brief summary, the requirements for a “general protected disclosure” are -

- It must be made in “good faith”,
- The employee must reasonably believe that “the information disclosed and any allegation contained in it are substantially true”,
- The employee cannot make the disclosure for personal gain, “excluding any reward payable in terms of any law”,
- “In all the circumstances of the case it [must be] reasonable to make the disclosure”.

### ***The mining engineer who blew the whistle***

A case recently before the Labour Appeal Court illustrates -

- An engineer employed by a mining operation as a “project superintendent” was, amongst other duties, responsible for maintaining health and safety standards,
- He was dismissed following a disciplinary hearing which found him guilty of failing to obey a reasonable instruction to return to work after a period of sick leave,
- A local newspaper published an article based on his media report to the effect that the mine had inadequate measures in place to address the water pollution that its mining operations had caused,
- The Court, finding on the facts that this disclosure was protected both in terms of the PDA and in terms of NEMA (the National Environmental Management Act), ordered retrospective re-instatement of the engineer with full back pay.

### ***A twist: environmental risks***

An interesting twist relevant to this case is that NEMA both -

- Imposes liabilities on “managers, agents and employees for environmental transgressions committed by their employers”, and
- Provides whistle-blowing protection to anyone (not just employees) for good faith disclosure of information on environmental risks “in the public interest and in the interest of protecting the environment”. Again, specific requirements and procedures apply, so take full advice in each case.

### ***The other side of the coin: Getting it wrong with Facebook***

Next month we'll look at another case where an employee's dismissal was confirmed as fair after he used Facebook to make disclosures about health hazards in a hospital, but did so unreasonably and outside PDA's requirements and procedures.

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## **Immigration Regulations – Two Requirements Postponed, But Apply Now**

Home Affairs have announced a postponement to 1 June 2015 of two of the new rules relating to children, namely the Unabridged Birth Certificate requirement and the requirement for written permission from both parents/guardians authorising a child's travel.

With reports of major delays in the Home Affairs system, if you don't have Unabridged Birth Certificates for all your children, apply for them **now** – whether or not you have any future travel plans in mind.



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## **Developers: New Health And Safety Construction Regulations**

Anyone involved in construction work, including developers and other “clients”, “designers” (architects, engineers, interior designers etc) and contractors, should familiarise themselves with the Department of Labour's new “Construction Regulations 2014” issued in terms of the



Occupational Health and Safety Act. These regulations currently apply to any construction that commenced after 7 February 2014 (earlier construction projects are affected only from 7 August 2015). They require formulation of health and safety plans, risk assessments, compliance with health and safety standards, and health and safety training.



### **Construction work permits and appointing agents**

Developers planning any project scheduled to commence on or after 7 August 2015 should also prepare now for two further requirements that will apply from that date to specified large construction projects -

1. They will need a "construction work permit" before starting construction, and
2. They will have to appoint an "agent" who must be a registered professional Health and Safety Agent (PrCHSA).

Non-compliance will risk both "stop work" orders and the imposition of penalties and criminal liability, and as your chosen PrCHSA will need time to prepare for the permit application (which must be lodged 30 days before you start work), don't leave this aspect of your planning to the last minute.

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### **The October Website: How To Reduce The Pain Of Queuing At SARS**

You can these days make your life a lot easier by interacting with SARS online for many things, but occasionally a personal visit to a physical branch is unavoidable.



Reduce the pain by checking SARS' website page "Find the Shortest SARS Branch Queue Near You" and following these steps –

1. Click on this link  
<http://www.sars.gov.za/Contact/Pages/Check%20the%20shortest%20queue.aspx>
2. If a Windows Security box pops up, click "Cancel"
3. Click on the link in "Step 1" to the "Branch Locator" page
4. Ignore the map, click on your Province in the black menu bar at the top e.g. "Eastern Cape"
5. Then click on your nearest branch in the same black menu bar e.g. "East-London"
6. "Best times to queue" is at the bottom of the page.

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