



With Compliments

Upper Ground Level
8 Arnold Road
Rosebank
2196

Tel: 011 880 3300
Fax: 011 880 9128
Email: dunn@hfattorneys.co.za
Website: www.hirschowitz-flionis.co.za



[Forward email](#)

*Hirschowitz Flionis
Attorneys & Conveyancers*

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Property: Why Do You Need an Occupancy Certificate Before You Buy?

"...there is no obligation on the [seller] to obtain an occupancy certificate and to furnish it to the [buyers]" (Extract from judgment below)



Imagine this – you buy your dream home, pay for it, take transfer into your name, and move in. But then disaster strikes. The Municipality tells you no occupancy certificate was ever issued for the property and that you must vacate. Now.

Both buyers and sellers should take note of a recent High Court decision highlighting the importance to buyers of getting an occupation certificate from the seller before putting in any offer or insisting on a clause in the sale agreement requiring the seller to produce one before transfer.

What is an occupancy certificate and why is it vital to have one?

It's confirmation by your local authority that the building complies with the approved building plans and that all other requirements have been met.

Without it, it is unlawful for anyone to occupy the building. You can be ordered to vacate, but that's not all – other risks include your insurers declining any claims you make, municipal penalties for non-compliance, perhaps threats of a demolition order. You and your family could even be in physical danger if the non-compliance results in electrical hazards, fire risks, structural failure, or the like.

Although the municipality can “grant permission in writing to use the building before the issue of the certificate of occupancy”, that will be a temporary permission only, probably only for a short period and with stringent conditions.

The demolition threat and the court application

- Having bought a property from the owner/builder's deceased estate, the buyers took transfer and happily moved in.
- To their horror, when a municipal building inspector was called in to inspect the building for defects, it came to light that although building plans had been approved 30 years ago, no occupancy certificate had ever been issued.
- The municipality “suggested” that the buyers vacate immediately and threatened to demolish the building, citing a number of outstanding certificates - completion certificates for the structural and storm water, an electrical compliance certificate, a plumbers' compliance certificate, a glazing certificate, a gas installation certificate, and a soil poisoning certificate.
- The buyers demanded that the executor of the deceased estate obtain an occupancy certificate for them, and when she refused, they asked the High Court to order her to do so.
- The buyers pointed out that, per a standard clause in their sale agreement, the seller was obliged to give them “vacant possession”. That, they argued, meant “lawful possession” requiring the seller to provide them with an occupancy certificate before transfer.
- The seller (executor) replied that she was not bound by the sale or any other agreement to provide a certificate, that there is no general obligation on a seller to furnish a purchaser of an immovable property with an occupation certificate, that the buyers had been given vacant (“free and undisturbed”) possession, and that anyway the buyers as the new owners should now be the ones to apply for the certificate.

The seller wins, and a warning for buyers

The Court refused to order the seller to provide an occupancy certificate, finding that despite the fact that occupancy of the house was unlawful without the certificate, the buyers had “...clearly received vacant possession. [They] received what they purchased. They had no concerns about what they were purchasing and there is no indication in the papers that they enquired about the occupancy certificate at the time of the sale or prior to taking transfer. They have alternatives available to them ... and failed to explain why, as the

owner of the property, they have not taken any of the steps available to them.”

In regard to the *voetstoots* (“sold as is” clause) the Court quoted from a Supreme Court of Appeal decision: “...the absence of the statutory approvals for building alterations, or the other authorisations that render the property compliant with prescribed building standards ... does not render the property unfit for the purpose for which it was purchased.”

Perhaps the outcome would be different if a buyer is able to prove that the seller knew of the lack of an occupancy certificate and concealed that, or if a buyer sues for cancellation of the sale agreement or for damages. But that is speculation.

What is clear is this: The occupancy certificate is a vital document and as a buyer you should insist that the seller gives it to you *before* you make an offer, or that at least a term in the sale agreement obliges the seller to give it to you before transfer.

Who Owns Your Employee’s Invention? Lessons from the “Please Call Me” Saga

24 April 2024 is ‘World Intellectual Property Day’. It’s “an opportunity to explore how intellectual property (IP) encourages and can amplify the innovative and creative solutions that are so crucial to building our common future.” (The UN’s World Intellectual Property Organization)



It’s a case that has been making headlines for years, the “Please Call Me” saga in which Vodacom has been sued by an ex-employee and is now at risk of having to pay over billions of rand to him.

