

M.C. MONTHLY



The newsletter with a difference

Jul/Aug 2014

THE AUTHORITY TO ENTER INTO A DEED OF SALE.

MAGTIGING OM 'N KOOPKONTRAK TE SLUIT

How will the agent know if the person acting on behalf of a trust, company or close corporation is indeed authorised to do so? When dealing with a company, the Companies Act 71 of 2008 will be applicable. The source document will be the Memorandum of Incorporation (MOI) and the shareholders agreement. If the seller or purchaser is a company, the agent should ask for a resolution by the directors of the company authorising the individual director to act on behalf of the company. The MOI can also provide that a specific director may act on behalf of the company.

A person can enter into a deed of sale on behalf of a company to be formed as the directors of the company can ratify the agreement after the incorporation of the company, as provided for in the Companies Act.

Where the seller or purchaser is a close corporation the relevant legislation is the Close Corporations Act 69 of 1984. The powers of the members will be contained mostly in the participation agreement. The agent should request a resolution authorising the relevant member to act on behalf of the close corporation.

When dealing with a trust it is the Letters of Authority issued by the Master of the High Court and the trust deed that should be perused. It was confirmed in various court cases that the trust does not have a separate legal persona, and that the trustees act as joint administrators of the trust assets. Therefore all the trustees should sign a deed of sale or a resolution by all the trustees authorising one of the trustees to act on their behalf should be obtained.

If in doubt, contact us before the deed of sale is signed. We will gladly assist you in determining if the necessary authorisation has been given, and if not, how authorisation can be given.



How can an agent be sure of the person who acts in the name of a company, trust or close corporation? By the Companies Act, 71 of 2008. The source document is the Memorandum of Incorporation (MOI) and the shareholders agreement. If the seller or purchaser is a company, the agent should ask for a resolution by the directors of the company authorising the individual director to act on behalf of the company. The MOI can also provide that a specific director may act on behalf of the company.

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KOHABITASIE (SAAMWOON) VS HUWELIK

Paartjies wat saamwoon het nie outomaties dieselfde regte as getroude paartjies nie. Dit beteken nie dat hulle geen beskerming geniet nie. 'n Saamwoonverhouding kan gedefinieer word as twee mense, ongeag hulle geslag, wat as 'n "getroude paar" saamwoon, sonder dat hulle wettig getroud is. Alhoewel dit nie op 'n huwelik neerkom nie, kan dit in sekere omstandighede as 'n "vennootskap" beskou word, mits daar aan sekere vereistes voldoen word, welke moeilik is om te bewys. As dit bewys word dat 'n "vennootskap" inderdaad tussen hulle bestaan, sal hulle gelyke eienaars wees van alle bates. As hulle dit nie kan bewys nie, sal elke party se bates die alleeneiendom van so 'n party bly.

Paartjies wat saamwoon, word nie toegelaat om gesametlike bankrekeninge te open nie. Hulle het ook geen eis teen mekaar ten aansien van finansiële steun nie. Partye by 'n saamwoonverhouding kan kies om 'n saamwoonoreenkoms te sluit welke voorsiening maak vir 'n eerlike bespreking van hulle kwellings en sekerheid bied oor die gevolge van die verhouding. Dit is belangrik om daarop te let dat indien een van die partye sou sterf, die ander partye nie 'n outomatiese aanspraak het om te erf teen die boedel van die oorlede party nie indien die oorledene nie ook voorsiening vir sodanige erfposisie in sy / haar testament gemaak het nie.

As die saamwoonverhouding tot 'n einde sou kom, is die saamwoonoreenkoms slegs tussen die twee partye bindend, en is nie teen derde partye afdwingbaar nie. In die lig van bogenoemde is dit belangrik om te let dat alhoewel 'n saamwoonverhouding 'n sekere mate van beskerming bied, dit nie dieselfde regte en verpligtinge as 'n huwelik tot gevolg het nie.



COHABITATION VS MARRIAGE

Couples living together will not automatically enjoy the same rights as married couples. This does not mean that they are without recourse. Cohabitation can be defined as two persons, irrespective of their gender, living together as a "married couple", without being married. Although it does not constitute a marriage, it can in be seen as a "partnership", provided specific requirements are proven, which requirements are not easily proven. Should it be proven that a "partnership" does exist, they will be equal owners of all assets. If they are unable to prove this, each party's assets will remain the sole property of such a party.

