

stand surety . . . or duck and run?

My father taught me two things about bills - always query them and never pay until you have no alternative.
- Miles Kingston.



Bob Williams
Commercial Division

What is the most important financial decision you will ever make?

Many would answer - the purchase of a house or car. But the most calamitous act can be the decision to bind yourself as surety for someone else's debts. By doing so, you take on yourself legal liability to pay those debts if the principal debtor fails to do so.

A suretyship can spell financial ruin. Paying one's own debts is arduous enough - undertaking liability for someone else's should never be done, unless it is absolutely unavoidable.

Yet it is astonishing how blithely and thoughtlessly some people can be induced to sign a suretyship.

"It's just a formality," says the bank official, "A standard form that we ask all our customers to sign."

In certain circumstances a suretyship may be inescapable. If, for example, you have your own business that trades as a company or close corporation, a bank will often refuse to open a bank account or give overdraft

facilities to the entity unless all the shareholders sign personal suretyships.

What, then, is the sensible course of action?

Firstly, avoid signing the suretyship if at all possible.

Secondly, if you have no choice but to sign a suretyship, then first ask your attorney to check the document and try to negotiate better terms. Many standard suretyship contracts are for an unlimited amount, of unlimited duration, and are applicable to all debts of every kind incurred by the debtor at any time in the future. Your attorney should negotiate for a limited duration, a cap on your liability and the exclusion of future debts. This will, at least, keep your liability within defined limits as to time and amount.

Finally, if you have already signed a suretyship, you should take the document to your attorney to see whether it can be cancelled or renegotiated.



Pat Dewes
Litigation Division

leadership changes in Litigation

The good lawyer is not the man who has an eye to every side and angle of contingency, and qualifies all his qualifications, but who throws himself on your part so heartily, that he can get you out of a scrape.
- Ralph Waldo Emerson.

We are pleased to announce that Pat Dewes has assumed leadership of our litigation team. Pat takes over from Deon Schaup, who has headed the Litigation Department for eight years.

Deon will be giving more attention to his duties as CEO, but will continue high-level litigation,

especially in insurance and personal injury law.

Pat is a veteran litigator with a wealth of experience in all fields of civil litigation, including commercial and property disputes and constitutional law.

fresh faces

*On overhearing a new Member of Parliament whisper to his companion, 'They say that the Old Man is getting a bit past it', an elderly Winston Churchill responded with characteristic wit:
And they say that the Old Man is getting deaf as well.*

You will notice some fresh new faces around Venn Nemeth and Hart in 2009. Succession planning is vital for any business and we take great pride (and pleasure) in training tomorrow's new attorneys.



Chuma Vabaza
Candidate Attorney

Chuma Vabaza matriculated from Selborne College in East London. Chuma sang for his school's Chamber Choir and received full school colours for singing. He obtained his LLB from the University of KwaZulu-Natal in Pietermaritzburg in 2008. Chuma is a sports all-rounder and enjoys, amongst other things, tennis, cricket and rugby.



Avinesh Dursen
Candidate Attorney

Menzi Mtshali schooled at Pinetown Boys High, where he was a soloist in the choir. Menzi then trekked up the north coast and completed his LLB at the University of Zululand. Menzi was varsity squash captain and chairman of the Law Students' Council. Menzi enjoys travelling, reading, and classical and inspirational music.

Avinesh Dursen attended Maritzburg College and obtained his Bachelor of Social Science and LLB from the University of KwaZulu-Natal, Pietermaritzburg campus. Avinesh enjoys technology, especially in the area of home entertainment systems. He enjoys weight training and, when most of us are worried about expanding waistlines, he is currently bemoaning the fact that a month out of the gym has cost him three precious kilograms!



Menzi Mtshali
Candidate Attorney

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LAW LETTER

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Simon Francis

coffee with redvers

Redvers is known for having more than a passing acquaintance with good wine. We broke tradition late one Friday afternoon and, over a glass of *Meerlust Rubicon*, Redvers told us more about his property and conveyancing practice ...

