

August 2014

"Develop success from failures. Discouragement and failure are two of the surest stepping stones to success." Dale Carnegie

REQUEST TO REGISTER INTEREST: SEMINAR ON LITIGATION PROCEDURES

We have become aware that the need exists to present a short (half day) seminar on the basic procedures, steps, terminology and role players involved in a typical litigation process.

The aim of the course would be to give our clients an inside glimpse of the system in which we operate and the challenges we face in managing litigation processes within the organisational framework of the courts and other institutions.

The proposed outcome of such a seminar would be to:

- better equip our clients to manage the legal side of their businesses with the benefit of inside knowledge of the litigation system;
- be able to prepare for handover of matters more efficiently; and
- be able to report to their internal stakeholders with a better understanding of the litigation process.

The course would typically cover the following areas:

1. Jurisdictional issues;
2. Applications, actions and alternative dispute resolution;
3. Insolvency law (liquidations and sequestrations);
4. Preparation of matters for handover;
5. Summary judgment and interlocutory remedies;
6. Trial procedure and evidence;
7. Urgent applications;
8. Labour dispute resolution.

The seminar would be to the benefit of anyone involved in credit control, legal management, general management and entrepreneurship. There would be no costs associated with the seminar.

Should you be interested in attending a course of this nature, please drop us a short email at litigation@vanhuyssteens.co.za. If there are any specific areas which you feel need be addressed, please feel free to let us know.

Law & Laughter

Q: What did the lawyer name his daughter?

A: Sue.

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DEFAULTING ON YOUR CREDIT AGREEMENT: RESCISSION OF JUDGMENTS WITH CONSENT FROM THE CREDITOR

Once a Creditor obtains a default judgment against a Debtor, for one reason or another, the judgment will be listed against the Debtor's name by the various credit bureaus which will negatively affect the Debtors credit record.

Upon payment of the judgment debt in full, such a Debtor can approach the court for an order to rescind the judgment against his name and have the negative record removed from the credit bureaus listings. The simplest way to have the judgment rescinded is by requesting the Creditor who obtained the judgment for a written consent that the judgment can be rescinded.

Section 36(2) of the Magistrate Court Act 32 of 1944 states that:

“If a plaintiff in whose favor a Default Judgment has been granted agreed in writing that the judgment be rescinded or varied, a court must rescind or vary such judgment on application by any party affected by it.”

It must be noted that the Creditor may refuse to grant his consent to have the judgment rescinded. In this case the Debtor can still approach the court for such an order, however, an application on this basis has many more requirements that need to be complied with and the court will have discretion to grant or dismiss the application.

The 4 basic elements of such an application with consent is:

- that it is brought by affidavit;
- stating mainly that the judgment debt was settled in full;
- that the Creditor consented to the rescission; and
- the Creditor's written consent must be attached to the affidavit in support of the application.

Upon hearing of the application the court will then grant the application to have the judgment rescinded paving the way for the Debtor to clear his credit record with the credit bureaus.

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