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WITH COMPLIMENTS

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HOW TO AVOID DISPUTES OVER JOINTLY OWNED PROPERTY

"Co-ownership is the mother of disputes" (Roman law maxim)

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Buying property can be an excellent investment, but it can also be expensive. So sometimes it makes a lot of sense to share the financial burden with someone else. Perhaps for example you are spouses or life partners buying your first home. Perhaps you are a group of families planning to share a holiday house, or two firms looking to co-own business premises.

Just be very careful here…

What can go wrong?

Co-ownership (or "joint ownership" – it's the same thing) always starts off all fine and friendly. You're life partners, or business partners, or best friends (you may even be all of those things together) and all is good between you. So nothing can go wrong, right?

Unfortunately it can, and as many bitterly fought court cases can attest, it does. "The sting's in the tail" as the old proverb has it, and problems tend to raise their ugly heads only down the line, long after you first became joint owners. Imagine a scenario where you can't agree on how to run the property and/or cover its expenses, or you need to wind up your co-ownership but can't agree on how to do so. What happens if one of you wants to buy the other out but the other refuses or you can't agree on a fair price? Or if (as co-owners are entitled to do if not bound to a contrary agreement) they sell their share/s to a total stranger? Or the time may come when you need to/want/must sell your share and your co-owner refuses to co-operate.

The issue here is that when you are co-owners of property you don't each hold separate title to your own physically-delineated "share". Your title deed (registered in our Deeds Office) will reflect each co-owner as holding an **undivided share** in the property. You have to act jointly or call in the lawyers.

A great deal of unhappiness and dispute – perhaps even the cost, delay and hassle of litigation – beckon. For example, a court can order one of you to buy the other out, or to subdivide the property, or even to order its sale (commonly by public auction) – but it really is a last resort to ask a court to decide what is best for you.

A simple solution and a checklist for you

The trick of course is as always to plan ahead. Before you buy the property, take advice on the best structure to use for your particular circumstances. Factors to bear in mind would include things like ease of ownership, cost of ownership, the tax angle, ultimate disposal, estate planning, asset security, protection from creditors, and so on.

A whole multitude of factors, unique to each situation, will determine whether you should own the property in a legal entity like a company or trust, or register it in your names jointly, or find some other way of ensuring that you share equally in both the costs and the benefits of property ownership.

Critically, you need to put in place a written, signed agreement setting out as clearly and as simply as possible –

- Your agreed method of ownership, and whether your undivided shares will be 50/50 or in another proportion.

- Who will cover what expenses, and how? Think about all the transfer costs, the moving costs, the costs of municipal services, maintenance costs, bond instalments, and so on. If it's an office held by a company for example, what rental will each of you pay? Who will pay the rates? Can co-owners make improvements to the property and if so how will they be compensated?

- If you are trading with the property (perhaps letting it out to tenants), will you share profits and losses in the same proportion as your shares?

- Who will attend to administrative duties? You need to cover things like paying the bond, arranging insurance, keeping financial records, dealing with tenants, and the like.

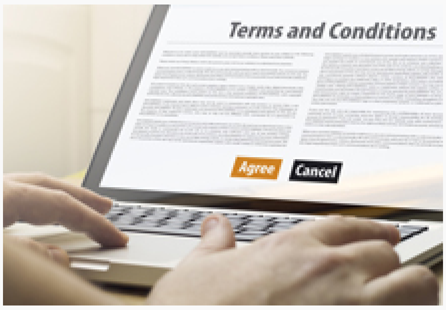
- Who will enjoy what benefits of the property, and how? In an office-sharing scenario for example, define exclusive-use and common-use areas, who gets the best undercover parking etc. If it's a holiday home, who gets to use it and when? Who gets the Summer Holidays each year? If you are a life partnership couple you should have a cohabitation agreement in place anyway – if you don't, ask your lawyer to draw one up for you and to integrate your co-ownership deal into it.

- Last, but certainly not least, you have to plan for the end game part. Without an agreement to the contrary, a co-owner can sell his/her share without the other's consent – a recipe for dispute. And if your relationship falls apart, you need to be able to wind up your joint ownership without all the hassle, stress, delay and cost of legal action. Consider also what happens if one of you goes insolvent or is liquidated, or if a co-owner's creditors attach his/her share for sale in execution. Specify what happens to a co-owner's share on death. Agree on how you will value the property, or each co-owner's share in it, if you need to.

