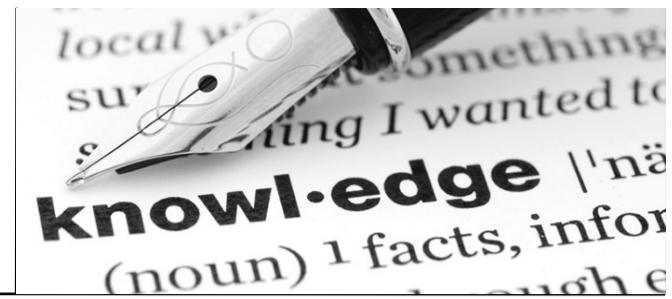


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# M.C. MONTHLY

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**ACTS CAUSE  
MAJOR CHANGE IN  
2016**

**CESSION OF A  
MORTGAGOR'S  
RIGHTS TO THE BANK**

**BONDS/VERBANDE:  
FREQUENTLY ASKED  
QUESTIONS**

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## Two acts that will cause a major change in 2016

The property law landscape will change significantly with the promulgation of two new acts, namely the Sectional Title Schemes Management Act (STSMa) and the Community Schemes Ombud Services Act (CSOSA).

Although the acts were promulgated in 2015 it has not come into operation as the regulations to both act were still in the proses of being drafted. In October 2015 the draft regulations were published and indications are that it will be finalised and the acts fully operational by April 2016.

### What are the main purpose and goal of the acts?

The Sectional Title Schemes Management Act (STSMa) provides for the dawn of a new era in sectional title management. Section 37 to 48 of the Sectional Titles Act are repealed by this act. All sectional title schemes are governed by this act (including a duet).

The Community Schemes Ombud Services Act (CSOSA) creates a new dispute resolution process in that the aggrieved party does not have to approach court to get a dispute resolved, but can use the services of the Ombud. Sectional Title Schemes, Home Owners Associations, Share Block Schemes and Time Share Schemes are all regulated by the act.

### What changes?

In terms of Sectional Title Schemes Management Act (STSMa) the major changes are:

1. The body corporate of each sectional title scheme is obliged to establish an administrative fund and reserve fund. Gone are the days where a special levy is instituted every time major maintenance needs to take place.
2. The body corporate must also file a maintenance plan in which it is set out when and how maintenance will be done.
3. The body who collects the levies (which will usually be a managing agent) is now obliged to have misappropriation insurance.
4. The Body corporate must have public liability insurance.
5. The representative of owners in the scheme may only receive 2 proxy votes to vote at a general meeting.
6. The interest that body corporates may charge on arrears levies is capped.

### The Community Schemes Ombud Services Act (CSOSA):

1. An advisory council is founded which will make recommendations and advise the minister on matters regarding the act.
2. The Ombud will adjudicate disputes between residents in a community scheme.
3. Each Community Scheme will be obliged to pay an annual levy to the Ombud.
4. An aggrieved party will also pay an application fee and adjudication fee to make use of the services of the Ombud.
5. Sectional scheme governance documentation will submitted to the Ombud's offices and the office will provide public access thereto.

In the next issue we will go into more detail of exactly what the requirements of the fund and the maintenance plan is as well as the functioning of the Ombud. We will also discuss the pro's and con's of these acts.



Written by/Geskryf deur: Sonja du Toit

## Die verhuurder se reg tot verbeterings deur die huurder aangebring / Compensation for improvements and attachments by tenants

Common Law principles dictate that all improvements made by a tenant on a leased property will become the property of the Landlord. This can be to the detriment of the tenant. The Common Law can however be amended by stipulating in the lease agreement which improvements will be allowed and when the tenant will be reimbursed.

If the landlord gave the tenant permission to make improvements and attachments as well as the indication that compensation will be paid, the tenant will be entitled to reimbursement. Some problems may arise if the tenant has not obtained consent from the landlord or that consent was obtained but no agreement was concluded for the compensation. There is a distinction between attachments and improvements for movable or immovable property.

