Bulletin

Risk Alert

A joint publication of the Attorneys Fidelity Fund and the Attorneys Insurance Indemnity Fund (Association incorporated under S21 of Act 61 of 1973)

August 2009 – No. 3/2009

In this edition

RISK MANAGER'S COLUMN

SCHEME POLICY FOR 2009/2010

CONVEYANCING

Risk Manager's Column

Erratum: I apologise for the error in my article entitled "Claims" on page 4 of the previous Bulletin (2/2009). Hesma Strydom's article about undertakings to bridging finance companies appeared in the November Bulletin (4/2008) and not in the February 2009 one. For me, the upside of my mistake was that a good number of attorneys contacted me to point it out!

NEW POLICY

As always, we publish the current year's new policy (1 July 2008 to 30 June 2009) in this August Bulletin.

Fortunately, there have been no noteworthy changes to the policy this year, but it has become necessary to alert practitioners to the fact that the Board of the AIIF is considering the implementation of exclusions and/or penalties in future policies … unless the claims experience improves significantly.

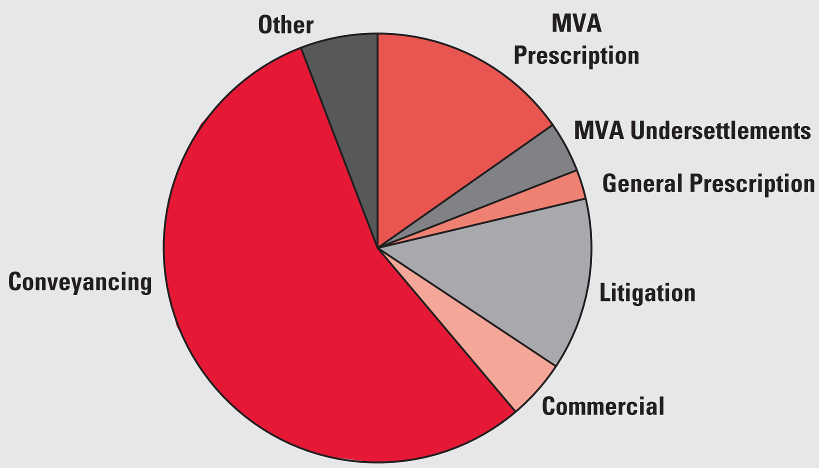
At the time of writing this column, there were 565 claims registered in the 2008/2009 year. In previous years the average number of claims at this time of year has been around 300.

One of the areas that is under the spotlight is defamation, because of the particular nature of these claims.

Another area that has been earmarked for consideration is conveyancing (particularly those matters involving bridging finance undertakings) in the light of the increase in numbers. As is clear from the pie chart below, in the current insurance year, conveyancing is by far the most prevalent claim type.

Continued on page 6 …

Claims Breakdown: 01 July 2008 - 31 March 2009



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GLENRAND M·I·B

THE ATTORNEYS FIDELITY FUND
PROFESSIONAL INDEMNITY INSURANCE SCHEME

1 JULY 2009 TO 30 JUNE 2010

PROFESSIONAL INDEMNITY INSURANCE

In consideration of the Attorneys Fidelity Fund, for and on behalf of every insured (as defined in this Policy), having paid or agreed to pay the insurer named in the schedule the premium stated in the Master Policy:

The insurer agrees to provide an indemnity in the manner and to the extent stipulated subject to the terms contained in this policy and the schedules hereto.

1. INDEMNITY

The indemnity granted in this policy is in respect of:

1.1 the insured's legal liability to any third party arising out of the conduct of the profession by the insured which legal liability is the subject of a claim first made on the insured during the period of insurance irrespective of when or where such liability arose.

1.2 approved costs in connection with any claim under 1.1.

1.3 approved costs of investigating and of being represented at any professional or judicial inquiry into any event or occurrence that may have given rise to or may reasonably be expected to give rise to a claim under 1.1.

