

November 2014

*"You are never too old to set another goal or to dream a new dream."*  
C.S. Lewis

## **PROPERTY LAW: THE LIABILITY OF PROPERTY OWNERS FOR RATES AND TAXES INCURRED BY PREVIOUS OWNERS**

Municipalities have recently been claiming rates and taxes from property owners who were not the owners over the periods for which the rates and taxes were charged. This has created difficulties and uncertainties within the property market as to whether, following transfer of a property, the rates and taxes can be considered to have been paid to date.

Usually, a rates clearance certificate would be issued by a municipality certifying all amounts due in connection with the property have been paid prior to a property being transferred to a new owner. This certificate will usually be relied upon by a purchaser of property as indicative of the fact that all such amounts have indeed been paid.

Due to inefficiencies within municipalities, as well as wrong interpretation of a previous court judgment on the matter, amounts due on the property are not always accounted for in a rates clearance certificate and municipalities have required current owners of a property to pay for rates and taxes not incurred by them but by the property's previous owners.

In a judgment handed down in September this year, the Gauteng division of the High Court has set down the current legal position pertaining to such outstanding rates and taxes and the rights of new owners as follows:

- A successor in title to a property (a new owner) does not become a co-principal debtor regarding the principal debt to the municipality owed by a previous owner and is not liable for the payment of historical debts incurred by previous owners or occupiers of a property.
- The outstanding debt owed by a previous owner remains owing by that owner. The debt is unaffected by the transfer of the property to a new owner so it remains due by the owner that incurred the debt to the municipality.

Accordingly, property owners should not proceed to pay any debts that were not incurred by them and any person who has been forced to pay a debt incurred by a previous owner should immediately be refunded by the municipality concerned.

*Law & Laughter*

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# CONSUMER PROTECTION: THE PROTECTION OF PERSONAL INFORMATION ACT AND DIRECT MARKETING

When the Consumer Protection Act (the “CPA”) first came into operation on 31 March 2011, the majority of South Africans felt relief as the proverbial monkey on the consumer's shoulder was lifted and the constant threat of supplier's abusing their dominant positions was gone. Unfortunately, it wasn't long before we all started experiencing the relentless efforts of suppliers (those we know and especially those we've never even heard of) “smsing” promotions and phoning at what would seem to be the most inappropriate hours.

The CPA essentially provides for (and enables) direct marketing as long as its justified with an opt-out option. Put differently, a marketing document may be sent to someone who didn't request it, provided they are able to opt-out from any further correspondence from that entity. Not only does this result in time consuming and unnecessary admin, but also nobody feels at ease exercising their opt-out rights.

The Protection of Personal Information Act (“POPI”), once implemented, will require marketers to get permission from recipients prior to engaging in direct marketing activities. This piece of legislation does not prohibit direct marketing, but regulates the way in which it is undertaken, to ensure privacy and rights of consumers are protected.

POPI specifically targets direct marketing by electronic means, this includes and is not limited to sms's, faxes, emails and voice automated systems, and provides that entities will only be able to utilise direct marketing if its adheres to certain prerequisites, which includes:

- the consent of the consumer must be obtained before he / she may be bombarded with direct marketing (i.e. the new “opt-in” message);
- suppliers may only contact consumers if they have previously been given the opportunity to opt-out but has not exercised such right;
- should a supplier contact a consumer who is an existing client and who has previously provided personal information, such consumer must be afforded the opportunity to opt-out;
- most importantly, each communication for the purposes of direct marketing must contain both the provider's identity as well as contact details which the consumer can use to opt-out of further communications.

## Contact Van Huyssteens

T +27 12 349 2306  
F +086 6151 183

## Address:

De Haviland Crescent Nr. 5,  
III Villaggio Nr.12, Torino Suite  
Persequor Park  
Pretoria, South Africa

## Van Huyssteens appreciates your feedback:

For information or editorial contributions, please e-mail: [commercial@vanhuyssteens.co.za](mailto:commercial@vanhuyssteens.co.za).

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