

Dear Client / Geagte Kliënt

## Newsletter

*In ons praktyk kry ons gereeld te doen met die interessante veld van opsies, voorkoopregte en verbodings op vervreemding.*

Jan en Alleman vind hierdie begrippe redelik verwarrend en daarom verskaf ons graag 'n kort opsomming van elkeen van die verskynsels, soos dit spesifiek toepassing het op transaksies rakende onroerende eiendom.



- **Option / Opsie:**

Generally, an option means a written document in terms of which a registered owner agrees to sell a specific (or determinable) fixed property to the holder of such option at a specific (or determinable) price within a specific (or determinable) period of time upon specific terms set out in such document (or determinable in terms thereof) at the election of the holder of the right. This type of option, which is fairly common, is known as a call option and the grantor of the option would be legally obliged to sell the property to the holder if he or she elects to exercise such exclusive right.

Lesser well known is what is the type of option known as a put option. In the latter case the potential purchaser agrees to purchase the specific property (or determinable property) from the registered owner at a specific (or determinable) price within a specific (or determinable) period of time upon specific terms set out in such document (or determinable in terms thereof), also at the exclusive election of the holder. In terms of the put option the grantor (purchaser) of such option is obliged to purchase the property from the holder if the option is property exercised by the land owner.

As stated, both types of options with regards to fixed property have to be in writing to be legally enforceable. Options can however not be registered as such against the title deed of a property unless it is dressed up as either a first right of refusal or a restriction of alienation.

Options are most commonly used in connection with lease agreements or prospecting contracts.

- **First Right of Refusal / Eerste Reg van Weiering:**

Hierdie reg is nou verweef met die gedagte van 'n opsie, behalwe dat die houer van die reg dit nie op eie inisiatief kan uitoefen, soos in die geval van 'n opsie nie. Dit bied aan die houer van die reg 'n voorkeur om 'n eiendom aan te koop indien die eienaar dit ooit wil verkoop. Dit is belangrik dat die eienaar nie verplig is om die eiendom aan die houer te verkoop nie, maar as die eienaar tydens die geldigheid van die reg sou besluit om te verkoop, moet die eienaar die reghebbende die eerste geleentheid gee om die eiendom te koop op die voorwaardes vervat in, of bepaalbaar in terme van die betrokke ooreenkoms.

Soos in die geval van 'n opsie, moet 'n ooreenkoms wat 'n eerste reg van weiering verleen in 'n skriftelike dokument vervat word om regtens geldend te wees. 'n Reg van weiering is egter nie teenoor derde partye (d.w.s 'n party anders as die kontrakspartye) afdwingbaar nie, tensy daardie reg teen die titelakte van die betrokke eiendom geregistreer was op 'n tydstip voordat die derde party se aanspraak ten opsigte van die betrokke eiendom gevestig het.

'n Eerste reg van weiering word dikwels in skriftelike huurkontrakte vervat. Dit is dus belangrik om te let dat ons Konstitusionele Hof vroeër vanjaar in die saak van Mokone v Tassos Properties CC and Another [2017] 25 CC 'n baie belangrike beslissing gemaak het. Ons gemene reg het voorheen bepaal dat nie-noodsaaklike (of kollaterale terme) in huurkontrakte nie outomaties hernieu word nie, in gevalle waar 'n huurtermyn outomaties verleng word, behalwe waar die partye duidelik aangedui het dat daardie terme ook moes hernu word. Die hof het by die oorweging van die saak verklaar dat hierdie posisie die verhuurder onbehoorlik bevoordeel en dat dit ondenkbaar is dat leke kan onderskei tussen wat noodsaaklik en kollateraal vir hul verhouding sou wees. Gevolglik het die hof bevind dat, tensy daar uitdruklik of stilswyende anders ooreengekom was, 'n reg van eerste weiering vorentoe inderdaad outomaties hernu word wanneer die huurkontrak hernu word.

- **Restriction on alienation / Verbod op vervreemding:**

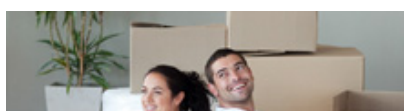
Such prohibition can only exist between contracting parties where the terms are contained in a notarial agreement registered against the title deed of the subject property. It has the effect that a landowner is barred from registering a sale, a mortgage or any transaction affecting the ownership of that property in the Deeds Office unless those measures imposed in favour of the holder in the notarial agreement are proven to have been met.

In most examples, the restriction is imposed to ensure compliance with rules of some controlling authority. An owner of property in a town house complex can for instance not sell his property unless the home owners' association has confirmed that all levies have been paid and that the purchaser has agreed to be bound by the constitution of such association. In another example, a farmer cannot sell a part of his farm without proof that the purchaser has enlisted for rights to water with the controlling irrigation scheme.

Such prohibitions are often used by attorneys when drafting documents to protect the rights of option holders or longer-term tenants who do not qualify for the statutory protections provided by statutes such as the Alienation of Land Act or of the Leases of Land Act. In this regard always keep in mind that when registering a restriction against alienation that the existing mortgagor will have to consent thereto in which case it will always insist that the holder of the right is to waive such rights in favour of the mortgagor in accordance with a non-prejudice clause.

Groete / Greetings

**Hennie & Eberhard**



## Life Partnership Agreements

Cohabitation refers to people who, regardless of gender, live together without being



validly married to each other and is also referred to as a common law marriage or a life partnership. However, cohabitation is not recognised as a legal relationship by South African law as there is no law that regulates the rights of parties in such a relationship.

Because their relationship is not recognised by South African law as a marriage, they do not have the rights and duties married couples have, regardless of the duration of the relationship. . . .

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## Verkoop jy jou eiendom oor die Feesseisoen? Drie wenke vir 'n gladde oordrag

Die Feesseisoen kan 'n goeie tyd wees om eiendom te koop en te verkoop.

Of jy nou 'n koper of verkoper is, ons praat hier van 'n belangrike en waardevolle bate – waarskynlik die belangrikste bate waaroor jy beskik. Dit is belangrik vir beide partye om seker te maak dat die proses sonder komplikasies verloop en dat die oordrag so vinnig en professioneel moontlik afgehandel word.

Ons kyk na drie belangrike aspekte.



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## Die Reg Van Toepassing Op Jou Huwelik

Daar is baie paartjies wat 'n droomhuwelik oorsee wil sluit. Daar is ook Suid-Afrikaners wat oorsee werk en terugkeer om in Suid-Afrika te trou. 'n Mens moet dan duidelikheid hê oor watter regstelsel op jou huwelik van toepassing gaan wees. Klop by jou prokureur aan om duidelikheid hieroor te kry.

### *Wat is ter sprake?*

In Suid-Afrika is die verstekposisie met 'n huwelik een van in gemeenskap van goedere. Dit is dikwels nie die gepaste opsie nie.

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## Don't Drink and Drive! The Legal Limits, the Risks, and Advice if Arrested

The authorities will no doubt once again turn the Festive Season into the Season of Roadblocks.

We all know we shouldn't drink and drive, but perhaps it's good to be reminded of what the blood and breath alcohol limits are, the penalties you face if you're caught, and of just how easy it is to avoid all that angst and risk.



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