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PROPERTY SELLERS - CHOOSE YOUR OWN ATTORNEY!



When you come to sell your house or other property, you have the right to nominate your own attorney to attend to the conveyancing for you. Insist on doing so –

- It is essential that your rights be protected at all stages of the transfer; choose a conveyancer you can trust to do so with speed and integrity.
- It is irrelevant that the buyer normally pays the conveyancer (as part of the transfer costs). You carry more risk than the buyer, and there is nothing to stop the buyer from employing his/her own attorney to monitor the transfer on their behalf if they feel this necessary.
- Have your chosen attorney check the deed of sale **before** you sign anything. Regular readers of LawDotNews will understand just how easily things can go wrong – badly wrong – if the sale agreement is incorrectly or loosely worded.
- Don't ever let anyone pressure you into nominating a conveyancer not of your choosing.

NOTE FOR ATTORNEYS: Estate agents in advising a seller as to the nomination of a conveyancer must abide by Clause 7 of the Estate Agency Affairs Board's Code of Conduct ("Prohibition against Undue Influence") - follow the link from the [EAAB's website](#).

THE NEW B-BBEE THRESHOLDS, CODES AND PENALTIES – WHAT YOU SHOULD KNOW



Every South African business will be affected by the pending new amendments to the B-BBEE (Broad Based Black Economic Empowerment) Act, and by the new Codes of Good Practice. The benefits of complying are as great as the risks of not complying, so take advice in any doubt.

Turnover thresholds up

- **Exempt micro-enterprises (EMEs):** the annual turnover threshold for EMEs has doubled to **R10m** from R5m. If you qualify (to be confirmed annually by an affidavit as to both annual total revenue and level of black ownership), you are deemed to be a Level 4 contributor (100% recognition level). You will go up to Level 1 (the highest level) if you are 100% black owned, and to Level 2 if you are 51% black owned.
- **Qualifying Small Enterprises (QSEs):** the threshold for QSEs has been increased to **R50m** from R35m.
- **Large Enterprises:** Over R50m you are a "Large Enterprise".

The Codes

There is a lot of detail in the new Codes, to which a 12 month transitional period applies from 11 October 2013 - during that time you can if you wish elect to be measured on the previous (2007) Generic Scorecard, so take advice on specifics. These are the highlights –

- Sector Charters (currently operative in the agricultural, chartered accountancy, construction, financial, forestry, Information and Communication Technology, property, tourism and transport sectors) will continue to apply until amended.
- You will be scored now on 5 targeted elements (down from 7) totalling 105 points –
 1. Ownership (25 points)
 2. Skills development (20 points)
 3. Enterprise and supplier development (40 points)
 4. Management control (15 points)
 5. Socio-economic development (5 points)
- Elements 1, 2 and 3 are now "priority elements". QSEs must comply with element 1 (ownership) and also with either element 2 or element 3. Large enterprises must comply with all 3.

- “Subminimum” targets are set for parts of the priority elements, and you drop one level if you fail to meet them.

New penalties pending

Amendments to the B-BBEE Act which are at date of writing working their way through the legislative process provide for fronting in any form to carry significant new penalties –

- A fine of up to 10% of annual turnover for offending businesses, and
- Anyone implicated in misrepresentation of B-BBEE status (or of information in order to secure such a status) will risk criminal prosecution and up to 10 years’ imprisonment.

Also proposed is a new Commission to monitor and evaluate B-BBEE, and to investigate complaints of fronting or other breaches of the Act.

NOTE FOR ATTORNEYS: The new Codes of Good Practice are on the [DTI website](#).

Sector Charters are available on the [DTI website](#).

The Broad Based Black Economic Empowerment Bill, B42-2012 is downloadable from the [Government Information website](#) and version B42A-2012 from the same [website](#).

IT’S WEDDING SEASON, BUT BEFORE YOU TIE THE KNOT....



“Keep your eyes wide open before marriage, half shut afterwards” (Benjamin Franklin)

Whether or not you elect to follow the second part of Ben Franklin’s advice, be sure to follow the first - keep your eyes wide open when choosing which “marital regime” will apply to your marriage.

To ANC or not to ANC? That is the question

Do you or don’t you need an ANC (“antenuptial contract”)?

Firstly, it’s not an admission that you may divorce, so don’t fall into the trap of thinking “we don’t want to even think about divorce so no ANC for us thanks”. Not only do our divorce statistics make that a very short-sighted approach, but your choice now **also affects you both during your marriage and when one of you dies**.

Secondly, familiarise yourself with the three options that our law allows. The guidelines below are simplified and there are many factors to take into account - seek specific advice on the right option for your particular needs and circumstances. And don’t leave it to the last minute; you are going to be making important decisions here!

Your choices

1. Marriage in community of property

Your assets and liabilities are merged into one “joint estate”. Everything (with only a few specific exceptions) that you bring into, or accrue during, the marriage falls into this joint estate. You will need your spouse’s written consent for some important transactions. On divorce or death the joint estate is split equally between you, regardless of what each of you contributed to the marriage. And if one of you runs up debts or gets into financial difficulties, it is the joint estate that must pay. Your joint estate could even be sequestrated - you risk losing everything. So this option is likely to be unsuitable for many couples - and beware it is the default regime i.e. **you will automatically be married in community of property if you don’t specify otherwise in an ANC executed before you marry**.