The above is of course just a summary of some common issues, so ask your lawyer to help you with your own checklist.

DO YOU READ ONLINE TERMS AND CONDITIONS? YOU SHOULD AND HERE'S WHY

"The Internet is a Real Place with Real Consequences" (Rebecca MacKinnon, Internet policy expert)



We live in an age of online commerce. We buy and sell pretty much anything you can think of on the Internet, whilst contracting online for everything from an Uber ride to a plumber's call out has become second nature.

So we should all know just how important it is to take note of those annoying little tick boxes saying things like "I agree to the terms and conditions available here" (with of course a hyperlink under the "here" leading you to a list of terms and conditions as long as your arm).

An interesting case recently before the High Court illustrates.

"I've won R5m" thought the online gambler

A regular visitor to a bookmaker's online sports betting website was overjoyed when, after placing over 530 bets over an 8 month period, and for a stake of only R100, he successfully picked the winners in 8 different horse races.

His betting slip showed a "total possible payment" of R4,841,728 and that, thought the gambler, was exactly what he'd won (actually it would have been over R5m before tax).

Imagine his disappointment and distress when the bookmaker paid him only R1m, referring him to its online standard terms and conditions. Clause 9, pointed out the bookmaker, was headed "Maximum Payout" and imposed on every customer a daily winnings limit of R1m.

Unwilling to go down without a fight, the punter sued the bookmaker for the full amount. He hadn't, he said, read the Ts and Cs (he is no doubt in very good company in that, which is indeed the point of this article) and anyway they were, he argued, overridden by the express reference on his betting slip to the full amount.

Let the signer beware

Unfortunately for him his luck had well and truly run out. The Court dismissed his claim with costs, holding that the "total possible payout" figure quoted on the betting slip could not entitle him to a payout in conflict with the daily limit.

Central to the Court's decision was its finding that the gambler, when he opened his account on the site, must have ticked a box agreeing to the bookmaker's standard terms and conditions. "When signing the document by placing an electronic tick in the box", held the Court, "the applicant placed himself in the same position as a person who had physically signed the document. He is bound by the maxim *caveat subscriptor* ['let the signer beware'], whether or not he actually took the trouble to read the terms".

There's a strong warning there to all of us – when the chips are down (so to speak) ticking those "I agree to the terms and conditions" boxes online binds you to them. You can't try to evade them later on by saying "I didn't actually read and understand them before agreeing – no one ever does". You're probably thinking "life's too short to read all that gumpf". But then pick your times to be cavalier about it, and when there's a lot at stake rather take the time to read and understand what you're agreeing to. Get legal advice in any doubt.

But wait, there's more (a caution for online product and service providers)

This is an area of law still being explored by our courts, and particularly in these days of strong consumer protections, online service and product providers should note that the bookmaker's case was bolstered by additional facts, two of them in particular –

1. The punter had been exposed to specific warnings about the limits imposed on winnings both before every bet (i.e. more than 530 times) and thereafter on every betting slip,

2. He always had easy access to the full Ts and Cs via a clickable icon.

Hence the Court's conclusion that the bookmaker "takes all reasonable steps to ensure that the client assents to the terms and conditions before the account is opened and both prior and subsequent to the placing of any bet the punter is told about the limits on winnings."

Perhaps the bookmaker would have won his case anyway on nothing more than the tick box and the "signer beware" principle, but on a better-safe-than-sorry basis online providers should perhaps follow the bookmaker's lead on that one and not rely entirely on a one-off tick in a tick box.

POPI: AN EXISTING RISK, A RIGHT ROYAL RUCKUS, AND THE EU DEADLINE

When will the enforcement provisions of the Protection of Personal Information Act ("POPI" or "POPIA") come into effect? Latest indications are that the Information Regulator will announce final Regulations and a commencement date shortly, but there

have been so many delays already that we perhaps shouldn't be holding our breath on that one.

Three important things to note here –

1. Once the enforcement provisions are in effect you will have a one year grace period before compliance is obligatory. After that date, any unlawful processing of personal information will cost you dearly,

2. Even for smaller businesses compliance will be a time-hungry affair – hence the many warnings against leaving it to the last minute,

3. **Even before POPI is fully effective you are at risk if you don't safeguard personal information.**

The King and the leaked sales call

To illustrate that risk -

- An insurance company employee phoned King Goodwill Zwelithini, King of the Zulu Nation, to offer him cheap insurance premiums. The employee called the King by his first name – a great insult.