2. DEFINITIONS

2.1 "the Act" – the Attorneys Act No. 53 of 1979 (as amended);

2.2 "the Attorneys Fidelity Fund"- the Attorneys Fidelity Fund referred to in Section 25 of the Act;

2.3 "practitioner" – any attorney notary or conveyancer as further defined in the Act;

2.4 "approved costs" – all legal and similar costs and expenses which the insured may incur with the insurer's written consent which shall not be unreasonably withheld;

2.5 "the insured"-

2.5.1 (a) every individual practitioner and

(b) every firm, partnership or incorporated practice consisting of one or more practitioners who, on the date on which the claim is made:

2.5.1.1 is practising as such in the Republic of South Africa, and

2.5.1.2 is in possession of or would have been obliged to apply for a current Fidelity Fund Certificate in terms of Section 42 of the Act;

2.5.2 any former sole practitioner and any former principal, partner, director or consultant of the firm, partnership or incorporated practice referred to in 2.5.1, who is no longer a practising practitioner when the claim is made against him provided that the claim arises out of the conduct of the profession by such person or such firm, partnership or incorporated practice at a time when he was:

2.5.2.1 practising as such in the Republic of South Africa and

2.5.2.2 in possession of or obliged to apply for a current Fidelity Fund Certificate in terms of Section 42 of the Act;

2.5.3 in the event of the death, incapacity, insolvency or dissolution of any person or entity referred to in 2.5.1, 2.5.2 and 7, his or her estate, legal representative, heir or successor in title in respect of any claim arising out of the conduct of the profession;

2.6 "partner or director" includes any person who is

2.6.1 de facto a partner or director of the insured or

2.6.2 who is publicly held out to be a partner or director of the insured;

2.7. "conduct of the profession"- the activities of the insured acting as a practitioner and such activities which are legitimately conducted as part of a legal practice. In the event of a dispute as to whether a particular act or activity is conducted as aforesaid the matter shall be referred to the president of the statutory law society having jurisdiction over the insured whose decision shall be binding on the parties to this policy.

3. LIMIT OF INDEMNITY

3.1 The liability of the insurer in respect of all claims and claimants' costs and expenses and approved costs shall not exceed the limit of indemnity specified in Schedule A.

3.2 All claims arising out of one act or omission or out of the dishonesty of any one person or any number of persons together or in collusion shall be deemed to arise out of one event or occurrence.

4. THE DEDUCTIBLE

The insured shall be responsible for the first amount of any claim and claimant's costs and expenses arising out of one event or occurrence, but not exceeding the deductibles specified in Schedule A. The deductibles shall only apply in respect of claims for breach of professional duty, but shall not be applied to approved costs.

5. EXCEPTIONS

5.1 Unless specifically stated to the contrary this policy does not cover any loss, destruction or damage whatsoever or any legal liability of whatever nature:

5.1.1 directly or indirectly caused by or arising from or in consequence of or contributed to by nuclear weapons materials or by ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel. Combustion shall include any self-sustaining process of nuclear fission.

5.1.2 which is insured or would but for the existence of this policy be insured by any other policy or policies or guarantees except in respect of any excess beyond the amount which would be payable under such policy or policies or guarantees had this insurance not been effected.

5.1.3 arising from any event or occurrence, which has been notified under any insurance in force prior to the inception of this policy.

5.1.4 arising out of or in connection with any trading losses or trading liabilities incurred by the insured or by any practice or business managed by or carried on by the insured.

5.1.5 arising from theft by any principal, partner, director, candidate attorney, employee or "in-house" consultant of the insured or of the insured's predecessors in practice of any money or other property referred to in Section 26 of the Act.

5.1.6 arising from or in terms of any judgement delivered or obtained in the first instance otherwise than by a court of competent jurisdiction within the Republic of South Africa.

5.1.7 arising out of or in connection with the provision of investment advice or the administration of any funds in contravention of the Banks Act 94 of 1990 (as amended), or as a liquidator in terms of the Agricultural Credit Act No.28 of 1996 (as amended)

5.1.8 arising out of or in connection with an order made against the insured to pay costs de bonis propriis in circumstances where the insured is acting in a capacity as attorney for one of the parties before the court which makes such order.

