



THE NEWSLETTER WITH A DIFFERENCE

M.C. MONTHLY

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GESEËNDE KERSFEES EN VOORSPOEDIGE NUWE JAAR

Our offices will be closed from 27 December 2017 and will reopen on 02 January 2018

Dit voel asof ek my oë net 'n paar maal geknip het sedert die begin van die jaar.

Baie dankie aan almal wat ons deur die jaar ondersteun het en deel was van ons opleiding.

Dit is lekker om terug te kyk oor 2017 en te besef dat, ten spyte van verskeie politieke en ekonomiese uitdagings, ons almal tog sukses behaal het.

My wens is dat al ons kliënte 'n geseënde Kersfees in die ware Gees sal hê, lekker sal rus, veilig sal wees en 'n wonderlike 2018 sal beleef.

- Tiaan



2017 was a tough year for me personally. I am sure many of our agents and clients share this sentiment.

What I learned from 2017 is:

- * Great works are performed not by strength but by perseverance.
- * It is ok not to be ok sometimes.
- * Positive thinking combined with positive actions lead to success.

Thank you for all the support during 2017.

My wish for you is that you experience the true Spirit of Christmas this festive season and may 2018 be a blessed year!

- Sonja



M.C. VAN DER BERG^{INC}
ATTORNEYS, CONVEYANCERS & NOTARIES

Your Property Attorneys



HUWELIKSKONTRAKTE: KAN EK EEN SLUIT NA HUWELIK?

Partye wat begerig is om in 'n huwelikskontrak te tree, moet hul ooreenkoms aangaan voor huweliksluiting. Die huwelikskontrak moet notarieël verly word deur 'n notaris en het die notaris drie maande om die huwelikskontrak te laat registreer in die aktekantoor.

Dit gebeur egter dat egpare vergeet van hierdie belangrike kontrak en na huweliksluiting 'n kontrak wil registreer. Dit kan ook gebeur dat partye oningelig was oor hul keuse van huweliksgoederebedeling en nou die kontrak wil wysig.

Die Wet op Huweliksgoedere 88 van 1984 skep 'n geleentheid vir egpare om hul huweliksgoederebedeling te wysig deur gesamentlik 'n hofaansoek te bring. Die vereistes waaraan die partye moet voldoen:

- 1) Daar moet grondige redes wees vir die verandering;
- 2) Kennisgewing van die verandering moet gelewer word aan die Registrateur van Aktes;
- 3) Kennisgewing moet ook gepubliseer word in die Staatskoerant en in twee plaaslike koerante; en
- 4) Kennisgewing moet gegee word aan alle krediteure van die egpare.

Die hof sal dan die aansoek oorweeg indien geen party of krediteur benadeel sal word nie.

Daar is dus 'n uitweg vir egpare wat hul huwelikskontrak na huweliksluiting wil registreer, maar die kostes daarvan moet in ag geneem word. Hierdie aansoek is duur aangesien dit 'n Hooggeregshofaansoek is. Indien die aansoek suksesvol is, moet die huwelikskontrak voor 'n notaris gebring word vir verlyding en moet die kontrak geregistreer word, wat natuurlik verdere kostes meebring.



Written by/Geskryf deur: Nicole Alberts

TRUST ASSETS AND ACCRUAL CLAIMS

A trust is a legal relationship that is created by a founder, in terms of which trustees are appointed to manage the trust assets to the benefit of the beneficiaries. The legal consequences relating to a trust is that the trustees cannot (except in exceptional circumstances) be held personally liable for any debts of the trust, and the trust assets do not vest in the trustees in their personal capacity as they act merely in fiduciary capacity.

Over the past decade the courts have dealt with the problem of preventative estate planning prior to divorce where one spouse alienates assets to a trust in order to minimize the accrual claim of the other spouse, but no definitive answer or approach has been laid down.