Couples living together are not permitted to open joint bank accounts. They also have no claim against one another in respect of financial support. Parties to a cohabitation relationship may opt to enter into a cohabitation agreement. This allows for an upfront discussion of their concerns and provides certainty regarding the consequences of the relationship. It is important to note that should one of the parties pass away, the other party will not have an automatic claim to inherit against the estate of the deceased party, if the deceased party did not provide for such inheritance in his / her will.

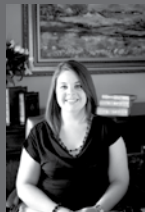
Should the cohabitation relationship come to an end for whatever reason, a cohabitation agreement will only be binding between the two parties, and will not be enforceable against third parties. In light of the above, it is clear that although a cohabitation relationship will provide some protection it does not provide the same rights and obligations as a valid marriage.

Written by/Geskryf deur: Annelé Odendaal

ONS PERSONEEL

Yolandi Fourie is sedert 1 Junie 2011 werksaam by die firma in die verbande afdeling. Sy is getroud met Jacques en hulle verwag hul eersteling ('n seun) in September.

Yolandi is een van die staatmakers in ons firma en haar aangename persoonlikheid en deeglikheid maak haar baie gewild onder die kliënte.



WAT ONS KLIENTE SÊ

- I would not hesitate to recommend your services by word of mouth due to the experience received from you.
- Baie dankie vir julle goeie diens. Dit was n plesier om met julle te kon deel.
- Thank you once again for the awesome service I received. I wish every body had your acumen and efficiency.
- Vir ongelooflike diens, sê ek dankie. Ook sal ek in die toekoms u aanbeveel by my vriende en familie.
- The service was really great 10/10 service.

Mcademy - Centurion

07 Aug 2014	09:00 to 10:30	ENG	Court cases, new legislation and trends applicable to the Real Estate Industry
	11:00 to 12:30	AFR	Regspraak, nuwe wetgewing en tendense van toepassing op die Eiendomsmark
14 Aug 2014	09:00 to 10:30	ENG	Court cases, new legislation and trends applicable to the Real Estate Industry
	11:00 to 12:30	AFR	Regspraak, nuwe wetgewing en tendense van toepassing op die Eiendomsmark
19 Aug 2014	09:00 to 10:30	ENG	Court cases, new legislation and trends applicable to the Real Estate Industry
	11:00 to 12:30	AFR	Regspraak, nuwe wetgewing en tendense van toepassing op die Eiendomsmark
26 Aug 2014	09:00 to 10:30	ENG	Court cases, new legislation and trends applicable to the Real Estate Industry
	11:00 to 12:30	AFR	Regspraak, nuwe wetgewing en tendense van toepassing op die Eiendomsmark
24 July 2014	09:00 to 11:00	ENG	Getting the parties to confess - Defects
	09:00 to 11:00	ENG	"Your punishment paying Tax - Capital Gains Tax"

Mcademy - Pretoria East

Practical training by Practitioners

During July and August the following topics will be presented :

FOREIGNERS - BUYING AND SELLING OF PROPERTY (PART 2 - SELLING OF IMMOVABLE PROPERTY)

In Part 1 of *Foreigners - Buying and Selling of property*, numerous requirements were set out for the acquisition of property. In part 2 the tax implications when selling a property is considered.

Income tax

Foreigners are liable to the South African tax authorities in respect of income earned from a South African source. For example, if a non-resident lets his property, the rental income will be subject to income tax. Fortunately, because of a number of double taxation agreements, the non-resident will only be taxed in South Africa.



Capital Gains Tax (CGT)

Non-residents will be liable for the payment of tax on the gain made when selling a property.

Withholding tax

Section 35 of the Income Tax Act obliges the purchaser of a property sold by a non-resident for R2 000 000.00 or more to retain a percentage of the purchase price, and pay it to SARS within 40 days of transfer.

BUITELANDERS - KOOP EN VERKOOP VAN EIENDOM (DEEL 2 - VERKOOP VAN ONROERENDE EIENDOM)

In Deel 1 van *Buitelanders-koop en verkoop van eiendom*, is verskeie vereistes uiteengesit vir die verkryging van eiendom. In deel 2 word die belastingimplikasies by verkoop van 'n eiendom bespreek.

