

Property & Tax Guide

2019/2020



profmark
keeping your clients informed



49 Bell Crescent
Westlake Business Park
WESTLAKE
7945

P O Box 31406
Tokai
7966

Tel: +27 87 550 4024

Email: info@profmark.co.za

www.profmark.co.za

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IMPORTANT NOTE AND DISCLAIMER

This guide is an easy reference, pocket-sized overview of the South African Tax System and residential property, incorporating announcements made in the Budget delivered on 20 February 2019.

- ♦ The information contained in this guide is a summary of current legislation, budget proposals and property related information. Due to limitations in length, only key points on each topic are addressed. Words importing the masculine shall include a reference to the feminine and vice versa.
- ♦ We suggest that you do not act solely on material contained in this guide as the nature of the information contained herein is general, and in summarised format, and may in certain circumstances be subject to misinterpretation. In addition, the budget proposals may not include all legislative adjustments which could be made in the near future. The information is provided with the understanding that no legal or professional advice is being rendered in this guide. We recommend that our advice be sought when encountering these potentially problematic areas.
- ♦ While every care has been taken in the compilation of this guide, no responsibility of any nature whatsoever will be accepted for any inaccuracies, errors, or omissions.

2019/2020 BUDGET HIGHLIGHTS

- ◆ To limit the negative impact on economic growth, the 2019 Budget proposals will not increase tax rates in any category of natural persons. Instead, they will increase collections by not adjusting for inflation.
- ◆ Rebates & tax-free thresholds for natural persons have been marginally increased.
- ◆ Medical tax credits have not changed.
- ◆ Fuel levy increases by 29c/litre, consisting of :
 - ❖ a 15c/litre increase in the general fuel levy,
 - ❖ a 5c/litre increase in the Road Accident Fund (RAF)levy,and
 - ❖ the introduction of a carbon tax on fuel of 9c/litre.
- ◆ Excise duties on alcohol and tobacco products increase by between 7.4 and 9%.
- ◆ Employment tax incentive eligible income bands increased
 - ❖ From 1 March 2019, employers will be able to claim the maximum value of R1 000 per month for employees earning up to R4 500 monthly, up from R4 000 previously. The incentive value will taper to zero at the maximum monthly income of R6 500.
- ◆ Zero Rated Vat items
 - ❖ From 1 April 2019, the list will include white bread flour, cake flour and sanitary pads.
- ◆ Carbon tax will be implemented on 1 June 2019.
 - ❖ It gives effect to the polluter-pays principle, prices greenhouse gas emissions and aims to ensure that businesses and households take these costs into account in their production, consumption and investment decisions.
- ◆ Urban development zone tax incentive
 - ❖ This incentive was introduced in 2003 to encourage investment in urban development zones in 16 municipalities. It is due to expire on 31 March 2020. Government will review the incentive in 2019 to determine whether it should be extended.

**NORMAL RATES OF TAX PAYABLE BY
NATURAL PERSONS FOR THE YEAR ENDED 29 FEBRUARY 2020**

TAXABLE INCOME	RATES OF TAX
R0 - R195 850	+ 18% of each R1
R195 851 - R305 850	R35 253 - 26% of the amount above R195 850
R305 851 - R423 300	R63 853 - 31% of the amount above R305 850
R423 301 - R555 600	R100 263 - 36% of the amount above R423 300
R555 601 - R708 310	R147 891 - 39% of the amount above R555 600
R708 311 - R1 500 000	R207 448 - 41% of the amount above R708 310
R1 500 001 and above	R532 041 - 45% of the amount above R1 500 000

**NORMAL RATES OF TAX PAYABLE BY
NATURAL PERSONS FOR THE YEAR ENDED 28 FEBRUARY 2019**

TAXABLE INCOME	RATES OF TAX
R0 - R195 850	+ 18% of each R1
R195 851 - R305 850	R35 253 - 26% of the amount above R195 850
R305 851 - R423 300	R63 853 - 31% of the amount above R305 850
R423 301 - R555 600	R100 263 - 36% of the amount above R423 300
R555 601 - R708 310	R147 891 - 39% of the amount above R555 600
R708 311 - R1 500 000	R207 448 - 41% of the amount above R708 310
R1 500 001 and above	R532 041 - 45% of the amount above R1 500 000

NORMAL RATES OF TAX PAYABLE BY NATURAL PERSONS FOR THE YEAR ENDED 28 FEBRUARY 2018

TAXABLE INCOME	RATES OF TAX
R0 - R189 880	+ 18% of each R1
R189 881 - R296 540	R34 178 + 26% of the amount above R189 880
R296 541 - R410 460	R61 910 + 31% of the amount above R296 540
R410 461 - R555 600	R97 225 + 36% of the amount above R410 460
R555 601 - R708 310	R149 475 + 39% of the amount above R555 600
R708 311 - R1 500 000	R209 032 + 41% of the amount above R708 310
R1 500 001 and above	R533 625 + 45% of the amount above R1 500 000

Tax rebates	2018	2019	2020
Primary	R13 635	R14 067	R14 220
Secondary (Persons 65 and older)	R7 479	R7 713	R7 794
Tertiary (Persons 75 and older)	R2 493	R2 574	R2 601

Tax thresholds	2018	2019	2020
Below age 65	R75 750	R78 150	R79 000
Age 65 to below 75	R117 300	R121 000	R122 300
Age 75 and over	R131 150	R135 300	R136 750

Interest Exemption	2018	2019	2020
Below age 65	R23 800	R23 800	R23 800
Age 65 & above	R34 500	R34 500	R34 500

TRANSFER DUTY ON IMMOVABLE PROPERTY

Transfer duty is an indirect tax on the acquisition of immovable property situated in South Africa. The following are the main provisions:

- ◆ It is calculated on the value of the immovable property (purchase price or market value whichever is the highest).
- ◆ It is payable within six months after the transaction is entered into.
- ◆ Where a registered VAT vendor purchases property from a non-vendor, the notional input tax is calculated by multiplying the tax fraction [15/115 (14/114 before 1 April 2018)] by the lesser of the consideration paid or market value.
- ◆ The acquisition of a contingent right in a trust that holds a residential property or the shares in a company or the member's interest in a close corporation which owns residential property comprising more than 50% of its assets, is subject to transfer duty at the applicable rate.

Transfer duty is calculated as follows:

R0 – R900 000	0%
R900 001 – R1 250 000	3% of the value over R900 000
R1 250 001 – R1 750 000	R10 500 + 6% of the value over R 1 250 000
R1 750 001 – R2 250 000	R40 500 + 8% of the value over R 1 750 000
R2 250 001 – R10 000 000	R80 500 + 11% of the value over R2 250 000
R10 000 001 +	R933 000 + 13% of the value over R10 000 000

The most notable exemptions from transfer duty are the following:

- ◆ If the purchase price/value is R900,000 or less.
- ◆ If the transaction is subject to VAT (i.e. where the seller is a VAT vendor).
- ◆ In the event of immovable property being transferred to a person (including a close corporation, company or trust), in terms of a Last Will and Testament, or as a result of intestate succession.
- ◆ The transfer of any property to a surviving spouse, or divorced person, who acquires sole ownership of the whole or any portion of property registered in the name of his or her deceased or divorced spouse where that property or portion is transferred to that surviving or divorced spouse as a result of the death of his or her spouse or dissolution of the marriage or union.

CAPITAL GAINS TAX & YOUR PROPERTY

IMMOVABLE PROPERTY SUBJECT TO CGT

CGT is payable on disposal of immovable property to the extent that the capital gains arise after 1 October 2001. Persons are subject to CGT on the following immovable property:

- ◆ Residents: On all assets (including immovable) disposed of including overseas assets and immovable property.
- ◆ Non-residents: On immovable property or any right or interest in a property situated in South Africa.

Note: Any right or interest in a property includes a direct or indirect interest of at least 20% held alone or together with any connected person in the equity share capital of a company, where at least 80% of the value of the net assets of the company is, at the time of the disposal, attributable to immovable property in South Africa.

CGT CALCULATION AND INCLUSION RATES

The capital gain or loss is the difference between the proceeds on disposal and the base cost of the property.

Events that trigger a disposal include a sale, donation, exchange, loss, death, vesting of property in a beneficiary of a trust and emigration.

Proceeds are equal to the amount received by the taxpayer in respect of the disposal.

The base cost is calculated as follows for property bought after 1 October 2001:

- ◆ The purchase price; plus
- ◆ Allowable capital expenditure.

The base cost is calculated as follows for a property bought before 1 October 2001:

- ◆ The valuation date value of the property on 1 October 2001; plus
- ◆ Allowable capital expenditure incurred after 1 October 2001.

The valuation date value is calculated as follows:

- ◆ The market value on 1/10/2001 as determined by a valuation; or
- ◆ 20% of the proceeds after deducting the allowable capital expenditure incurred after valuation date; or
- ◆ The time apportioned base cost, as determined by a formula.

Allowable capital expenditure includes the following:

- ◆ The cost of acquiring, creating or improving the asset (excluding any borrowing costs).
- ◆ The cost for valuation of the property for CGT purposes.
- ◆ Cost incurred in respect of disposal of the property (including sales commission, advertising, valuation costs, accounting and legal costs, removal cost etc.).

A capital gain or loss is calculated separately in respect of each asset disposed. Once determined, gains or losses are combined for that year of assessment and if it is:

- ◆ An assessed capital loss, it is carried forward to the following year; or
- ◆ A net capital gain, it is multiplied by the inclusion rate and included in taxable income.
- ◆ Annual exclusion of R40 000 capital gain or capital loss is granted to individuals and special trusts.
- ◆ Instead of the annual exclusion, the exclusion granted to individuals is R300 000 for the year of death.

The inclusion rates are as follows:

PERSON	2019	2020
Natural person and special trust	40%	40%
Company	80%	80%
Trust	80%	80%

PRIMARY RESIDENCE EXCLUSION

When a primary residence is disposed of capital gains up to R2 million is exempt from CGT. The following are the main provisions relating to primary residences:

- ◆ The exemption is applicable to natural persons and special trusts.
- ◆ Only one residence at a time may be a primary residence of a person.
- ◆ The exemption is applicable if a person merely has an interest in the residence. As a result a share in a share block company and a usufruct may qualify (subject to further provisions).
- ◆ If the residence is held by more than one person as a primary residence an apportionment of the R2 million must be made in relation to their interest.
- ◆ An apportionment of the profit must be done if the person used the house as a primary residence for only part of the time it was owned. If a person was absent from the residence for less than 2 years as a result of the residence being offered for sale and vacated due to the intended acquisition of a new primary residence, the residence being erected on land acquired, the residence being accidentally rendered uninhabitable or the death of that person, it will not be seen as an absence from the residence.