In respect to movable property, the tenant will have an enrichment claim for the following improvements:

1. Necessary improvements - All costs and expenses
2. Useful improvements - Increasing the market value
3. Luxurious improvements - No claim

In respect of immovable property, the tenant will have an enrichment claim if he obtained permission from the landlord for the improvements. He may however only claim the costs if the improvements as set out above with regard to movable property. If the tenant has no permission there will be no claim.

The tenant does not have a lien over the property. The tenant can however remove the attachments provided that the tenant does not damage the property.

Gemeenregtelik behoort 'n eiendom asook alle verbeterings daarop aangebring aan die verhuurder. Voorgenoemde kan egter tot nadeel van die huurder wees. Om die gemeenregtelike posisie te verander moet die partye in 'n huurkontrak kontraktueel ooreenkom wanneer daar verbeterings aangebring en vergoed sal word.

Indien die verhuurder die huurder toestemming verleen het om aanhegtings en verbeterings aan te bring en om die huurder te vergoed, is die huurder op vergoeding geregtig. Probleme duik op indien geen toestemming verkry is nie of waar toestemming wel verkry is, maar sonder 'n onderneming om die vergoeding te betaal. Daar moet 'n onderskeid getref word tussen aanhegtings en verbeterings aan roerende of onroerende goedere.

Ten opsigte van roerende goedere, het die huurder 'n verrykingseis vir die volgende:

1. Noodsaaklike verbeterings - Alle onkoste en uitgawes
2. Nuttige verbeterings - Verhoging van markwaarde
3. Luukse verbeterings - Geen eis

Ten opsigte van onroerende eiendom, het die huurder slegs 'n verrykingseis indien hy toestemming hiervoor bekom het. Indien dit wel die geval is, kan die huurder eis vir verbeterings soos by roerende goedere. Indien daar geen toestemming is nie, het die huurder geen eis nie.

Die huurder het glad nie 'n retensiereg op die eiendom nie. Die huurder kan egter die aanhegtings verwyder mits dit nie die eiendom beskadig nie.



Written by/Geskryf deur: Nicole Alberts

## Cession of a mortgagor's rights to the bank / Sessie van 'n verbandgewer se regte aan die Bank

It is a standard clause in most banks' Home Loan Agreements that the Mortgagor cedes all his rights, pertaining to the property mortgaged, to the bank. This includes the right to collect rental income as well. In the case of Picardi Hotels Ltd v Thekwini Properties (Pty) Ltd ([2009] 1 All SA 471 (SCA)), the Supreme Court of Appeal held that this cession has the effect that an owner cannot institute any claims for arrear rental against his tenant as this right was ceded to the bank and he therefore does not have the locus standi (legal standing) to do so.

Mortgagors (owners) who have rented out bonded property should therefore examine their bond agreements carefully to establish whether any cession of rental is contained in the agreement and if this cession is conditional or not. If the agreement contains a cession clause, that owner would have to obtain a written mandate from the bank authorising him/her to collect the arrear rentals or conclude a recession agreement with the bank to enable him/her to proceed with any action against the tenant.

Dit is 'n standaard klousule in die meeste banke se Leningooreenkomste dat die Verbandgewer al sy of haar regte in verband met die eiendom waarop die verband geregistreer word aan die bank sedgeer. Dit sluit die reg om huurinkomste in te vorder in. In die saak van Picardi Hotels Ltd v Thekwini Properties (Pty) Ltd ([2009] 1 All SA 471 (SCA)) het die Appelhof beslis dat hierdie klousule die effek het dat 'n eienaar nie enige eise van agterstallige huur teen sy huurder kan instel nie, aangesien hierdie reg aan die bank gesedgeer is, en hy dan nie die nodige locus standi (reg om 'n regsdinging in te stel) het nie.

Verbandgewers (eienaars) wat hul eiendomme uitverhuur, waaroor daar 'n verband geregistreer is, moet hul Leningsooreenkomste noukeurig nagaan om vas te stel of daar enige sessie van huurinkomste in die ooreenkoms vervat is. As daar wel so klousule is, moet die eienaar eers 'n mandaat vanaf die bank verkry wat hom/haar magtig om die agterstallige huur in te vorder, of hy/sy moet weer 'n sessie ooreenkoms met die bank sluit.



