



NEWSLETTER

This Issue's Word:

de facto entities *n. a*
conveyancing term used to describe entities that, for certain purposes in practice, are recognized as entities, but which the law does not recognize as having a legal personality separate from the individuals that own or control the entity. Trusts and partnerships are examples of *de facto* entities.

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ITA Launches New Property Law Service

ITA recognized a need for an update service which focuses on property law to provide the conveyancing fraternity with regular updates regarding changes to legislation, new case law, registrar circulars and other conveyancing-relevant information.

As an additional component to this service ITA will soon introduce "Continuing Education" newsletters. This "CE" newsletter will provide in depth legal insight and analysis of various issues encountered daily by property law practitioners.

As we are sure any conveyancer will tell you, it is always advisable to read up on case law, new legislation, and any other legal publications to keep yourself 'in the loop'.

If you elect not to receive our Property Law Service newsletter, simply click on "unsubscribe" when you next receive one in your inbox. You will stop receiving the Property Law Service, but will continue to receive this Student Newsletter.

Please feel free to send comments, questions, and/or suggestions to ITAdmin@stbb.co.za.

In conjunction with STBB | Smith Tabata Buchanan Boyes Attorneys and thanks to a grant from Bright Foundation Trust, ITA launched its first "Property Law Service" email newsletter on 11 February 2009. This ad hoc newsletter is sent out to attorneys, estate agents, mortgage originators, and other property stakeholders and is currently

We will also be sending Property Law Service newsletters to you, our students! This will offer you the opportunity to stay just as informed as your boss! Or perhaps, you may even find yourself updating your boss! If you are studying to become an attorney or conveyancer, you will find that reading our Property Law Service

What a Conveyancer Wants

We thought it would be interesting to get into the head of a conveyancer to find out what his/her thoughts are about the role a conveyancing paralegal plays in his/her office. Cape Town conveyancer Meyer De Waal from Attorneys Oosthuizen & Co Meyer De Waal bravely

agreed to speak to us!
ITA: *What do you value most about the role paralegals play in your office?* MDW: "They are well trained and perform well under pressure and are alert to clients' needs. Good communication between various departments" (is also

key). ITA: *What do you find the most frustrating about a paralegal's manner of working?* MDW: "Poor time management, poor management of files and failure to distinguish between what is most important to attend to" (at any given time), and *(Cont' on page 2...)*



REMINDER!

New Deeds Office fees came into effect on **28 March 2009**.

There have not been too many amendments since last year's fee changes (which came into effect on 27 October 2008).

To view the new schedule of fees click [here](#).

What a Conveyancer Wants (Cont')

(Cont'... from page 1)

the inability to effectively prioritise matters in order of importance. Also, "Unnecessary mistakes in documents".

When we asked Mr De Waal what advice he would give a paralegal who is about to start working at his office, he indicated that the paralegal should have a proper diary system in place and he/she must make sure time is managed in the most productive and efficient manner as possible. He said that he/she should be "helpful and optimistic" and should set goals for him/herself.

ITA: *What is the best thing a paralegal of yours has ever done in your office?* MDW: "Giving such excellent service to the bank that the bank is now (also) forwarding transfer instructions to us."

ITA: *What is the biggest mistake a paralegal could make?* MDW: "Not keeping clients informed (throughout the transfer/bond process) and making mistakes with calculating transfer duty and accounts." ITA: *If a paralegal aspires to become a conveyancer one day, what extra 'work' (over and above studying hard) would you recommend she/he should do in preparation of his/her*

career in conveyancing? MDW: "Be helpful with any legal matters. Show interest in any field of law and be keen to learn and put in some extra time if necessary." He also added that she/he should "dress well and look the part".

ITA: *What is the best thing a paralegal can do to "get on your right side"?* MDW: "Be alert and distinguish between what needs to be done NOW and what needs to be done as soon as possible. Respond to queries fast. Support me by giving good co-operation and manage time efficiently and productively. Inform me of difficult clients/agents timeously and let me know if you are unsure (about anything or) if you have made a mistake so that we can work it out together."