With April being “World Intellectual Property Month”, now’s a perfect time to see what lessons this bitter fight holds for all employers and their employees.

The trainee accountant, his long-distance girlfriend, and his bright idea

- Employed by Vodacom as a trainee accountant, Mr. Kenneth Nkosana Makate was looking for a way to stay in touch with his girlfriend (now wife) with whom he was in a long-distance relationship. As a student she couldn’t afford airtime, a problem faced by many cellphone users at one time or another.
- Long story short, in 2000 Mr. Makate came up with what is now known as the “Please Call Me” (“PCM”) concept – “a brilliant idea: a cellphone user with no airtime could send a request to another user with airtime, to call the former.” He took the idea to his employer, for whom it turned out to be a “resounding success”.
- He asked to be paid for his idea, but Vodacom said it wasn’t obliged to pay him anything. Eventually he sued them on

the basis of an agreement, verbally reached between him and Vodacom's Director of Product Development, to pay him compensation for his idea in the form of a share of revenue.

- Many court battles later the Constitutional Court issued an order declaring that Vodacom was bound by the verbal agreement and ordering the parties to negotiate in good faith to determine an amount of reasonable compensation to be paid.
- More litigation followed, leading most recently to the Supreme Court of Appeal (SCA). Its order setting out how that compensation is to be calculated leaves Vodacom facing a liability reported to total billions of Rand.
- Vodacom is, at date of writing, asking for leave to appeal that order in the Constitutional Court, so the show may not be over quite yet. But regardless of the final outcome, there are valuable lessons to be learned here by all employers (and their employees).

So do your employees own their inventions, or do you?

Generally speaking, our common law rule is that the right to all IP or "intellectual property" (covering patents, designs, copyright, and trademarks – loosely "inventions"), belongs to the employer **if the employee created it "in the course and scope of employment"**.

But that rule has over the decades led to much uncertainty in cases where employees claim to have come up with their inventions other than in the course of their employment – such as out of working hours, whilst working on their own initiative and on personal matters rather than under the employer's control and direction, and so on.

For example, one of the many areas of dispute in the Vodacom case was the question of whether or not Mr. Makate, as a junior employee on the accounting side, was acting in the course and scope of his employment when he had his lightbulb moment.

Although, as many commentators have pointed out, that case actually has more to do with being bound by one's verbal agreements than with questions of intellectual property law, the fact remains that, for employers and employees alike, there is a way to avoid all these potential disputes.

How to avoid uncertainty and dispute

The answer of course is to set out clearly in all contracts of employment and related policy documents who will own such inventions. A standard clause to protect employers in this regard might provide that any IP created by the employee during the period of employment are presumed to belong to the employer, no matter the circumstances in which it is created.

Such a clause should ideally be customized to reflect the nature of the employer's business and the employee's job description, it should ensure fairness and practicability, it should comply with legislative limitations applying to various types of IP, and it should

lay out incentives and procedures for employees to come up with bright ideas and share them.

Every situation will be unique, so specific professional advice tailored to meet your business and its particular needs is essential.

How to Safeguard Your Digital Presence: A Simple Checklist for Website Compliance

"It's important to remember your competitor is only one mouse click away" (Doug Warner)



Your website, social media profiles, and other online platforms play a vital role in your business strategy and in staying ahead of your competition at all times.

However, it's not just about marketing effectively. Ensuring compliance with regulations is equally crucial, although often overlooked.

Why is Compliance Important?

Compliance ensures that your business:

- Meets all legal requirements.
- Reduces risks associated with user engagement.
- Enhances your brand's image.
- Builds trust and loyalty with users.
- Safeguards your reputation.
- Prevents unnecessary costs.

A Checklist for Website Compliance

Website compliance involves adhering to various laws, regulations, and standards governing online operations and content. Here's what it entails:

- **Legal Compliance:** Your website must follow local, national, and international laws, covering online business, intellectual property, and consumer protection requirements.
- **Accessibility Compliance:** Websites should be accessible to people with disabilities, as mandated by some countries' laws.
- **Cookie Compliance:** Inform users about cookies and obtain their consent before placing them on their devices, as required by many countries.

