

When I hear somebody sigh "Life is hard" I'm always tempted to ask "Compared to what?"

THE ADVANTANGES OF USING A TRUST

Asset protection, risk mitigation and limiting ones tax liability are only some of the desired reasons for separating ownership of one's assets. This is perhaps the most significant purpose nowadays for establishing a trust.

Although great care needs to be taken during the administration of trust assets, there are still some instances where this standard of care is neglected. For example, a recent judgment handed down by the Supreme Court of Appeal scrutinised the way in which Trustees exercise their decision-making powers. The case specifically revolved around when and how internal disagreements between Trustees affect their ability to make decisions externally. The court punished Trustees who fell afoul of the provisions of the Trust Property Control Act.

There are however advantages related to purchasing assets in a trust, as opposed to buying it in personal capacity, of which the following are just a few:

- A trust is a flexible vehicle, capable of catering for various changes and uncertainties occurring in one's life over time e.g. a larger family, death, insolvency, legislative and financial changes and other circumstances.
- Since 23 February 2011 transfer duty payable when purchasing fixed assets is the same as for a natural person.
- Since the asset(s) are not registered in own name, the value of your personal estate upon death is reduced. Should the asset value increase over time, this growth will be excluded from your estate and the CGT payable is reduced accordingly.
- Provided that you do not establish your trust(s) with the intention of prejudicing creditors, purchasing or transferring assets into a trust helps to protect the specific asset from creditors.
- Trusts are excellent succession planning tools as a property bought in a trust can remain in the trust indefinitely. Consequently, there is no need to transfer the property from the deceased into the name of a heir. In turn this saves on unnecessary transfer costs and CGT duty.

Although having some pitfalls, if administered correctly, one can benefit tremendously from purchasing and holding assets of any kind by way of a trust.

Law & Laughter

Q: Why do they bury lawyers twelve feet deep?

A: Because deep down, they are really good guys.

LEASES AND THE CONSUMER PROTECTION ACT

The primary purpose and function of the Consumer Protection Act (the “CPA”), is to protect consumers. This protection also extends to tenants and lessees alike and generally means that any dispute involving the Act will usually tend to favour the tenant.

Section 14 of the CPA is of particular importance when it comes to leases and deals with the basic provisions applicable to all fixed term agreements. A tenant is entitled to the cancellation provisions as set out in section 14 regardless of whether the provisions are stated in the lease agreement or not. The maximum duration of a Lease Agreement is 24 months. A landlord or agent can also not attempt to contract out of these provisions and the tenant cannot waive them as they will operate automatically. On the other hand, the landlord must give 20 (business) days’ notice to cancel the agreement should there be a “material failure to comply with the agreement” and must give 40 to 80 days’ notice that the agreement will come to an end. A landlord will be viewed as a “supplier” when it/he/she purchased for investment purposes with the intention to rent it out.

Unless it falls within one of the following 6 exclusions, all leases can be classified as fixed term agreements and fall within the ambit of the CPA and its provisions:

1. Where services are rendered in terms of employment contracts, bargaining and/or collective agreements;
2. Where both the consumer and supplier is a juristic person regardless of asset value or annual turnover;
3. Where the consumer is a juristic person with a GROSS asset value or annual turnover of more than R 2 million (this exclusion does not apply to franchise agreements);
4. All credit agreements that fall under the National Credit Act (NCA) for eg bonds and hire purchases.
5. Those excluded transactions that relate to the supply or promotion of goods or services to the State;.
6. Any supply of goods and/or services not in the “ordinary course of business” will not be subject to the CPA’s provisions.

Contact van Huyssteens

T +27 12 349 2306
F +27 12 349-2308

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

If you would like to subscribe to this service, please send a blank e-mail to: commercial@vanhuyssteens.co.za with the word 'subscribe' in the subject line. To unsubscribe send a blank e-mail to: commercial@vanhuyssteens.co.za with the word 'un-subscribe' in the subject line.

Van Huyssteens Commercial Attorneys disclaims all liability for any loss, damage, injury or expense however caused, arising from the use of, or reliance upon, in any manner or form, the information provided through this newsletter. It does not, in any form or manner, warrant, or purport to warrant, the truth, accuracy and/or completeness of the information provided. Should any of the information provided herein be applicable to (or interest) you, please consult with a legal professional for comprehensive advice and guidance thereon. The publisher's prior written permission is required to reproduce, publish, use and/or display the contents hereof in any form or manner and/or for any reason whatsoever.