- ◆ When the residence is used partially for residential and partially for business purposes an apportionment must be done.
- ◆ If a person is absent from his residence for a continuous period of 5 years or less and lets the premises during this time, the absence will be ignored if the person stayed in the residence for a period of at least one year before and after the period it was let, no other residence was treated as a primary residence during this period and the person was absent from the residence due to being absent from South Africa or was employed or engaged in a business in South Africa at a location more than 250 kilometers from the residence.
- ◆ Where the residence is more than 2 hectares in size, the exemption only applies to the gain made on the residence and 2 hectares, provided that the land is used mainly for domestic or private purposes together with the residence and the land is disposed of at the same time and to the same person who buys the residence (this land could be unconsolidated and next to the residence to qualify).

WITHHOLDING TAX ON ACQUISITION OF PROPERTY FROM NON-RESIDENT

The purchaser must withhold CGT on the purchase price where assets are purchased from a non-resident except where the amount payable by the purchaser is less than R2 million. The amount withheld is an advance tax in respect of the sellers' liability for CGT.

If the purchaser is a resident withholding tax must be paid within 14 days from the date on which the seller was paid and if the purchaser is a non-resident, within 28 days.

The following withholding tax rates are applicable and are based on the proceeds on disposal:

NON-RESIDENT SELLER	2019	2020
Natural person	7.5%	7.5%
Company	10%	10%
Trust	15%	15%

The seller may apply to SARS for a directive in order to reduce the amount to be withheld.

THE DEED OF SALE

A written agreement must be drafted and signed. A verbal sale agreement in respect of immovable property is unenforceable and void in South Africa. The following are some important clauses to be borne in mind:

DESCRIPTION OF THE PROPERTY AND PARTIES

The property and parties must be properly defined, so as to be capable of identification from the very wording used in the agreement.

UNFAIR CONTRACT TERMS PROHIBITED

In terms of the Consumer Protection Act (68 of 2008), or “the CPA”, unfair contract terms are to be prohibited in deeds of sale to which the Act applies. Note that it is still ambiguous as to whether the CPA applies at all to residential property sales, as a seller in these “once off” private sales, may not be deemed to be a supplier selling goods in his/her ordinary course of business, as defined in the Act. Where the CPA does apply, each case will be determined on its merits as to what is deemed to be fair or unfair contract terms. Notwithstanding the above, the general view is that Section 49 of the CPA should be taken cognisance of in all cases– and provision should be made that any waiver of liability, assumption of an obligation, or waiver of a right is drawn specifically to the attention of both parties to the agreement in a conspicuous manner.

PURCHASE PRICE & PAYMENT

- ◆ The price offered must be clearly stated, written both numerically and alphabetically.
- ◆ Sellers normally do and should require the payment of a deposit, which shows good faith, and the financial ability on the part of the purchaser and also provides security for the seller to cover its losses should the purchaser breach the agreement. As a purchaser, it is advisable to stipulate that the deposit be held in trust in an interest-bearing account, for the purchaser’s benefit pending transfer by the conveyancer (and dealt with in accordance with Section 86(4) of the Legal Practice Act).
- ◆ The balance of the purchase price is normally secured by a bank guarantee, usually coupled with a mortgage bond to be registered over the property. The seller’s conveyancer must make sure that guarantees are provided timeously, and the purchaser must ensure that the contract provides sufficient time to arrange finance and provide guarantees.

LEGAL PRACTICE ACT

The Legal Practice Act (no 28 of 2014) has replaced the Attorneys Act (no 53 of 1979) in its entirety, with effect from 1 November 2018. Section 86(4) allows legal practitioners to invest client monies in a separate trust savings account where there is an underlying transaction with an explicit mandate from the client to do so. From 1 March 2019, 5% of the interest earned, usually paid to the client, will automatically be paid monthly to the Legal Practitioners Fidelity Fund by the bank (approved by the LPFF). In addition, the Act will require an attorney who receives written instructions from a client, to set out the intended scope of the engagement with clarity and in writing, including estimated costs for the services to be provided.

FATCA

In order to invest funds, the requirement of disclosure of world-wide tax registration is required in terms of the US Foreign Account Tax Compliance Act, and an Inter-Governmental Agreement (IGA).

OCCUPATIONAL INTEREST

Where occupation takes place on a particular date and transfer takes place after the date of occupation, occupational interest is paid at an agreed amount for the period of occupation until transfer. In most cases this is paid by the purchaser, who may take occupation prior to transfer being registered. The terms should be stipulated in the deed of sale. In some cases, it is the seller who is the one who has to stay on in the property he or she has sold and where transfer has been registered. In this case, the seller will be required to pay occupational interest to the purchaser. In general, on occupation, risk passes to the purchaser. Clauses dealing with occupational interest and risk (who is at risk while the purchaser is in occupation) should be included in the deed of sale.

CERTIFICATES

The contract of sale is required to include clauses which deal with the Electrical, Beetle, Gas and Plumbing Certificate (where applicable). The City of Cape Town: Water Amendment By-law, 2018 provides that the seller must, before the transfer of a property, submit a plumbing Certificate of Compliance from a registered plumber (who must be registered with CoCT), certifying that any water installation (including alternative water connections) conform to the by-law and any National Building Regulations and Standards.

ELECTRIC FENCE REGULATIONS

Regulation 12 of the “Electrical Machinery Regulations” require that you have an “electric fence system certificate of compliance” if you install, add to, or alter an electric fence after 1 October 2012, or where there is a change of ownership of the premises on which the system exists, if the change of ownership takes place after 1 October 2012.

DISCLOSURE OF LISTED INVASIVE SPECIES

The National Environmental Management Biodiversity Act (10 of 2004) requires that the seller of an immovable property must, prior to the conclusion of the relevant sale agreement, notify the purchaser of such immovable property, in writing, of the presence of listed invasive species on the property. The obligation and the duty to remove could be negotiated between the seller and the purchaser.

THE FICA CLAUSE

Cash transactions and FICA:

The Financial Intelligence Centre Act (38 of 2001), as amended, provides that Accountable institutions (AI's), which include attorneys and estate agents, are required to file a report with the Financial Intelligence Centre in regard to any cash transactions involving domestic and foreign notes and coins, and travellers cheques above R25 000 or an aggregate thereof (i.e. smaller amounts that when taken together at the same time amount to over R25 000).

In addition, the transferring attorney and the estate agent are required to request certain documents from both the seller and the purchaser, in compliance with FICA.

If applicable, the bank, and the bank's attorneys granting the bond may also require documents such as income tax numbers, identity documents, and proof of residential address not older than three months (for individuals, trustees and beneficiaries of trusts, directors and shareholders of a company). For individuals, proof of marital status is required [including the marriage certificate, antenuptial contract, divorce orders and consent papers (where applicable)]. Trust documents and Letters of Authority (for trusts). A Memorandum of Incorporation, COR39 form (for a company). For bond registrations of a company or trust, the bank may also require a resolution authorising the trustee/director to act on behalf of the trust/company, as well as the financial statements for the entity, and/or personal suretyship from the trustees/shareholders/members of the entity. This list is not exhaustive and is intended to give an idea of the required documentation for FICA compliance.

BUILDING PLANS

The seller must ensure that all the buildings and structures on the property are approved by the relevant local authority. Before a seller places his home on the market for sale, he should make sure the approved plans reflect the buildings and structures on the property. It is best practice to include a clause in the sale agreement which deals with the building plans specifically. The clause may state that the property is sold subject to the condition that plan approval is obtained and provided to the purchaser prior to transfer, or that the purchaser acknowledges the absence of approved plans and accepts the liability for the risks associated therewith expressly. The seller cannot rely on the voetstoots clause to protect him in the event that plans are not approved, and he fails to disclose, as this will be deemed to be a latent defect known to the seller.

PROPERTY DISCLOSURE REPORT

While it has always been best practice for sellers to provide a property defects disclosure document as part of the sale agreement, the Property Practitioners Bill (B21B-2018) – which is anticipated to be signed into law in March/April 2019 – proposes to make this mandatory. The Bill provides that the report must be signed by all relevant parties and forms an integral part of the agreement. The sale agreement should expressly state which of the parties will be responsible for the costs incurred to correct any defects that may be listed in the report. This clause should be expressly agreed to and accepted by both parties in writing.

PRIME BANK OVERDRAFT RATES

Effective Date	Rate
20.07.2012	8.50%
31.01.2014	9.00%
18.07.2014	9.25%
24.07.2015	9.50%
20.11.2015	9.75%
29.01.2016	10.25%
18.03.2016	10.50%
21.07.2017	10.25%
29.03.2018	10.00%
23.11.2018	10.25%

HOME LOANS AND MORTGAGE BONDS

HOME LOAN AND MORTGAGE DISCLOSURE ACT (63 OF 2000)

A “home loan” is defined as a loan or advance by a financial institution to a person for purposes of constructing, purchasing, renovating or improving a home against security of a mortgage bond or other accepted form of security.

When mortgage finance is necessary, a suspensive condition will be included in the Offer to Purchase setting out the specific terms under which the finance must be approved and these conditions must be fulfilled on or before the time limit stated in the contract, failing which the contract will lapse and be null and void. It cannot be reinstated, even with the agreement of the parties by means of signing an Addendum. Due care should be taken to properly understand the conditions relating to the Bond approval, as once the mortgage bond condition and any other suspensive conditions have been fulfilled, a binding, enforceable contract comes into existence. Financial institutions reserve the right to withdraw the approval should any new or previously undisclosed facts emerge, or should there be a change in circumstances which may prejudice the rights of the financial institution. Financial institutions may also require an Occupancy Certificate from the Local Authority before registering a mortgage bond.

Taking into account the increase in the prime interest rate quoted by the financial institutions, the facility in terms of the mortgage bond approval may be withdrawn in the event that the banks find that their rights are prejudiced due to an increase in the bond rate. The withdrawal of the approval does not affect the Seller's rights to argue that the transfer of the property should proceed as the suspensive conditions were fulfilled. This would place the purchaser in the position that the transfer would have to proceed on a cash basis.

THE HOUSING CONSUMERS PROTECTION MEASURES ACT (95 OF 1998)

In terms of Section 18, no financial institution may advance mortgage bond finance to enable the consumer to purchase or build a home, unless the financial institution is satisfied that the home builder is registered in terms of the Act, and that the home is or will be enrolled with the National Home Builders Registration Council. The financial institution will impose a requirement that the necessary NHBC Certificate be obtained prior to transfer of the property when the building on the property is less than five years old.

THE CONSUMER PROTECTION ACT

Please note that the information contained in this section is not exhaustive and serves as a brief overview of the CPA as it specifically relates to property related transactions. There are still many ambiguities and uncertainties surrounding some of the provisions of the Act which only time (and the courts) will be able to interpret and clarify. You are strongly advised to contact our offices for further advice or consultation on this topic.