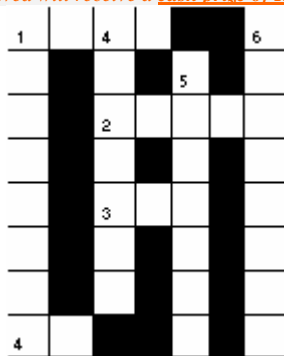
ITA: *What is the funniest thing a paralegal has ever done in your office?* MDW: "This is not work-related, but one day there was a rumour that a tornado was going to hit Cape Town. All the employees were starting to panic and because the trains were not going to be running late, I let all my employees go home at 12h00. One of my paralegals told me that she first wanted to go to gym." They all had a good laugh about her wanting to still go to gym in the midst of a tornado emergency! ☺

Iq Crossword

Complete this crossword and fax (with your contact details) to 021-4197845 for attention "Nailah". The first three correct entries received will receive a **cash prize of R50.00 each!!**

ACROSS

1. Act which helps to curb money laundering (Abbr)
2. on the bank's _____
3. Minimum amount of partners in a partnership
4. Lodgement code for "Notarial Deed of Cession of real right of extension"



DOWN

1. usually included in a sale of property - _____ and fittings
4. The "C" in CGT (Tax)
5. To stamp a deed
6. _____ of the agreement must be checked (is it valid?)

Congratulations to the winners of V1 Issue 4's puzzle!

V1 ISSUE 4 WINNERS:-
Rebecca Palmer(Class of 05-07); **Crysal Van der Westhuizen**; **Juanita Davis**(Class of 11-08)

V1 ISSUE 4 ANSWERS:-

ACROSS: 1. caveat. 2. rata 3. initial. 4. cool. DOWN: 1. certify. 5. VAT. 6. attach. 7. testator.

Thanks to all for the tremendous response and good luck with this issue's puzzle!



NEWSLETTER



I "ITA'd" it!! – [About our Graduates]

Cindi Dollman was part of the Conveyancing for Paralegals Level 1/2 class which graduated on 12 November 2008. 22 years young, Cindi is looking forward to a long and exciting career in property.

When Cindi was still in school she aspired to be an accountant, but after giving it more thought realized that she did not want to be stuck behind a computer staring at numbers the whole day.

Instead, she opted to study law (Bachelor of Social Sciences & Law) so that she would have the ability to work in a corporate environment with the added 'people interaction' component. Initially, she was quite interested in the family branch of law because she likes to interact with and help people, but as soon as her studies started covering property law, she found that this branch made most sense to her.

Today Cindi fills an important role at a property investment company. Cindi's daily duties include liaising with transfer and bond attorneys, applying for bonds, liaising with tenants, arranging the signing of lease agreements, collecting rentals, showing

properties to prospective tenants and all other admin work.

ITA: *Why did you decide to take the ITA Conveyancing for Paralegals Course?* CD:

"Because I was studying law and I wanted a job in law.

Studying teaches the principles, but does not give you the 'hands on' experience of what happens day-to-day [in practice]. [The ITA] course shows you exactly what you are doing and it is good to have this on your CV."

ITA: *How did you hear about ITA?* CD: "A personnel agency I applied at suggested I take the course". ITA: *How did this course help you?* CD:

"It is more realistic on a day-to-day basis. I now know what is going on 'on the other side'. This allows me to check on [the attorneys I deal with] and also helps me to know where they are coming from."

ITA: *What do you like most about your job?* CD: "I like the fact that it is very different every day. I speak to a variety of people, see new faces and hear new voices every day. I like meeting tenants and solving their problems. You make quite a few people happy when you put a roof over their heads!... It feels good when you have

helped." ITA: *What don't you like about your job?* CD:

"Nothing really... I can't pinpoint anything... except maybe that I fight with council a lot!". ITA: *What do you hope to achieve in your career?* CD: "I am still studying law as I would like this qualification behind me."

Cindi said she hopes to be able to grow with the company she works for now and she believes that having her LLB behind her will help in many aspects because it is often necessary in the property business to know the law, legal jargon and to be able to draft legal letters.

ITA: *What about this course stood out for you?* CD: "I am not a 'reader' and this course was the only course that I actually did all of the reading for! The [practical] knowledge gained was very exciting (i.e. working in Ghostconvey and having our own transfer files). The lecturers were great (happy and cheerful). I really enjoy property, so the whole course was very nice."

DID YOU KNOW?

THE #1 MOST COMMON REASON FOR REJECTION OF DEEDS IS:-

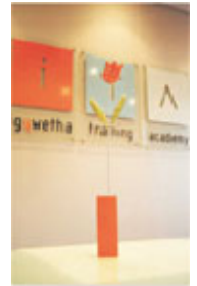
"Faulty description of parties in the preamble and vesting clauses."