5.1.9 arising out of or in consequence of an instruction to the insured to invest money on behalf of any person other than an instruction to pay money into an account contemplated in Section 78 2(A) of the Act, if such payment is for the purpose of investing such money in such account on a temporary or interim basis only, pending the conclusion or implementation of a particular matter or transaction which is already in existence or about to come in to existence at the time the investment is made. This exclusion does not apply to money which the insured is authorised to invest in his or her capacity as executor, trustee or curator or in any other similar capacity.

5.1.10 arising out of or in connection with any work done on behalf of an entity defined in the Housing Act 107 of 1997 or its representative, with respect to the National Housing Programme provided for in the Housing Act 1997.

5.2 Unless specifically stated to the contrary this policy also does not cover:

5.2.1 any person who was in any way and at any time dishonest in relation to or in connection with any claim under this policy.

5.2.2 costs and expenses of litigation recovered by any claimant from the insured which are not incurred in and recoverable in the Republic of South Africa.

5.2.3 loss or destruction of or damage to any property whatsoever (including a computer) or any loss or expense whatsoever resulting or arising therefrom;

5.2.3.1 any legal liability of whatsoever nature;

5.2.3.2 any consequential loss; directly or indirectly caused by or contributed to or consisting of or arising from the incapacity or failure of any computer

i. to treat any date before, during or after the year 2000 as the correct date or true calendar date, or correctly or appropriately to recognise, manipulate, interpret, process, store, receive or to respond to any data or information, or to carry out any command or instruction, in regard to or in connection with any such date; or

ii. to capture, save, retain or correctly to process any data as a result of the operation of any command which has been programmed into any computer, being a command which causes the loss of data or the inability to capture, save, retain or correctly to process such data in regard to or in connection with any such date.

A computer includes any computer, data processing equipment, micro-chip, integrated circuit or similar device or any computer software tools operating system or any computer hardware or peripherals and the information or data stored in or on any of the above, whether the property of the insured or not.

6. CONDITIONS

6.1 The insured shall give immediate written notice to the insurer of any claim or intimation of a claim. Once the insured has notified the insurer in terms of this clause the insurer may submit to the insured a claim form requiring the insured to provide all further information reasonably required by the insurer in respect of the claim or intimation of a claim. The insured shall not be entitled to the indemnity afforded by this policy until the insurer's claim form has been properly completed by the insured and returned to the insurer.

6.1.2 Every letter, claim, summons or process received by the insured, which evidences a claim or an intention to claim, shall be forwarded to the insurer immediately.

6.1.3 If the insured gives notice of any event or occurrence of which the insured becomes aware during the period of insurance which may give rise to a claim, then any claim in respect of that event or occurrence which is subsequently notified against the insured after the expiry of the period of insurance shall for the purpose of this policy be treated as having been made during the period of insurance.

6.2 The insurer waives any right of subrogation against any partner or director of the insured, unless such person has committed a dishonest or criminal act in relation to matters, which are the subject of a claim under this policy.

6.3 In the event of a claim arising out of any dishonest act or omission of any partner, director or employee of the insured, the insured shall take all possible action to sue for and obtain reimbursement from any such person or from the estate or legal representatives of such person and any monies which but for such dishonesty would be due to such person from the insured or any monies of such person held by the insured, shall to the extent allowable by law be deducted from the insured's loss.

6.4 Any dispute or disagreement between the insured and the insurer as to any right to indemnity in terms of this policy or as to any matter arising out of or in connection with this policy, shall be referred for a final decision to a senior counsel agreed upon between the insured and the insurer or failing such agreement, nominated by the president of the statutory law society having jurisdiction over the insured.

