



ON TOP OF THE YEAR

2009 was a busy year at STBB – not only in the boardroom, but also out in the field. While we believe in working hard, we also believe in playing hard and giving back to the community. In the following pages you'll get a peek into what we've been up to, and you'll find answers to some of the questions we are frequently asked.

INSIDE

Retiring soon?

We help you weigh up
your options



Focus on divorce:

What happens to
the house, financial
planning and more



Focus on rights:

What the law says
about kids, domestic
workers, and getting
arrested



Giving back:

We help out in Philippi

WALKING THE TALK

On Sunday 30 August, STBB staff took part in the annual Blisters for Bread charity family fun walk to support the Peninsula School Feeding Association. This charity works hard to provide needy school children with food. They currently feed 228 000 children in 638 schools daily, which is a tremendously worthy cause – just imagine having to absorb an English or accounting lesson when all you can think of is how hungry you are. We're truly happy and proud to have supported PSFA.

WE HELP REVAMP DURBANVILLE CHILDREN'S HOME

A team of STBB volunteers was privileged to assist Chas Everitt International with their Home Make-Over project in October. What our team may have lacked in skill, we more than made up for in enthusiasm as we gave the Durbanville Children's Home an extreme make-over! The excitement and delight on the children's faces at the "big reveal" was well worth all the hard work.



LAWYERS AT SEA

As the 2008 winner of the Legal eagles Yacht Race, our team of attorneys again put their best foot (or should that be sea leg) forward in this year's race, held on the 28th of November 2009. The wind conditions were fairly poor and the team fought a good battle throughout. Well done to Stoffel Ackerman and team for attaining 4th position!



RETIREMENT SCHEMES

KNOW WHAT YOU'RE BUYING

Looking to make the move to a retirement complex? Here's what you need to know.

Retirement schemes are as popular as ever, given that they provide you not only with housing but also a variety of active lifestyle facilities, lock-up-and-go security and frail-care services with or without an option of assisted living. While it seems logical to choose your retirement spot for its location and facilities, it's vital to check legalities first. We're talking form of ownership. Read on to see how your legal rights and obligations vary depending on the form of ownership.

OWNERSHIP: THE OPTIONS

Retirement villages (or schemes) may be based on one of four options:

- **Sectional title ownership** gives you outright ownership of the unit in the retirement village.
- With **share-block ownership** you find that the complex is registered in the name of a share-block company and each unit is allotted a number of shares in the company. You buy shares, which give you the right to use the residence and the complex's facilities. However, you don't own the dwelling itself, merely the shares.
- **Life rights** give you the right to occupy a particular cottage or apartment for the rest of your life, without you actually owning it. These rights are governed by the Housing Development Scheme for Retired Persons Act.
- In **full-title ownership** (not typically found in retirement schemes) the property is registered in your name and you are liable for services, rates and levies as may apply. A homeowners' association will be established to maintain public areas in the retirement village and provide security and other services.

In all four of these scenarios it is imperative that you understand the implications of the agreement that you as a buyer will be signing. This is one of the most important deals of your life, so get professional advice to discuss the myriad considerations that apply.

BEFORE YOU SIGN, CONSIDER THIS

- Are you sure what you're buying, whether **life rights, share-block or sectional title**?
- Are you and your spouse or partner both signing the agreement? If not, what are the **surviving party's rights on the death of the other**?
- Are you relying on the proceeds of the sale of your present home with which to **fund the purchase**? If so, you need to ensure the agreement to purchase is made subject to the sale of your existing home.
- Is the **date of occupation** clearly stated in the contract?
- What are the **rules** of the scheme? The contracts of many retirement villages include clauses in terms of which you **surrender part of the resale value** of the unit and this money is ear-marked to go into a levy stabilisation fund to cover the cost of the services offered or to subsidise the levies.
- Make sure which **maintenance** expenses are covered by the levies. In some schemes all maintenance and repairs of communal property as well as individual units may be covered by the levies, whilst in others owners may be expected to pay for certain repairs to their units. Find out whether a portion of the levy is set aside to build up reserves for major maintenance and repairs.
- Some schemes include **meals** in the monthly levy. If so, do they charge extra for specific dietary



requirements? Or if meals are not included, what are the costs of meals?

- **Rates, water and sewage** may or may not be included in the levies in life-right and share-block schemes. In a sectional title scheme, you will receive separate rates accounts.
- Which services are included in **frail care** and what are the costs?
- If your unit has its own private garden, are **gardening costs** included in the levy or for the occupier's own account?
- The retirement village may offer 24-hour **security**, but does this include/exclude electrified fencing, panic buttons, patrols and/or boom-controlled access to the village?
- Who pays the **insurance**? And in instances where the homeowner's insurance is paid from the levy, are you liable to pay the excess in certain circumstances, for example where you were the negligent party?