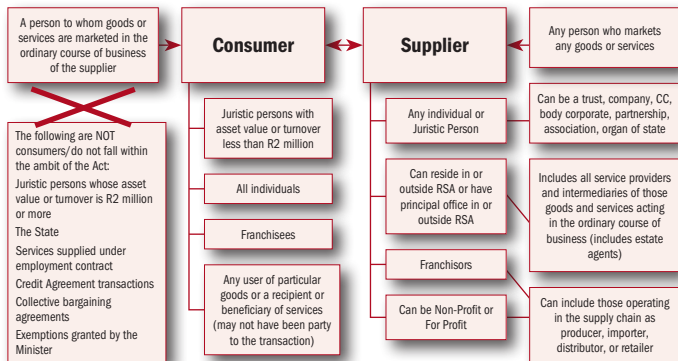
Scope of the Act:

The CPA regulates the activities of suppliers and creates rights for consumers in the event that they fall within the ambit and scope of the Act. The CPA applies to every transaction occurring within SA, and covers both goods or services delivered or rendered “in the ordinary course of business” and it applies to transactions which suppliers enter into with consumers (a transaction refers to the supply of goods or services in return for payment). It therefore covers:

- ♦ The promotion and advertising of goods or services that could lead to the transaction being entered into (unless exempted), the performance of the service and the supply of goods, the goods and services themselves after the transaction is completed, and the goods which form the subject of an exempted transaction.

The Act does not apply to certain consumers, certain transactions, or in specific instances where exempted by the Minister.

Summary of Consumer/Supplier:



SALE AND PURCHASE OF IMMOVABLE PROPERTY

- ◆ Where the supplier is a seller of property (who sells property as his/her ordinary course of business), and the purchaser is an individual or a juristic body whose turnover or asset value is less than R2 million, the Act will have application.
- ◆ The basic test is whether the consumer purchases the property from the supplier in the course of the latter's "ordinary course of business". This means that it is unlikely that the CPA will apply to property sales in the average "one-off" private sale situation – it is aimed more at "commercial" sales – by property developers, builders, speculators, and other property dealers, extending to transactions where people buy and sell property on a continuous basis. In such cases, the deed of sale and actual transfer of property into the name of the purchaser would fall under the provisions of the CPA (where the purchaser qualifies as a consumer in terms of the Act).

Definition of "goods" includes a legal interest in land or other immovable property:

- ◆ The definition of "goods" in the CPA is defined to include a legal interest in land or any other immovable property, other than an interest that falls within the definition of "services". In other words, the definition of "goods" includes the sale and purchase of immovable property. Note: whether the CPA applies to a once off sale of residential property has not yet been tested in our Courts, as it will depend on who is selling the property, and whether such seller falls within the definition of supplier in terms of the Act.

REMEDIES FOR CONSUMERS (AS PURCHASERS) PROVIDED BY THE ACT:

Right to fair and honest dealing with consumers – Sections 40–42, 44

The CPA deals with unconscionable conduct, false, misleading or deceptive representations (whether by word or conduct), fraudulent schemes or offers, and the consumers right to assume a supplier is entitled to sell goods. Consumers (purchasers) are entitled to fair and reasonable marketing. "Market" is defined in the CPA as the "promotion and supply of any goods or services". All negotiations and representations made by sellers, estate agents, property developers, builders and other property dealers – to purchasers, must comply with the Act, so as to ensure that purchasers are treated lawfully and fairly.

Cooling off period – Section 16

Consumers are afforded a period of five business days to rescind a transaction resulting from any direct marketing without reason or penalty, by notice to the supplier in writing. Direct marketing includes telephone calls, electronic communications and cold calling – as opposed to ordinary marketing-which involves printed brochures, print media and websites.

This section may have the effect of allowing a cooling-off period when a property is purchased due to direct marketing, even if it is sold for more than R250 000 (i.e this

cooling off right is in addition to the cooling off period in terms of Section 29A of the Alienation of Land Amendment Act, which applies where the value of the property is less than R250 000, or such higher amount as the Minister may prescribe in order to counter the effect of inflation, and the purchaser is an individual).

Disclosure and Information – Section 22–28

Consumers (purchasers/tenants where applicable) are entitled to information in plain and understandable language. Purchasers must understand exactly what they are buying. The purchaser has the right to receive express notice of any term in an agreement which limits the risk or liability of the provider, or of any term which constitutes an assumption of risk or liability by the consumer.

Certain information is required to be disclosed by intermediaries, agents and/or estate agents in terms of Regulation 9, such as their full names, identity number, a description of the exact service to be provided and fees to be earned.

Consumer agreements – Sections 48–52

Unfair, unreasonable or unjust contract terms are not allowed in deeds of sale. These agreements will be scrutinised – the meaning and effect of all applicable terms and conditions of the agreement are required to be explained, and no terms or conditions that are deemed unfair for the consumer will be able to be inserted.

Right to fair value, good quality and safety – Sections 53–60

A. Right to fair value

Sale prices could be scrutinised for reasonableness. The price should always be displayed when the property is being advertised for sale.

B. Right to good quality and safety – Sections 55–56

Section 55(2): Except to the extent contemplated in subsection (6), every consumer has a right to receive goods that are reasonably suitable for the purposes for which they are generally intended, are of good quality, in good working order and free of any defects, and will be useable and durable for a reasonable period of time, having regard to the use to which they would normally be put, and to all the surrounding circumstances of their supply. In other words, where the CPA applies, it would seem that the purchaser has a right to return goods (to require the seller to take re-transfer of the property) if any of the requirements listed in the section are not met. Where the sale agreement expressly lists any patent (visible) defects, latent (unknown) defects, or specifies the exact condition of the property, the seller will most likely be protected. Such a clause must be expressly accepted by the purchaser. The purchaser must have expressly agreed to accept the goods (property) in that condition or knowingly acted in a manner consistent with accepting the goods in that condition [Section 55(6)].

Right to return defective goods – Section 56(2)

Within six months after the delivery of any goods to a consumer, the consumer may return the goods to the supplier, without penalty and at the supplier's risk and expense, if the goods fail to satisfy the requirements and standards contemplated in Section 55.

Where the CPA applies, the purchaser has the right to return the goods to the seller –without penalty and at the seller's risk and expense – within six months of delivery (registration of transfer at the deeds office). The purchaser has the choice as to whether the seller will be required to refund the full purchase price or repair the 'goods' (where applicable).

Effect of the CPA on the Voetstoets clause

There are conflicting views on the likely effect of the CPA on the traditional voetstoets clause. Certainly, where the Act applies, traditional voetstoets clauses that breach the consumer's rights as per Section 55 of the Act will no longer be applicable. Property speculators, developers, builders, estate agents, and attorneys involved in the drafting of the contract of sale will be required to comply with Sections 55–56. However it is also likely that the exception in Section 55(6) will relate to the voetstoets clause in that when the purchaser signs the deed of sale, and (s)he acknowledges that (s)he has been expressly informed that the property is sold in the specific condition that (s)he sees it, and which condition is listed in detail in the contract itself, and is acquainted with the property's condition, nature and extent, land use planning and building plan approval, accepts it as is, then the exception should apply. As per Section 49 of the CPA, such provision must have been drawn to the attention of the consumer and in a conspicuous manner, that is likely to attract the attention of an ordinarily alert consumer, having regard to the circumstances, and before the earlier of the time at which the consumer enters into the transaction or agreement, or is required or expected to offer consideration for the transaction or agreement.

LEASES AND LANDLORDS

'Lease' is not defined in the CPA, however, 'services' is defined as including the provision of accommodation or sustenance, access to or use of any premises or other property in terms of a rental. 'Rental' means an agreement for consideration in the ordinary course of business, in terms of which temporary possession of any premises or other property is delivered to or at the direction of the consumer, or the right to use any premises or other property is granted to or at the direction of the consumer, excluding a lease within the meaning of the National Credit Act.

Landlord as Supplier/Tenant as Consumer:

- ♦ The Act applies where the landlord is in the business of letting properties, and the tenant meets the criteria of 'consumer' – being an individual, or juristic body whose turnover or asset value is less than R2 million.

Some sections in the Act which will apply to lease agreements:

- ◆ Sections 22 and 40 of the Act state that it is the inherent duty of the landlord to ensure the tenant understands the lease agreement, and to provide full disclosure and information.
- ◆ The tenant is entitled to information in plain and understandable language.
- ◆ Most lease agreements are for a fixed period. Section 14 provides that the tenant may arbitrarily terminate the lease by providing twenty working days written notice to the landlord (for a lease entered into after 1 April 2011), subject to payment of reasonable penalties.
- ◆ Where the CPA applies, a landlord can only terminate the lease if there was a material breach and the tenant has not remedied the same within the specified period provided for in the lease agreement.
- ◆ Upon cancellation by the tenant, the landlord may impose a reasonable cancellation penalty.
- ◆ Section 14 however does not apply to transactions between juristic persons, regardless of their annual turnover or asset value.
- ◆ Fixed lease agreements under the Act have a maximum duration of twenty-four months. After expiry of the agreement, it will continue on a month to month basis unless a new agreement is signed. Should the landlord wish to terminate the agreement upon its expiry, (s)he must notify the tenant in writing not more than eighty but not less than forty business days (before expiration of the agreement) of its looming expiry. If the agreement is to be renewed, a notice of any material changes that would apply would need to be provided to the tenant by the landlord within the same time frame.
- ◆ In summary, if two individuals enter into a lease agreement (commercial or residential), the CPA will apply, including Section 14. If an individual as landlord and a juristic person with assets or turnover of less than R2million, as tenant, enter into a lease agreement, the CPA will apply, including Section 14. However, if two juristic persons, regardless of assets or turnover value, enter into a lease agreement, Section 14 of the Act will not apply (the remaining provisions of the Act may apply where both parties are juristic persons and the tenant as juristic person has assets or turnover value of less than R2 million). Note that where the tenant as juristic person has assets or turnover over R2 million, the CPA will not apply to the lease agreement at all.

THE PROPERTY PRACTITIONERS BILL

The Property Practitioners Bill (B21B-2018) has been adopted by Parliament and is expected to be signed into law in March/April 2019. The Bill will repeal the Estate Agency Affairs Act (no 112 of 1976), and aims to regulate all property practitioners (not just estate agents), including estate agents and agencies, property brokers, providers of bridging finance, bond brokers, marketers, auctioneers, property managers, sellers of time share, developers, rental agents, home owner associations, digital portals that publicly exhibit properties, and employees of attorneys who act as estate agents. The Bill specifically excludes a person who does not carry out any of these functions in the ordinary course of business, and a natural person who sells their own property (even if it is in the ordinary course of business), as well as attorneys, candidate attorneys and the Sheriffs of the Court. The Bill applies to the marketing, promotion, managing, sale, letting, financing and purchase of immovable property. Some of the key changes it introduces are as follows:

◆ **The Property Practitioners Regulatory Authority**

- ❖ The current Estate Agency Affairs Board will be replaced by the Board of Authority, which will govern the property practitioners profession (not just estate agents).