6.5.1 Subject to the exceptions, the deductible and 6.1, 6.7.2 and 6.9 hereof, the insurer shall not seek to avoid, repudiate or rescind this insurance upon any ground whatsoever, including in particular non-disclosure or misrepresentation;

6.5.2 Where the breach of or non-compliance with any term of this policy by the insured other than 6.1, 6.7.2 and 6.9 has resulted in substantial prejudice to the handling or settlement of any claim against the insured, the insured shall reimburse to the insurer the difference between the sum payable by the insurer in respect of that claim and the sum which would have been payable in the absence of such prejudice. Provided always that it shall be a condition precedent of the right of the insurer to seek reimbursement that they shall have fully indemnified the insured in accordance with the terms of this policy.

6.6 The insured shall not without the written consent of the insurer repudiate liability, negotiate or make any admission, offer, promise or payment in connection with any claim and the insurer shall be entitled, if it so desires, to take over the conduct in the name of the insured of the defence of any claim or to prosecute in the name of the insured at its own expense and for its own benefit any claim for indemnity or damages or otherwise against any person and shall have full discretion in the conduct of any proceedings and in the settlement of any claim.

6.7.1 The insured shall render at his or her own cost such assistance as the insurer may reasonably require and shall arrange to be available at his or her own cost for such interviews as may reasonably be required by the insurer or the legal advisers of the insurer.

6.7.2 Notwithstanding anything else contained in this policy, should the insured fail or refuse to provide assistance or to attend interviews stipulated in 6.7.1 and remain in breach of such clause for the period of ten (10) days after receiving written notice from the insurer to remedy such breach, all benefits afforded by this policy may be withdrawn by the insurer.

6.8 Unless otherwise expressly stated nothing contained in this policy shall give any rights against the insurer to any person other than the insured.

6.9 If any claim by the insured be in any respect fraudulent or any fraudulent means or devices be used by the insured or anyone acting on his or her behalf with his or her knowledge or authority to obtain benefits in respect of that claim all benefit under this policy shall be forfeited.

6.10 Whenever this policy provides for notice to be given to the insurer, such notice shall be given to:

Glenrand M.I.B Professional Services
PO Box 2544
Randburg, 2125
Docex 34 Randburg
Telephone No. (011) 329-1140
Fax No. (011) 329-1984

6.11 The insurer may in its sole discretion, in the case of any claim for indemnity, pay to the insured or to the claimant, the limit of indemnity (but deducting in such case any sum or sums already paid as indemnity) or any lesser sum for which the claim or claims arising from such claim for indemnity can be settled and the insurer shall thereafter be under no further liability in respect of such claims for indemnity, except for the payment of costs and expenses of litigation incurred prior to the date of payment of such limit of indemnity or such lesser sum.

6.12 If the insured reasonably so requires he or she shall not be obliged to contest or prosecute any legal proceedings unless a senior counsel shall advise that there are reasonable grounds for contesting or prosecuting such proceedings, such senior counsel to be agreed upon between the insured and the insurer or failing such agreement, nominated by the president of the statutory law society having jurisdiction over the insured.

6.13 In the case of any conflict or divergence between the English and Afrikaans texts of this policy, the English text shall prevail.

6.14 All recoveries made in respect of any claim under this policy shall be applied (after deduction of the costs, fees and expenses incurred in obtaining such recovery) in the following order of priority:

i) the insured shall first be reimbursed for the amount by which its liability in respect of such claim exceeded the amount of indemnity provided by the policy or any other policy;
ii) the insurers shall then be reimbursed for the amount of their liability under the policy in respect of such claim;
iii) any remaining amount shall be applied towards the amount of the deductible borne by the insured in respect of such claim

7. **SPECIAL EXTENSIONS**

7.1 Indemnity under this policy shall be extended to any candidate attorney or other person employed by the insured in an employer/employee relationship in the conduct of the profession by the insured, and such person shall be deemed to be an insured for the purposes of indemnity in terms of this policy subject to the terms, limits and conditions thereof.

