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KEEPING YOU IN TOUCH

LawDotNews



In this Issue

Your Holiday Season
Guide to House
Buying and Selling

Motorists Renewing
Licences – What To
Take with You

Body Corporate v
Nightmare
Neighbour: Court To
The Rescue

- *Harassment – it could be a ticket to prison.....*
- *..... and costly*

**Domestic Violence:
Report It!**

DECEMBER 2015

Thank you for your support in 2015.

Have a Wonderful Festive Season, and a Happy and Prosperous 2016!



YOUR HOLIDAY SEASON GUIDE TO HOME BUYING AND SELLING



“Buy land – they’ve stopped making it” (Mark Twain)

Selling or buying a house can seem like a complicated and confusing process but help is at hand! Have a look at this simple overview: “Buying or Selling a House – What You Need to Know” from the Law Society of South Africa on its website at <http://www.lssa.org.za/legal->

- *Applying for a protection order*
- *Police must pay for victimising a victim*

Property Professionals: Have Your Say Now On The Draft New B-BBEE Sector Code

- *Eligibility as an Exempted Micro Enterprise (EME)*
- *Eligibility as a Qualifying Small Enterprise (QSE)*

The December Websites: Some Year-End Snippets

- *Gift ideas for your clients*
- *Business Networking at the Year End bash*
- *"Oops I didn't mean to send that!"*
- *Track your lost or stolen smartphone*
- *Emergencies I: Install this app*
- *Emergencies II: Add ICE numbers to your address book*
- *Surviving the drought*
- *Travelling internationally? Here's the new visa concessions timetable*
- *Granting credit – new Affordability Regulations*
- *Domestic workers' wages up 1 December*
- *"Hangover Cures around the World"*

[practitioners/resources-for-attorneys/misc/public-information-brochures/misc/buying-and-selling-a-house.](#)

Just remember these important principles (familiar to regular LawDotNews readers) –

1. If you are the seller, you have the right to choose the conveyancer (the specialist attorney who will register change of ownership in the Deeds Office). Choose a conveyancer you can trust to act with both speed and integrity.
2. When buying into a complex, you are bound by rules and regulations imposed by either a Body Corporate if you are buying a sectional title unit or, if you are buying a separate title property in a complex managed by a Home Owners Association ("HOA"), by the HOA. Thus in a recent High Court case a homeowner in an equestrian estate was ordered to stop operating her seminar/lecture business because it breached her contractual obligation to the HOA to conform with local town planning laws. Read and understand all rules and regulations before you buy!
3. A lot can go seriously wrong with property transactions, and for many people your house is going to be your most important asset, so don't take any chances: **Agree to nothing until you have asked your lawyer for advice!**

MOTORISTS RENEWING LICENCES – WHAT TO TAKE WITH YOU



From 1st November, you can only register a vehicle, obtain or renew a vehicle licence or driver's licence, or register any change in your particulars or address, if you submit proof of –

1. **Your full names, date of birth and ID number**, by way of "any form of acceptable identification", and
2. **Your residential and postal address**, in the form of "any utility account". If the utility account is in someone else's name, you can lodge it together with an affidavit or affirmation from the other person declaring that you reside at that address. Anyone residing in an informal settlement can lodge "a letter with an official date stamp from the ward councillor confirming [your] postal and residential address".

These new rules apply to all motor vehicle and driver's licence transactions country-wide, but if you don't have standard identification and proof of address documents, contact your own local authority for details of what it will and won't accept.

BODY CORPORATE v NIGHTMARE NEIGHBOUR: COURT TO THE RESCUE



"His demeanour at this time was highly aggressive, flying his arms about and it was clear to me that he had to prevent himself from lashing out at me physically" (Trustee quoted in judgment below)

The irrational, aggressive and disruptive "Nightmare Next Door" owner is regrettably a well-known and much-disliked feature of all too many residential complexes. He or she makes trouble at every opportunity, attacking other owners and the body corporate's trustees with equal abandon.

What can you do about it? In sufficiently serious cases, our courts will come to your rescue, as a recent High Court decision illustrates.

