

PERSONALISED LEGAL ASSISTANCE

Professional legal and property consulting

SONNENBERG & ASSOCIATES PROPERTY AND LEGAL ADVICE NEWSLETTER #79

1. Legal Quotes

"Justice will not be served until those who are unaffected are as outraged as those who are." [Benjamin Franklin]

"If you can't dazzle them with brilliance, baffle them with bullshit." [W C Fields]

"We are very good lawyers for our own mistakes, but very good judges for the mistakes of others." [unknown]

2. Legal short

Q: What do a baker and a lawyer have in common?

A: They both enjoy carving up the pie.

3. Inspiring quotes

"Courage doesn't always roar. Sometimes courage is the little voice at the end of the day that says 'I'll try again tomorrow.' " [May Anne Radmacher]

"Being a successful person is not necessarily defined by what you have achieved, but by what you have overcome." [Fannie Flagg]

"One day the people who didn't believe in you will tell everyone how they met you." [Johnny Depp]

4. The *rei vindicatio* remedy in South African law

Rights of ownership include the **entitlement to exclusive possession of your property** (a "res" in Roman Dutch law). **The *rei vindicatio*, or vindicatory action, is a remedy available to the owner to reclaim his property from wherever it is found and from whosoever is unlawfully holding it.**

The remedy is **available to the owner in respect of both movable and immovable property.**

It is important to note that the remedy merely restores the property to the rightful owner; it does not award damages.

Requirements:

The following requirements must be met for a successful vindicatory claim:

1. There must be **proof of ownership** on the part of the person instituting the action;
2. the **property must exist and be identifiable**; and
3. the **defendant must be in physical control of the property** at the time the action is instituted.

The defendant carries the burden to prove a right to the property, such as a lien or a lease. If the owner concedes that there is a lease, he must prove to the court that the lease has been terminated in order to succeed with his action.

Defences:

There are four main defences:

1. The **claimant is not the owner of the property** (the defendant must produce documentary evidence);
2. The **property in question is no longer identifiable or does not exist** (it has, for instance, been destroyed);
3. The **defendant's possession or physical control of the property is not unlawful**;
4. The **defendant is in fact not, or no longer, in physical control of the property.**

Limitations:

There are certain **common law** (the doctrine of **estoppel** – where the defendant alleges he has acted on

a misrepresentation by the owner, and has suffered harm or loss as a result) **statutory limitations** (the Insolvency Act provides that property sold and transferred after an insolvency action cannot be subject to the rei vindicatio, while, in terms of **section 70 of the Magistrates' Court Act, a sale in execution of property cannot be impeached against a good-faith purchaser in the absence of a defect**) and **constitutional limitations** (mostly relating to **security of tenure and evictions** - no-one may be evicted from his home without a court order).

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Sonnenberg Property Services (Pty) Ltd is a registered estate agency.

All newsletters can be obtained on our website: www.sonnenberg.co.za.



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