These are but some of the questions – speak to your attorney to make sure you cover all your bases and make the best choice for you and your family. For advice on retirement villages and schemes, call Allan White on 021 673 4700.

NEVER TOO SOON TO START SAVING

Think retirement's still far in the future? It's never too soon to start preparing for it. As a rule of thumb, you should save at least 15% of your salary (before tax) towards your retirement. This will keep you financially independent in later years.

“More and more, research is showing us that retirement cannot be successful unless you involve yourself in something that is vital and purposeful for you.” – Mitch Anthoney, *The New Retirementality*.

DID YOU KNOW ...

TRANSFER YOUR HOME FREE OF TAX LIABILITY

The 2009 Taxation Laws Amendment Act came into operation on 30 September 2009. One of the provisions of this Act relates to the possibility of transferring a domestic residence that is held in an entity (such as a company, close corporation or trust) free from any tax liability.

In terms of the amended provisions, companies and close corporations whose primary asset is a domestic residence and whose members are individuals will be able to transfer the property to the members without the liability to pay transfer duty, CGT or STC. There are similar provisions in respect of trusts.

If you are holding your residential home in a company, close corporation or trust and wish to take advantage of these tax savings, speak to one of our attorneys to discuss your options.

“ These days, people live longer and are healthier, which means many of us have plenty of energy left at retirement age. ”

STBB FOCUS

DIVORCE

YOU BOUGHT YOUR HOME IN A CC,
NOW YOU'RE GETTING DIVORCED

James and Irene were married out of community of property in 2003 and soon thereafter found their dream home. On advice of an accountant friend, they decided not to buy the property in their own names but to form a close corporation in order to buy the house.

A close corporation is a legal entity with rights and obligations distinct from the holders of the membership interest therein. A CC can therefore enter into contracts, operate a bank account, own property and so forth. A CC is simpler and easier to start than a trust or a company, making it suitable for individuals or small businesses. The reason for buying in a CC, as it was explained to James and Irene, was so that they could avoid estate duty implications of the growth in the value of the property. The assets in their estates would be their share of the initial interest-free loan made to the close corporation to acquire the property.

When the marriage failed, the question arose of what to do with the house, given that it was not registered in either of their names. The answer is that whilst James and Irene don't own the property, they do own the members' interests and a loan account in the CC which owns the immovable property. Their members' interests and loan accounts are assets in their respective estates which can be valued and such value may then be used for settlement purposes.

Had James and Irene been married in community of property, all the interest they held in the close corporation would be held jointly in equal undivided shares and upon divorce each would be entitled to his/her half share.

DOES IT INVOLVE A CONVEYANCING
PROCEDURE?

Suppose James and Irene agreed in their divorce settlement that James would transfer his member's interest in the CC to Irene. No conveyancing procedure in the Deeds Office is required because

there will be no change in the ownership. However, the membership interest changes in that Irene is now the sole member and holder of member's interest in the CC. This change attracts the attention of the Receiver of Revenue. The Transfer Duty Act determines that transfer duty will be payable where an individual or an entity acquires a share in a CC of which the only asset consists of residential property. A conveyancer will attend to the procedure to pay the required transfer duty.

TRANSFER DUTY RATE

Fortunately, because Irene is a natural person, she pays transfer duty at a lower rate than charged in respect of legal entities. This rate is based on a sliding scale determined by the value of the property. For entities the rate of transfer duty is a flat 8% of the market value of the property, whilst for individuals there is a sliding scale whereby the first R500 000 in value is exempt; R500 001 to R1m attracts duty of 5% of the value exceeding R500 000 and properties valued at more than R1m attract duty amounting to R25 000 plus 8% of the value exceeding R1m. Where only a portion of the property is being transferred, the duty is reduced by a percentage equal to that of the share of the property being transferred.

TAKING CARE OF YOURSELF

It's a good idea to join a support group. You could try SADS (SA Divorce Support Association) on 082 344 33 43 or look in the yellow pages to find a psychologist or social worker specialising in loss and grief counselling.





DIVORCE AND FINANCIAL PLANNING

Time to review your financial planning? Here are some of the most important aspects.

+ Your will

Did you know that if you don't change your will after getting divorced, the Master of the High Court will view your old will as valid? This could result in your ex-spouse benefiting your estate.