Harassment – it could be a ticket to prison

- The owner of a sectional title unit harassed the board of trustees in his complex to such an extent that they obtained a court order prohibiting him from raising complaints, objections and the like with the trustees in any way other than through written communication to the secretary of the body corporate.
- Undeterred, he breached this order on at least 3 occasions, threatening for example to remove the trustees' roof tiles (so that, he said, they could feel what it feels like to live in a unit with roof leaks), and aggressively objecting to the way a trustee was painting some plant pots. It couldn't have helped

his case that the female trustees on the board seem to have borne the brunt of these attacks, and to have felt physically intimidated on at least one occasion – as evidenced in the quoted evidence above.

- Holding the owner to be clearly in contempt of the original court order, the Court sentenced him to 6 months' imprisonment. It suspended this sentence for 5 years on condition that the owner "does not harass or contact any member of the Board of Trustees personally, but must address all communication regarding complaints, grievances, proposals or commentary to the secretary of the applicant in writing".

..... and costly

Because it was the owner's "irrational and acrimonious behaviour" that necessitated the court action, the Court also ordered him to pay the Body Corporate's legal costs on the punitive attorney and client scale.

DOMESTIC VIOLENCE: REPORT IT!



"To afford the victims of domestic violence the maximum protection from domestic abuse that the law can provide"
(Preamble to the Domestic Violence Act)

A recent SCA (Supreme Court of Appeal) decision underlines the very strong duty on SAPS members to assist victims of domestic violence.

The Domestic Violence Act ("domestic violence" isn't limited to cases of physical harm – it includes a very wide range of abusive conduct) provides legal protection to victims, especially to those most vulnerable such as women, children, disabled people and the elderly. **If you are a victim (or helping a victim) the Police are obliged to assist and cannot shirk their responsibilities.** You should in appropriate cases lay criminal charges and/or apply for a protection order. Police officers attending to domestic violence cases must help victims to lay criminal charges, find shelter and obtain medical treatment where necessary.

Applying for a protection order

Go to your nearest Magistrates Court and ask for assistance. If an order is granted, the issue of a warrant of arrest is authorised at the same time. The warrant is suspended on condition that there is no breach of the terms of the protection order. To have the warrant executed, you will need to give details of any violation of the order on affidavit – be aware that you will both face criminal charges and risk a damages claim if you intentionally make any false allegations.

Police must pay for victimising a victim

The facts of the case before the SCA were these -

- Hospitalised after being assaulted by her ex-husband, a woman tried to lay an assault charge at her local police station.
- There she was (wrongly) told that she had to get a protection order first, but when the magistrate's court confirmed that a protection order is not a prerequisite to laying criminal charges, she returned to the police station.
- Her ex-husband was called to the station and they were told to discuss an amicable resolution. When this failed, both made statements and laid charges against each other. Both were arrested, charged and detained overnight. The woman was injured next morning when an officer forcibly flung her into a police van to take her to court.
- Finding that the police had acted negligently towards the victim, had subjected her to secondary victimisation and had, by not assisting her, exacerbated her sense of vulnerability, the Court awarded her damages of R280,000.

PROPERTY PROFESSIONALS: HAVE YOUR SAY NOW ON THE DRAFT NEW B-BBEE SECTOR CODE



If you are involved in any "commercial activity" relating to property - **development, ownership, management, valuation, provision of services such as estate agency** etc – you have a substantial



stake in the draft new B-BBEE Aligned Property Sector Codes.

The proposed Codes contain a lot of detail, and they differ from the general Codes in several important respects. For example different segments of the Property sector will have their own separate asset/turnover thresholds to qualify as an EME (Exempt Micro Enterprise) or as a QSE (Qualifying Small Enterprise). See the tables below -

Eligibility as an Exempted Micro Enterprise (EME)				
Exempted Micro Enterprises		ASSET BASED	SERVICE BASED	ESTATE AGENCIES/ BROKING/ VALUATION COMPANIES
	Net Assets	Less than R80M		
	Turnover		Less than R10M	Less than R2.5M

Eligibility as a Qualifying Small Enterprise (QSE)				
Qualifying Small Enterprises		ASSET BASED	SERVICE BASED	ESTATE AGENCIES/ BROKING/ VALUATION COMPANIES
	Net Assets	Less than R400M		
	Turnover		Less than R50M	Less than R35M

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

You have only 60 days from 30 October to comment on the proposals, so speak now if you have any concerns or suggestions.

