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WITH COMPLIMENTS

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In this Issue

Can I have pets in a residential complex?

It's "13th Cheque" Time Again: Must You Pay Annual Bonuses?

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CAN I HAVE PETS IN A RESIDENTIAL COMPLEX?

"I never married because there was no need. I have three pets at home which

When is a Debtor "Insolvent"? A Case of Arrear Maintenance Illustrates

Travelling Abroad? Know Local Laws or Risk Jail

Your Website of the Month: 6 Ways for Your SME to Survive the Recession

answer the same purpose as a husband. I have a dog which growls every morning, a parrot which swears all afternoon, and a cat that comes home late at night" (Marie Corelli, English novelist)

Residential complexes and estates are becoming more and more popular for the many advantages they provide. Remember however that - in everyone's interests - they also come with restrictions on your freedom to use and enjoy your property, and that you bind yourself to whatever Conduct Rules apply in your community scheme.

One of those restrictions is likely to be your right to keep a pet, and that's a topic that can be a source of much conflict and unhappiness.

Residents tend to fall into one of three camps –

1. "I really need to have my little dog/cat/parrot/lizard living with me"
2. "I simply cannot handle any more of that parrot-screeching/lapdog-yapping/midnight-cat-yowling – it has to go!" or
3. "Pets – don't need them myself but hey, fine so long as they don't cause me any trouble".

Regardless of which category you fall into, it's important to understand **before** you move into any form of residential complex whether or not you and other residents are allowed to keep pets, and to obtain any necessary prior authority to do so.

Sellers, buyers and **estate agents** would do well to address this specifically in sale agreements to avoid disappointment and dispute down the line.

Sectional title schemes

Your Body Corporate has the right to impose limits on pet ownership. It can for example prohibit pets altogether, or it can impose limits on the number of pets allowed, types of pet, breeds or sizes allowed, access to common areas, noise-control, replacement on the pet's death and so on. **Trustees** should take care here to define clearly what is allowed and what isn't. Are only dogs banned or also cats and cage birds? What about pet pigs? Guide dogs? Hamsters? Pet snakes? Goldfish? The more detail the better.

You need to find out exactly what rules apply in your particular complex, but the standard "Prescribed Conduct Rule" below will be in force unless your Body Corporate has amended it. This Rule reads -

"Keeping of animals, reptiles and birds

1. The owner or occupier of a section must not, without the trustees' written consent, which must not be unreasonably withheld, keep an animal, reptile or bird in a section or on the common property.
2. An owner or occupier suffering from a disability and who reasonably requires a guide, hearing or assistance dog must be considered to have the trustees' consent to keep that animal in a section and to accompany it on the common property.
3. The trustees may provide for any reasonable condition in regard to the keeping of an animal, reptile or bird in a section or on the common property.
4. The trustees may withdraw any consent if the owner or occupier of a section breaches any condition imposed in terms of sub-rule (3)."

Note that where this Prescribed Rule applies unamended, the body corporate is specifically required to act "reasonably" in all the circumstances of each matter. That entails a delicate balancing act between the competing rights of pet-owning residents and their neighbours, which means grey areas and fertile ground for

dispute.

Hence the advice to get clarity on your rights before buying into a complex.

Home Owners Associations (HOAs)

HOAs have similar rights to restrict the keeping of pets, but no "Prescribed Rules" apply as they do with sectional title and their powers will depend on whatever founding documentation underlies them. HOAs normally govern free-standing estate houses rather than apartments and so are perhaps more likely to be pet-friendly but again, find out what the complex's Rules say before you buy.

Trustees barking up the wrong tree? Polly ruffling feathers? The ADR alternative

If you find yourself embroiled in a dispute with your body corporate/HOA or a fellow resident or owner, first prize will of course always be a chat over a friendly cup of coffee to find common ground and a win-win outcome.

If that fails, the (relatively) new Community Schemes Ombud Service provides an alternate dispute resolution (ADR) service designed to assist with just this sort of situation. Ask your lawyer for help in any doubt.

IT'S "13TH CHEQUE" TIME AGAIN: MUST YOU PAY ANNUAL BONUSES?

Once again November is upon us, and no doubt employees around the country are starting to dream of all the good things they can do with that "Christmas" bonus coming their way. If you are one of them perhaps you plan to pay off debt or to re-charge the family's batteries with a special holiday. Or perhaps you just want to reward yourself and your loved ones with a bit of free-spending on a luxury or two to celebrate a special time of year.