+ Divorce orders

A parent paying under a maintenance order must have sufficient liquidity to continue paying the maintenance. Assets must be liquidated if income is not sufficient to pay maintenance. This is typically funded through life assurance.

+ Pension benefits

These laws have changed. If, in terms of your divorce order, you are entitled to share in the benefits of your ex-spouse's pension/provident fund, you may now access these funds before your ex-spouse's retirement.

+ Policy reviews

It is crucial to review your portfolio of policies to make sure they are sufficient to cover your dependants.

STBB | Smith Tabata Buchanan Boyes are well equipped to deal with the legal side of divorce and together with Stonehenge Wealth Management, an independent financial advisory firm, can offer comprehensive advice to you in this very difficult process.

Contact either your STBB attorney or Mark Moir (021 702 1915) for further information or assistance.

HOW DO YOU START THE DIVORCE PROCESS YOURSELF?

Getting divorced can be a relatively straightforward process. The Southern Divorce Court in Cape Town assists members of the public to do so.

You need to apply with the registrar of the court. Take along a certified copy of your marriage certificate, ID and antenuptial contract (if applicable).

Once you have completed the application form at court (90 Plein Street), a summons will be handed to you. The registrar will help you complete the summons.

You will then have to make sufficient copies of the summons: for the court file, for delivery to your spouse and for your own records.

Return the summons and copies to the registrar, who will issue a case number.

The summons must be served – this means it must be personally delivered by the sheriff. You will have to pay the sheriff's fees.

Depending on how far the sheriff has to travel, these fees should be around R40 to R100. You will save money if your spouse agrees to collect the summons from the sheriff's office.

Once the summons has been served, your spouse will have the option to defend the divorce. The defendant – the party served with the summons, if he is not contesting the divorce – can sign a so-called notice of non-defence. This form is also available from the registrar's office and must be filed once it has been signed.

Except in the very basic and uncomplicated divorces, it is always better to appoint an attorney to assist you, especially where children are involved. Your and your children's best interests will be optimally served by a professional on your side. For any information or assistance, contact Christel Beukes on 021 4069100.

“ The worst possible thing we can ever do, is have suffering with no meaning and no purpose. ”

- RELATIONSHIP COUNSELLOR,
DR PHIL MCGRAW



KNOW YOUR RIGHTS

Our constitution guarantees all South Africans basic human rights, but in some cases different rights apply. Here's what you need to know.

WHEN ARRESTED

Blue lights are flashing. There's a knock on your car window.

You know you should have declined the last drink at work and you start to panic. What if you get arrested?



STBB TIP

STAY CALM AND REMEMBER THE FOLLOWING:

Depending on the charge, an arrest may be affected with or without a warrant. If arrest is imminent, you have to be informed of the cause of your arrest at the time of your arrest, or immediately afterwards.

THE ARRESTING OFFICER HAS TO INFORM YOU OF YOUR RIGHTS, WHICH INCLUDE:

- The right to remain silent and the right to legal representation. We recommend that you don't answer any questions before consulting with your legal advisor. Don't find yourself compelled or forced to make any confession or admissions that could be used as evidence against you.

Don't obstruct or resist your arrest as this constitutes an offence itself in terms of Section 67 of the South African Service Act 68 of 1995.

- You have the right to have someone notified of your arrest. We suggest you contact a family member who will in turn notify your legal representative of your arrest.

Once your arrest has been completed, the arresting officer has to take you to the nearest police station as soon as reasonably possible. It is advisable to take note of the time of your arrest as you have to be brought before a magistrate within 48 hours of your arrest, or be released on the expiry of the period of 48 hours.

BASIC RIGHTS FOR DOMESTIC WORKERS

Domestic workers, just as any other labourers in this country, are protected by our labour laws. The law regulates working hours, leave, employment contracts, deductions, pay slips and termination of service. According to the Basic Conditions of Employment Act a domestic worker may be any person that does chores in the house, as well as a gardener, household driver and somebody who takes care of children, the aged, the sick, the frail or the disabled. However, it does not include a farm worker who performs domestic work in a home on a farm.

MINIMUM WAGES

New minimum wages were set in December 2009. The minimum wages for domestic workers who work 27 ordinary hours per week or less in an urban area amount to an hourly rate of R7.40, a weekly rate of R333.13 and a monthly rate of R1442.86.

It is illegal to pay lower than the prescribed hourly rate. However, employers who cannot afford to pay the minimum wage have an option of reducing the hours of work instead of retrenching their employee. If you pay more than the prescribed hourly rate you may not reduce it since that would constitute an unfair labour practice.

