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ARE BUYERS LIABLE FOR HISTORICAL RATES AND UTILITIES

A rates certificate must be lodged in the Deeds Office before a property can be transferred. Most people believe that once the Municipality has issued the rates certificate and the property has been transferred to the buyer, the Municipality cannot claim from the buyer any arrear rates or other unpaid debts which were not claimed before the transfer was registered.

The Local Government : Municipal Systems Act No 32 of 2000 ("MSA") came into effect on 1st March 2001. In terms of Section 118(1) of the MSA, the Registrar of Deeds may not register the transfer of a property without a rates certificate certifying that all amounts that became due in connection with the property for Municipal fees, service charges, property rates and other Municipal taxes, levies and duties during the two years preceding the date of the application for the rates certificate, have been fully paid. The Municipality is thus obliged to issue a rates certificate if all amounts due for the two year period prior to the application for the rates certificate are paid. The Municipality may still be left with an outstanding balance which still remains due in respect of that property after the rates certificate has been issued and the property has been transferred to the buyer.

Section 118(3) of the MSA provides that the amounts due to the Municipality are a charge on the property which enjoy preference over any mortgage bond registered against the property. It is important to note that Section 118(3) of the MSA does not state that it is amounts due by the seller but rather amounts due in connection with the property, which include utility charges incurred by an occupier of the property.

Several Municipalities are claiming these arrear amounts from buyers after the transfer has been registered, on the basis that they remain debts due in connection with the property. The stance adopted by the Municipalities was endorsed in the recent judgment of the Supreme Court of Appeal in the case of City of Tshwane Metropolitan Municipality v Mathabathe & Another 2013 (4) SA 319 (SCA).

The court held that Municipalities are obliged to collect moneys that becomes payable to them for property rates and taxes and the provision of Municipal services. They are assisted to fulfil that obligation by being given security for repayment of the debt, in the form of a charge against the property without a time limit, and the capacity to prevent transfer of the property until debts have been paid in certain circumstances, with a time limit. In respect of the security element, it does not matter when the component parts of the secured debt arose.

It should be noted that the security given has no time limit. Accordingly the security applies to historical debt and the Municipality would still be able to pursue the buyer for debts in respect of the property which arose prior to them taking transfer of the property and were not settled when they took transfer of the property.

FURTHER ADVICE

It may be prudent for buyers to ensure their sale agreement contains an obligation on the seller to settle all amounts owing to the Municipality in respect of the property prior to transfer and for the buyer to insist on a statement from the Municipality to ensure that there are no historical debts. It is also arguable that there is a duty on the conveyancers attending to the transfer of the property to advise the buyer if they are aware of any historical debt in respect of the property that will remain outstanding after transfer.

However, this may not always assist the buyer as record keeping in some Municipalities is not always what it should be and certain instances have arisen where Municipalities have discovered, after the transfer of the property has been registered, that there were amounts owing on that property in respect of utilities and services which they were not aware of when issuing the rates certificate. They have subsequently sought to claim those from the buyer.

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