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HOLIDAY HOMES AND BIG TAX SAVINGS (IF YOU DO IT RIGHT)

A new amendment to the Transfer Duty Act could save you a lot of money when you next buy a holiday home.

No transfer duty will be payable provided that: -

1. The home is a unit in a sectional title scheme, and
2. The unit is currently part of a rental pool scheme, and
3. It will remain in the rental pool scheme.

Be careful here – to avoid duty, you must elect in writing that the house will remain in the rental pool scheme. The wording is important, so make sure that the agreement is professionally drawn and checked.

BE CAREFUL – "FULL AND FINAL SETTLEMENT" ISN'T ALWAYS FINAL

When you dispute a claim by a creditor, making a payment by way of a cheque marked in "full and final settlement" will not necessarily finalise the dispute.

The Supreme Court of Appeal has held that the *context* of the payment is also relevant – you must make sure that your tender of payment amounts to an *offer to settle the dispute*. To put it beyond doubt, the cheque should be delivered under cover of a lawyer's letter drawn to ensure that the claim is compromised immediately on deposit of the cheque.

And if you receive a cheque purporting to be a settlement payment, you cannot deposit it (even, as happened in the case in question, to be held in your attorney's trust account) without running the risk that it will be construed as acceptance of a compromise.

If you are a business, put a clear policy in place to prevent inadvertent deposit of such cheques by your staff. And if a cheque is nonetheless deposited in error, get immediate legal assistance; instant repayment may help in some cases.

DEVELOPERS AND BUYERS BEWARE: UNLAWFUL OCCUPIERS = COSTLY DELAYS!

When you buy property, be aware that any unlawful occupiers on or in it cannot be evicted without following the complex and lengthy procedures required by PIE (the Prevention of Illegal Eviction and Unlawful Occupation of Land Act).

Plan to carry your holding costs for even longer than previously, following a recent High Court refusal to grant an eviction order against 27 "desperately poor" unlawful occupants of a house: -

- The Court required the local municipality to be joined into the action, holding that it was for the municipality to provide alternative land or accommodation for the occupiers.
- The parties were ordered to engage in mediation to seek an acceptable solution
- That sounds OK in theory, but in view of the municipality's attitude that it simply has no suitable alternative accommodation, it could mean a very lengthy (i.e. costly) process!

COMPANY FINANCIAL REPORTS – MORE LIABILITY FOR INACCURACY

In terms of a new amendment to the Companies Act, anyone party to the "preparation, approval, publication, issue or supply" of any "financial report" (including but not limited to "financial statements") of the company is liable to criminal prosecution if the report is "false or misleading in a material respect".

Be warned - this considerably widens the existing liability (limited to directors and other officers of the company only) to ensure that "financial statements" (a much narrower definition) are complete and in compliance with the Companies Act. Tread carefully, and seek advice if you aren't sure whether you are at risk.

NEIGHBOURS AND THE NUISANCE FACTOR: WHEN WILL THE LAW HELP YOU?

If you are unlucky enough to have a "nuisance neighbour" (referred to perhaps in more colourful terms when the techno trance music from next door wakes you up at 2 a.m. for the third night running!) – what can you do about it?

The law will help you – but only if the nuisance is "excessive and unreasonable in all the circumstances". In striking a balance between your and your neighbour's general rights to use your respective properties as you wish, our Courts apply the principle of 'give and take, live and let live'.

Much media attention has been given to the Supreme Court of Appeal ruling last year that a Golf Club must protect house owners next to one of its holes from stray golf balls. The owners, held the Court, must "tolerate some ingress of badly hit golf balls"; but 875 balls in 28 months was excessive.

But be careful here – check the neighbours out before you buy. What is considered "excessive" in one set of circumstances (or by one Court) may be regarded as quite reasonable in others (or by another Court). Moreover, the hole in question was found to be "badly designed", and the cause of "safety concerns" – and the owners were not aware of this design defect when they bought. The outcome could well have been different had either of these two factors not applied.

DISCIPLINARY MATTERS AND THE NEW FAIRNESS TEST

The need for employers to ensure that they act with scrupulous (and objectively reasonable) fairness in all disciplinary matters has been underlined by a recent Constitutional Court judgment.

The Court held that a CCMA commissioner is not required to defer to the employer's decision as to an appropriate sanction for misconduct - the commissioner must simply "decide whether what the employer did was fair", after considering "all relevant circumstances" (which would include "the reasons for a particular rule being adopted and its importance in the running of the employer's business"). The commissioner cannot "consider afresh what he or she would do" - it is the employer's actions and procedures that are to be scrutinised for fairness.

Critically, the Court held that "the commissioner's sense of fairness is what must prevail". That's a wide and imprecise test, so make sure that your policies, procedures and disciplinary codes are properly formulated, communicated, and applied. It's also critical that in any CCMA hearing, all the relevant facts and arguments are properly put before the commissioner; you only get one shot at that.

THE SCHOOLIGAN FACTOR – IS BAD CONDUCT A LAWFUL BAR TO SCHOOL ADMISSION?

A record of misconduct on its own is *not* enough reason to bar a learner from admission to a public school. But the High Court, in coming to this conclusion recently, also held that schools may, in their admission policies, require a certificate of conduct from an applicant's previous school; provided that the requirement is

- In no way unfairly discriminatory, and
- Not used for an "ulterior purpose".

The certificate may lawfully be used in determining whether an admission might "present the danger of violence against other learners, teachers and staff at the school."

And it is essential that the process followed by the school in assessing the learner's record of conduct must be "procedurally fair", and the outcome must be "lawful and reasonable". There are grey areas here, so in doubt seek proper advice.

WEBSITES OF THE MONTH: COMPARE PRICES BEFORE YOU BUY!

If you don't have the time or energy to surf around a whole lot of websites looking for the cheapest airfare to Naboomspruit, or the best deal on a new broadband connection/SUV/hamster care guide/kettlebraai – get smart and go to a "price comparison" site. They do it all for you.

There's a lot of choice these days, and huge variation in price (one random example – a cordless phone at R1.873 from one supplier and R2.238 from another – a saving of R365!) - so it really does make sense to spend 10 minutes, before you make *any* significant purchase, on one or more of these local sites. Each has its own advantages and weaknesses – have a look at them all and decide which best suits your needs.

Try MyKindaPrices at www.mykindaprices.com and Hot Price at www.hotprice.co.za - they even help you find the best airfares and car hire prices. MyKindaPrices also gives direct comparisons with UK prices on some products.

Other sites with a wide general selection are JumpShopping at www.jump.co.za and PriceCheck at www.pricecheck.co.za.

BlueSting at www.bluesting.co.za specialises in electronic equipment, and RatesDirect at www.ratesdirect.co.za in "financial online comparisons", i.e. home loans, debt, credit cards and insurance (also broadband).

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