Written by/Geskryf deur: Ramona Michael

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## RICH'S REVIEW

Wanneer ek aan Afrikaanse spanningskrywers dink kom name soos Deon Meyer en Karin Brynard by my op. Skrywers wat spanning kan neerpen. Ek het nog 'n skrywer om by daardie lysie te voeg. Irma Venter se Biografië oor haar meld sy was 'n joernalis – ek het daarop afgekom toe ek begin wonder waar sy aan al die karakters en stories te kom.

Soos Deon Meyer se karakter Bennie Griesel wat onomwonde onder menige lesers se vel ingekruip het met sy "menswees", begin Irma Venter met twee karakters, Alex Dercksen en Ranna Abramson. Haar debuut roman *Skoenlapper* skop af in Dar es Salaam waar die karakters ontrafel en ons leer dat Alex, 'n vryskutjoernalis en wat definitief 'n swerwers bestaan voer, meegesleur word deur Ranna. 'n Vryskutfotograaf. Ene met 'n geskiedenis. Sy is moeilikheid, of soos Alex dit stel, chaos.

Irma Venter skryf op 'n baie interessante wyse deur karakter hoofstukke te skep en heelyd die karakters met mekaar af te wissel en nuwes by te voeg. Sy kry dit briljant reg om elke hoofstuk met 'n senuwinger te laat. Ek kan haar 4 "S" boeke sterk aanbeveel. Dit is definitiewe lekker lees boeke. Sy skep die karakters in *Skoenlapper* en bring 'n kuberkraker wat baie herinner aan Stieg Larsson se Sallander na haar tweede boek, *Skrapnel*. Maar laat ek nie te veel se nie, ek was baie opgewonde om die derde boek *Sondebok* aan te pak en het gewens daar is nog iets na die vierde boek, *Skarlaken*.

Written by/Geskryf deur: Rich Redinger

## Bonds/Verbande

### Frequent Asked Questions / Gereelde Vrae en Antwoorde

#### WHAT IS A RATES CLEARANCE CERTIFICATE?

The transfer of property is not possible without a clearance certificate confirming that the Seller does not owe any money to the City Council. This ensures that the Purchaser can rest assured that the rates for the 24 months preceding the transfer has been paid in full. The conveyancer requests clearance figures from the City Council and presents the figures to the seller. The seller pays the amount due into the conveyancers account and the conveyancer pays it to the City Council. The Council will then issue a clearance certificate to the conveyancer.

#### WAT IS 'N UITKLARINGSERTIFIKAAT ?

Die oordrag van 'n eiendom is nie moontlik sonder 'n uitklaringsertifikaat wat bevestig dat die Verkoper nie enige gelde aan die Stadsraad verskuldig is nie. Derhalwe is die Koper verseker dat die skulde vir 24 maande wat die oordrag voorafgaan, ten volle betaal is. Die oordragprokureur vra die syfers aan by die Stadsraad, gee die syfers aan die verkoper en die verkoper betaal die bedrag in die oordragprokureur se rekening. Die oordragprokureur betaal die bedrag aan die Stadsraad en dan reik die Stadsraad eers die uitklaringsertifikaat uit.

Written by/Geskryf deur: Marike Snyman

## What our clients have to say / Wat ons kliënte sê

- Just wanted to officially and formally THANK YOU all for ensuring this matter till the end was finalised. You all handled it with the utmost level of professionalism. You guys were awesome. I look forward to us finally selling our retirement village land and you guys finally handling that transfer too.
- Baie dankie vir die uiters professionele diens verrig. Hierdie is my 2de transaksie met MC vd Berg en ek sal in die toekoms ook poog om aankooptransaksies (verkopers) te probeer beïnvloed om van julle dienste gebruik te maak. Julle is beslis my eerste keuse vir die tipe transaksie.
- I just want to thank you all for the great service we received, we appreciated it very much and will always keep M.C. VAN DER BERG in mind for future business.
- Thanks once again for your awesome service. I think we just take it for granted that we get exceptional service from MC vd Berg!
- Ek is baie beïndruk met julle flinke en professionele diens. Baie dankie! As ek weer 'n oordrag laat doen sal ek beslis weer van julle diens gebruik maak.
- I think that your service has been excellent, and in particular the regular status updates and anticipated timings which kept us well informed all through the process.
- I thank you all deeply from my heart for the efficient initiation and successful conclusion of my bond registration. The service that I received was really phenomenal and outstanding.