I walked to work from my flat in Pine Street when I first joined the firm. As a candidate attorney I was in awe of our chairman, Garnet Venn. I was filled with anxiety at the end of my first month when Garnet's secretary told me that he wanted to see me later that day. My trepidation was thankfully misplaced - Garnet gave me a raise!

I enjoy fixing complex conveyancing problems. Technical problems can hold up a transfer or the start of a development. I get a lot of exposure to these problems because we lodge transfers at the Deeds Office on behalf of attorneys throughout Kwazulu-Natal and the rest of South Africa. As a result, we have been involved as agents in the development of the Umhlanga Ridge and in exciting projects like Zimbali, Nondela and Dunblane.

I also enjoy putting together property development projects. Nothing gives me greater pleasure than driving past a commercial or residential property project that we helped establish. I especially like the financial aspects of conveyancing, probably because I come from a long line of accountants.



Redvers Lee
Property Division

The great thing about our country's conveyancing system is - certainty. When you buy property you are *certain* about the current owner, the boundaries of the property and the conditions registered against the property. This is a great contribution to our property market and the economy generally. In the United States, for example, the system is so unreliable that the first thing you do as a new property owner is take out insurance against the risk of someone challenging your title.

I have a real interest in education. I was chairman of the Board of the Governors at the Wykeham Collegiate for six years and thoroughly enjoyed the interaction with dedicated educators. At Venn Nemeth & Hart, we put a lot of emphasis on training candidate attorneys in conveyancing. The conveyancing exams are difficult and we are proud of our 100% pass rate.

At the end of the day I am a 'people' person. Conveyancing is a technical process, but human relations are terribly important. I still visit the Deeds Office every day. These personal visits allow me to keep up to date with the latest conveyancing practice and help me to maintain good relationships with the Registrar and her staff. Property developments aside, nothing gives me a thrill like seeing a young couple into their first house!

i am the missus!

He taught me housekeeping. When I divorce, I keep the house.
- Zsa Zsa Gabor

Customary marriages are not uncommon in African culture, especially in rural areas. The tricky part is when issues of rank between civil and customary spouses come into play. It is not unusual in these circumstances for the civil law wife to be seen parading about, with one hand on her hip, shouting: *Yimina umfazi wephepha - uwubanike wena?* (Translation for *umlungus*: I am the Missus, can you hear me? I am the Missus! And who are you?).

Issues of rank can also arise between former and current civil law spouses. Imagine the following scenario:

Sipho marries Thandi. They are married in community of property, which means that their assets are shared in a joint estate. They buy a property and are both cited as owners on the title deed. A couple of years later Sipho and Thandi divorce and the settlement agreement provides that Sipho gets the whole property.

Sipho forgets to have the whole property transferred into his name and, a few years later, meets a fine dame, Dudu. Sipho and Dudu also get married in community of property and Dudu automatically becomes the owner of a half share in the property.

When Dudu discovers that the title deed refers to Thandi, her hand moves threateningly close to her hip and she says firmly: *"I am the Missus and the title deed*

had better reflect that."

Sipho and Dudu see a conveyancer, who hastily agrees that Dudu *is* the Missus, but that before the title deed can reflect the true position, the conveyancer must give effect to the settlement agreement. This should have happened immediately after Sipho and Thandi were divorced.

The conveyancer will have to lodge an application for an endorsement transfer with the Deeds Office. Amongst other things, an endorsement transfer allows spouses married in community of property to give effect to a divorce settlement or court order that requires that one spouse gets the other spouse's half share in the property. The title deed of the property is endorsed to show the remaining spouse as owner of the entire property.

The conveyancer will simultaneously lodge an application with the Deeds Office to have the title deed endorsed to show that although Sipho is cited as owner, he and Dudu have subsequently been married in community of property, and the property is jointly owned.

Only then will the proper order of things - between the Missus and the former wife - have been restored.



Nosipo Mgojo
Property Division