◆ **Transformation of Property Sector**

- ❖ When procuring property related goods and services, all organs of state must utilise the services of property practitioners who comply with the broad-based black economic empowerment and employment equity legislation.
- ❖ The Board of Authority must, within 6 months of its establishment, open a Property Sector Transformation Fund, into which grants are paid- with the aim of benefiting previously disadvantaged individuals (small black-owned property practitioners). The Board must also consult with the services SETA to develop special dispensation for training and development of the historically disadvantaged.
- ❖ The Minister may prescribe measures to promote economic transformation by facilitating the accessibility of finance for property ownership, development and investment in order to enable meaningful participation of historically disadvantaged individuals including women, youth and the disabled.

- ◆ **Property Practitioners Fidelity Fund and Fidelity Fund Certificates**
 - ❖ The Estate Agents Fidelity Fund will continue, but will be known as the Property Practitioners Fidelity Fund.
 - ❖ Property practitioners will not only be required to possess a valid Fidelity Fund Certificate, but also Tax Clearance and BEE Certificates.
 - ❖ A valid Fidelity Fund Certificate must be held for all property practitioners within the agency or business. If an entity is a company, close corporation, trust or partnership, then every director, member, trustee and partner in that business must be issued with a Fidelity Fund Certificate, and failure to do so constitutes an offence.

- ◆ **Consumer protection – Property Defects Disclosure**
 - ❖ It will be mandatory for sellers or lessors to provide a comprehensive property defects disclosure document as part of a property transfer (or lease), which will form part of the sale or lease agreement, and no mandate may be accepted from a seller or lessor without this document, and a copy thereof must be provided to a prospective purchaser or lessee of the property.

- ◆ **Property Practitioners Ombud**
 - ❖ The Bill introduces the Ombud, whose purpose is to consider complaints by members of the public against property practitioners (the Board of Authority also may receive complaints). The Ombud's decision is equivalent to that of a Magistrate, and it has the power to withdraw a Fidelity Fund Certificate (as does the Board of Authority).

- ◆ **Inspectors, Compliance Notices and Record Storage**
 - ❖ Inspectors may be appointed by the Board of Authority. They may, at any reasonable time, and without prior notice, conduct an inspection at the business premises of any property practitioner in order to determine whether the provisions of the Bill have been complied with. The inspector may issue compliance notices- which could include the imposition of a fine. All records are to be kept for 10 years, and may be kept electronically.

- ◆ **Remuneration**
 - ❖ In order for a property practitioner to enforce the collection of remuneration (commission), a valid Fidelity Fund Certificate must be held for all property practitioners within the agency or business – and failure to have it may require the property practitioner to refund any commission paid by the seller. In addition, agents may only receive commission from a property sale on registration (and this requirement cannot be amended by agreement).

PURCHASING VIA LEGAL ENTITIES – PRO'S & CON'S

COMPANY

ADVANTAGES

1. CC, trust, company can be shareholders
2. Strictly controlled by legislation Companies Act (71 of 2008) as amended
3. Can have more than 10 shareholders
4. Has greater image value than a CC or a trust as a business vehicle
5. Relatively easy sale of interest through a sale of shares

6. Shareholders agreement can neatly regulate the relationship between the shareholders (subject to the MOI and Act)
7. A bond may be registered subject to the solvency and liquidity requirements of Section 44

DISADVANTAGES

1. The costs of annual audit (where applicable)
2. Complex legislation to comply with

CLOSE CORPORATION

ADVANTAGES

1. Management is also represented by members who hold interest in the CC

DISADVANTAGES

1. Membership limited to 10
2. Since 2011, no new CC's may be registered

TRUST

ADVANTAGES

1. The trust is treated as an entity separate from the individuals
2. Assets don't form part of the insolvent estate in the event of sequestration
3. Strict controls – Trustees accountable to Master of the High Court
4. Special trusts formed for mentally ill or seriously disabled, will be allowed CGT exemption if primary residence (and meets other requirements to qualify)
5. Special trusts – taxed at individual rates

6. Trust deed can be set up so as to determine the manner in which Trustee administers the fixed property and the Trustee is dutybound to obey these wishes

DISADVANTAGES

1. Cannot be sold as an entity
2. The beneficiaries normally have discretionary rights which are not assets that can be sold such as shares
3. Trustees cannot act until Letters of Authority have been issued

Transferring property into a trust should be considered in light of recent tax law amendments – trusts should no longer be created to simply limit taxes, but may still have other benefits. Each situation should be considered on its own merits (with the aid of specialists in the field).

APPLICABLE TO ALL ENTITIES

ADVANTAGES

1. Separate legal personality (CC's and Companies)
2. If shares held in trust, may protect the shares as long as not offered as security against a loan
3. Shares/Members interests can be sold
4. Continues to exist as an entity even in event of death or resignation of member/shareholder/director/trustee
5. Need not be in existence at time of signing agreement (CC's and Companies)

DISADVANTAGES

1. CGT – where property is held in Company/CC, ordinary trust, and special testamentary trust, no primary residence exemption allowed
2. Dividends tax levied on the shareholder at a rate of 20% on the amount of any dividend paid by a company (subject to certain exemptions). The tax is to be withheld by the company paying the taxable dividends and paid across to SARS
3. Transfer of members interest, shares – subject to Securities Transfer Tax at a rate of 0.25% on the transfer of listed or unlisted securities

THE PROTECTION OF PERSONAL INFORMATION ACT

- ◆ The Protection of Personal Information Act (4 of 2013), otherwise known as POPI, promotes the protection of personal information by public and private bodies.
- ◆ Estate agents, intermediaries, property companies and other institutions conducting business in the property sector, are required to comply with the Regulations of the Act, which includes obtaining approval from the consumer or client before any of their private information is used or distributed, and collecting and storing client information in such a way that only individuals with the necessary authorisation are able to access it. A breach may expose the holder of the information to a damages claim.
- ◆ The Information Regulator (IR) and its members have been appointed. It is responsible for education, monitoring, enforcement and compliance, as well as the handling of complaints, performing research and facilitating cross-border co-operation. The IR published the final POPI Regulations in December 2018, however they will only commence at the same time that POPI commences.
- ◆ The commencement date of the Act has not yet been proclaimed. It is anticipated to commence during 2019. There will be a one year grace period from the date of commencement, following which, POPI will be enforced.

TAX IMPLICATIONS ON THE LEASING OF PROPERTY

For the landlord:

- ◆ All income received from rental of a property is of a revenue nature and has to be declared as part of a landlord's gross income.
- ◆ Deductions are available, such as: interest on bond repayments, repairs and maintenance, municipal rates and taxes, letting agent's fees (if applicable), and expenses not recovered from the tenant, such as security, utilities or garden services. In the case of a sectional title scheme, the levy is also deductible.
- ◆ In order for the deductions to be allowed the expenditure must have been actually incurred in the production of income and not be of a capital nature. The landlord must effectively be able to satisfy SARS that he is carrying on a bona fide trade through the rental of his property.

- ◆ The cost of improvements, reconstructions or additions to the property cannot be deducted, as these expenses are of a capital nature. Improvements made to leasehold property in terms of a lease agreement by the tenant must be included in the income of the landlord. Either the stipulated amount or a fair and reasonable value will be included. There may be relief available for the landlord, in terms of Section 11(h) of the Income Tax Act.

For the tenant:

- ◆ The tenant can claim the rental expense as a deduction for tax purposes if the rental payment or expenditure was actually incurred in the production of income.
- ◆ If improvements are made to leasehold property in terms of a lease agreement by the tenant and the improvements are included in the income of the landlord, the tenant may deduct such expenditure over the period of the initial lease or 25 years (whichever is shorter).

THE RENTAL HOUSING ACT

The Rental Housing Act (50 of 1999), as amended, aims to regulate the relationship between tenants and landlords of residential property (utilised for dwelling purposes) in South Africa – by setting out general requirements relating to leases, laying down general principles and governing conflict resolution. The Rental Housing Tribunal's function is to ensure that unfair practices between landlords and tenants are eliminated and hence it interprets both the Act and the Procedural and Unfair Practice Regulations, where applicable, in its deliberations. The service is free to both tenants and landlords. A lease will be deemed to include a number of terms, which cannot be waived by either party, some of which are listed below:

- ◆ The landlord must furnish the tenant with written receipts for all payments received by the landlord from the tenant.
- ◆ If on the expiration of the lease, the tenant remains in the dwelling with the express or tacit consent of the landlord, the landlord and tenant are deemed, in the absence of a further written lease, to have entered into a periodic lease, on the same terms and conditions as the expired lease, except that at least one month's written notice must be given of the intention by either party to terminate the lease.
- ◆ A deposit must be invested by the landlord in an interest bearing account, such interest not to be less than the rate applicable to a savings account. During the period of the lease, the tenant is entitled to request proof from the landlord in respect of interest accrued.

- ◆ A tenant has the right, during the lease period, to privacy, and should the landlord wish to exercise his or her right of inspection, the inspection must be done in a reasonable manner after reasonable notice to the tenant.
- ◆ A landlord must provide a tenant with a dwelling that is fit and suitable to live in, maintain the existing structure of the dwelling and facilitate the provision of utilities to the dwelling.
- ◆ The Rental Housing Amendment Act (no 35 of 2014) addresses some of the shortcomings of the Act, and will come into operation on a date yet to be proclaimed. Some of the main changes that the Amendment Act brings about are that:
 - ❖ Leases must be reduced to writing. The onus will be on the landlord to make sure it is in writing.
 - ❖ The deposit and interest accrued on it must be paid to the tenant within 7 days of the expiration of the lease, however a reasonable cost incurred in repairing damage to the dwelling may be deducted from the deposit, but relevant receipts reflecting these costs must be made available to the tenant for inspection. Failure by a landlord to repay the deposit to the tenant is a criminal offence.

WATER AND PROPERTY

The Constitution of South Africa affords everyone the right to sufficient food and water. The National Water Act (no 36 of 1998) states that National Government is the public trustee of the nation's water resources, and must ensure that water is protected, used, developed, conserved, managed and controlled in a sustainable and equitable manner for the benefit of all persons. The Act states that any entitlement to water that it provides does not override any other law, ordinance, by-law or regulation, and is subject to any limitation or prohibition thereunder. Many areas of South Africa are experiencing mild to severe drought conditions. The scarcity of water as a resource is the "new normal", and the passing of water by-laws and restrictions by local authorities to accommodate the water crisis, impacts property owners, landlords and tenants alike.

LANDLORD AND TENANT

The residential lease agreement

Most existing lease agreements would have been executed during a time when water scarcity could not have been reasonably foreseen at the time that the contract was signed. The enforceability of some of the terms of the agreement, may therefore be adversely

affected. The Rental Housing Act, as amended, lists the obligations of the landlord and tenant – for example, tenant’s responsibility to keep and maintain the garden area and swimming pool in good condition, and return same to the landlord in substantially the same condition that it was in at the commencement date of the lease. Due to the severe drought conditions and water restrictions imposed by local authorities, the tenant may be unable to meet this obligation. Water Restrictions (currently Level 5) imposed by the City of Cape Town (CoCT) make irrigation and the topping up of private swimming pools with municipal water unlawful. The tenant may not contravene the law, rendering it impossible for him to perform in terms of the agreement, making the clause unenforceable. Should there be an adequate alternative water installation on the property, or had the restrictions been foreseeable at the time of the signing of the lease, the tenant may not have such a defence available to him.

