

DECEMBER 2007 ISSUE OF LAWDOTNEWS

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FARMLAND DEVELOPMENT – OPPORTUNITY KNOCKING?

The subdivision of agricultural land has always been strictly controlled (to avoid fragmentation into farms too small to be viable), and is only valid if authorised by the Minister of Agriculture.

But the Supreme Court of Appeal has just held that the concept of “agricultural land” is fluid rather than static; and that the farmland involved in the case in question was no longer “agricultural” for the purposes of the relevant legislation.

The very technical reason for this finding relates to the transfer of the land from the jurisdiction of a transitional council to a permanent municipality. But what is important to farm owners and developers is that the Court held that the Minister’s permission was no longer required for subdivision.

This decision has led to conjecture that in practice all (or most of) South Africa’s farmland could now be up for subdivision, and (if applicable) rezoning, conversion to sectional title etc – subject only to local authority permission.

But take legal advice before committing yourself to anything in this regard. Although there could well be huge opportunities here, there are still areas of uncertainty. There is for example an argument that perhaps not all municipal areas are affected, there is talk of an appeal to the Constitutional Court; and anyway it seems that the Deeds Offices aren’t rushing to change their procedures just yet.

TRAVEL INSURANCE: CHECK THE SMALL PRINT!

Whether you travel for business or pleasure, insurance against travel losses – particularly for medical expenses and emergency evacuation home – is a good investment.

Many travellers rely on the automatic insurance cover provided by credit card companies when their cards are used to buy travel tickets, but take care – automatic cover is limited, and may not adequately meet your needs.

Even if you buy the optional extensions, always get a copy of the policy from the credit card company (often easily downloadable from its website) and check the small print. A good starting place is the schedules at the end of the policy. Also look out for clauses such as “special conditions”, “exclusions” etc. Don’t rely on any summaries or “abridged versions” you find. Check when the medical cover falls away (normally on your return to SA). Fully understand the procedures to be followed in the event of a claim.

It’s well worth the effort - the law will normally hold you to the terms of such documents whether you read them or not, and an uncovered emergency far from home could be a real disaster.

MORE DEMOLITION DANGER – GOODBYE GUEST HOUSE.....

The High Court earlier this year ordered the owner of a guesthouse to demolish one building, and partially demolish another, on the application of an aggrieved neighbour – and subsequent attempts by the owner to obtain leave to appeal to the Supreme Court of Appeals (and thereafter via the Constitutional Court), have failed. The owner now has two months to demolish.

The Courts have discretion to order payment of damages in place of demolition in certain cases, but in this case the Court held that the “continued enjoyment of the privacy of those living as neighbours” would be destroyed unless the buildings were demolished. Moreover, because the property’s title conditions restricted its use to one single dwelling for one family to occupy for residential purposes only, “any possible permission by the municipality to build or use buildings contrary to the conditions can not be lawful”.

Even if the municipality effectively allows, or fails to prevent, the construction and use of the building/s, you remain at risk. It may be coincidence, but municipalities around the country are suddenly threatening to enforce demolition of illegal structures – and to prosecute offenders. So don’t build without prior approval of building plans by the local authority.

THE ADVERT THAT PARODIED THE NATIONAL ANTHEM

In totalitarian countries, parodying the National Anthem for any reason could well result in a very unhappy encounter with the local secret police.

But the South African Advertising Standards Authority has held that you are free to parody our Anthem in your advertising, provided that “it is not mocked or belittled in any way and nothing derogatory or harmful is said about it or about South Africa”. So, the ASA have held, there is nothing wrong with a radio commercial featuring a voice singing about the advertiser but using the South African National Anthem melody – the punch line being “You don’t have to know all the words to get fast reliable Internet at the best price...”.

You will want to tread carefully here – it seems that a factor taken into account in reaching this decision was that only three complaints were received, the Directorate noting that “while the number of complaints is not a decisive factor, it does serve as a potential indication as to the level of offence perceived. In this case the number of complaints received further negates any argument of a public outcry.”

“NO LICENCE, NO DRIVE”: AND DON’T GIVE THE KEYS TO AN UNFIT DRIVER

Don’t allow anyone else to drive your car if you have any reason to doubt that the driver will exercise due care and attention.

The Supreme Court has just held a father liable for damages partly caused by the negligent driving of his sixteen year old son. The son took some friends for a drive in a farm bakkie, and, once on a public road, engaged in some “stunt” driving which resulted in a passenger sustaining serious injuries after being flung out of the vehicle. The Court held that the father himself was negligent, in that he gave “unrestricted access to the vehicle to a boy who lacked both maturity and judgment in circumstances where it should have been obvious that peer pressure might adversely influence his decisions in driving that vehicle”.

No doubt the father’s insurers declined cover because the son was unlicensed. So, when the request comes in “Mum/Dad, can I use the car?” - whilst your main concern is of course going to be the safety of your child, don’t forget there’s also a financial disaster in the offing.

SURVIVING SPOUSE MAINTENANCE: WHO IS COVERED?

When a spouse dies, the “surviving spouse” has a claim against the other spouse’s deceased estate for maintenance.

The Courts have previously held that “a party to a monogamous Muslim marriage” and the “surviving partner of a permanent life partnership” fall into the relevant definitions. Now, the High Court has extended that to a spouse married by customary law.

The Court held that a customary law marriage is valid even if it hasn’t been officially registered within 12 months (as required by the relevant legislation). But it still makes sense to register any customary marriage, sooner rather than later – an official certificate will make proving the existence of the marriage much easier.

WEBSITE OF THE MONTH: SAFE HOLIDAY TRAVELLING!

“In South Africa, one person is killed every hour in a collision”.

Don’t be one of them. Reach your holiday destination safe and happy this season (and get home from the year end function without an unpleasant detour to the local police cells!) with advice from Arrive Alive at <http://www.arrivealive.co.za>.

The site has a profusion of information on how to enjoy your travelling this holiday season, and how to journey safely. Topics such as: -

- Planning Your Trip
- Safe Driving Techniques
- Road Rage
- In Case Of Emergency
- In Case Of Accident
- Passenger Safety
- Drunken Driving
- (and many others.....)

are supplemented by links to other useful and interesting websites.

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