* Allan West

LESSON FOR PARALEGAL:-

Although it is up to your conveyancer to prep, you also need to take certain steps to avoid such a rejection.

Don't just copy the information from one source. **DO FOUR COMPARISON CHECKS** to look for discrepancies: **1.** Check against ID/passport copy; **2.** Check against all additional documents provided by the client (ie info specified on completed info sheet(s) attached to the agreement of sale, marriage certificates, ANCs, divorce orders, signed affidavits, etc.); **3.** Obtain copies and check all contracts and registered documents in all SA deeds registries. **4.** Check the description of the holding deed (or flysheet if a bond, or original bond if a BC). **Also** ensure that you make all of this information available to your conveyancer for prepping purposes.



NEWSLETTER



LEGALEYES – RESOLUTIONS [Part 1]

New Years Resolutions by now completely forgotten, we decided to write about an altogether different type of resolution!

When entities (juristic persons) make decisions, it is normally done by owners/persons in charge of the business. How this needs to be done is usually set out in the entity's founding documents. 'Passing resolutions' are the most common way in which entities formalize their decisions.

What does this have to do with you (the paralegal)? A LOT! If you are appointed to attend to a conveyancing transaction, you (and your conveyancer) need to be sure that you obtain proof that the parties to the transaction are legally authorized to act on behalf of the entities/persons they represent. If they are not, the transaction COULD end up being declared invalid! Generally speaking in the case of a conveyancing transaction, the paralegal / conveyancer needs to obtain proof that: 1) The *entities entering into the transaction* actually have such authority in the first place; and 2) the *parties signing the agreement/transfer/bond documents on behalf of the entity* have the authority to act on behalf of the entity. Upon conducting a Cipro

search and after receiving a copy of an entity's founding documents, you will be able to determine who the decision-making persons are and how decisions are to be made. Most 'heads' of entities make decisions at meetings in the form of a proposal called a 'motion' or a 'draft resolution'. A vote takes place and if the majority vote is in favour of the decision, the 'proposal' is 'resolved' and passed as a decision of the entity. This is then recorded in the minutes of the meeting. In such a case, a paralegal will obtain a document called an "extract of the minutes" as proof that the decision is authorized by the entity.

Another way an entity can make a decision is by way of a 'resolution in circulation' (a 'written resolution'). The proposed decision is recorded on a document (known as the 'draft resolution'). This document is circulated (for signature) to all persons authorized to make decisions on behalf of the entity.

Remember to check founding documents to see how decisions are meant to be made when dealing with a specific entity. **Companies** normally make decisions in meetings and/or by written resolution as indicated above (refer to the company's

Memorandum and Articles of Association to double check this). **Close corporations** also make use of the above two methods, however, you do not need to check the cc's 'founding documents' as this is not a stipulation for cc's (unless if a separate 'association agreement' is in place for the cc). With cc's, the only decision making persons are the 'members' of the cc, as opposed to a company in which the directors RUN the business (make decisions) and the shareholders OWN the business. As for **trusts**, one needs to refer to the trust deed to see how the trust is to make decisions and at the same time one must check to see what restrictions the trust deed lays out (is/are the trust/ees even allowed to acquire or dispose of property?). The Letters of Authority will specify who the decision-making persons (trustees) are in the trust. As for **voluntary associations**, the founding document to check is called the Constitution. When dealing with **partnerships**, the partnership agreement should be checked (if there is a written one in place). Note however that with a partnership, one partner has the right to make a decision without the consent of the other partners (thereby

binding the other partners) as long as the decision is "in the course of normal business".

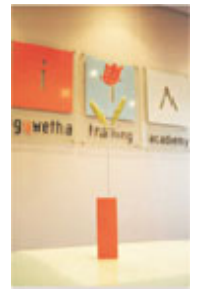
When only one partner signs, it would be safe to always double check the partnership agreement to see that the transaction in question is in fact in the course of the partnership's "normal business".

Having said all of this, we know that in many cases, when a paralegal receives an instruction, the directors / members / trustees / partners representing the entities that are party to the transaction often have no idea what is required of them and have often never even held meetings or signed resolutions!

