



MEUMANN WHITE



ATTORNEYS

**AMENDMENTS TO THE TRANSFER DUTY
ACT IN RESPECT OF NOMINATIONS AND
TRIPARTITE AGREEMENTS**

NOMINATIONS

- 1.1 Section 16 of the Transfer Duty Act, 1949 has been amended to the effect that nominations must be done-
 - (i) on the day of acceptance by the auctioneer of the offer, if the sale is by auction; or
 - (ii) on the day of conclusion of the agreement of sale, if the sale is otherwise than by auction.
- 1.2 It is clear that with auctions, the nomination must be accepted and signed on the day of the auction when the auctioneer accepts the offer.
- 1.3 The Receiver of Revenue has already issued a ruling that with private agreements of sale the "day of conclusion of the agreement" will be the day on which the agreement was signed.
- 1.4 Section 16 goes on to say that if a person or (agent) fails to timeously nominate in accordance with the above, it will be presumed that such person (or agent) acquired the property for himself and accordingly, double transfer duty will be payable.
- 1.5 In effect, the Receiver of Revenue will regard all agreements with nominees as constituting two separate transactions and transfer duty will therefore be payable on the transaction between the seller and the purchaser and on the 'subsequent' transaction between the purchaser and the nominee.
- 1.6 To prove the contrary to the Receiver will be a difficult feat as the Receiver has already made it quite clear that affidavits by the respective parties will **not** suffice.
- 1.7 Documentary proof will have to be submitted for the Receiver to decide whether the property was in fact purchased by an agent only and in the interim, double transfer duty will remain payable.
- 1.8 It is consequently our advice not to utilise nominee agreements any longer.

2. TRIPARTITE AGREEMENTS

- 2.1 The Transfer Duty Act, 1949 has been recently amended to the effect that on cancellation or dissolution of a transaction, the property must completely revert to the seller and the original purchaser must relinquish all rights and may not receive any consideration arising from such cancellation or dissolution.
- 2.2 In the event of the original purchaser retaining any amount whatsoever, transfer duty will be payable on the full purchase price of the first transaction between the seller and original purchaser. In addition, transfer duty will be paid on any consideration received by the seller as a result of the cancellation.
- 2.3 In effect, all tripartite agreements will now attract double transfer duty and it is clearly the intention of the Receiver's Office to do away with tripartite agreements in their entirety.