Inkomstebelasting

Buitelanders is aanspreeklik teenoor die Suid-Afrikaanse belastingowerheid ten opsigte van inkomste wat van 'n Suid-Afrikaanse bron afkomstig is. As 'n nie-inwoner byvoorbeeld sy eiendom verhuur, is die huurinkomste onderworpe aan Suid-Afrikaanse inkomstebelasting. Die nie-inwoner sal gelukkig slegs in Suid-Afrika belas word in terme van 'n aantal dubbelbelastingooreenkomste.

Kapitaalwinstbelasting (KWB)

Nie-inwoners is aanspreeklik vir die betaling van belasting op die wins wat hulle maak wanneer hulle 'n eiendom verkoop.

Terughoubelasting

Artikel 35 van die Inkomstebelastingwet verplig die koper van 'n eiendom wat deur 'n nie-inwoner vir R2 000 000.00 of meer verkoop word om 'n persentasie van die koopprijs terug te hou en dit aan die SAID binne 40 dae na oordrag te betaal.

Written by/Geskryf deur: Nicole Rokebrand

BONDS - FREQUENTLY ASKED QUESTIONS

WHAT IS THE DIFFERENCE BETWEEN A FIXED INTEREST RATE AND A VARIABLE INTEREST RATE?

A fixed interest rate guarantees that your interest rate will stay the same for a specific period. This will protect you against any changes in the interest rate and help you to budget for your future instalments. If a variable interest rate is applicable to your bond, your interest rate will vary, depending on whether the prime lending rate increases or decreases. Contact your bank to find out which options are available to you.

WAT IS DIE VERSKIL TUSSEN 'N VASTE RENTEKOERS EN 'N WISSELENDE RENTEKOERS?

'n Vaste rentekoers waarborg dat u rentekoers dieselfde sal bly vir 'n spesifieke tydperk. Dit sal u beskerm teen enige veranderinge in die rentekoers en sal u help met die beplanning van u toekomstige paaiemente. Indien die wisselende rentekoers egter op u verband van toepassing is, sal u rentekoers wissel, na gelang daarvan of die huidige prima uitleenkoers verhoog of verlaag word. Skakel gerus u bank om uit te vind watter opsies is vir u beskikbaar.



Written by/Geskryf deur: Vernée Roets

MCADEMY ROOKIE TRAINING

MCademy, an initiative by M.C. van der Berg Incorporated, regularly hosts a two-day seminar for rookie estate agents. The seminar was designed by the training team with the goal of introducing a rookie estate agent with six months or less experience in the property market to the basics of the law of contract.

The seminar is presented over two days and certificates of attendance are given. The certificate is accompanied by a letter from the directors of M.C. van der Berg Incorporated, addressed to the principal, confirming the sessions attended for logbook purposes. Rookie training was introduced in January this year and received positive feedback from the principals and rookies.

Training is presented by the directors, Tiaan (M.C.) van der Berg and Sonja du Toit, who both have extensive experience in lecturing. Rich Redinger and Nicole Rokebrand contribute with hands-on knowledge of day-to-day property transactions.

The seminar is presented in English and limited seats are available. You are welcome to book your seat(s) at MCademybookings@mcvdberg.co.za, or visit our website, www.mcvdberg.co.za to book online, or contact Liza Louw on 012 660 6000.

The training will be hosted on 28/29 July and 27/28 August 2014 and will be presented free of charge.

Welkom by die nuwe verbeterde weergawe van MCMonthly. Van tyd tot tyd is dit nodig om weer te besin en gehoor te gee aan lesers se versoeke. Die nuwe formaat van die MCMonthly is daarop gerig om dit meer van 'n koerant as 'n prokureurs nuusbrieff te maak. Verskeie agente het ons al versoek om die MCMonthly aan hulle beskikbaar te stel sodat hulle dit aan hulle kopers en verkopers kan aanstuur.

Daarom sal die voorbladartikel voortaan fokus op die koper en verkoper se behoeftes, terwyl die ander twee artikels eiendomsagent gerig sal wees. Die gereelde rubriek oor vrae en antwoorde oor verbande sal ook weer maandeliks verskyn.