8. **SCHEDULE A**

Insurer: Attorneys Insurance Indemnity Fund (Association incorporated under Section 21) (Reg. No. 93/03588/08)

8.1 Master policy: No.AIIF/MP/06/09

8.2 Period of Insurance: 1 July 2009 to 30 June 2010 (both days inclusive)

8.3 Situation risk: World-wide (subject to exceptions 5.1.6 and 5.2.2)

8.4 Limit of Indemnity:

8.4.1 The limit of indemnity in respect of 1.1 and 1.2 is determined by the number of partners or directors of the firm, partnership or incorporated practice referred to in 2.5.1 (b) on the date on which the event or occurrence occurred which gives rise to a claim against the insured in accordance with the following schedule:

No. of partners/ directors	Limit of indemnity per period of insurance
1 (Sole practitioner)	R1 562 500
2	R1 562 500
3	R1 562 500
4	R1 562 500
5	R1 562 500
6	R1 562 500
7	R1 640 625
8	R1 875 000
9	R2 109 375
10	R2 343 750
11	R2 578 125
12	R2 812 500
13	R3 046 875
14 and above	R3 125 000

8.4.2 The limit of indemnity in respect of 1.3 is 25% of the limit of indemnity specified in the Schedule against 8.4.1.

8.5.1 The deductible:

8.5.1 The deductible is determined by the number of partners or directors of the firm, partnership or incorporated practice referred to in 2.5.1(b) on the date on which the event or occurrence occurred which gives rise to a claim against the insured and the type of matter which gave rise to the claim in accordance with the following schedule:

No. of partners/directors	Column A	Column B
	Prescribed MVA claims	Other claims
	Deductible	Deductible
1. (Sole practitioner)	R35 000	R20 000
2.	R63 000	R36 000
3.	R84 000	R48 000
4.	R105 000	R60 000
5.	R126 000	R72 000
6.	R147 000	R84 000
7.	R168 000	R96 000
8.	R189 000	R108 000
9.	R210 000	R120 000
10.	R231 000	R132 000
11.	R252 000	R144 000
12.	R273 000	R156 000
13.	R294 000	R168 000
14. and above	R315 000	R180 000

8.5.2 In the case of a claim for loss or damage in respect of bodily injury or death caused by, arising from or in any way connected with the driving of a motor vehicle (being a motor vehicle as defined in the Road Accident Fund Act 56 of 1996 or any predecessor or successor of the aforementioned Act) at any place within the Republic of South Africa, which has become prescribed in the hands of the insured, the deductible set out in 8.5.1 (Column A) will apply. Provided that if Prescription Alert a computerised diary system available to the insured has not been utilised or adhered to by the insured, the deductible as specified in 8.5.1 (Column A) will be increased by an additional 15%.

8.5.3 If a claim arises for reasons other than those set out in 8.5.2 the applicable deductible shall be as set out in 8.5.1 (Column B).

8.6 Agreed reduction in limit of indemnity and deductible

8.6.1 It is recorded that prior to the inception of this policy, certain firms, partnerships or incorporated practices referred to in 2.5.1 (b) entered into agreements with the insurer in terms of which such firms, partnerships and incorporated practices accepted a reduced limit of indemnity of 50% or 25% (as the case may be) of the indemnity otherwise afforded in terms of 8.4.1, on condition that such firms, partnerships or incorporated practices, would be liable for 50% or 25% (as the case may be) of the deductible specified in 8.5.1, for all claims made by these firms, partnerships or incorporated practices in terms of this policy.

8.6.2 Notwithstanding anything else contained in this policy, the terms of the agreements referred to in 8.6.1 shall be binding on the insurer and the firms, partnerships or incorporated practices concerned.

... Continued from cover

As at the date of writing, out of the 565 claims notified, 294 are conveyancing claims (of which 201 are bridging finance matters).

I once again prevail upon all conveyancers to read and take note of Hesma Strydom's article on bridging finance matters in the November Bulletin (4/ 2008).

Please look out for articles on defamation and risky areas in conveyancing in this and the next few Bulletins.

OPTIONS TO REDUCE

This year, we have again offered attorneys the option to reduce their indemnity and deductibles. If you wish to take one of the options and have not yet done so, please telephone Naomi van Tonder on (011) 329-1779 or Karen Makara on (011) 329-1364.

