

Dear Client / Geagte Kliënt

## Newsletter

Welkom terug in die spreekwoordelike tuig vir 'n nuwe jaar.

May 2018 be a prosperous year for all of our clients, associates, service providers and staff members.



HAPPY NEW YEAR

Dit is inderdaad 'n nuwe jaar, maar die eeu oue regsbegrip “voetstoots” wat as 'n verweer deur verkopers gebruik word om verantwoordelikheid vir gebreke in 'n koopsaak te ontduik, bly maar op die voorgrond.

There is no proper translation of the Dutch word “voetstoots” which literally means to push something by foot. It is speculated that the Dutch, whose legal system was based on ancient Roman Law, was cunning enough to escape the obligations of the Roman Law formality of “*traditio brevi manu*” where it was regarded that goods handed (literally by hand) to a purchaser by a seller presupposed that the seller guaranteed that the item sold was useful for the purpose such item was intended for.

Deur die item dus nie met die hand te oorhandig nie, maar dit bloot met die voet na die koper te stoot, kon 'n verkoper dus die verweer opper dat hy sodoende geen waarborg met betrekking tot die verkoopte saak aan die koper gegee het nie. Die koper moes verlies neem dat die koopsaak gebrekkig was en dat hy derhalwe self die item wat verkoop word moes ondersoek vir gebreke.

The term “voetstoots” is loosely translated by the expression “as is” albeit the latter is normally used in conjunction with “voetstoots” as an explanation of the foreign term.

Die verweer vervat in die voetstoots begrip kan egter nie gebruik word ten opsigte van gebreke wat willens en wetens deur die verkoper verberg was en nie aan die koper geopenbaar is nie.

Examples of latent defects for which the voetstoots defence would not be appropriate in real estate scenarios would be amateurish attempts to repair roof leaks or rising damp as well as propped up foundations. Unfortunately, the proof that a particular defect was latent in nature will rest upon the purchaser where fixed property was sold on a “voetstoots” basis.

Voetstoots klousules word steeds deurlopend gebruik in alle vorme van koop en verkoop kontrakte en het deur die jare al vele kopers letterlik duur te staan gekom, veral by verkoop van vaste eiendom, elektronika en meganiese toerusting.

With the introduction of the Consumer Protection Act (CPA) the common law defence of “voetstoots” was taken away from suppliers of goods to the public even where such supply consisted of fixed property such as a house, factory or commercial building. This was widely welcomed but unfortunately led to the belief by many that the voetstoots clause has no further application.

Slegs die verkoop van goedere en vaste eiendom deur vervaardigers, beleggers, spekulante, handelaars, bouers en ontwikkelaars “in die gewone loop van sake” word deur die Wet op Verbruikersbeskerming uitdruklik uitgesluit as transaksies waar daar nie staatgemaak mag word op die voetstoots klousule nie. In sulke gevalle sal gebreke geag word die verkoper se verantwoordelikheid te

wees en hy / sy sal dit moet regstel, vervang of skadeververgoeding aan die koper betaal, na gelang van die geval.

If you are therefore in future contemplating to purchase any property (including fixed property) from anyone who is not an investor, manufacturer, speculator, trader, builder or developer and the agreement contains the word “voetstoots” be sure to remember another old Roman Law saying of “*caveat emptor*” as you will not be protected by the CPA!

Die Romeinse regstelsel het deur die begrip “*caveat emptor*” bloot die verpligting op die koper geplaas om ekstra versigtig te wees om redelikerwys seker te maak dat die koopsaak inderdaad voldoen aan die koper se verwagtinge. As hy versuim het om dit te doen, kon hy hom nie op die reg beroep om hom van hulp te wees nie.

We trust that this look into the history of our legal system may have some benefit for you in time to come.

Groete / Regards.

**Hennie & Eberhard**



## Deposits and Penalties in Sale Agreements

Quite often in practice we come across offers to purchase or sale agreements of immovable property containing a clause which makes provision for non-refundable deposits. The same sale agreement usually contains a breach clause which stipulates that, in the event of a breach of contract on the part of the purchaser, which breach is not rectified within a specific period of time, the seller can cancel such agreement and retain all amounts paid by the purchaser in respect of the purchase price, including the deposit, as a penalty for damages suffered by the seller. Daniel Van Zyl explains...

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## Verkopers en Verhuurders : Is jou eiendomsagent geregistreer?

Mediaberigte dui aan dat tot soveel as 50 000 eiendomsagente sonder die verpligte Getrouheidswaarborgsertifikate praktiseer. Dit kan wees dat heelwat agente bloot ophou praktiseer het. Dit is ook moontlik dat die agent wat jou huis verkoop het of verhuur het (of dit nou opsetlik of onwetend is) nie meer by die Raad op Eiendomsagentskapaangeleenthede as 'n agent geregistreer is nie.

Hoe raak dit jou as verkoper of verhuurder? Ons kyk ook na hoe dit die agent raak. Dit is van uiterste belang vir 'n agent om toe te sien dat sy Sertifikaat jaarliks hernu word. Ons kyk ook na die gebruik van elektroniese bevestiging van registrasie met behulp van EAAB se PrivySeals.



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## Plot-and-Plan: Great Option, Just Beware the Building Deadline

There are many benefits to the “buy and build” option when you decide to buy a house, but they come with some important cautions.

One of them is that buyers who fail to build on their plots by deadline risk penalty levies and/or buy-back (retransfer) clauses. We discuss a recent SCA case illustrating both the risk to buyers of a buy-back clause, and the need for developers to beware of losing their claims through prescription.

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## Wie ry aan die pen? BTW Bedrog en die vonnis van 25 Jaar

Die meeste hardwerkende en eerlike belastingbetalers moes al met groeiende frustrasie wag voordat SARS selfs die kleinste terugbetaling aan hulle magtig. Daarom sou daar 'n mate van genoegdoening wees met die nuus dat drie



maatskappydirekteure stywe vonnisse opgelê is vir belastingbedrog.



Oor 'n periode van drie jaar het hulle 198 valse BTW opgawes ingedien. Hulle het op bedrieglike wyse 'n totale bedrag van R216 miljoen van die staatskas gevorder. 'n Effektiewe vonnis van 25 jaar gevangenisstraf is aan elkeen van die direkteure opgelê.

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## Our Directors



### Hennie van Zyl

DIRECTOR

021 180 4551 / 083 250 9501

[hvanzyl@vzk.co.za](mailto:hvanzyl@vzk.co.za)

[Full Bio →](#)



### Eberhard Kruger

DIRECTOR

021 180 4552 / 082 789 1706

[ekruger@vzk.co.za](mailto:ekruger@vzk.co.za)

[Full Bio →](#)

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VAN ZYL KRUGER INCORPORATED (REG. NO 2015/174073/21) (VAT NUMBER 413 0273 172)

# VZK

[www.vzk.co.za](http://www.vzk.co.za)



Suite A4-2, Avanti Building, South Block,  
cnr Carl Conje Drive & Bill Bezuidenhout Avenue, Bellville, Cape Town

[info@vzk.co.za](mailto:info@vzk.co.za) | Reception: 021 180 4550 | Fax: 021 180 4540

DIRECTORS: H L VAN ZYL (B.PROC); E S KRUGER (B.COMM LLB MPRE).  
ASSOCIATES: A S WEBSTER (B Iuris LL.B), ASSISTED BY: D VAN ZYL (LL.B); K BEZUIDENHOUT (LL.B LL.D).  
CONSULTANT: J A L VAN ZYL (B.JURIS LLB); PRACTICE MANAGER: F BRAVENBOER (NDIP FIS).