- **Privacy Compliance:** Comply with privacy regulations when collecting user data, such as POPIA in South Africa and (where applicable) GDPR in the EU.
- **Security Compliance:** Implement security measures like encryption and secure logins to protect user data and prevent unauthorized access.
- **Content Compliance:** Ensure content doesn't violate copyright or trademark laws.
- **Financial Compliance:** Adhere to regulations for online payments and financial transactions if your website conducts such activities.
- **Advertising Compliance:** Ensure ads meet advertising standards and regulations to avoid deception or violation of laws.
- **Terms of Service/Supply and Policies:** Make legal documents clear, transparent, and legally sound for users to agree to.
- **Industry-Specific Compliance:** Some industries have specific regulations, like healthcare websites complying with health information privacy laws.

Integrate compliance into step 1 of your website's development

Integrate compliance into the very earliest developmental stage of your website, focusing not only on content but also design and process. This ensures that your online presence remains compliant from the outset, reducing the risk of non-compliance issues down the line.

When to Lawyer Up

“The first thing we do is, let's kill all the lawyers.” (Shakespeare)



Shakespeare must have had an unhappy experience or two with the lawyers of his time to have one of his characters utter that threat, but the reality is that every aspect of our lives is touched at one time or another by the law and the only way to navigate legal waters confidently and safely is with professional guidance.

While many people may feel intimidated by the legal system, seeking legal advice can help to avoid costly mistakes and to ensure that your rights are protected. Here's a brief guide on when and why you should seek legal help.

When should you seek legal help?

The short answer of course is “any time you are faced with a significant legal issue”, but let's list some of the more common and

important scenarios in which specific legal advice and assistance sometimes seems overkill, but is actually a no-brainer -

- **Buying or selling a property:** The process of buying or selling a house involves several legal requirements, from contracts and the transfer process to the financial preparations. Asking us for legal advice *before* you sign anything can help to ensure that the transaction is legally binding and protects your interests.
- **Starting a business:** Setting up a business requires a good understanding of all the legal aspects. We can advise on the best legal structure for your business, help draft contracts and agreements, and ensure that your business complies with all relevant laws.
- **Drafting a will:** A valid will is an absolutely vital document to ensure that your loved ones are properly provided for when you die. We will help you draft a will that clearly expresses your wishes and protects the interests of your beneficiaries.
- **Getting married:** Choosing the correct “marital regime” *before* you marry is essential and we will help you to make the best choice and to structure the right ANC (ante-nuptial contract) to protect you both.
- **Getting divorced:** The long-term personal and financial ramifications of divorcing make legal assistance indispensable. The earlier you approach us for advice and help, the more effectively we can help you navigate this unhappy process with as little delay and dispute as possible.
- **Employer/employee contracts and disputes:** Our employment and labour laws are complex and the consequences of getting them wrong can be extremely serious. There is no substitute for upfront and specific legal advice on structuring employment contracts and handling disputes as they arise.
- **Dealing with disputes:** Whether it's a dispute with an employer, an employee, a neighbor, a customer, or indeed anyone else, seeking legal advice can help you resolve the issue and protect your rights. We can help you understand your rights, stay on the right side of the law, negotiate a settlement, seek arbitration, or if need be, represent you in court.
- **Any brush with our criminal laws:** Being accused of a crime can happen to anyone at any time. Perhaps you are arrested after failing a breathalyser test or threatened with a statutory offence relating to your tax affairs. Perhaps it is something even more serious or perhaps it seems inconsequential, but don't take any chances here – ask us for help immediately or you could end up with a criminal record and serious penalties.

What about small claims, minor disputes, and the like?

You probably won't need to incur the costs of formal legal advice and help when smaller and less important disputes and issues arise, but it's always wisest to check with us first. Something seemingly minor

could risk serious consequences down the line if not properly handled, and we'll tell you whether or not that is the case.

Beware false economy

Legal assistance can be costly but beware the temptation to penny-pinch. Our law reports are full of cases where, for want of a little upfront and specific legal advice, litigants end up fighting – and often losing – long, bitter, and costly cases through court after court.

“A stitch in time saves nine” goes the old adage – wise advice indeed, and well worth heeding.

Legal Speak Made Easy

“Pro Bono”



“Pro bono” (or *“pro bono publico”* meaning “for the public good”) is normally used in the context of free legal advice and assistance given by lawyers to people unable to afford them, but it can also refer to other professional services provided voluntarily and without charge.

Per the Law Society of South Africa, “To qualify for free legal assistance, a person must comply with a ‘means test’ (a maximum monthly or no income) and have a legal problem with merit ... If a referral is made to a *pro bono* attorney, the client is responsible only for the cost of disbursements (actual expenses), such as Sheriffs’ fees, and the attorney will not charge any fees for the work and legal services provided.”

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