The position was clarified in the decision of the Supreme Court of Appeal (SCA) in REM v VM 2017. In this case the parties were married out of community of property, and their ante-nuptial agreement included the application of the accrual system. In order to hand down a decision the court had to decide if the 2 trusts, of which the husband was trustee, was an alter ego of the husband, and therefore the assets to be included in the calculation of the accrual claim.

The SCA confirmed the distinction between a sham trust and the instance where a litigant sought to "pierce the veneer" of a trust as the alter ego of a trust founder or trustee. The former implies that a valid trust never existed and the latter entailed a remedy aimed at combating the abuse of an existing trust.

The critical issue was whether the spouse was attempting to prejudice a patrimonial claim of the other spouse by administering the trust in such a manner as to amount to an unconscionable abuse of the trust form. The SCA found that in marriages to which the accrual system is applicable, and where a trustee-spouse transferred personal assets to a trust and dealt with them as if they were trust assets in a dishonest attempt to conceal them and thus prejudice the aggrieved spouse's accrual claim, these assets can be taken into account when calculating the accrual claim. Therefore the asset values of an alter ego trust may now be taken into account for purposes of calculating the accrual claim.



Written by/Geskryf deur: Ramona Michael

Frequently Asked Questions / Gereelde Vrae

WHAT IS A GUARANTEE?

A guarantee is a written undertaking by a bank to pay a specified amount (loan amount) to a specific beneficiary at an uncertain future date (registration) when specified events take place. In relation to property transactions, the specified events are usually the following –

- 1) Registration of the property into the name of the purchaser;
- 2) Registration of the purchaser's bond; and
- 3) Cancellation of the seller's bond.

The guarantees can be issued once the bond documentation has been signed by the purchaser and all the bond requirements have been met.

WAT IS 'N WAARBORG?

'n Waarborg is 'n dokument waarin 'n bank onderneem om 'n bepaalde bedrag geld (leningsbedrag) aan 'n begunstigde/s te betaal op 'n onsekere toekomstige datum (registrasie) by die plaasvind van bepaalde gebeurtenisse. Hierdie gebeurtenisse in 'n eiendomstransaksie is gewoonlik die volgende –

- 1) Registrasie van die eiendom in die naam van die koper;
- 2) Registrasie van die koper se verband; en
- 3) Kansellasië van die verkoper se verband.

Nadat die kliënt die verbanddokumente onderteken het en al die verbandvoorwaardes nagekom is, word waarborge uitgereik.



Written by/Geskryf deur: Chanel Ferguson

WHAT OUR CLIENTS HAVE TO SAY / WAT ONS KLIËNTE SÊ

- ◆ Just wanted to drop you a BIG Thank YOU Note for your professionalism and attendance to our sale matter - all the way. Thank you for informing us and keeping our heads up for the required actions. Shortly, Thank You for chasing everything for us in professional and Kind manner!!!
- ◆ Namens myself en Wessel wil ons graag hierdie personeel van MC van der Berg bedank vir hulle uitstekende kliënte diens, met die verkoop van ons eiendom. Hulle was deurentyd flink, vinnig en professioneel, en dit was 'n riem onder die hart om met hulle te kon handel. Ek dink dit is as gevolg van sulke goeie diens dat MC van der Berg se naam so bekend is!
- ◆ The feedback based on your performance has been outstanding. You have demonstrated absolute patience with my ongoing queries. And truth be told I am quite a difficult person always wanting ongoing feedback through the entire process. You responded almost immediately making me feel like a valued customer. It was an absolute pleasure doing business with your organization and will not hesitate to recommend your organization moving forward.
- ◆ Ek wil vandag die tyd vat om aan julle DANKIE te sê vir julle spoedige reaksie, glimlag oproepe en harde werk. Julle is altyd beskikbaar en ek sê vandag uit my hart uit BAIE DANKIE!!

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May this festive season be filled with peace and joy. Keep on spreading Kindness and Hope