The restrictions may also have an impact on the landlord’s obligations. Both the Rental Housing Act and Unfair Practices Regulations promulgated thereunder are clear on the landlord’s responsibility to offer a property as ‘reasonably fit’ for the purpose for which it has been let, and to ensure it is habitable. The Unfair Practice Regulations stipulate that landlords may not unilaterally terminate the tenant’s water supply without lawful cause, or be complicitly or negligently responsible for the tenant’s water supply being cut off. However, many leases do not directly address the issue of an interrupted (or non-existent) water supply. Where a lease agreement is silent on the issue, there is no express legal or constitutional duty on landlords to ensure that tenants have a continuous water supply when the water pressure is reduced or the supply is cut off by the local authority due to water restrictions. This duty falls on the State, in terms of the Constitution. The landlord may have the defence available to him of supervening impossibility of performance, rendering his obligation unenforceable (unless the interruption of services was foreseeable at the time of the execution of the lease agreement).

Where the Consumer Protection Act applies to a lease agreement, and in order that the lease does not contain an unfair contract term, or contravene the Unfair Practice Regulations, the agreement would need to contain a clause clearly stated in bold and upper case letters whereby any waiver of liability, assumption of an obligation, or waiver of a right is drawn specifically to the attention of both parties to the agreement in a conspicuous manner.

SELLER AND PURCHASER

A purchaser is entitled to receive a property in the same condition as it was at the date that the offer to purchase was accepted. The seller will remain responsible for the upkeep and maintenance of the property until such time as transfer is registered at the Deeds Office. The seller may not be able to maintain the garden and/or swimming pool due to impossibility of performance brought about by drought and local authority restrictions on the use of municipal water. The purchaser may not receive the property in the same condition as it was in when he signed the offer to purchase. Offers to Purchase in water restricted areas should include a clause in bold stating that due to local municipality restrictions and by-laws brought about by the water crisis, the property may not be in the same condition, and that the purchaser waives all claims against the seller for as long as the restrictions apply. The occupational interest clause should also contain provisions to protect the seller regarding possible penalties and/or costs of water management device installations where the purchaser takes occupation prior to registration of transfer of the property.

DRAFT EXPROPRIATION BILL, 2019

The draft Expropriation Bill, 2019 was published on 21 December 2018 for public comment (to be submitted within 60 days from the date of publication). Its aim is to enable expropriation in accordance with the Constitution, and provides for the expropriation of property for a public purpose or in the public interest.

Once signed into law, it will provide the legal basis for the application of any amendment to section 25 of the Constitution of South Africa, 1996 (the property clause), subject to section 36(1) which states that the limitation of any right should be “reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors...”. The draft Bill does, however, stand apart from the process to amend the Constitution, and once enacted, will govern the expropriation process. It aims to allow for land expropriation without compensation in specific circumstances.

The draft Bill sets out the process by which expropriation is to proceed, by stating (inter alia) that:

- ◆ Only the State is empowered to expropriate property, and may only do so in terms of the provisions of the draft Bill.

- ◆ A notice of intention must be served on the owner as well as any rights holders in the property (and the owner or rights holder is required to identify any unregistered rights holders, who would also need to be notified).
- ◆ Anyone who may be affected may lodge an objection to the expropriation (for example on the grounds that the expropriation is not for a public purpose, nor in the public interest).
- ◆ All costs involved in the expropriation are to be borne by the State.
- ◆ The expropriating authority may not proceed with expropriation unless they have first attempted to reach an agreement with the owner for the acquisition on reasonable terms. There are five instances listed in the draft Bill, where land may be expropriated without compensation, otherwise the principle that the State should pay compensation for expropriated property applies.
- ◆ All steps in the process, including the question of what constitutes just and equitable compensation, would be subject to judicial review.

COMPENSATION

The draft Bill states that the amount of compensation to be paid to an expropriated owner (or expropriated holder) must be just and equitable reflecting an equitable balance between the public interest and the interests of the expropriated owner/holder, having regard to all relevant circumstances, including the current use of the property, the history of the acquisition and use of the property, the market value of the property, the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property, and the purpose of the expropriation. [The current Expropriation Act (no 63 of 1975) stipulates that compensation should be at market value, regardless of the context].

The draft Bill introduces a new section dealing with circumstances in which nil compensation might be just and equitable and in the public interest, where land is expropriated, as follows (but not limited to):

- ◆ the owner has abandoned the land
- ◆ the land is occupied or used by a labour tenant
- ◆ the land is owned by a state-owned corporation or other state-owned entity (subject to concurrence with the relevant executive authority)
- ◆ the land is held for purely speculative purposes
- ◆ the market value of the land is equivalent to, or less than, the present value of direct state investment or subsidy in the acquisition and beneficial capital improvement of the land.

SECTIONAL TITLE AND COMMUNITY SCHEMES

The Sectional Titles Schemes Management Act (no 8 of 2011) or “STSMA” and The Community Schemes Ombud Service Act (no 9 of 2011), or “CSOSA”, and regulations aim primarily to protect owners in sectional title and community schemes and provide for management procedures and dispute resolution processes through the Ombud Service.

Attorneys, Estate Agents, Trustees of Sectional Title Schemes, Directors of Share Block Companies, Members of the Management Associations of housing schemes for retired persons, Owners, Developers and Managing Agents are required to know the critical aspects of the CSOSA. Trustees, Owners, Developers and Managing agents of Sectional Title Schemes are required to have knowledge and apply the provisions of the STSMA.

THE SECTIONAL TITLES SCHEMES MANAGEMENT ACT AND REGULATIONS

The following persons/groups of persons involved in Sectional Title Schemes are defined in the STSMA as follows:

The Body Corporate	
Developer	A person who is the registered owner of land situated within the area of jurisdiction of a local municipality, on which is situated or be erected a building or buildings which he or she has divided or proposes to divide into two or more sections in terms of a scheme.
Owner	In relation to a unit or a section or an undivided share in the common property forming part of such unit, means the person in whose name the unit is registered at a deeds registry in terms of the Sectional Titles Act.
Trustee	All the members (owners) are trustees from the establishment of the body corporate until the end of the first general meeting.

The executives of a community scheme, including the body corporate of a Sectional Title Scheme, may appoint Managing Agents to provide the scheme with management services to the community scheme for reward.

THE BODY CORPORATE

The body corporate is automatically established as soon as any person (other than the developer) becomes an owner of a unit in the scheme. At such time the developer and such persons are the members of the body corporate, and any person who thereafter

becomes an owner of a unit becomes a member. The developer ceases to be a member when he or she ceases to have a share in the common property. The body corporate is responsible for the enforcement of the Rules of the scheme, and the control, administration and management of the common property. Some of the more important functions of the body corporate are to establish and maintain an Administration Fund, to establish and maintain a Reserve Fund, to require owners to contribute to these funds and to raise these amounts by levying contributions on the owners in proportion to the quotas of their respective sections, to insure buildings and keep them insured to the replacement value thereof. In addition the Chief Ombud, local municipality, and local registrar of deeds need to have the domicile of the community scheme registered, so that in events of cases being brought against bodies corporate by owners or vice versa, there is one address at which to serve notices.

TEN-YEAR REPAIR, REPLACEMENT AND MAINTENANCE PLAN

A body corporate or the Trustees are required to prepare a written, ten-year repair, replacement and maintenance plan for the common property, setting out a number of items including major capital items expected to require maintenance, repair and replacement within the next 10 years, the estimated cost of such maintenance, repair and replacement and the expected life of those items. This plan is used to ascertain Reserve Fund Contributions.

MEETINGS OF THE BODY CORPORATE

The developer must convene a meeting of the members of the body corporate not more than 60 days after the establishment of the body corporate, and is required to furnish the members with information and documentation regarding the scheme. Where a special or unanimous resolution will be taken, 30 days' prior notice must be given to all the members in the prescribed form. Votes are calculated in value, or in number, as is set out in section 6(6) and (7).

A person may not act as a proxy for more than 2 members of the body corporate.

A body corporate or an owner who is unable to obtain a special or unanimous resolution may approach the Chief Ombud for relief.

OWNER MEETINGS

The body corporate must hold an AGM within 4 months of the end of each financial year, unless this requirement is waived. Business must not be transacted at any general meeting unless a quorum is present or represented, and the requirements for a quorum to be met are set out in detail in the Act.

MANAGEMENT AND CONDUCT RULES

Sectional Title schemes are regulated and managed by means of Management and Conduct Rules, subject to the STSMA.

Management rules exist to specify in detail how the body corporate's operations must be carried out and they also set out the rights and duties of its trustees and members. Conduct rules exist to regulate the behaviour of owners and occupiers, setting out their rights and in their use of sections and the common property – for example, rules relating to the keeping of animals, reptiles and birds, refuse and waste disposal, vehicles, damage to common property, storage of flammable materials and eradication of pests.

TRUSTEES OF THE BODY CORPORATE

The functions and powers of the body corporate must, (subject to the provisions of the Act, the Rules and any restriction imposed or direction given at a general meeting of the owners of sections), be performed and exercised by the trustees of the body corporate, holding office in terms of the Rules.

The rules set out the requirements for office and disqualification, nomination, election and replacement, trustee meetings and decisions, quorum requirements and voting at trustee meetings. At a trustee meeting, 50% of the trustees by number, but not less than two, form a quorum. Any member of a body corporate may attend a Trustees meeting.

The Trustees stand in a **fiduciary relationship** to the body corporate. He or she must avoid any material conflict between his or her own interests and those of the body corporate. A trustee who acts in breach of this duty is liable to the body corporate for any loss suffered by the body corporate as a result thereof or any economic benefit received by the trustee by reason thereof.

GOVERNANCE DOCUMENTATION REQUIREMENTS FOR SECTIONAL TITLE SCHEMES

The Management Rules may be amended, added to, repealed, or substituted, as follows:

By the developer (when applying to open a sectional title register)	By the body corporate
subject to the approval of the Chief Ombud, and provided they are not inconsistent with any other Management Rule,	by unanimous resolution provided that at such time there are owners (other than the developer) of at least 30% of the units in the scheme (subject to certain exceptions).

Conduct Rules may be substituted, added to, amended or repealed by **special resolution** of the body corporate (provided that such Conduct Rules may not be irreconcilable with any prescribed Management Rule).

Unanimous resolution	Special resolution
<p>Means a resolution -</p> <p>(a) passed unanimously by all the members of the body corporate at a meeting at which (i) at least 80% calculated both in value and in number, of the votes of all of the members of a body corporate are present or represented, and (ii) all the members who cast their votes do so in favour of the resolution, OR</p> <p>(b) agreed to in writing by all the members of the body corporate.</p>	<p>Means a resolution -</p> <p>(a) passed by at least 75% calculated both in value and in number, of the votes of the members of a body corporate who are represented at a general meeting, OR</p> <p>(b) agreed to in writing by members of a body corporate holding at least 75% calculated both in value and in number, of all the votes.</p>

The body corporate must lodge a notification of an amendment to the scheme's Management and/or Conduct Rules as soon as reasonably possible, with the Ombud Service - but not later than 10 days after the date of the relevant resolution of the body corporate, and must compile and keep a complete set of all Management and Conduct Rules.