Please note that practitioners who have previously elected one of the options to reduce indemnity, need to inform us in writing, of their choice of option every year for the new insurance period. If they fail to submit their choice, Option 1 (the full indemnity and deductible) will apply automatically.

SPECIAL ALERT!

CURRENCY TRANSLATION

With the volatility of various currencies, and particularly the weakening of the South African Rand last year, several practitioners have been faced with claims from clients and/or third parties arising from transactions denoted in foreign currency.

Practitioners are advised to ensure that detailed instructions are obtained from the relevant parties before payment instructions are executed in such transactions. In particular where a liability or payment is denoted in a foreign currency the time line between the receipt of payment in South Africa and the date of the actual payment can give rise to a significant liability on the part of practitioners who are advised to take every measure to indemnify themselves against such a possibility.

RAF News

DIRECT PAYMENTS SYSTEM (DPS)

On 11 June 2009, Judge Denis van Heerden, of the Cape High Court granted a final interdict against the RAF, which prevents them from implementing the DPS, to pay claims directly to claimants instead of through their attorneys.

The court also declared invalid and set aside the RAF administrative decision of June 2007, to forthwith implement the system.

It should be noted that the interdict only applies to the 2007 decision and does not preclude the RAF from making further decisions relating to the system in the future.

APPLICATION BY LSNP

In the May bulletin 2/2009, we discussed the constitutional challenge on the Road Accident Fund Amendment Act (RAFAA) brought by the LSSA and three others.

No hearing date has yet been applied for. The Applicants are still awaiting certain documents from the Respondents, whereafter they will have an opportunity to amend their notice of motion and file supplementary affidavits.

I thank Nicolette Koch of Adams and Adams, for agreeing to provide us with updates on the developments in this matter. For more information on this application, please see the LSSA website on www.lssa.org.za.

ANN BERTELSMANN,
GENERAL MANAGER
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Conveyancing

The table below reflects the annual increase, over the past six years, in the number of claims arising out of conveyancing matters.

2003	2004	2005	2006	2007	2008
30	40	67	70	98	294

We are hopeful that, now that the property boom is over, conveyancers and their staff may be less pressurised and over-burdened, and that fewer errors will occur. However, the claims team has compiled an updated list of problem areas in conveyancing practice, in an attempt to alert conveyancers to some of the possible pitfalls. These are taken from actual claims.

RED FLAG AREAS IN CONVEYANCING PRACTICE

a) Payment of deposit/ purchase price to seller/developer before transfer is registered. (Risk of seller's insolvency)

Never pay over the deposit and/or purchase price until the transfer has been registered and you have ensured that all undertakings etc have been met.

It is also advisable to warn purchasers against improving the property before registration.

b) Payment of proceeds of sale to a third party who is not authorised to act on behalf of a seller/ paying over proceeds on the instructions of a third party

Be very wary of situations where anyone other than the seller gives instructions regarding the payment of the proceeds of the sale. Always obtain the seller's written and verified instructions if the proceeds are to be paid to or on the instructions of anyone else.

c) Failure to study and familiarise oneself with the terms and conditions of the Agreement of Sale e.g. remedies provided for in the event of a breach, the procedure to be followed for cancellation, method of payment of the purchase price, suspensive conditions, payment of commission etc.
This is a very important area, which has led to a number of claims against conveyancers.

Ensure that all conditions have been met before transferring the property. Ensure that the seller is advised of his rights in the case of a breach and that the correct remedies are applied.

d) Failure to confirm instructions in writing, to reduce variations of the agreement to writing and to record essential facts which have been agreed upon verbally.
All material terms and instructions should be recorded in writing.

e) Failure to provide guarantees timeously or in an acceptable form resulting in the seller cancelling the contract. Paying guarantees prematurely (i.e. before registration.)
In one matter the conveyancer failed to established that the seller's bond was a single facility account. The purchaser's bank paid the guarantee directly into the seller's account and the conveyancer only became aware of this once the seller had withdrawn a substantial portion of the proceeds, before registration.