2. Marriage out of community of property without the accrual system

Your own assets and liabilities, both what you bring in and what you accrue during the marriage, remain solely yours to do with as you wish. You don’t need your spouse’s consent for any transactions relating to them. You are not liable for your spouse’s separate debts and if your spouse’s estate is sequestrated you can claim your separate assets back (you will however need to prove that they are indeed yours). **Note that if you want to exclude the accrual system your antenuptial contract must specify accordingly**. Excluding accrual will be the right choice for some, but be aware that without accrual the poorer spouse (usually a spouse whose contribution to the marriage was more on the home-making side rather than financial) risks being

left destitute after many years of marriage.

3. *Marriage out of community of property with the accrual system*

Firstly, although this is generally regarded as the fairest and most popular option for modern marriages, it is not necessarily the best choice for everyone. As with the previous option, your own assets and liabilities remain solely yours, you don't need your spouse's consent for any transactions relating to them, and you can protect your assets from your spouse's creditors. On divorce or death however, you share equally in the "accrual" (growth) of your assets (with a few exceptions) during the marriage, as the table below illustrates –

Example: Asset split under the accrual system		
The calculation process	Your estate	Your spouse's estate
Assets at date of divorce/death valued at a total of R4,5m	R3,000,000	R1,500,000
Less: Assets brought into the marriage *	R2,000,000	R600,000
= Accrual (growth in value during marriage)	R1,000,000	R900,000
Difference in accrual	R1,000,000 - R900,000 = R100,000	
Split 50/50	÷ 2	
= Balance you pay to your spouse	= R50,000 (i.e. You each get R950,000 accrual)	
The Bottom Line The final split of the R4,5m total value at divorce/death	R2,000,000 (what you brought in) + R950,000 (your ½ share of the accrual) = R2,950,00	R600,000 (what your spouse brought in) + R950,000 (your spouse's ½ share of the accrual) = R1,550,000
* Values adjusted by the average increase in CPI		

(If the table above does not display correctly, please see the "online version" – link above the compliments slip)

Tailored ANCs, and a note for the long-married

- Regardless of which regime you choose, take advice on tailoring your ANC to meet your particular needs.
- If you were married before 1 November 1984, different laws apply – take advice for details.
- If you are already married and want to change from one regime to another, you may be able to – take advice on your specific circumstances.

NOTE FOR ATTORNEYS: The Matrimonial Property Act, no. 88 of 1984 is available on the Department of Justice [website](#).

See also the brochure "Marriage: The Legal Aspects" (with useful notes on the advantages and disadvantages of each regime) on the Law Society of South Africa [website](#).

BAD NEIGHBOURS, UNLAWFUL BUILDING, AND THE DEMOLITION REMEDY



"A bad neighbour is as great a calamity as a good one is a great advantage" (Hesiod, 700 BC)

Bad neighbours have it seems been troubling us since at least the days of ancient Greece. If two and a half thousand years later you are unlucky enough to have one, and if the particular calamity visited upon you by said neighbour (loss of a sea view perhaps) results from his/her unlawful building operations, take heart. Our law has a strong and effective remedy for you - a demolition order.

In an important new decision, the Supreme Court of Appeal has held that, *where the structure in question is an illegal one for want of approved building plans, the*

court – once satisfied that the relevant statutory prohibitions have indeed been breached – has no discretion and must order demolition. To do otherwise, held the Court, “would amount to the sanctioning of an on-going illegality and criminal offence”, regardless of the financial and other distress a demolition order may cause the owner (the house to be demolished in this case being worth some R8m). The only escape route for an owner seems to be to show that demolition would infringe on his or her constitutional right of access to “adequate housing” – a factor not applicable, held the Court, to the “luxury home” in this case.

Moreover the local authority in this case was, held the Court, “statutorily and morally duty bound to approach the court for a demolition order in order to uphold the law” – insist that your local council assists you by doing just that.

Note that a court will still have a discretion between ordering either demolition or some other remedy – for example an award of damages for an encroachment on your property – where “private” or “neighbour” law applies, as opposed to the “public law” illegality applicable to this case. The distinction can be a fine one, so take advice on the particular facts of your matter.

NOTE FOR ATTORNEYS: Judgment in the matter of *Lester v Ndlambe Municipality (514/12) [2013]* ZASCA 95 is on [Saflii](#).

THE NOVEMBER WEBSITES – YOUR WEDDING PLANNER 101



1. Before you do anything else, take legal advice as suggested in the article “It’s Wedding Season, But Before You Tie The Knot.....” above
2. Go to “A 13 step guide to planning your wedding” at <http://www.hitched.co.za/planning/13steps.aspx>
3. Download a checklist with supplier contact details from <http://www.theweddingdirectory.co.za/wp-content/uploads/Your-Ultimate-Wedding-Checklist.pdf>
4. Track your actual expenses against your budget with Women 24’s interactive “Budget Tool” downloadable from <http://www.women24.com/Static/BrideBudget.xls>
5. If you have a limited budget read “Planning a budget wedding with only R10,000” at <http://www.theweddingdirectory.co.za/planning-tools/wedding-questions-and-answers/can-you-plan-a-wedding-with-only-r10-000-and-can-it-still-be-original>

Have a Great November!

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