THE DECEMBER WEBSITES: SOME YEAR-END SNIPPETS



Gift ideas for your clients

Get some inspiration with "13 Fun (and Affordable) Gifts for Your Business Clients" on the BusinessNewsDaily website at www.businessnewsdaily.com/8422-gifts-for-clients.html#sthash.4h7JsbZt.dpuf. Google for local suppliers and alternatives by adding "site:za" into your search terms e.g. "Electronic travel mug site:za".

Business Networking at the Year End bash

Turn your Festive Season parties into valuable business opportunities with "10 tips to get your business ahead during the Christmas party season" on the Business Sense website at <http://www.nw-businesssense.com/the-art-of-schmoozing.html>.

"Oops I didn't mean to send that!"

We've all done it – you're in a rush, and 2 seconds after pushing the "Send" button on your Outlook you realise that you shouldn't have. The wrong person will get it; or the right person with the wrong message – disaster! Possibly even legal liability. But it won't happen again if you follow the simple instructions in "Fix the "Oops I did not mean to send that!" email issue" on Tech4Law's website at <http://www.tech4law.co.za/tech-advisor/office-software-products/fix-the-gooops-i-did-not-mean-to-send-thatq-email-issue.html>.

Track your lost or stolen smartphone

Avoid the nightmare of losing your smartphone/tablet/device. If it's stolen, call in SAPS, your security services provider and your local crime watch immediately – there have been many successes with both recovery and arrests. Read “How to track a stolen smartphone” on the httx.africa website at <http://www.httx.co.za/2014/05/02/how-to-track-a-stolen-smartphone/>.

Emergencies I: Install this app

The “mySOS SA” Emergency app gives you access to appropriate emergency assistance -

- When you don't know who to call,
- When you don't know where you are,
- When you really need help...

Download it from your smartphone or <https://www.mysos.co.za/>.

Emergencies II: Add ICE numbers to your address book

Don't forget to have at least one “ICE” (In Case of Emergency”) number in your cell phone address book – paramedics and other emergency personnel are trained to check your phone for these emergency numbers so they can contact your family/friends/colleagues when you can't do it yourself. Follow the steps in “How to Add ICE to Your Cell Phone” at <http://www.wikihow.com/Add-ICE-to-Your-Cell-Phone>.

Surviving the drought

Sadly many parts of SA are it seems in for a drought of epic proportions. “Saving water for a sustainable future” on the Western Cape Government website at <https://www.westerncape.gov.za/general-publication/saving-water-sustainable-future> will help you cope with the inevitable water restrictions.

Travelling internationally? Here's the new visa concessions timetable

See “Changes in SA immigration regulations: What you need to know” on the Homecoming Revolution website at <http://homecomingrevolution.com/south-africa/2015/10/29/changes-in-sa-immigration-regulations-what-you-need-to-know/>.

Granting credit – new Affordability Regulations

If you are a credit grantor or consumer you need to know about the new Affordability Assessment Regulations, available on the National Credit Regulator's website at <http://www.ncr.org.za/documents/pages/NCA-amendment-Regulations-March-20151.pdf>. For an overview and a practical example see “Consumer Credit: Affordability Assessment” on the Consumer Protection in South Africa blog at <http://consumerlawrsa.blogspot.co.za/2015/04/consumer-credit-affordability-assessment.html>.

Domestic workers' wages up 1 December

Full details of the new minimum wages are in “You will have to pay your domestic worker more from December” on the BusinessTech website at <http://businesstech.co.za/news/government/104309/you-will-have-to-pay-your-domestic-worker-more-from-december/>.

“Hangover Cures around the World”

And to end off on a lighter note whether or not you yourself would ever think of imbibing (let alone over-imbibing) anything stronger than iced tea, have a laugh with this infographic on the Health24 website at <http://www.health24.com/Medical/Liver-Health/Alcohol-and-your-liver/Hangover-cures-around-the-world-20130210>. Experiment with these only if you dare, and entirely at your own risk!



Enjoy the break!



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