

People who own more than one residential property will not have to pay commercial rates on their additional residential properties.

Despite these reassurances, the wording of the Amendment Bill is wide enough to cause concern. We hope that the Amendment Bill will be refined and an appropriate provision enacted.

## what happens when someone is **sequestered?**

*I owe much; I have nothing; the rest I leave to the poor.*  
- Francois Rabelais

Sequestration may sound like a particularly painful medical procedure, but it is really an effective debt collection process.

Creditors may sequester an individual (or liquidate a company or another entity for that matter) as a last resort, in an attempt to recover a debt. But what exactly happens when a person is sequestered?

After sequestration, the debtor's estate vests in the Master of the High Court until a trustee is appointed. Once a trustee is appointed, the trustee controls the debtor's estate. The trustee then sells up the debtor's assets and distributes the proceeds to the creditors.

The debtor and his spouse, if they are married out of community of property, have to provide a statement of their affairs, as well as all documents and records relating to their affairs, to the Master of the High Court.

The debtor is not allowed to deal with his or her assets. Immovable property may not, for example, be transferred by the debtor. The Registrar of the Court sends a copy of the sequestration order to every Registrar of Deeds in whose jurisdiction the debtor owns

immovable property. The Registrar of Deeds must then enter a *caveat* against the title deeds of any immovable property owned by the debtor. The *caveat* prevents the debtor from transferring the property in question.

One of the goals of the trustee is to liquidate as many assets as possible, so that creditors can be repaid as far as possible. Trustees are entitled to liquidate all movable and immovable property within the Republic.

Property situated outside the Republic is a bit more complex. Movable property owned by an insolvent person in a foreign country will, according to the common law, vest in the insolvent estate if the estate is sequestered by the court where the insolvent person is domiciled. But the trustee can only gain control of foreign immovable property if a court of that country recognises the trustee's appointment, failing which the immovable property remains vested in the insolvent person.



Michael Swanepoel  
Debt Collections Division

## the only thing harder than making money... **is collecting it!**

*Never invest your money in anything that eats or needs repairing.*  
- Billy Rose

Lindi Pearson has joined Venn Nemeth & Hart as Debt Collections Manager in our debt Collections Division. Lindi will focus on ensuring that we maintain our traditionally high standards of service quality, client liaison and value for money.

Lindi grew up in Kempton Park, Gauteng. Her husband hails from Pietermaritzburg, but they met and married in Johannesburg. Lindi is delighted to have settled in our city with her husband and two boys aged

nine and one.

Lindi is a qualified attorney, having completed her BProc at Tukkies in Pretoria and her articles at Barnard's Incorporated in Kempton Park. Her hobbies includes reading, scrap booking, glass painting and sewing.



Lindi Pearson

## chuma moving to **property**

*Education is not the filling of a pail, but the lighting of a fire.*  
- William Butler Yeats

Venn Nemeth and Hart is justifiably proud of Guy Smith - a conveyancer and property lawyer who has developed high profile residential estates in his own right. Guy's depth of understanding of the business and law of property development - as well as his appreciation for aesthetics and a communal basis for living - have made him a sought after development partner.

Chuma comes from Stutterheim, a little town in the Eastern Cape. He schooled at Selborne College in East London and studied law at our Pietermaritzburg campus

before completing articles at Venn Nemeth & Hart.

Recognising in Chuma a drive, fortitude and quirky sense of humour that might just survive exposure to Guy's manic genius, we are pleased to report that Guy is actively mentoring Chuma in the arts of property development.