The Chief Ombud must approve and issue a certificate for any Rules that may be substituted, added to, or changed. The Certificate must be lodged at the Registrar of Deeds.

The body corporate, or the elected Trustees, are responsible for making governance documentation, financial records, budgets and reports available to a member, a registered bondholder, or a person authorised in writing by a member or registered bondholder, on receiving a written request for such documentation. The Rules and Regulations of the scheme must be given to people who are new to the scheme, whether owners or tenants and must be available in all meetings held. The Ombud Service will be responsible to ensure that Rules comply with the requirements of the STSMA and that they will be reasonable and apply equally to all owners of units.

All other community schemes (Share Block company's, home owner's associations etc.) will have their own rules, own constitutions, Memorandum of Incorporation (whichever is applicable), however these also have to be lodged with and approved by the Chief Ombud.

RELIEF AVAILABLE FOR AGGRIEVED PERSONS

An aggrieved person who is dissatisfied with the management, or any other aspect of the Sectional Title Scheme, may:

- ◆ refer any dispute to the Chief Ombud in terms of the CSOSA
- ◆ appoint an Executive Managing Agent by special resolution of the body corporate (in terms of Regulation 28), to perform the functions and exercise the powers of the trustees
- ◆ apply to a Magistrate's Court for the appointment of an Administrator in terms of Section 16 of the STSMA, on the basis of serious financial and administrative mismanagement of the body corporate.

THE COMMUNITY SCHEMES OMBUD SERVICE ACT AND REGULATIONS

The CSOSA applies to “community schemes” which are defined as shared use of and responsibility for parts of land and buildings, including but not limited to a sectional titles development scheme, a share block company, a home or property owners' association, however constituted, established to administer a property development, a housing scheme for retired persons, and a housing co-operative as contemplated in the South African Co-operatives Act (no 14 of 2005).

GOVERNANCE AND CONTROL OF COMMUNITY SCHEMES

CSOS establishes an **Ombud Service**, with its main functions as follows:

- ◆ To regulate, monitor and control the quality of all sectional title and other scheme governance documentation.
- ◆ To develop and provide a dispute resolution service.
- ◆ To provide training for conciliators, adjudicators and other employees of the service.
- ◆ To take custody of, preserve and provide public access electronically, or by other means to sectional title scheme governance documentation and such other scheme governance documents.
- ◆ To provide education and documentation to owners, occupiers, executive committees as regards their rights and obligations.

APPLICATIONS FOR RELIEF TO THE CSOS

Any person may make an application to CSOS for dispute resolution, if such person is a party to or affected materially by a dispute (the relief is therefore available to persons such as tenants, owners, trustees etc.). The grounds on which such an application may be made include: financial issues, behavioural issues, scheme governance issues, meetings, management services, any works pertaining to private areas and common areas, and any general and other issues.

CONCILIATION, ADJUDICATION, APPEAL

On acceptance of an application and after receipt of any submissions from affected persons, or responses from the applicant, if the Ombud considers that there is a reasonable prospect of a negotiated settlement of the dispute, he must refer the matter to conciliation.

Should conciliation fail, the Ombud must refer the application, together with any submissions and responses thereto, to an adjudicator, who may make an order to dismiss the application, or grant or refuse each part of the relief sought by the applicant, or an order requiring a person to act, or to refrain from acting in a specified way.

An applicant, the association or any affected person who is dissatisfied by an adjudicator's order, may appeal to the High Court, but only on a question of law.

OMBUD SERVICE FEES

The fee for applying to the Ombud to resolve a dispute is just R50, and once it reaches adjudication, R100 is payable. A person whose monthly net household (gross income less PAYE) income is below R5 500 is entitled to a 100% waiver of application and adjudication fees.

SCHEME LEVIES

The CSOS is also funded by a small levy attached to every community scheme's levy payment, payable on a quarterly basis, commencing January 2017.

The levy is calculated subject to any applicable maximum amount, discount or waiver, according to the following formula:

The lessor of R40 or 2% of the amount by which the monthly levy charged by the Scheme exceeds R500

Should a community scheme, or person, fail to pay a levy or amount due to the CSOS on the date due and payable, interest on that amount is payable for the period it remains outstanding at a rate prescribed by the National Credit Act (no. 34 of 2005), as amended.

ANNUAL RETURNS, ANNUAL FINANCIAL STATEMENTS, CERTIFICATES AND FORMS

Every community scheme must file an annual return, and a copy of its annual financial statements with the Ombud Service, in the prescribed form, within 4 months after the end of the community scheme's financial year.

PROMOTION OF GOOD GOVERNANCE, TRAINING AND EDUCATION

Duties of Scheme Executives

A scheme executive (which includes Trustees of a Sectional Title body corporate, the board of directors of a share block company, and the management association of any housing scheme for retirement persons), must inform and educate himself about the community scheme, legislation and governance documentation, as well as obtain sufficient information and advice about all matters to be decided by scheme executives. He or she must attend all meetings of the scheme executives and attend the Annual General Meeting (unless excused by the Chairperson), exercise due diligence and act in a fiduciary capacity at all times.

Fidelity Insurance

Every community scheme is obliged to obtain fidelity insurance and insure against the risk of loss of money belonging to the scheme, as a result of any act of fraud or dishonesty committed by any "insurable person", which means a scheme executive, an employee or agent of a community scheme, who has control over the money of a community scheme, a managing agent, and a contractor, employee or other person acting on behalf of or under the direction of a managing agent, who in the normal course of the community scheme's affairs has access to or control over the monies of the community scheme.

Quality and Form of governance documentation

The Chief Ombud may, by written notice to the community scheme, require that the scheme governance documentation be lodged with the Ombud Service within 90 days after the establishment of the community scheme. This documentation includes any rules, regulations, articles, constitution, terms, conditions or other provisions that control the administration or occupation of private areas and common areas in a community scheme.

OFFENCES AND PENALTIES

CSOS aims to keep Trustees and members of the body corporate in line, in that it provides that any person is guilty of an offence, and is liable, on conviction, to a fine or imprisonment for a period not exceeding five years or to both a fine and such imprisonment, where he or she contravenes the Act. The list of offences to which this provision applies are set out in Section 34.

COSTS OF BUYING & SELLING PROPERTY

TYPICAL COSTS OF BUYING

PURCHASE PRICE

- ◆ A deposit (usually 10% of the gross purchase price) to the estate agent or conveyancer payable usually on signature of the deed of sale by both parties or within 7 to 14 days from signature (if applicable).
- ◆ The balance of the purchase price is lodged with the conveyancer prior to transfer, or is secured by way of a bank guarantee. Over and above the purchase price, the purchaser should have the cash available to cover the transfer costs (if this is not included in the bond) and the bond registration costs as follows:

TRANSFER COSTS

- ◆ **Transfer duty** – calculated on a sliding scale between 0% to 13% of the gross purchase price, is payable to SARS. (R0 to R900 000 is exempt).
- ◆ If the seller is a VAT vendor, then VAT is payable at 15% of the purchase price from 1 April 2018. As the seller is liable for payment, it is important to add the VAT to the purchase price, and to state clearly whether the agreed purchase price includes or excludes VAT. If nothing is stated, it is deemed to be inclusive of VAT, and the seller will be liable for VAT at the “tax fraction” (which equates to 13.04% of the gross price).
- ◆ The transaction may be zero-rated only when an income generating entity, which is also a going concern, is sold from a VAT vendor to a VAT vendor.
- ◆ **Conveyancing fees** – of the transferring attorney, may vary slightly according to rates set by the conveyancer who attends to the transfer, but are based on recommended fee guidelines from the law society (plus VAT).
- ◆ **Bond registration costs** – the purchaser normally pays the transfer and bond registration costs (plus VAT).
- ◆ **Other costs** – the bank may also charge a bond initiation fee – usually a base fee plus % of the loan amount, which is usually debited off home loan account. A homeowners insurance policy (to cover property and structures on it against natural disasters), home loan protection assurance (death, disability), moving costs, and telephone and internet connection costs may also need to be taken into account.

- ◆ **Deeds office/registration fees** – a fee which varies dependent on purchase price/value of property.
- ◆ **Sundry charges** – may include posts and petties payable to the transferring attorney, valuation certificates – a disbursement to the local authority to obtain valuation and rates clearance certificate – which varies depending on the local authority, electronic documentation generation fee costs, e-VAULT fees, deeds office search fees, a home-owners consent fee, FICA costs, and a transactional billing fee.
- ◆ **Occupational rental** – where the buyer takes occupation before registration of transfer of the property takes place, occupational rental is payable as per agreement and usually prior to and adjusted on registration of transfer.

TYPICAL COSTS OF SELLING

- ◆ **Estate agent's commission** – Commission rates are calculated as a % of the gross purchase price and should be negotiated upfront with the agent. Sellers need to establish very clearly what commission an agent proposes to charge before awarding a mandate and to ensure that the % agreed upon after any negotiation is written into the mandate document (where applicable) and establish whether such % includes VAT.
- ◆ **Beetle inspection, electrical inspection, plumbing and gas certificates** – the seller will be responsible for any repairs required before such a clearance certificate can be issued. The beetle inspection certificate may be required by inclusion in the contract of sale (KZN and Cape Provinces). The electrical inspection certificate is required to be obtained by the seller in terms of legislation – the Occupational Health and Safety Act (85 of 1993) – all provinces.
- ◆ **Bond cancellation fees** – to cancel an existing bond. Sellers should be aware that they need to give their financial institution 90 days notice of their intent to sell and in turn cancel their bond finance to avoid early termination penalties.
- ◆ **Rates and taxes** – the seller is normally liable to pay rates and taxes and utilities (levied by the local authority) up to the date of transfer. This may involve paying a 60 days rates in advance (Cape Town), payable to obtain clearance before registration of transfer (can vary from agreement to agreement). The seller may then claim a refund from council for any amount overpaid, covering the period after registration of transfer.
- ◆ **Electrical System Fence Certificate** – Usually this will be provided for in sale agreements concluded after 1 October 2012, which in most cases, will require the seller to bear the cost of ensuring compliance with specifications, together with the cost of obtaining the compliance certificate.

EXCHANGE CONTROL

ACQUISITION OF FIXED PROPERTY BY NON-RESIDENTS

Non-residents may invest in the Republic (including the acquisition of fixed property), provided that suitable documentary evidence is received in order to ensure that such transactions are concluded at arms' length, at fair market-related prices, and are financed in an approved manner.