Ons sal voortaan maandeliks 'n artikel hê oor 'n liefdadigheidsorganisasie vir diegene wat dit graag wil ondersteun, 'n boereraat vir die wat nie moderne medikasie vertrou nie, 'n etiese aangeleentheid wat betrekking het op agente en prokureurs asook 'n artikel oor een van ons wonderlike personeel. Rich sal elke maand iets te sê hê oor 'n boek wat hy gelees het in Rich's review. Ons het oorweeg om die Sudoku weg te laat tot groot ontsteltenis van die Sudoku verslaafdes.

Hou asseblief ook 'n oog oor die MCademy datums. Agente kan aanlyn op ons webwerf bespreek vir die gewilde lesings.

Ons hoop julle geniet die nuwe verbeterde MCMonthly.



RICH'S REVIEW:

"And the Mountains Echoed" by Khaled Hosseini is one of those books that will make your heart sing. Hosseini is a brilliant story teller. The setting is Afghanistan in 1952, before and during the war. It tells the story of a brother and sister who are torn apart by poverty and the instinct to survive.

This moving story will leave most readers in tears (if you're a cowboy, you will at least have a lump in your throat). Hosseini explores the joys and sorrows of two separate families and joy of being reunited, albeit years later.

Hosseini is regarded by many critics as a Dickensian, comparing and elevating his style to that of Charles Dickens. I must agree. He is not one of those writers who produces books like a bakery, his novels are thought through and will have an immense effect on the reader. He is also the author of *The Kite Runner* (also made into a film) and *A Thousand Splendid Suns*.

And the Mountains Echoed – ISBN 978-1-4088-4243-0

Liefdadigheids Projekte

Ki-Deo voorsien 'n permanente tuisste vir kinders van alle onderdomme wat weggeneem is uit die sorg van hul ouers as gevolg van verskillende omstandighede.

Ki-Deo bestaan al vir 7 jaar en van ons personeel is nou betrokke met die kinders. Betrokkenheid behels nie net finansiële bydraes nie, maar ook om die kinders vir vakansies en "uit" naweke aan huis te neem en hul die liefde en versorging te bied van 'n stabiele oerhuis wat hulle nie elke dag ervaar nie.

Die Kinderhuis kan gekontak word by 012 664 2524 of gaan loer op hul webtuiste by www.ki-deo.co.za

Looney Law

Lawyer: "Trooper, when you stopped the defendant, were your red and blue lights flashing?"
 Witness: "Yes."
 Lawyer: "Did the defendant say anything when she got out of her car?"
 Witness: "Yes, sir."
 Lawyer: "What did she say?"
 Witness: "What disco am I at?"



Boereraad:
Blik Plan
 Bedek die rand van 'n verfblik met aluminiumfolie sodat die verf nie die groefie bemors nie. Die deksel pas dan netjies op die blik sonder dat verf teen die kante afloop.

ADVERTENSIE

TOIT'S Vleismark

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ETHICAL CODE

In terms of the EAAB code of conduct an estate agent is obliged to inform a prospective purchaser of any defect to the property that the agent is aware of. There is no obligation on the estate agent to do a proper inspection on behalf of the purchaser.

WHAT MAKES US UNIQUE?

Over the years we have launched several initiatives with the aim of adding to your success as agent. The following initiatives are unique to our firm and can be found on our website at www.mcvdberg.co.za.

M.C.Monthly and e-M.C.Monthly: A monthly newsletter in printed and electronic format. Register online if you would like to receive a monthly newsletter or send an e-mail to info@mcvdberg.co.za.

MC²Agent: A weekly e-mail sent to estate agents containing a short and powerful piece of legal advice. Register online if you would like to receive this weekly legal advice or send an e-mail to info@mcvdberg.co.za.

MCSellersGuide and MCPurchasersGuide: These guides inform purchasers and sellers respectively about certain risks they have to take into account before signing a contract to ensure that the transaction progresses smoothly.

MCSellersVideo and MCPurchasersVideo: A visual version of the guides above.

MCQuickGuide: A guide explaining the property transfer process and our feedback system.

MCBondGuide: A guide explaining the bond registration process to the mortgagor.



Website: www.mcvdberg.co.za

SUDOKU

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