f) Undue delays in passing transfer, opening a Sectional Title register etc.
Give clients realistic time periods for transfer, so that there are no unrealistic expectations. Timeously advise clients of unavoidable delays. Prepare documents with great care to avoid delays at the Deeds Office.

g) Failure to ensure that transfer/ bond documents are signed in front of the conveyancer (or at the very least a trained, reliable paralegal) so that identity of signatories can be verified.
All documents must be signed in the Conveyancer's presence, once the identity (and where necessary, the authority) of the signatory has been confirmed.

h) Failure to clarify and reduce to writing the relationship with third parties, for example estate agents.
In one of our matters, the recipient of a standard letter sent out by a conveyancer inviting tenders on a property, subsequently alleged that he had had a mandate to sell the property and claimed commission on the sale.

The conveyancer had regarded the claimant as an interested developer. The problem was made worse by the fact that the conveyancer had not received (or responded to) a letter from the claimant setting out the terms of his alleged mandate.

i) Problems with the financial aspects of a transaction especially VAT, Transfer Duty, Capital Gains Tax, currency of purchase price etc.
Ensure that you establish the status of the parties to the agreement of sale and whether transfer duty or Vat applies or if the transaction is zero-rated. Be extra vigilant when dealing with parties in/from other countries and ensure that VAT is paid over to the Receiver timeously.

NB: If the Seller is a non resident, the sale will be subject to Capital Gains Tax. Advise your clients accordingly. Conveyancers must beware as the Receiver will expect them to pay over the Capital Gains Tax.

NB: For a useful discussion of this aspect, please refer to the article by Hesma Strydom in Bulletin 2/2008.

j) Failure to obtain the consent of the Minister in terms of S 3(1)(e) of the sub-division of Agricultural Land Act 70 of 1970
In one of our matters, the conveyancer drafted an agreement of sale, which was entered into prior to the parties' having obtained the consent of the Minister of Agriculture. On the basis that he was not bound by the agreement, the seller, sold the property to another purchaser. The original purchaser claimed damages from the conveyancer.

k) Creation of a conflict of interest situation, when acting for both purchaser and seller and a dispute arises
Remember that the transferring attorney is duty bound to safeguard the interests of both seller and purchaser, especially when one of the parties is not represented.

l) Failure to comply with the requirements for sales of immovable property in instalments in terms of the Alienation of Land Act.
In one of our matters, an option clause, drawn by the conveyancer was unenforceable as it did not sufficiently describe the property as required by Section 2 (1) of the Alienation of Land Act, read together with the Sectional Title Act.

m) Proceeding with a foreclosure when the judgment debtor has made arrangements with the bank/ failure to communicate properly with the judgment creditor (bank, body corporate etc)
Before carrying out such a drastic step, ensure that you are aware of all developments.

n) Failure to observe specific conditions on the Title Deed/ failure to ensure that conditions on the deed of sale are carried over on to the Title Deed.
This happens more often than one would expect and great care should be taken.

o) Furnishing of undertakings (including bridging finance matters.)
In practice, attorneys sometimes give undertakings on behalf of and on the instructions of their clients. These undertakings promise to pay an amount of money on the happening of a future event. The legal implications and consequences of attorneys giving such undertakings were underestimated until the decision in Ridon v Van der Spuy & Partners (Weskaap Inc) 2002 (2) SA 121 (C).

In the light of that decision, it is imperative that great care be given in the wording of such a document. It must be clear that the undertaking is only given in a representative capacity and that the attorney/firm does not assume personal liability for the payment should it not be honoured.

Where possible, the undertaking should be given and signed by the client himself, where not, the attorney should obtain an irrevocable authorisation from the client.

With regard to bridging finance matters, please refer to Hesma Strydom's article on the topic in Bulletin 4/2008.

p) Payment of the proceeds of a sale to an incorrect party.
Again it is essential to know what documents and instructions are on the file before paying out. We have had several instances where the conveyancer has