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SMOKE ALARM! PENALTIES HARSHER, NET WIDER

New smoking laws (likely to come into effect shortly), provide very substantially increased penalties - and the net has been cast much wider.

There are several stringent new requirements here, and at particular risk are

- Importers, exporters, manufacturers and advertisers (up to R1m fine), and
- Retailers, those owning or in control of “public places” (a wider definition now includes clubs, taxis, trains etc as well as restaurants and pubs), and employers in respect of places of work (fines of up to R50.000 and R100.000).

For others, your home may still be your castle, but you can’t smoke in it (nor allow others to) if it “is used for any commercial childcare activity, or for schooling or tutoring”. The ban applies also to any vehicle carrying children under 12.

Just smoking in the wrong place (too near a public doorway for example) could cost you R500. If all this motivates you to revive your New Years resolution to give up the habit, you’ll find help in the “Guide to Quitting” at the National Council Against Smoking website http://www.againstsmoking.org/NCAS_guide%20to%20quit.htm.

PIE LIMITED – A HOUSE IS NOT A HOME (NOT ALWAYS, ANYWAY)

When is a “Home” not a “Home”? That’s not a trick question - when you are trying to evict unlawful occupants, it is critical in deciding whether or not you have to comply with the complex and onerous processes required by PIE (the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act).

The Supreme Court of Appeal recently held that a holiday house is not a “home” covered by PIE. The concept “home”, held the Court, requires “an element of regular occupation coupled with some degree of permanence” – it doesn’t apply to “holiday cottages erected for holiday purposes and visited occasionally over weekends and during vacations, albeit on a regular basis, by persons who have their habitual dwellings”.

There is a fine line involved there which could have serious consequences for landlords letting out “holiday” accommodation for long periods, because the Court also accepted that a person may have more than one “home” simultaneously – when in doubt, seek advice.

.....AND NO PIE FOR OWNERS

The Supreme Court of Appeal has also made it clear recently that PIE cannot be used by an owner of property to defeat another party’s claim to a right of possession – in this case, by a builder seeking to restore a builder’s lien.

The main purpose of the Act, held the Court, is “to prevent evictions of the landless - a category of vulnerable persons which by its very nature excludes owners of land”.

“NON-INCOMING INCOME”: INTEREST-FREE LOANS ARE TAXABLE

The Supreme Court of Appeal has held that the right to use interest-free loans is taxable income – even though a loan itself (being the only money that actually “comes in” in a physical sense) can never itself be “income” for tax purposes.

As the Court put it: “in the modern commercial world, a right to retain and use loan capital for a period of time, interest-free, is a valuable right”.

DON'T LET A LOAN LOOK LIKE A DONATION!

When you loan money (or anything else of value for that matter) to another person, make sure that it cannot be construed as a donation. Although our law will generally infer that donation is unlikely as “people do not ordinarily part with their property for nothing”, the High Court recently confirmed that there is no actual *presumption* against donation in our law - so it will be up to you to prove that the money (or whatever) is repayable.

Put any loan agreement in writing – particularly where your relationship with the recipient is a close one, as it seems that, the closer the relationship, the more likely it is that the Court will view the disposal as a gift rather than as a loan.

THE MAY DAY NO SHOW

You cannot require an employee to work on a public holiday without an agreement to do so – for example the CCMA recently awarded 3 months' income to an employee unlawfully dismissed for failing to work on 1 May. And don't forget the “double pay” entitlement.

OBEY ALL ADMINISTRATIVE ORDERS! AND THE DEVELOPER WHO DIDN'T

You may be tempted to just ignore an administrative decision that you believe to be clearly wrong and invalid.

That's exactly what a property developer did in a recent High Court case, when it was served with “compliance notices” (in terms of “NEMA” - the National Environmental Management Act) ordering it to cease all construction on its properties.

The Court interdicted the developer from proceeding with construction, and hauled it over the coals for conduct “inimical to and seriously subversive of a sound and efficient system of public administration”. You are obliged to comply with such notices even if they are unlawful. Your remedy of course is to apply for the order to be set aside - in the case of NEMA for example, procedures are provided for objecting to notices, and you must follow these “internal” remedies before approaching the Courts.

The case also highlights the law's balancing act between our Constitutional rights to property on the one hand, and to an “environment which is not harmful to the health or well-being of the people” on the other. There is a clear message here to developers - the Courts will play their part in protecting the environment, and ignoring that could be a costly mistake.

SEA VIEWS AND THE DEMOLITION DANGER

A long-running dispute in the High Court, between neighbours in a seaside resort, highlights the need to comply fully with the National Building Regulations and Building Standards Act when building. If you don't, you face being ordered to demolish your dream house.

In the case in question, A's sea view was impaired by neighbour B's new house – which, says A, was built without properly approved plans.

B applied for an order that the house not be subject to demolition, but that he rather pay compensation to A. Instead, the Court has now set aside B's building plans and ordered the local authority to regularise the position - so B could still have to demolish his house.

Avoid disaster. *Before* you start to build, make sure that you are in full compliance with local height restrictions, building lines, any restrictive conditions in the title deeds, etc.

CHANGES TO FRINGE BENEFITS TAX AND SECONDARY TAX ON COMPANIES

The official interest rate for Fringe Benefits Tax has increased to 11% from 1 September 2007.

It is not (at date of writing) clear whether or not STC will be reduced from 12.5% to 10% (and, if so, when). Any changes in this regard could have important consequences for businesses considering the declaration of dividends, so take advice on the current situation.

UNLAWFULLY ARRESTED? DON'T DELAY IN CLAIMING

If you ever suffer the misfortune of being unlawfully arrested by the police (and it can happen to anyone), take legal advice immediately on suing for damages. In a recent case, the High Court awarded a 53 year old businessman R50.000 for unlawful arrest (and subsequent detention for 17hours), and a further R40.000 for assault during arrest and detention.

However don't delay in seeking advice:

1. There are tight deadlines for suing the State, and
2. If you have suffered any form of trauma, the earlier your attorney arranges for a proper medico-legal report, the more weight it will carry.

TRANSFER DUTY TRAP – CHECK THE VALUATION

Don't buy or sell property without first checking its new municipal valuation - media reports suggest that SARS is assessing transfer duty on municipal valuations wherever they exceed the actual purchase price. If the valuation is unrealistically high, get it sorted out *before* selling/buying.

WEBSITE OF THE MONTH: THE SME TOOLKIT

If you are an entrepreneur, you need all the help you can get to grow your business into the success you deserve it to be.

You'll find plenty of assistance on the new SME Toolkit South Africa website at <http://southafrica.smetoolkit.org/sa/en/index> - including software, business forms, how-to articles and on-line training in all aspects of establishing and managing small businesses.

As Sir Francis Bacon put it: "Knowledge is Power" – and on this site it's all free, so this really is an offer you can't refuse!

And don't neglect the "**Marketing and Sales**" section – it's easy to get bogged down in day-to-day operations, but the really successful businesses will always be those that excel at effectively marketing their products and services.

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