The following provisions relate to financial assistance in South Africa:

- ◆ **Emigrants:** Local financial assistance made available to emigrants is subject to the 1:1 ratio.
- ◆ **Non-residents:** Authorised Dealers may grant or authorise local financial assistance facilities to non-residents in respect of bona fide foreign direct investments into South Africa (including the acquisition of commercial property), without restrictions. Where the funds are required for the acquisition of residential property (or other financial transactions) in South Africa the 1:1 ratio will apply.
- ◆ **Affected persons (i.e. where non-residents directly or indirectly owns 75% or more of an entity):** There is no restriction on the amount that could be borrowed locally in instances where an affected person wishes to borrow locally to finance a foreign direct investment into South Africa (including the acquisition of commercial property), or for domestic working capital requirements. Wholly non-resident owned subsidiaries may borrow locally up to 100% of the total shareholders' investment in respect of the acquisition of residential property (and or other financial transactions) in South Africa. The effect of local participation in non-resident controlled entities is to make the abovementioned norms more liberal the greater the local participation, i.e. the ability to borrow locally increases. This is based on a formula.

DISPOSAL OF FIXED PROPERTY BY NON-RESIDENTS

Proceeds from the sale of assets, including immovable property by non-residents in South Africa may be remitted abroad. Proceeds on the sale of assets, including immovable property in South Africa by Emigrants will be subject to the blocked account provisions, and withholding tax.

YOUR WILL & YOUR PROPERTY

- ◆ If you bequeath your fixed property to your surviving spouse, then no tax is payable, as all bequests to spouses are exempt from estate duty and/or CGT. No transfer duty is payable on a bequest of fixed property to an heir/legatee.
- ◆ If the value of your estate is more than R3,5 million, estate duty will become payable on the balance in excess of R3,5 million. Sufficient cash should be made available to pay this duty in order to avoid selling any fixed property.
- ◆ If your property is subject to a mortgage bond, and you leave your property as a specific bequest, you may wish to make the bequest subject to the provision that your legatee takes over the bond liability. Alternatively, you may wish to secure the bond by life assurance, the proceeds of which would clear the debt on your death.
- ◆ If your children are still minors, (under 18 and unmarried), it is advisable to set up a testamentary trust in your will, which would come into effect should both parents pass away before they reach majority.
- ◆ If you bequeath your fixed property to a number of heirs in equal shares, this may give rise to impracticalities due to the indivisibility of the bequest, and may give rise to a redistribution agreement being drawn up between your heirs.
- ◆ There may be specific provisions in your antenuptial contract in regard to your fixed property, which may override your wishes in terms of your will.
- ◆ There is a portable R3.5 million estate duty deduction between spouses.
- ◆ Where agricultural property is bequeathed, the testator needs to be aware of Section 3 of the Subdivision of Agricultural Land Act, which prevents the subdivision of agricultural land, and such land being registered in undivided shares in more than one person's name. This is especially relevant when the testator is considering bequeathing agricultural land to more than one beneficiary.

REGULATIONS FOR NEW BUILDINGS AND ENERGY USAGE

The Energy Efficiency Regulations for energy usage in buildings provide that all new buildings and building extensions in South Africa must conform to the regulations on energy conservation, including homes, industrial buildings, hotels and schools. The regulations are enforceable in terms of the National Building Regulations and Building Standards Act. Building plans will not be approved without compliance with the regulations. Buildings Control Officers (inspectors) will be required to ensure that buildings are built in accordance with National Building Regulations and specifically with energy usage requirements. No compliance – no occupancy certificate.

TAX ALLOWANCE FOR ENERGY-EFFICIENCY SAVINGS

Regulations on the tax allowance for Energy-efficiency savings stipulate that any company holding a certificate that can prove their energy savings are genuine, can submit the certificate to claim an allowance from SARS. The allowance is as contemplated in Section 12L (2) of the Income Tax Act, 1962. Section 12L provides that tax incentives are available for savings in all energy forms, and not only electricity. The energy-efficiency savings tax incentive is calculated at a rate of 95c/kWh and also applies to cogeneration projects.

WATER BY-LAWS: APPROVAL OF WATER INSTALLATIONS

Most municipal authority water by-laws provide that if an owner wishes to install a new water installation, or obtain water from another water source other than municipal water, the owner must first obtain the written approval from the municipal authority. The City of Cape Town: Water Amendment By-law, 2018 makes it mandatory where renovations to an existing building triggers a building plan approval process, to provide full details of any water conservation and demand management system or alternative water systems for flushing toilets, irrigation, swimming pool filling or top-up or other non-domestic purposes together with the building plans submitted for approval. All new developments [comprising land development for commercial, industrial or housing purposes including sectional title, single title cluster, gated villages, block of flats, etc. (excluding stand-alone households)] must provide for the installation of water conservation and demand management systems or alternative water systems for non-domestic purposes (flushing/laundry). Full details thereof must accompany the building plans, and comply with any National Building Regulations and Standards.

TRUSTS

TAX RATES

Tax rates applicable to trusts are as follows:

TYPE OF TRUST	INCOME TAX RATES	CAPITAL GAINS TAX INCLUSION RATE
Normal Trust	45%	80%
Special Trust	Same as those applicable to natural persons, except that the rebates and interest exemptions do not apply.	40%

Note: A special trust is a trust created solely for the benefit of someone who suffers from a disability that prevents such person from earning sufficient income for their maintenance or from managing their own financial affairs. A special trust can also be created by way of a testamentary trust whereby relatives of the testator who are alive on the date of death are the beneficiaries. In order to qualify as a special trust, the youngest of the beneficiaries must, on the last day of the year of assessment of that trust, be under the age of 18 years.

INTEREST-FREE AND LOW-INTEREST LOANS TO A TRUST

With effect 1 March 2017 loans made to a trust by

- ♦ a natural person, or
- ♦ at the instance of that person, a company in relation to which that person is a connected person, and where that person or company is a connected person in relation to the trust

the difference between the amount of interest incurred by the trust (if any, otherwise nil) and the interest that would have been incurred by that trust at the official rate of interest will be a continuing, annual donation for purposes of donations tax, made by the lender on the last day of the year of assessment of the trust

With effect 19 July 2017 loans by a natural person or a company to a company is also subject to donation tax on the same basis if 20% or more of the shares of the company is held directly or indirectly by a trust (or beneficiary of trust or spouse of beneficiary).

The following will be specifically excluded from the above donation provisions:

- ◆ special trusts that are created solely for the benefit of disabled persons
- ◆ trusts that fall under public benefit organisations
- ◆ vesting trusts (in respect of which the vesting rights and contributions of the beneficiaries are clearly established)
- ◆ loans used by the trusts to fund the acquisition of a primary residence
- ◆ loans that constitute affected transactions and are subject to transfer pricing provisions
- ◆ loans provided to the trust in terms of a sharia-compliant financing arrangement, or
- ◆ loans that are subject to dividends tax
- ◆ loans to employee share purchase trusts

The lender may utilise the annual donations tax exemption of R100 000 (or remaining portion if applicable) against this deemed donation.

No deduction, loss, allowance or capital loss may be claimed in respect of the reduction, waiver or other disposal of such a loan, advance or credit by the lender and will thus have no tax benefit for the lender.

OTHER ANTI-AVOIDANCE PROVISIONS

Anti-avoidance provisions exist to combat the use of trusts for income splitting and tax avoidance schemes. These provisions will normally be applicable where income accrues to a person other than the donor as a result of a donation, settlement or other disposition made (i.e. interest free loans). These provisions may apply where income accrues to the following persons:

- ◆ The donor's spouse;
- ◆ A minor child of the donor;
- ◆ The trust to whom the donation, settlement or other disposition has been made;
- ◆ Non-residents.

The result of the anti-avoidance provisions are that the income that accrues to the person's mentioned above are deemed to be the income of the donor.

CHECKLIST WHEN BUYING OR SELLING A PROPERTY FROM A TRUST

- 1. Review the Trust deed** Review the clauses pertaining to the powers and authority of the Trustees to act. They must have the requisite capacity to contract on behalf of the trust regarding the acquisition or disposal of property.
- 2. Letters of Authority** Trustees must be duly authorised to act in terms of the most recent Letters of Authority issued by the Master of the High Court.
- 3. FICA** Obtain all signing Trustees' Identity documents, and other FICA documentation.

- 4. Board of Trustees** The Board must be properly constituted. The minimum number of Trustees required by the Trust Deed must be appointed.
- 5. Administrative requirements** The Trustees must issue the necessary authority for one Trustee to act on their behalf, failing which, all Trustees are required to sign the necessary documentation. A prior resolution of Trustees is required authorising the purchase or sale of any immovable property in the name of the Trust. If this is not effected, all of the Trustees will be required to sign the Deed of Sale.

DONATIONS TAX

Donations Tax is payable by any South African resident. The donations tax provisions do not apply to non-residents even if they donate South African assets. Donations tax is payable on the value of any gratuitous disposal of property (including the disposal of property for inadequate consideration) and the renunciation of rights.

PRINCIPAL EXEMPTIONS

- ◆ Donations between spouses
- ◆ Donations to charitable, ecclesiastical and educational institutions, and certain public bodies in the Republic of South Africa (limited to certain thresholds)
- ◆ Donations by natural persons not exceeding R100 000 per year
- ◆ The donation of assets situated outside the Republic, subject to certain conditions
- ◆ Donations by companies not considered to be public companies up to R10 000 per annum
- ◆ Donations where the donee will not benefit until the death of the donor
- ◆ Donations made by companies which are recognised as public companies for tax purposes
- ◆ Donations cancelled within six months of the effective date
- ◆ Property disposed of under and in pursuance of any trust
- ◆ Donations between companies forming part of the same group of companies
- ◆ Reasonable bona fide contributions to the maintenance of individuals

RATES

Donations tax is payable at the end of the month following the month in which the donation was made, at a flat rate of 20% on the first R30 million donations. Donations tax on the donations in excess of R30 million over the lifetime of the donor will be 25%.

ESTATE DUTY

The general rule is that if the taxpayer is ordinarily resident in the Republic at the time of death, all of his assets (including deemed property), wherever they are situated, will be included in the gross value of his estate for the determination of duty payable thereon. Estate duty is levied at 20% on the first R30 million of the dutiable estate. Estate duty will be levied at 25% on the dutiable estate in excess of R30 million. Estate duty is levied on the South African property of non-residents.

Deemed property includes insurance policies on the life of the deceased, claims in terms of the matrimonial property act as well as property that the deceased was competent to dispose of immediately prior to his death.

The most important deductions are:

- ◆ Debts due at date of death
- ◆ Bequests to public benefit organisations
- ◆ Bequests to a surviving spouse

The Act allows for a R3.5 million estate duty abatement. This abatement could rollover from the deceased to a surviving spouse, so that the surviving spouse can use a R7 million abatement on death. The portability of the deduction will apply to the extent that the first dying spouse did not use the whole abatement.

