

DEBTS ON PROPERTY

ETHEKWINI GETS TOUGH ON DEBT

The Municipal Systems Act came into effect in 2001 and serves to regulate public administration and service delivery.

For customers, the most notable change has been Section 118 of this Act. Section 118 (1) and (2) regulates the issuing of Clearance Certificates by the Municipality which is required when a property is sold, while section 118 (3) cements the notion of charges against property.

It is Section 118(3) that has brought about the most change, most especially in the mind-set of the customer.

Section 118(3) states that

“ An amount due for municipal service fees, surcharges on fees , property rates and other municipal taxes , levies and duties **Is A Charge Upon The Property** in connection with which the amount is owing and enjoys preference over any mortgage bond registered against the property.”

Previously eThekweni Municipality held customers personally liable for debts on the property. The debts followed the customer where ever he went.

Section 118(3) of the Act has changed this so that the debts now remain as a “charge against the property”. As a result, since 2001, debts no longer follow the customer but remain as a “charge against the property”.

The case of Mkontwa vs Nelson Mandela Metropolitan municipality (CCT 57/03), dealt with the transfer of property and who was responsible for the debt that remained on the property.

The court emphasized that the law burdens the owners of property. The owner is now the statutory surety for the tenant. The court found that it would not be unreasonable for the owner to bear the risk and that the relationship between the owner, the property and the consumption charge is strong enough for the owner to take the risk.

This 2004 judgment was the turning point in the way Municipalities did business with the Public.

eThekwini Municipality realized the pressure that this piece of legislation created on owners of property. The legislation was applied gradually, first for Clearance purposes, then on businesses and finally on residential properties.

To fully comply with the Act and more especially, to protect owners at the time of sale of their properties, eThekwini Municipality now insists that all debts on the property must be paid, or necessary arrangements made to pay off the debts, before a customer is registered for services. If a land-lord leases a property to a new tenant, the Municipality will not register the new tenant until the debt of the previous tenant has been paid.

Owners are therefore encouraged to register for services in their own names to ensure better control over their properties. Since the owner is ultimately responsible for the debts on his property, if the tenant registers for services the owner must give his written authority to do so. Similarly, if the tenant is in arrears with his services and requires an extension of time to pay, once again, the written authority of the owner is required.

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