That's all well and good, but the hard reality is that every year a percentage of employers decide that they can't afford a sudden doubling of their staff costs and will call everyone together to say something like "Sorry guys, times are really tough so no bonuses this year. You're lucky to still have jobs".

Disappointment and anger will no doubt lead to thoughts of CCMA referral and legal action, but **none of that is necessary if both employers and employees (a) understand the law, (b) prepare and plan properly, and (c) communicate effectively long before hopes are raised then shattered.**

Firstly, what does our law say?

It is a persistent myth that our law automatically forces employers to pay annual bonuses. Not so – nothing in our labour legislation or employment law says anything of the sort.

What our law does say to employers is this –

- If your employment contracts say you must pay bonuses, your employees have an enforceable legal right to receive them. This is just standard contractual law – both you and your employees are held to your agreements.

- You must consider not only what your employment contracts themselves provide, but also any company policies, collective agreements and the like.

- Check also whether any conditions – like profitability of the business or employee performance or contribution to profitability – are specified. And are you given unlimited discretion in deciding whether or not to award bonuses?

- Even where nothing has actually been agreed as above, you may still be bound to pay annual bonuses if you have paid them regularly in the past. This is because departing from any established practice or custom without prior employee consultation can be seen as an unfair labour practice. The law aside, employee morale will naturally plummet if expectations of a bonus have been built up over the years but are then dashed at short notice.

- Be careful of differentiating between employees performing the same or similar work – that's a recipe for dispute and accusations of unfair labour practice.

Prepare and plan

Employers: Have your lawyer check all your employment contracts and company policies to make sure that you have full discretion and will never be forced to pay bonuses your business can't afford. Take advice on how you can regularly pay bonuses in good years without creating "rights of expectation" enforceable by your employees in bad years. Use cash flow projections to give you (and your employees) early warning of any inability to pay bonuses this year.

Employees: Don't spend your bonus until you know for certain how much (if anything) is actually coming your way. And remember that SARS could be taking a bigger than normal slice out of this particular pie – ask your employer for an estimate of how much from the PAYE deduction tables. And in planning how to spend your bonus you can do a lot worse than follow the tips in an article like The Post's "Use your 13th cheque wisely" **here**.

Communicate, communicate!

Whichever side of the employment contract you are on, open and effective communication will always be the key to avoiding false hope and bitter disappointment when it comes to bonus time.

So as an employee don't be shy to ask the boss about his/her bonus plans and if as an employer you have any doubt at all about your business' capacity and/or willingness to pay bonuses this year, tell your employees what to expect **before** expectations build up. After, of course, taking legal advice if you have any doubt as to your legal position in this regard – our labour laws are complex and getting them wrong can be costly!

WHEN IS A DEBTOR "INSOLVENT"? A CASE OF ARREAR MAINTENANCE ILLUSTRATES

"To my mind the best proof of solvency is that a man should pay his debts" (quoted in the judgment below)

If you are owed maintenance you have a variety of enforcement options open to you and should ask your lawyer for advice on which is the best for your particular claim and circumstances.

A recent High Court judgment confirms that one of the weapons in your legal armoury is the sequestration application. And as the defaulter's desperate attempt to avoid sequestration in this particular case illustrates, even just the threat of sequestration can be a powerful motivator to settle up, regardless of whether your claim is based on maintenance arrears or on any other form of debt.

The reason is that an insolvent has to surrender control of his/her estate to a Trustee, who collects and sells all the insolvent's assets and divides the proceeds between the creditors. The insolvent can also be ordered to pay over any excess earnings – such as for example monthly salary less reasonable expenses - to the Insolvent Estate. That's a lot of control to lose over one's own affairs.

Maintenance arrears and a "no goods" return

In this particular case -

- As part of a divorce settlement, a father was ordered to pay child maintenance, but fell behind and ran up substantial arrears.
- His ex-wife obtained judgment against him in the maintenance court for R45k and the sheriff, with a warrant of execution against property in hand, attached a motor vehicle belonging to the father.
- Unfortunately the sheriff did not actually remove and sell the vehicle at the time and three months later it was gone. The sheriff then rendered a *nulla bona* ("no goods") return when the husband claimed to have no money or attachable assets.
- The mother then applied for the sequestration of the father's estate, and the father raised two main defences –

"I'm not actually insolvent"

To sequestrate someone's estate you have to prove either actual insolvency (not always easy to do) or an "act of insolvency". And although the sheriff's *nulla bona* return in this matter qualified as an act of insolvency, the husband still insisted that he was actually solvent. He didn't deny owing the R45k (plus by that stage another R183k) but said that he would make payment once he received tax refunds from SARS in the future.

