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REAL ESTATE **ALERT**

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Relocate your property disputes

The South African court system has been under pressure for a long time and this has been recognised by our legislature which, together with the courts themselves and other key participants, has been on a mission to lighten the weight on our courts' shoulders. Significantly, there have been recent developments in South African property law which have contributed toward this objective.

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Relocate your property disputes

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Most recently, in the High Court judgment of *Coral Island Body Corporate v Hoge* [2019] JOL 42032 (WCC), the court provided some insight into this matter. The case involved a dispute in respect of plumbing installations and the usage of designated areas in a sectional title scheme. The court was of the view that the body corporate should not have brought the application in the high court but should have made use of the mechanisms provided by the Community Schemes Ombud Act, No 9 of 2011 (Ombud Act) and the services of the Community Schemes Ombud Service (Ombud).

The court based its conclusion on several factors including (i) the common occurrence of such disputes which create a desirability that they be dealt with cost-effectively and informally, since individual home owners can seldom afford to litigate in the high court over simple residential matters, (ii) the Ombud Act providing sufficient mechanisms alternative to approaching a court, and (iii) the Ombud being sufficiently equipped to deal with sectional title scheme disputes, and specialising therein. The court concluded that the lodging of the application in the High Court was "undoubtedly inappropriate".

On the legislature front we have the Rental Housing Amendment Bill of 2014, which was signed into law on 5 November 2014, resulting in the Rental Housing Amendment Act, No 25 of 2014 (RHAA). Once promulgated the RHAA will make many amendments to the Rental Housing Act, No 50 of 1999 (Old Act), many of which can be seen as an attempt by the legislature to lighten the weight on the court system's shoulders by allowing more matters to be resolved by the Rental Housing Tribunal (Tribunal).

The RHAA provides that the Minister of Human Settlements will be obliged rather than merely empowered, to establish a Tribunal in every province. There is quite a heavy focus on improving efficiency and continuity of the Tribunal, as is evident by the empowering of the MEC to appoint four additional people as members of the Tribunal, the requirement of adopting succession plans, and the allowance for Tribunal members as at the date of commencement of the RHAA to stay on for an additional term not exceeding 18 months after the commencement of the RHAA. The Tribunal's powers are also widened by the RHAA, as is apparent by the new wording governing the rulings it may make, and several additions such as the power to make any order (in respect of any matter over which it has jurisdiction) that is necessary to give effect to the RHAA. More notable new additions include the Tribunal's powers to rescind or vary its rulings in certain circumstances and make costs orders.

Relocate your property disputes...*continued*

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Aggrieved persons will also be afforded the option to appeal the decision of the Tribunal to the MEC, within 14 days of receipt of the Tribunal's decision, which will be obliged to select a panel to attend to the appeal. Such appeal will have to be finalised within 30 days of referral of the appeal to the aforementioned panel.

It seems that the legislature has attempted to curtail disputes in general, with the inclusion of objectives such as laying down general principles governing conflict resolution, providing for the facilitation of sound relations between tenants and landowners, providing for legal mechanisms ensuring the protection of rights, and affording speedy means of redress at minimum cost. Some examples of this include (i) the explicit requirement that leases will *have* to be in writing and conform to prescribed requirements, (ii) the allowance of landowners to apply deposit/s (and interest earned thereon) towards the payment of *any and all* amounts for which the tenant is liable, (iii) the obligation placed on the landlord to arrange for a joint inspection on expiration of a lease, and (iv) the express setting-out of the process to be followed for an eviction.

Overall, the RHAA tries to limit the scope for a dispute to occur or be referred to the Tribunal or a court.

In our view the effect of the above is that should a dispute be referred to the Tribunal or a court under the auspices of the RHAA or in respect of common sectional title scheme disputes, the outcome may very likely be more detrimental for the defaulting party, than previously. In the *Coral Island* judgment the court expressed mirroring sentiments when it remarked that courts should hereon forth "use their judicial discretion in respect of costs to discourage the inappropriate resort to the courts" with matters that applicants could have, and more appropriately should have, approached the Ombud with. In essence, the recent developments in alternative dispute resolution processes in property law put applicants at risk of being on the receiving end of a punitive adverse costs order, should they have failed to exhaust the easily accessible alternative dispute resolution mechanisms before approaching a court of law.

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Cliffe Dekker Hofmeyr is very pleased to have achieved a Level 1 BBBEE verification under the new BBBEE Codes of Good Practice. Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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