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# Newsletter

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## A PERSPECTIVE: CESSION IN SECURITATEM DEBITI

An owner of a corporeal movable property can give his creditor the said property as security, for getting credit from the creditor. Upon payment of the given credit, the corporeal movable can be returned to the debtor together with fruits it had accumulated whilst in the possession of the creditor.

The creditor does not ascertain ownership upon the corporeal movable, and therefore cannot sell it or destroy it, he can only exercise his right to do so upon the creditor being in default, or act in terms of agreement he had concluded with the creditor.

The South African law recognizes the ability to cede, transfer or assign a right

that one has against a third party or to another person. For example in the case of *Picardi Hotels Ltd v Thekwini Properties (Pty) Ltd 2009(1) SA 493 (SCA)*, the parties entered into a contract of lease of an immovable property, the appellant failed to pay his rental on the said property. The respondent then tried to recover his arrear rental and a special plea was raised that he (the respondent) lacked *locus*

**standi** to sue the appellant, as the appellant had ceded, transferred or assigned his right of recovery to a certain bank in terms of a mortgage bond, and the court agreed to this argument.

The judge in the above matter stated that it was recognized law that unless the parties agreed otherwise, a cession in **securitatem debiti** was dispossessed of its right to recover the ceded claim, and therefore can only retain the right to *bare dominium* or reversionary interest and as such it was held that the words used i.e. cedes, transfers and assigns were sufficient to constitute an effective transfer of rights.

There are various theories associated with a *cession in securitatem debiti*, in the

case *Development Bank of Southern Africa Ltd v Van Rensburg 2002 (5) SA 425 (SCA)*, which states the principle that the principal debt can be used as security for due performance of a secured debt. Furthermore it was stated that a *cession in securitatem debiti*, can be used whereby the principal debt is pledged to the cessionary while the cedent the bare dominium or a reversionary interest in the claim against the main debtor.

Another theory which is mostly preferred by academic writers, is that *cession securitatem debiti* is an out-and-out cession whereby responsibility is imposed on the cessionary to cede the principal debt again to the cedent on

satisfaction of the secured debt. And as such the ceded right is vested in the cessionary, after the *cession in securitatem debiti* the cedent does not have any right or interest in the principal debt or the fruits thereof.

In terms of the above facts, it is best when drafting an agreement to put facts clearly as to the kind of agreement parties wish to conclude, by using words which are unambiguous and which can easily be interpreted by an ordinary man





## 2. RENTING AND THE EVICTION OF RESIDENTIAL TENANTS

In general, both tenants and landlords will have corresponding obligations and duties towards each other. There are various legal consequences attached to a party who disregards these obligations or duties.

There are various legal mechanisms for tenants and landlords to protect their rights, namely Rental Housing Act, Prevention of Illegal Eviction Act, the New Consumer Protection Act and the Companies Act.

The Rental Housing Tribunal was established as a forum to settle disputes between tenants and landlords and ensure that unfair and unscrupulous practices are eliminated between the parties.

The Rental Housing Tribunal provides information regarding agreements (includes lease agreements), legal rights, deposits, refunds, rental property inspections, forced removals, maintenance as well as dispute resolution and arbitration processes amongst others.

Eviction procedure of residential tenants in South Africa

In terms of the Prevention of Illegal Eviction Act, a landlord must follow the requisite procedure in order to properly and lawfully evict a tenant, which can be briefly summarized as follows:

1. Application for Eviction can be issued in the magistrate's or the High Court, asking the Court to evict a Tenant which will contain a short affidavit and annexures such as the lease agreement.
2. The said application is then served on the Municipality having jurisdiction over the property and on the Tenant.
3. The tenant will then have (5) five business days to oppose the Application, after the lapse of five business days an exparte Application can be brought to Court without first informing the Tenant. The Court will consider the Application and will order how the requisite Notice in terms of the Prevention of Illegal Eviction is to be served.

4. The Prevention of Illegal Eviction Notice is then served on both the Municipality and the Tenant.

5. Usually a period of 14 days has to lapse in terms of the Prevention of Illegal Evictions Act.

6. On the return date of the said application, the matter will be heard by the Court and, if successful, an Eviction order is granted. The Eviction Order can order the Tenant to be evicted immediately but usually grants the Tenant 30 days to vacate the Premises, or have the Sheriff of the Court effect the ordered Eviction.

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