The Court dismissed this argument, quoting from a 1907 judgment: "Speaking for myself, I always look with great suspicion upon, and examine very narrowly, the position of a debtor who says, 'I am sorry that I cannot pay my creditor, but my assets far exceed my liabilities'. **To my mind the best proof of solvency is that a man should pay his debts;** and therefore I always examine in a critical spirit the case of a man who does not pay what he owes" (our emphasis).

It was just not good enough, said the Court, for the father to say that he would eventually pay.

"Sequestration won't be to the advantage of my creditors"

To get a sequestration order you must also prove that "there is reason to believe that it will be to the advantage of creditors of the debtor if his estate is sequestrated".

The husband's contention here was that he was under debt review in terms of the National Credit Act, and was making payments to his creditors. The flaw in this argument, said the Court, was that only listed creditors were being paid under the debt review arrangement. Nothing at all had been paid towards maintenance for almost four years, and the arrears were increasing at a rate of some R7k every month.

In those circumstances the Court was satisfied that sequestration would indeed be to the advantage of the husband's creditors.

The Court's discretion

Even after you have proved that you have a "liquidated" (agreed or easily-established amount) claim of at least R100, plus insolvency and advantage to creditors as above, the court can still refuse to order sequestration. In this regard it has a wide discretion "to be exercised judicially taking into account all the facts as well as the general history and circumstances of the case".

Finding there to be "no reasons or circumstances to disentitle her of this order", the Court held for the mother and sequestrated the defaulting husband's estate.

TRAVELLING ABROAD? KNOW LOCAL LAWS OR RISK JAIL

"Ignorance of the law is no excuse" (old Roman law principle applied in many legal systems worldwide)

Whether you travel abroad on business or on holiday, ignorance of local laws can easily land you in a situation where your protestations of "But I had no idea that that is illegal here, it's totally legal in South Africa" are met with stony faces and a complete lack of sympathy from your destination's law enforcement authorities. And whilst the nearest South African embassy or consulate can offer you some basic support, it's the local laws – and penalties for contravening them – that could put you in jail (or worse).

Recently government has specifically warned travellers to acquaint themselves with the laws and customs of their destination countries. This follows the death sentence imposed on a South African drug smuggler in Vietnam, and reports that some 800 South Africans are currently doing time in foreign jails, not only on drug-related charges (see "Know your foreign laws before travelling" on the South African Government News Agency's **website**).

In regard to drug laws the problem is that, with many countries in the process of either legalising or easing their stance on marijuana and other "soft" drugs, it can be difficult to keep up with what's legal where.

And remember that **even prescription drugs** can put you behind bars - in some countries medicines which are legal in South Africa could land you in prison (in the case of Dubai for example, for 6 months to 2 years unless you are carrying the required "medical certificate" - see **here**).

Moreover the warning goes far beyond illegal drugs, and applies to you even if you have never had anything to do with them. In Thailand for example, you

can be imprisoned for disrespecting the Thai Royal Family in any way – see here for details of how much trouble you can land in for not obeying that particular law.

There are many other such examples from around the world, and whilst some general articles are interesting for an overview of some unexpected laws in popular destinations (**this one** for example), rather Google specifically for the laws of the particular country or countries you are visiting. Just make sure that whatever webpage you land on is (a) authoritative and (b) up to date. A good place to start is perhaps the UK Government's "Foreign travel advice" **page**.

DIRCO (the Department of International Relations and Cooperation) has plenty of guidance on its "Advice for South African Citizens Travelling Abroad" page **here**.

If you're unsure of anything don't take any chances, rather ask your lawyer for help.

YOUR WEBSITE OF THE MONTH: 6 WAYS FOR YOUR SME TO SURVIVE THE RECESSION

No doubt we are in for at least a year or two of difficult economic conditions, but small businesses have one important advantage over larger competitors – their size keeps them agile. That means they can adapt more quickly to changing conditions, which in turn puts them in pole position to grasp the many opportunities that always accompany change and challenge.

Here are some thoughts on how to get started with that - "6 ways SA small businesses can survive the dire economy - which may last until 2020" is on **BusinessInsider**.

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