



Biccari Bollo Mariano Attorneys

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Property Law Matters



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BBM at the Forefront

Congratulations to Nicci Sauli-Koren, our Head of Conveyancing, on being appointed to the committee of the Women's Property Network (WPN). WPN is a national organization where women are able to share information and develop business relationships relating to property. The organization is countrywide, and has a membership exceeding 500. They are dedicated to advancing the success of women in the field of property.



Agents Beware!

CASE LAW

Kovacs Inv 724 (Pty) Ltd v Marais

This case deals with issues that we all come across very often in property transactions and it is essential that we all take note of it.

The Seller applied to the High Court for an order declaring a written agreement of sale for immovable property to be of no force and effect due to the Purchaser's alleged non-fulfillment of the suspensive condition.

The facts of the case are that the Purchaser had only secured partial fulfillment of the suspensive condition in that he had obtained a bond grant for a lesser amount than the amount stipulated in the agreement.





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The Purchaser contended that the Seller's conduct in proceeding to implement the sale constituted an acceptance that the suspensive condition had been fulfilled and that the Seller had waived any non-fulfillment of the suspensive condition.

The High Court held that there had not been a waiver and therefore the agreement of sale had automatically lapsed when a bond for the full required sum was not timeously obtained.

The matter was taken on appeal and the Supreme Court of Appeal held that the change to the quantum of the loan approved by the bank was not a waiver of the suspensive condition but an amendment or alteration of the agreement and such amendment or alteration was contrary to the provisions of the Alienation of Land Act as it was not in writing. The agreement had therefore lapsed.

This case shows how important proper fulfillment of any suspensive condition is! It is imperative to ensure that all amendments are done in writing and signed by the parties or their agents authorized in writing thereto.

Problems with Local Authorities

You are all no doubt aware of the many issues relating to poor and/or lack of service delivery on the part of many of the local authorities and in particular the City of Johannesburg. In this regard, the Property Law Committee of the Johannesburg Attorneys' Association (of which Nicci Sauli-Koren is the chairperson), has commenced with monthly meetings with the representatives of the City of Johannesburg to deal with these issues and hopefully resolve the problem. Should there be no change within a reasonable period, the Johannesburg Attorneys' Association has authorized legal action against the local authorities, if necessary.



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Opportunity to Save on Tax

A further reminder of the tax break that is available to owners who own their PRIMARY RESIDENCE in a company/cc/trust and who now wish to transfer same into their personal names.



If owners take advantage of this tax break, they will be able to transfer the property without paying Transfer Duty, Capital Gains Tax or secondary tax on companies (“STC”) on such transfer. Note, however, that conveyancing fees and deeds office fees will still be applicable.

Be aware further, that should your primary residence have a bond registered over it, it would be prudent to first contact the bondholder to advise them of your intention and to ascertain what their requirements will be.

This tax break is available until 31 December 2011 and will benefit you when, in due course, selling the property, as any capital gain accrued to you will be reduced by the R 1.5 million primary residence rebate. In addition, you will avoid the Secondary Tax on Companies which would apply when the company or cc sells the property and wants to distribute the proceeds to the shareholder/member.



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Title Deeds and Diagrams



It is always important to stand out in your profession and to have a reputation of excellence in your field, and in this regard, a good estate agent should always obtain copies of and study the relevant title deed and diagrams of any property they wish to market.

If the title deed and diagram are studied, the purchaser may be properly advised of any restrictions or servitudes pertaining to the property as well as being informed as to any unexpected irregularities and discrepancies in the size and even the shape of the property.

Electronic Deeds registration Bill

A proposed electronic deeds registration system will come into effect within the next 5 years.

A Bill has been drafted in this regard and is now available for comments. Should you wish to obtain a copy of the Bill you may contact Elna Buys on ebuys@bbmlaw.co.za.



The Property Team



Seated: (left to right) Kelly Northmore (Dbn); Nicci Sauli-Koren (Jhb); Dave Freeman (Pta & Jhb); Jannie Cornelissen (Cpt)

Nationwide!



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