Thank you to everyone for the wonderful feedback received. We aim to bridge the gaps in knowledge between estate agents and conveyancers, making property transactions simpler, easier and faster. Remember that you may contact us directly for individual queries, and submit your personal areas of interest for future articles.

In this issue we will be covering the amendments to transfer duty, the subdivision of agricultural land act, the developer's real right of extension in sectional title schemes and rental compliance matters.

TRANSFER DUTY (UPDATE)

Following the budget speech 2016, transfer duty amendments have come into effect from 1 March 2016 until the next revision. Calculations for properties under R10 000 000-00 stay the same as the previous year's calculation, but for values that are higher, the calculation will change.

The exemption value of R750 000-00 still applies (zero transfer duty payable), and the noticeable change is in the upper property value segment.

Prior to the effected change in tariff, the scale of duty imposed on property above the value of R2 250 000-00 was fixed at the rate of R85 000-00 plus 11% of the value above R2 250 000-00.

The new change in tariff now sees an imposition of a higher rate of 13% (a 2% increase) for property values over R10 000 000-00, which equates to an increase of R20 000-00 per million.

Practically this would mean that the calculation of duty above R2 250 000-00 but under R10 000 001-00 will be R85 000-00 plus 11% of the value above R2 250 000-00.

For property values above R10 000 000-00, the calculation will be R937 500-00 plus 13% of the value exceeding R10 000 000-00.

It is advisable to notify clients of the changes to ensure that arrangements are made for the increases.

The table below can be used to easily calculate duty payable:

VALUE OF PROPERTY (Rand)	RATE
0 - 750 000	0%
750 001 - 1 250 000	3% on the value above 750 000
1 250 001 - 1 750 000	15 000 + 6% of the value above 1 250 000
1 750 001 - 2 250 000	45 000 + 8% of the amount above 1 750 000
2 250 001 - 10 000 000	85 000 + 11% of the amount above 2 250 000
10 000 001 and above	937 500-00 + 13% of the amount above 10 000 000-00.

THE SUBDIVISION OF AGRICULTURAL LAND ACT 70 OF 1970

The Subdivision of Agricultural Land Act 70 of 1970 came into operation on the 2 January 1971, and as the name indicates, it deals with the subdivision of land deemed to be agricultural. The Act has changed how agricultural land is dealt with. A Repeal Act was gazetted in 1998, to repeal the entire Act, but the date for the Repeal Act to come into operation has not been set. Given a period of almost 20 years since the publishing of the Repeal Act in the Government Gazette, it is uncertain whether the Act will ever be repealed.

It is important to note at the outset that although restrictions are in place, one can apply to the office of the Minister of Agriculture for consent in writing in order to proceed against the restrictions. Time frames for obtaining consent vary.

The following restrictions are of importance when dealing with agricultural land:

1. Agricultural land may not be subdivided;

2. Agricultural land may not be sold in undivided shares unless those undivided shares already exist;

3. A portion of an undivided share in agricultural land may not be sold to anyone who does not already own a share in such land;

4. Agricultural land may not be leased for a period over 10 years, or for the natural life of the lessee, or for periods which can be renewed by the lessee which amount to a period of over 10 years;

5. A portion of agricultural land agricultural land cannot be sold or advertised to be sold;

The act stops the practise of dividing agricultural land into smaller units.

To understand how these restrictions apply, we look at the following examples:

A farmer owns a farm (agricultural land) and wishes to sell it. He may sell it to one buyer only. If he sells it to two buyers, then they would have to acquire ownership in undivided shares, which is not allowed. This would also apply to inheritances.

The solution would be to apply for consent to sell the farm in undivided shares, which could take a long period of time, and consent may not be granted. The alternative and faster solution is for the buyers to form a company, and purchase the farm through the company. Because the company acquires the farm in its entirety, there will be no contravention of the restrictions. The buyers will own the farm according to their shares in the company.

For inheritances, the options are the same, or if the beneficiaries do not wish to do so, a redistribution agreement can be entered into, or the asset realized (sold) and the proceeds distributed to the beneficiaries.

If the same farmer, decided to subdivide his land and sell off a portion, he cannot do so, and he further cannot advertise that portion to be sold, without consent first being obtained.

If farmer A and farmer B are the owners of the farm in undivided shares, and wish to sell the farm, they may sell it in undivided shares, because those undivided shares exist. The restrictions apply to the creation of further undivided shares.

If farmer A and farmer B are the owners of the farm in undivided shares, and Farmer A wishes to sell a portion of his share, he may only sell that portion to farmer B, because farmer B already owns a share in the farm. He may not sell a portion of his share to anyone else unless consent is obtained to do so.

Keeping the above in mind, ensure that you obtain a deeds search on the land before taking in offers. This will allow you to advise the prospective buyer or buyers on how to proceed, and ensure a smooth and fast transfer.