There is relief from Estate Duty in the case of the same property being included in the estates of taxpayers dying within ten years of each other. The deduction is calculated on a sliding scale varying from 100% where the taxpayers die within two years of each other and 20% where the deaths are within eight to ten years of each other.

Executor's remuneration

An executor is entitled to the following remuneration:

- ◆ The remuneration fixed by deceased in the will, or
- ◆ 3.5% of gross assets
- ◆ 6% on income accrued and collected from date of death

Executor's remuneration is subject to VAT where the executor is registered as a vendor.

MORTGAGE BOND REPAYMENT FACTORS

INTEREST	YEARS			INTEREST	YEARS		
%	20	25	30	%	20	25	30
8.00	8.36	7.72	7.34	18.00	15.43	15.17	15.07
8.50	8.68	8.05	7.69	18.25	15.63	15.37	15.28
9.00	9.00	8.39	8.05	18.50	15.62	15.57	15.48
9.50	9.32	8.74	8.41	18.75	16.01	15.78	15.68
9.75	9.49	8.91	8.59	19.00	16.21	15.98	15.89
10.00	9.65	9.09	8.78	19.25	16.40	16.16	16.09
10.50	9.98	9.44	9.15	19.50	16.60	16.38	16.30
11.00	10.32	9.80	9.52	19.75	16.79	16.58	16.50
11.50	10.66	10.16	9.90	20.00	16.99	16.78	16.71
12.00	11.01	10.53	10.29	20.25	17.18	16.99	16.92
12.50	11.36	10.90	10.67	20.50	17.38	17.19	17.12
13.00	11.72	11.28	11.06	20.75	17.58	17.89	17.33
13.50	12.07	11.66	11.45	21.00	17.78	17.60	17.53
14.00	12.44	12.04	11.85	21.25	17.97	17.80	17.74
14.50	12.80	12.42	12.25	21.50	18.17	18.00	17.95
15.00	13.17	12.81	12.64	21.75	18.37	18.21	18.15
15.25	13.35	13.00	12.84	22.00	18.57	18.41	18.36
15.50	13.54	13.20	13.05	22.25	18.77	18.62	18.57
15.75	13.73	13.39	13.25	22.50	18.97	18.82	18.77
16.00	13.91	13.59	13.45	22.75	19.17	19.03	18.98
16.25	14.10	13.79	13.65	23.00	19.37	19.23	19.19
16.50	14.29	13.98	13.85	23.25	19.57	19.44	19.39
16.75	14.48	14.18	14.05	23.50	19.77	19.64	19.60
17.00	14.67	14.38	14.26	23.75	19.97	19.85	19.81
17.25	14.86	14.58	14.46	24.00	20.17	20.05	20.01
17.50	15.05	14.78	14.66	24.25	20.38	20.26	20.22
17.75	15.24	14.97	14.87	25.00	20.98	20.88	20.85

The table gives a monthly repayment per R1,000 of a loan with an interest rate ranging between 8% and 25% p.a. over a period of 20, 25 or 30 years. For example, if the loan is R100 000 at an interest rate of 10% p.a. to be repaid over 20 years, the monthly repayment is R100 000 divide by R1,000 \times 9.65 which is R965. Monthly repayments of approximately R965 will be required to liquidate capital and interest on a bond of R100 000.

SALE OF PROPERTY TIMELINE

While the transfer process follows a series of successive stages, the time period involved varies considerably. Here are some guidelines:

- ◆ Cash transactions may take 6 to 8 weeks.
- ◆ In normal circumstances, from date of approval of conditions, approx 2 months.
- ◆ There will be a 4-5 week delay in the event that an application for a lost or destroyed Deed or Bond is required.

Purchaser and Seller sign agreement

Stage 1

- ◆ Seller to advise bank of intention to cancel bond to avoid 90 day cancellation penalty **Stage 2**
- ◆ Bond approved
- ◆ Fulfillment of other suspensive conditions
- ◆ Deposit paid
- ◆ Transferring, bond and cancellation attorneys instructed
- ◆ Parties to provide FICA documentation and copy of rates account
- ◆ Transfer attorney requests title deeds and cancellation figures from the bank, and prepares transfer documents for signature by parties
- ◆ Bond attorney advises transfer attorney of amount available for guarantees

Stage 3

- ◆ Purchaser pays transfer costs
- ◆ Rates clearance and valuation certificates applied for (seller pays rates and utilities to transferring attorney).
- ◆ Transfer attorney receives title deed and cancellation figures from cancellation attorneys and sends draft deed to bond attorney
- ◆ Bond documents prepared once draft deed received
- ◆ Cancellation attorney is requested to cancel seller's bond on receipt of guarantees from the new bond attorney
- ◆ Purchaser signs bond documents and pays bond registration costs
- ◆ Purchaser signs transfer documents
- ◆ Seller signs transfer documents
- ◆ Electrical, beetle, gas and electric fence certificates arranged (and plumbing, where appropriate)

Stage 4

- ◆ Transfer attorney pays rates/levies and transfer duty to SARS (electronically)
- ◆ Bond attorneys send guarantees to the transfer or cancellation attorneys
- ◆ Transfer attorney obtains consent from the bondholder to cancel the seller's bond

- ◆ Documents lodged at Deeds Office
- ◆ Documents are checked in the Deeds Office (+10 days, regulation: 7 days)
- ◆ Purchaser must pay the balance of the purchase price to transfer attorney before lodgement, or when called for in terms of the agreement

ON REGISTRATION:

- ◆ Financial institution's attorneys have bond amount available
- ◆ Property registered in purchaser's name. Seller's bond cancelled. Purchaser's bond registered

COMPARATIVE TAX RATES

CATEGORY	2018	2019	2020
NATURAL PERSONS			
◆ Maximum marginal rate	45%	45%	45%
◆ Reached at a taxable income	1 500 000	1 500 000	1 500 000
◆ Minimum rate	18%	18%	18%
◆ Up to taxable income of	189 880	195 850	195 850
◆ CGT inclusion rate	40%	40%	40%
COMPANIES & CC's			
◆ Normal tax rate	28%	28%	28%
◆ Dividends Tax	20%	20%	20%
◆ CGT inclusion rate	80%	80%	80%
TRUSTS (other than special trusts)			
◆ Flat rate	45%	45%	45%
◆ CGT inclusion rate	80%	80%	80%
SUNDRY			
◆ Donations Tax	20%	20%-25%*	20%-25%*
◆ Estate Duty	20%	20%-25%*	20%-25%*
◆ VAT	14%	15%	15%
SMALL BUSINESS CORPORATIONS			
◆ Maximum marginal rate	28%	28%	28%
◆ Reached at a taxable income	550 000	550 000	550 000
◆ Minimum rate	0%	0%	0%
◆ Up to a taxable income of	75 750	78 150	79 000
MICRO BUSINESS			
◆ Maximum rate of tax	3%	3%	3%
◆ On turnover of	750 000	750 000	750 000
◆ Minimum rate	0%	0%	0%
◆ Up to a turnover of	335 000	335 000	335 000

* Estates and cumulative donations in excess of R30 million will be taxed at 25%.

VALUE-ADDED TAX (VAT)

The VAT system comprises of three types of supplies:

- ◆ Standard-rated supplies – supplies of goods and services subject to the VAT rate in force at the time of supply. With effect 1 April 2018 the VAT rate was increased from 14% to 15%*.
- ◆ Exempt supplies – supplies of certain services not subject to VAT. Vendors making exempt supplies are not entitled to input VAT credits.
- ◆ Zero-rated supplies – supplies of certain goods or services subject to VAT at zero percent. Vendors making zero-rated supplies are entitled to input VAT credits.

*Transitional rules dealing with VAT rate increases are contained in s 67A of the VAT Act.

KEY FEATURES

- ◆ Enterprises with a turnover of less than R1 000 000 in any period of 12 months are not obliged to register for VAT.
- ◆ Enterprises with a turnover of less than R50 000 in any period of 12 months are not permitted to register for VAT.
- ◆ VAT returns are generally submitted on a two monthly basis unless turnover in any period of 12 months exceeds R30 million, in which case returns are submitted monthly.
- ◆ Farmers may submit VAT returns on a six monthly basis as long as their turnover does not exceed R1.5 million and property letting companies and trusts may, subject to certain requirements, submit annual VAT returns.
- ◆ Vendors may reclaim the VAT element on expenditure incurred for the purpose of making taxable VAT supplies except on, entertainment, excluding qualifying subsistence, passenger vehicles (including hiring) and club subscriptions.
- ◆ Input tax credits may not be claimed on expenditure relating to exempt supplies.
- ◆ Input tax credits may only be claimed upon receipt of a valid tax invoice.
- ◆ In order to be a valid tax invoice the name, address and VAT registration number of the recipient and supplier must appear on tax invoices where the VAT inclusive total exceeds R5 000.

ILLUSTRATIVE SUMMARY OF COSTS

The transfer fees and bond costs reflected in the summary below are based on the recommended guideline issued by the SA Law Society on the 1 June 2018. The guideline may be updated during the course of 2019. The summary is therefore illustrative in nature, and is intended to provide an estimated idea of the costs to be expected by a purchaser of property in South Africa. In addition, the Deeds Office Fees reflected below are as per Government Gazette No. 41669 – published 31 May 2018, and effective 1 July 2018. These fees may also be updated during the course of 2019.

The summary comprises conveyancing fees and bond costs according to guidelines, VAT, Deeds Office Fees and Transfer Duty. Provision should also be made for petty disbursements such as FICA costs, posts and petties, rates clearance and/or levies, cancellation costs of an existing bond, bank initiation and valuation fees, electronic document generation, e-Vault and deeds office search fees, a home-owners consent fee and transactional billing fees (where applicable).

	R	R	R	R	R	R	R
Property Price/Value/Bond amount	1,000,000	2,000,000	3,000,000	6,000,000	8,000,000	10,000,000	30,000,000
Transfer fee (excl)	18,030.00	25,380.00	32,730.00	51,130.00	58,530.00	65,930.00	139,930.00
Vat at 15%	2,704.50	3,807.00	4,909.50	7,669.50	8,779.50	9,889.50	20,989.50
Deeds office levy	978.00	1,098.00	1,522.00	1,846.00	2,197.00	2,568.00	4,890.00
Transfer duty	3,000.00	60,500.00	163,000.00	493,000.00	713,000.00	933,000.00	3,533,000.00
Total	24,712.50	90,785.00	202,161.50	553,645.50	782,506.50	1,011,387.50	3,698,809.50
Bond fee (excl)	18,030.00	25,380.00	32,730.00	51,130.00	58,530.00	65,930.00	139,930.00
Vat at 15%	2,704.50	3,807.00	4,909.50	7,669.50	8,779.50	9,889.50	20,989.50
Deeds office levy	978.00	1,098.00	1,522.00	1,846.00	2,197.00	2,568.00	4,278.00
Total	21,712.50	30,285.00	39,161.50	60,645.50	69,506.50	78,387.50	165,197.50

Note: Our fees may vary from the guideline, based on the requirements of each specific matter quoted for.



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