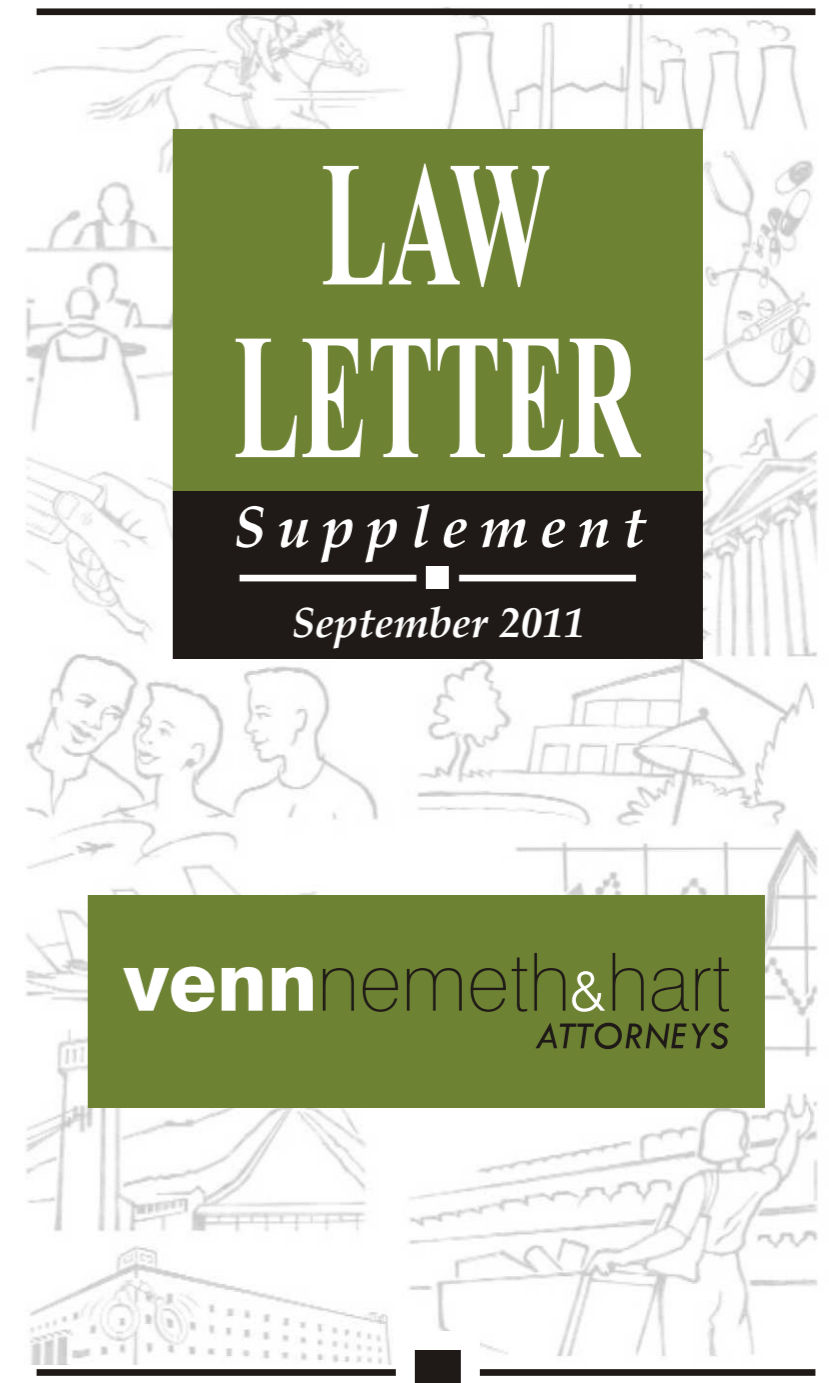
Chuma Vabuza

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**LAW LETTER**  
*Supplement*  
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# estate planning

*We've joined a SKI club - Spend the Kids' Inheritance!  
- Comment from an [elderly] client.*

If you are a member of the abovementioned SKI club, then read no further. But, tongue in cheek aside, Hannah Szudrawski, the head of our Trustee Division, gives a few points on why estate planning is vitally important.

**Death duty / Estate duty - call it what you will, only SARS benefits from the death of a wealthy testator.** Subject to various deductions and abatements, you pay 20% estate duty on the assets in your estate. Estate planning involves the careful and considered movement of assets out of your personal estate into, for example, a trust, so that your personal assets are reduced.

**When do you need to think about estate planning?** You do not pay estate duty on the first R3,5 million in your estate. If you leave your estate to your spouse, then this abatement can be rolled over to your spouse, so that a married couple does not pay estate duty on the first R7 million. Effectively, you only need to consider estate planning if your assets exceed - or are likely to exceed - R3,5 million if you are single or R7 million if you are married.

**Young people have the more difficult choice.** Young people are focused on the business of living, pursuing careers and building up assets. The irony is that this is the right time to move the right assets into a trust - before they start growing in value.

Also, some young people may not be certain whether or not their assets - or their joint assets with their spouses - will exceed the abatement threshold. This planning is best begun as soon as possible, so young people need to do some crystal ball gazing. To some extent, it is about backing yourself - where do you see yourself going?

**Deciding which assets to move is not always easy.** This process is best done by an attorney and an accountant working together. We generally only transfer growth assets to a trust. First, we weigh up the costs of transferring the asset - CGT and transfer duty in particular - against the benefits of reduced estate duty. We also consider whether the asset is passive - like unit trusts or a share portfolio - or active, such as a working farm or equity in your own business. The transfer of active assets generally triggers VAT and other unforeseen tax consequences, and needs further thought.

**Setting up a trust requires a real change in mindset.** You have to remember that the trust now owns the assets - not you. You cannot deal with the asset unilaterally, without involving your trustees. You need separate bank accounts and a paper trail



Hannah Szudrawski  
Estates Division

supporting the idea that the trust is the actual owner. If you fail to make this shift, then SARS may well deem the assets to be your's; and swiftly undo all the hard work put in by your planners.

**Estate planning is about taking some pain now for the sake of the next generation.** The costs of setting up a trust

are negligible - generally about R5000 plus VAT - but there are tax costs in transferring assets and annual accounting costs in preparing financial statements and submitting returns to SARS. The real question is: are those costs worth the reduced estate duty that your heirs will be required to pay?

the municipal property rates amendment bill:

# a sting in the tail

*The Eiffel Tower is the Empire State building after taxes.  
- Anonymous*

A public outcry followed the recent publication of the Municipal Property Rates Amendment Bill. Firstly, because the Bill allowed for a very short period within which objections could be made and, secondly, because the bill seeks to change the definition of "residential property".

The Municipal Property Rates Act presently defines residential property as "being a property included in a valuation roll as residential". The Amendment Bill says "residential property means property of which the primary use or permitted use is for residential purposes, excluding such property used to accommodate persons other than the owner for gain".

The question is: will "buy to let" properties, purchased as part of your investment strategy for the rental market, still be regarded as residential property? And what about beach houses and other second homes which may be occasionally let out to holiday makers? If these properties are no

longer residential, then rates will be levied at the higher, commercial rate.

Numerous objections have been received by government, including objections from the South African Property Owners Association and the Institute of Estate Agents.

The objections have focused on two considerations: firstly, if rates increase, then landlords will have to increase rentals, affecting tenants everywhere. Secondly, the current depressed property market may be further depressed if increased rates liabilities drives away "buy to let" investors.

The Deputy Minister, Yunus Carrim, has made a public statement to the effect that government intended the Amendment Bill to target guesthouses, bed and breakfasts and small hotels. The aim was to ensure that residential properties being used for commercial purposes were properly rated.



Redvers Lee  
Property Division