- The employee's profuse apologies (once informed of his blunder) apparently went at least some way to repairing the damage, but then a recording of the call found its way onto social media. That, it seems, was the last straw, and the King is reportedly now about to sue the company for damages.

- The really interesting part is the Information Regulator's response. It issued a formal media statement to the effect that it is engaging with the insurer about what "processes and measures they have put in place to comply with the conditions for lawful processing of personal information as prescribed in POPIA". Of course the Regulator cannot yet handle this matter officially in terms of POPI (nor can it officially address any of the many complaints relating to direct marketing already lodged with it), but it sounds as though an unofficial "rap over the knuckles" is in the offing if any unlawful processing of information indeed took place.

- The negative publicity generated in the media and the potential damages claim could well be the insurer's bigger headache at the moment.

Europe's 25 May Deadline – Must You Comply?

If you offer goods or services in or to the EU, you must, even if you are based here and not in Europe, comply by 25 May with the EU's GDPR (General Data Protection Regulation). Take advice on the specifics – although it resembles POPI in many respects, there are key differences. Plus you risk severe penalties for contravention – fines up to €20 million or 4% of your annual worldwide turnover.

FROM THE HORSE'S MOUTH: HOUSE SALES AND THE VAT INCREASE

"If you hear something (straight) from the horse's mouth, you hear it from the person who has direct personal knowledge of it" (Cambridge Dictionary)

We all know by now that the VAT rate increased from 14% to 15% on 1 April. How does that affect your residential property sale/purchase?

We are talking big money here – if for example you bought a house from a developer for R10m + VAT, that extra 1% adds R100,000 to your cost. Fortunately a little-known (until now) section of the VAT Act provides some relief to residential property buyers.

This is what SARS has to say about it (slightly simplified) –

Question – "Is there a rate specific rule which is applicable to me if I signed the contract to buy residential property (for example, a dwelling) before the rate of VAT increased, but payment of the purchase price and registration will only take place on or after 1 April 2018?"

Answer – "**Yes**. You will pay VAT based on the rate that applied before the increase on 1 April 2018 (that is 14% VAT and not 15% VAT).

This rate specific rule applies only if –

- You entered into a written agreement to buy the dwelling (that is "residential property") before 1 April 2018;
- Both the payment of the purchase price and the registration of the property in your name will only occur on or after 1 April 2018; and
- The VAT-inclusive purchase price was determined and stated as such in the agreement.

For purposes of this rule, "residential property" includes –

- An existing dwelling, together with the land on which it is erected or any other real rights associated with that property;
- So-called plot-and-plan deals where the land is bought together with a building package for a dwelling to be erected on the land; or
- The construction of a new dwelling by any vendor carrying on a construction business."

But what about commercial property?

Let's quote SARS again on property generally (once again, slightly simplified) –

Question – "How will the rate increase work generally for fixed property transactions?"

Answer – "The rate of VAT for fixed property transactions will be the rate that applies on the date of registration of transfer of the property in a Deeds Registry, or the date that any payment of the purchase price is made to the seller – whichever event occurs first.

If a "deposit" is paid and held in trust by the transferring attorney, this payment will not trigger the time of supply as it is not regarded as payment of the purchase price at that point in time.

Normally the sale price of a property is paid to the seller in full by the purchaser's bank (for example, if a bond is granted) or by the purchaser's transferring attorney. However, if the seller allows the purchaser to pay the purchase price off over a period of time, the output tax and input tax of the parties is calculated by multiplying the tax fraction at the original time of supply by the amount of each subsequent payment, as and when those payments are made. In other words, if the time of supply was triggered before 1 April 2018, your agreed payments to the seller over time will not increase because of the increase in the VAT rate on 1 April 2018."

YOUR WEBSITE OF THE MONTH: 5 HACKS TO MAXIMISE OFFICE PRODUCTIVITY

Successful entrepreneurs and corporates understand that a happy, healthy workplace environment is a productive one, and that a productive office is a key driver of profitability.

Now picture such a productive office, what springs to mind? What is its colour scheme, how much light is there? Is the temperature comfortable, how are the noise levels, is there a subtle fragrance in the air?

Create your own checklist for creating a really productive office with "5 Office Design Hacks That Will Increase Employee's Productivity" on the Dumb Little Man website.

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