



DYKES VAN HEERDEN GROUP OF COMPANIES
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NATIONAL ENVIRONMENTAL MANAGEMENT: BIODIVERSITY ACT (ACT 10 OF 2004)

The National Environmental Management: Biodiversity Act 2004 (Act No 10 of 2004) (The “Act”) provides for the management and conservation of South Africa’s biodiversity and the establishment of a National Biodiversity Institute for the implementation of the Act. In terms of Section 70(1) of the Act, the Minister *must* publish a national list, and the MEC *may* publish a provincial list of invasive species for which restricted activities apply. A person may not carry out restricted activities involving a specimen of alien species on such list without a permit issued in terms of Chapter 7 of the Act, which shall only be issued after the prescribed assessment of risks and potential impact on biodiversity is carried out. Restricted activities include amongst others importing, having in possession, conveying, moving or translocation, and acquiring or disposing of a listed invasive species.

The Regulations to the Act as well as the list of invasive species were both published on 1 August 2014 and the Regulations came into force on 1 October 2014. Of particular interest to property owners is Section 29 of the Regulations that deals with the sale or transfer of alien and listed invasive species. In terms of subsection 1, if a permit holder sells a specimen of an alien or listed invasive species or the property where it is under its control, the new owner must apply for a permit under Chapter 7 of the Act, which shall in terms of subsection (2) be subject to the same conditions as the previous permit holder unless specific circumstances requires a revision of the permit conditions. Subsection (3) requires that: *“The Seller of an immovable property must, prior to the conclusion of the relevant sale agreement, notify the purchaser of such immovable property in writing of the presence of listed invasive species on that property”*. Persons contravening or not complying with the Regulations are guilty of an offence and if convicted liable for a fine not exceeding five million rand for a first offence and ten million rand for a second offence, or imprisonment for a period not exceeding 10 years, or both a fine and imprisonment. We therefore suggest that the following clause be inserted in Deeds of Sale of immovable property to adhere to the requirements of the Act:

The parties agree that the Seller has complied with his/her obligations in terms of Section 29(3) of the Regulations of the National Environmental Management: Biodiversity Act 2004 (Act No 10 of 2004) and particularly with regards to the disclosures contained therein regarding the Alien and Invasive Species Lists 2014 published on the website of the Department of Environmental Affairs www.environment.gov.za.

Immovable property is not defined in the Act or the Regulations and will therefore include sectional title properties. The question immediately arises whether the Seller of a Sectional Title Unit has to disclose the presence of alien and listed invasive species on the common property of such Sectional Title Scheme. One must remember that the common property of a Sectional Title Scheme belongs to the Body Corporate and that the Seller merely owns an undivided share in same allocated in terms of his/her participation quota in the Scheme.

COMPANIES WITHIN THE DYKES VAN HEERDEN GROUP

DYKES VAN HEERDEN INC

Tel : (011) 279-5000
Fax : (011) 955-4799
E-mail info@dvh.net.za
19 Ontdekkers Road
Roodepoort 1724, South Africa

Docex 24, Roodepoort
Web-site: <http://www.dvh.law.za>

DYKES VAN HEERDEN (CAPE) INC

Tel : 0861 110 210
Fax : (021) 910-4911
E-mail admin@dvh.law.za
Unit E4/2, Edward IV
120 – 122 Edward Street
Bellville 7530, South Africa
Docex 42, Tygerberg
Web-site: <http://www.dvh.law.za>

DYKES VAN HEERDEN (KZN) INC

Tel : (031) 903- 1851
Fax : (031) 903-1101
E-mail thomas@kzndvh.za.net
Nr. 18 Ridge Road
Amanzimtoti
Durban 4120, South Africa
Docex 7, Amanzimtoti
Web-site: <http://www.dvh.law.za>

**DYKES VAN HEERDEN SLABBERT
HOPKINS INC**

Tel : 0861 110 210
Fax : (021) 910-4911
E-mail capetown@dvhs.law.za
Unit E4/2, Edward IV
120 – 122 Edward Street
Bellville 7530, South Africa
Docex 42, Tygerberg
Web-site: <http://www.dvh.law.za>

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