



Co-ownership agreements save pain

IF YOU are considering buying a property with someone other than a spouse, it is advisable to enter into a co-ownership agreement.

A co-ownership agreement should deal with issues such as the sale of the property, resolution of disputes and maintenance.

The danger of not entering into a co-ownership agreement was highlighted in *Claassen v Quenstedt and Others* (1199/2011) [2014] ZAECPE-HC (25 March 2014).

Claassen and Quenstedt intended to marry. They bought a house together that was registered in both their names. They did not conclude a co-ownership agreement.

Quenstedt paid the deposit, bond repayments, rates and maintenance

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costs.

The relationship broke down and Claassen vacated the property.

Although both parties wanted to sell the property, they could not agree on a number of issues:

1 Should Quenstedt, who remained in occupation of the property, pay rent to Claassen pending the sale of the property?

The court held that an owner

cannot be required to pay rent and bond instalments in respect of the property that he owns and occupies.

Quenstedt's occupation of the property was lawful, and Claassen could not demand rent. It would have been different if Quenstedt was receiving rental income, in which case he would be obliged to share the profit with his co-owner.

2 How were the net proceeds of the sale to be divided?

The court ordered the parties to sell the property, settle the bond, pay agents' commission and other costs, and split the net proceeds equally.

3 Could Quenstedt demand payment from Claassen for a share of the costs he incurred in respect of bond repayments, rates and maintenance?

And if so, for what portion?

The court held that:

● Co-ownership must be distinguished from a partnership. If a partnership existed, then one partner may still have a claim against the other even after the lapse of the three-year prescription period.

● A co-owner alleging partnership will be required to prove the existence of the partnership. Co-ownership need not exist for the sake of gain or profit. However, gain or profit is fundamental to a partnership and is a factor to be taken into consideration in determining if a partnership was established.

● The parties had not created a partnership; they were merely joint owners. Thus the usual three-year prescription period applied and any

claim for payment of a share of bond repayments, rates and maintenance costs lapsed three years after it arose.

The time and money wasted in protracted litigation could have been avoided if, at the outset, the parties had entered into a co-ownership agreement dealing with all these issues.

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