UIF

There is no obligation upon an employer to make provision for pension-, provident- or

funeral benefits for a domestic worker. There are however organisations that provide such cover for employees who wish to offer this to their domestic workers. The Unemployment Insurance Fund (UIF) prescribes that employers of domestic workers who work more than 24 hours a month **must** register themselves and their workers with the UIF. The total contribution paid to the UIF or SARS is 2% of the employee's earnings. 1% is deducted from the worker's total earnings (excluding commission), and another 1% is paid from their own pockets to the UIF or SARS before the 7th of every month.

The Basic Conditions of Employment Act requires employers to provide their workers with a pay slip every time they are paid as well as a certificate of service when their employment is ended. A Time and Wages record should also be completed in order to record the calculation of remuneration. These records of information must be kept for at least three years.

The abovementioned documents as well as a UIF application form and a basic contract of employment can be downloaded from our website, www.stbb.co.za. If an employer contemplates dismissing a domestic worker, certain guidelines as set out in the Labour Relations Act must be followed. If you are unsure about any of the above or require further information, please feel free to contact our offices for professional advice.

“ It is illegal to pay lower than the prescribed hourly rate. However, employers who cannot afford to pay the minimum wage have an option of reducing the hours of work, instead of retrenching their employee. ”



CHILDREN'S RIGHTS

Children are a special case, given that they're so vulnerable. The Children's Act prioritises the best interest of the child. It also makes provision for a national child protection register, which keeps a record of any adults found guilty of child abuse, which in turn means safer schools and crèches. Access to the register is, however, restricted and the information is only available when appropriate.

WHAT COUNTS AS CHILD ABUSE?

- Physical abuse, such as beating;
- Sexual abuse;
- Psychological abuse such as degrading treatment;
- Deliberate neglect, such as depriving children of adequate food and shelter.



We welcome your feedback
and invite you to contact us at
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REACHING OUT

In the spirit of giving, we visited Pine Acres and Egoli squatter camps in Philippi, Cape Town.

One Saturday morning last July, a team from STBB | SMITH TABATA BUCHANAN BOYES in association with Aden and Michelle Thomas of Cape Talk Radio opened their hearts and gave to a community in need.

The first stop was at Pine Acres Farm, Philippi, home to about 25 indigent families. At first we were not quite sure what to expect, but as the residents started to gather around, the sombre mood changed as we started to unpack the precious cargo – food, clothes and blankets donated by STBB staff. Charles Kadalie, chairman of the board of the City Mission in Cape Town and full-time minister with New Generations Southern Africa, got the growing crowd singing along joyfully while strumming his guitar. The children were quiet, playing in the sand and watching us with big, eager eyes.

Food, clothing and blankets were made into separate parcels catering specifically for the needs of every family at the Pine Acres Farm. Apart from

the parcels, every resident received a hot meal to combat the icy temperatures. It was an eye-opening experience in which some of us saw for the first time the real suffering that happens daily in neighbouring communities.

Along the way to our next stop we handed out more parcels to specific households in and around the area until we reached our final destination, the Egoli informal settlement in Philippi. While one group set up a make-shift soup kitchen in the middle of the township, the other handed out the last of the clothes, shoes and blankets to the crowd that gathered around. The desperation of difficult times was hanging thick in the air over the closely built shacks and shelters. The line of people that were patiently waiting for the soup and bread kept growing.

This kind of experience makes one realise how fortunate one is, and serves as inspiration to lend a helping hand when and where possible.

FOOD FOR THOUGHT

You give but little when you give of your possessions. It is when you give of yourself that you truly give.

For what are your possessions but things you keep and guard for fear you may need them tomorrow? And tomorrow, what shall tomorrow bring to the overprudent dog burying bones in the

trackless sand as he follows the pilgrims to the holy city? And what is fear of need but need itself? Is not dread of thirst when your well is full, the thirst that is unquenchable? There are those who give little of the much which they have – and they give it for recognition and their hidden desire makes their gifts

unwholesome. And there are those who have little and give it all. These are the believers in life and the bounty of life, and their coffer is never empty. There are those who give with joy, and their joy is their reward. And there are those who give with pain, and that pain is their baptism. And there are those who

give and know not pain in giving, nor do they seek joy, nor give with mindfulness of virtue: They give as in yonder valley the myrtle breathes its fragrance into space. Through the hands of such as these God speaks, and from behind their eyes He smiles upon the earth.

FROM *THE PROPHET* BY
KAHLIL GIBRAN