## SUDOKU

7	6			5			8
4				3		2	
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6		8				9	1
		7		4			5
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## BOERERAAT – BLOMKOOL

Kook blomkool in melk en plaas van water om die smaak te verbeter. Die melk kan dan vir die witsous gebruik word.

Sit 'n stukkie suurelemoenskil of bietjie suurlemoensap in water as jy blomkool kook. Dit hou die blomkool mooi wit.

## ETHICAL CODE

### 3. MANDATES

No estate agent shall –

3.1 offer, purport or attempt to offer any immovable property for sale or to let or negotiate in connection therewith or canvass or undertake or offer to canvass a purchaser or lessee therefor, unless he has been given a mandate to do so by the seller or lessor of the property, or his duly authorised agent;

## Werknemer van die maand

Marike Snyman het op 6 Januarie 2014 by die firma aangesluit as Kandidaat Prokureur. Sy het intussen al haar eksamens geslaag en kwalifikasies bekom om as volwaardige prokureur en notaris op te tree.

Sy is dan ook as prokureur en notaris by die firma aangestel vanaf 15 Mei 2015. Marike is spanleier van 4 aktetiktsters en haar sin vir regverdigheid en noukeurigheid asook haar sagte geaardheid maak haar gewild onder haar kollegas en ander werknemers.

Marike is getroud met Johan en hulle het nog nie besoek van die ooevaar ontvang nie.



Dis die begin van 'n wonderlike nuwe jaar met vele nuwe uitdagings. Die jaar het begin met negatiewe mense wat afbrekende en onvanpaste goed oor sosiale media sê oor ander mense. Dis onnodig en lelik. Maar dit was net enkeles. Hulle verteenwoordig beslis nie die meerderheid van Suid-Afrikaners soos wat die selfaangestelde SMP (Sosiale Media Polisie) wil voorgee nie. Die probleem is dat ons altyd dink dis die ander mense terwyl ons self ook skuld hieraan het.

Ek sien daagliks hoe mense (ingeslote eiendomsagente) facebook bladsye "like" waar die einde van Suid-Afrika aangekondig word, die 3 de wêreld oorlog met h toespraak deur een of ander bemoeisieke fanatikus ingewy word of die ineenstorting van die ekonomie en nog erger die eiendomsbedryf in die breë of meer spesifiek in die betrokke agent se area reeds laas week Woensdag om 14h35 begin het. Een van die onbedoelde gevolge van sosiale media is dat baie mense jou nou kan oordeel sonder dat hulle jou ooit ontmoet het. En dan wonder ons almal in ons stiltetyd waarom dit sleg gaan met ons syfers. Ons verkondig die aanvang van die dreigende apokalips met soveel passie aan dat enige siel wat nie reeds die skrik op die lyf gejaag is omdat hy/sy die koerant lees of Carte Blanche kyk nou sku is om enige eiendom te koop. Diesulkes sal eerder hul laaste geld onder die matras bêre om Bully beef en soja bone te koop soos net voor 1994. As jy in jou hart ter harte glo die einde van die ekonomie, eiendomsbedryf, Suid-Afrika en die wêreld is hier ... is jy 100% reg.... wel ten minste vir jouself. Waak net daarteen om dit as die waarheid te verkondig ter wille van die res van ons. As jy glo die toekoms hou wonderlike geleenthede in ten spyte van al die uitdagings (soos ek en die res van die MC span) ... is jy ook 100% reg.... ten minste vir jouself. Ons is al deur moeiliker tye. Ons sal hierdeur kom.

Vriende waak daarteen om deel te word van die immergroene negatiewe populêre diskoers dat alles op die rand van die spreekwoordelike afgrond staan. Wees die lig en baken van hoop wat ons nodig het. Ek wil afsluit met 'n aanhaling van Martin Luther:

*"Even if I knew that tomorrow the world would go to pieces, I would still plant my apple tree."*





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