In our next issue, we will answer the following questions:

- **When must SHAREHOLDERS (as opposed to just directors) of a company sign the resolution?**
- **What does 'ratify' mean and when does it apply?**
- **Must I obtain the ORIGINAL signed resolution for my file or will a faxed copy do?**
- **Do I need to obtain a resolution if I am dealing with a partnership?**

(Cont' on page 5)



NEWSLETTER



LEGALEYES – RESOLUTIONS [Part 1] (Cont')

(Cont'... from page 4)

- **How do my dealings with a trust differ compared to other entities (with regard to resolutions)?**

- **In which case(s) is it NOT acceptable for a resolution to be signed AFTER the entity's representative has already signed the**

sale agreement and/or transfer/bond documents?

- **Can a Power of Attorney be used when dealing with**

entities (as apposed to a resolution)?

If you have any additional 'resolution' questions to add, please email us on:

ITAdmin@stbb.co.za.

UNCOMMON PROPERTY – Open Parking Bay Section?

Many paralegals only know about two ways in which exclusive use areas are dealt with: (i) EUAs allocated in terms of Section 27 of the STA [registered EUAs], and (ii) EUAs allocated in terms of section 27A of the STA [recorded in the rules of the body corporate]. In addition, there are times when certain [exclusive] areas more specifically, ones enclosed by 'bricks and mortar', (such as garages or storerooms) are actually registered as SECTIONS by way of Sectional Deeds of Transfer. This is not uncommon. However, did you know that when dealing with older schemes, you might also encounter an OPEN exclusive area (such as an **open** parking bay) that is ALSO registered as a section by way of a Sectional Deed of Transfer?

In terms of the very first Sectional Titles Act (Sectional Titles Act 66 of 1971) exclusive use areas could only be allocated in terms of the rules that are applicable to the sectional scheme. When the STA 66 of 1971 was repealed and replaced with the STA 95 of 1986, it became possible for Exclusive Use Areas to be REGISTERED by way of Notarial Deed

of Cession of Exclusive Use Areas (in terms of Section 27 of the STA 95 OF 1986). This new Act came into effect on 1 June 1988. This new law was welcome, however, it also lacked certain flexibility as developers no longer had the option of allocating certain areas as exclusive use areas in terms of rules. (This was corrected later on by the insertion of Section 27A into the new Act in 1997. The new Section 27A left room for developers to decide whether they wished to allocate exclusive use areas in terms of rules or to register them by way of notarial cession.)

It sometimes occurred that developers would rather opt to INCLUDE parking bays and other open areas as SECTIONS of the scheme, rather than simply having these areas allocated in terms of rules. Although the old Act did not prohibit this, it is today considered necessary when making such a decision to take various factors into consideration. Loosely stated, the main factors to consider are whether the area is part of the building; whether it shares boundary/ies with the section; and whether it is only accessible through the section to which it is to be included. As this was not properly dealt with in old legislation, there were times when developers may have included specific

areas (not enclosed by 'bricks and mortar') into sections when it would have been more appropriate to deem them exclusive use areas.

The purpose of this article is to make you aware that when dealing with a conveyancing transaction in a sectional title scheme registered prior to June 1988, you may encounter the uncommon scenario of having an open parking bay identified as a SECTION. This, in itself, is not cause for alarm. You will deal with the transfer of the section(s) in the same way that you would deal with any normal section in a sectional title scheme. Similarly, you should always double check the description of the property in the Agreement of Sale against the deeds office records and also check the scheme's schedule of conditions. If you encounter any discrepancies, immediately draw this to the attention of your conveyancer.

It is also interesting to note that when dealing with sectional title schemes registered between 1 June 1988 and 25 September 1997, the option of allocating exclusive use areas in terms of rules would not have been available.



NEWSLETTER



NAILAH'S SPECIAL DAY



We would like to congratulate our lovely Student Liaison and Administration Officer, Nailah Johnstone on her wedding which took place on the 13th December 2008. On that bright sunny Saturday, a lucky Mr

Ishaam Harris became the husband of this beautiful bride. Here is a picture of Nailah getting ready on her special day, with the help of Shahnaaz.

Making Light of It! 😊



"O.K., folks, let's move along. I'm sure you've all seen someone qualify for a loan before."

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igqwetha training academy

At ITA we are passionate about practical legal training, particularly in the field of conveyancing, which is our speciality.

Our aim is not in the first place to make money (although we need to do that too in order to remain in business). We want to make a difference in people's lives, by teaching knowledge and skills about law that has value in the market place and which will help them to find jobs that they enjoy.

A career in conveyancing (or in other legal fields) is demanding but also stimulating, and there are many opportunities for growth and advancement. We want our students to enjoy their studies, and to master the theory and practice of conveyancing.