RENTALS – ARE YOU COMPLIANT?

The Rental Housing Act 50 of 1999 has been around for a while and governs landlord and tenant transactions. It places duties on the parties to a lease agreement, and penalties for breach. The Rental Housing Tribunal is recognised in law and any ruling by the Tribunal is deemed to be an order of the Magistrate's Court in terms of the Magistrate's Court Act 32 of 1944. The tribunal can award fines and/or imprisonment up to 2(two) years for violations.

The frequently encountered requirement is Section 5(3) (e). This section deals with defects. Repairs which need to be done at the expiration of the lease stem from the differences in the condition of the property prior to the tenant taking occupation and the condition of the property at the expiration of the tenacy. The Act permits the landlord to deduct the reasonable costs of repairs from any deposit (or interest accrued), and it is important to look at the initial requirements for the noting of defects.

Attention must be drawn to the wording of the section, and the implementation thereof. The act requires that an inspection be conducted by the landlord and tenant prior to the tenant taking occupation of the premises. Defects or the non-existence of defects must be noted (Section (5)(7)), and this list must be annexed to the lease agreement. The landlord may be represented by his/her duly authorized agent.

Whilst this may seem logical, agents are often guilty of completing the list after occupation, or placing the onus on the tenant to notify them of any defects that exist. This could result in a tenant taking action against the landlord at expiration of the lease when disputes arise. The question that must be asked is not whether defects exist, but whether the inspection was done prior to the tenant taking occupation. If the inspection was not done as required, then this is a contravention of the Act.

A further point of note is Section 5(3) (f), which requires that the outgoing inspection must be conducted within 3 days prior to the expiration of the lease.

To avoid problems, ensure strict compliance. Have the inspections done prior to occupation and make arrangements to have the outgoing inspection done at least 3 days before expiry of the lease.

THE REAL RIGHT TO EXTENT AND SECTIONAL TITLE SALE AGREEMENT COMPLIANCE

With sectional title developments being the future of residential living, it has become very important to familiarize oneself with the Developers Real Right of Extension in terms of Section 25 of the Sectional Titles Act 95 of 1986.

The real right of extension gives the developer a right to extend the scheme by adding further buildings and conferring exclusive use rights to prospective buyers. The right has to be registered and is operational for a specified period of time.

This has a direct impact on current or future owners, an example being that a unit with an un-obscured view may find its view blocked due to a new phase being built directly in front of it, thereby diminishing the property value by terminating the view. Apart from values of the property being affected, living conditions may be affected as well.

Further impacts are the potential to increase the number of residents in the development, the reduction of common property and the increase in traffic in or around the development.

In terms of Section 25(14) of Sectional Titles Act, one must ensure that if a real right of extension exists it must be declared in the sale agreement.

Should the right exist, but not be disclosed in the sale agreement, the agreement can be declared voidable at the option of the purchaser by simply delivering notice to the seller. The Section 15B (3)(a) conveyancers certificate also covers this right, and should the right exist but not be disclosed, then the purchaser has to give written notice in terms of Section 25(15) that he/she does not intend to annul the agreement because of the defect.

The end result is that the purchaser will inevitably find out about any non-disclosure, thereby allowing him/her an option to cancel the agreement.

ESURING FASTER PROPERTY TRANSFERS

The signing of an offer to purchase is usually the end of the estate agent's responsibilities, and the beginning of the conveyancer's responsibility.

There are however a few aspects that estate agents should cover, which will dramatically increase transfer times, which not only benefits clients, but also benefits the agency.

Being a part of your FICA compliance, copies of the identity documents, proof of residence, the latest municipal bill for the property, the tax numbers of the parties (or annual income if not tax registered), the marital status of the parties, and the contact details for each party are documents which can be acquired upon signature of the sale agreement.

The collection of these documents will ensure that preliminary drafting can begin immediately, and transfer speeds are increased. The resultant effect is that the rates clearance applications and transfer duty applications can be completed in advance.

With the current municipal delays, it is imperative that pro-active steps be taken when dealing with transfers. Cash flows of estate agencies, interest payments, client service and reputation all rely on the speed that the transfer is done.

A further aspect that must be dealt with is informing buyers and sellers of the costs involved in the property transaction, and saving for these costs. This would go beyond the conveyancing fees for transfers and bond

registration. The aspects that should be covered are the rates clearance amounts, levy clearance amounts, budgeting for electrical compliance and entomology reports, notary fees for exclusive use areas, transfer duty, and service initiation fees for bonds.

Adding more information to your services will adequately prepare clients for their future obligations, and will ensure that the magic time period of transfers being registered within 2 months becomes a norm.

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Disclaimer:

Whilst every effort is taken to ensure the correctness of the contents hereof, these notes should be used for informational purposes only, and further study is highly recommended to fully understand the subject material.