



SCHÜLER HEERSCHOP PIENAAR

Attorneys | Conveyancers | Notaries

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“RELAXED LOCKDOWN” AND LEASE AGREEMENTS

1. On 23 April 2020, President Cyril Ramaphosa announced that the current national lockdown would not be uplifted on 1 May 2020. Instead of an immediate and total cessation of the lockdown and restrictions, government has chosen to rather adopt a risk-adjusted strategy in order to “*take a deliberate and cautious approach to the easing of current lockdown restrictions*” – which will extend beyond the end of April 2020.
2. The risk-adjusted strategy has been widely published by government and incorporates 5 levels. Currently South Africa is in a full-scale lockdown, with the entire country being at the highest risk level which is level 5. As of 1 May 2020, our risk level will be adjusted to level 4. Level 4 envisages a relaxation of the current restrictions, predominantly in respect of a “*gradual and phased recovery of our economic activity*”.
3. From a social perspective, very little separates the restrictions between Level 4 and Level 5. For the most part, restrictions relating to movement, social interactions and other gatherings, remain the same as before.
4. As stated by Minister Nkosazana Dlamini-Zuma on 25 April 2020;

Directors: Karl Christian Schüler (B Proc) | Rudi Jack Heerschop (LLB) | Mark Henri Pienaar (LLB) (LLM) (Adv. Dip. Insolvency law)
Associates: Quentin Van Huyssteen (LLB) | Hein Gouws (LLB)
Professional Assistant: Janine Visagie (LLB)
Candidate Attorneys: K van As | S Coetzee | JP Spangenberg | D Williams | M van Rooy | L van Niekerk | S van den Bergh
Roodepoort Office: Block 3, First Floor, Clearwater Office Park, Millennium Boulevard, Strubens Valley, 1735 | Tel: 011 763 3050
Centurion Office: Unit E, 2nd Floor Cambridge Office Park, 5 Bauhinia Street, Highveld Techno Park, Centurion | Tel: 012 880 3050
Cape Town Office: 8th Floor, 2 On Long, Long Street, Cape Town, 8001 | Tel: 021 879 1071
Postal Address: Postnet Suite 162, Private Bag X1, Florida Hills, 1716
General: Email: office@shplaw.co.za | Web: www.shplaw.co.za | Fax: 011 760 4767



“Level 4 means the lockdown is still there, but there will be a few things that will change. We should not think that when we move for level 4 it means that the lockdown is gone. No, the lockdown is still there... what is important that there will be more people and more companies opening up, and more people going to work, that is basically the major change. The rest, more or less remains the same.” (sic)

5. As was the case when the initial lockdown was announced and regulations were published, there is once again a plethora of uncertainty and confusion surrounding what is permissible and what is not. For the purpose of this article, the questions arising in the property and rental sector are inter alia:
 - 5.1. Will a tenant be able to move out during level 4 of the risk-adjusted strategy, allowing a new tenant to move in?
 - 5.2. How will exit and entry inspections be conducted?
 - 5.3. Will you be able to view a prospective property in person? and,
 - 5.4. How will parties be able to enter into lease agreements without the tenant having personally viewed the property?

6. It should be noted that the opinions expressed herein are informed by a consideration of the Disaster Management Act regulations as they stand on 27 April 2020 (before publication of amended or additional regulations addressing the risk-adjusted approach), the draft framework published by government on the recommencement of business sectors (published on the government’s website - A Schedule of Services To Be Phased In as per the Covid-19 Risk Adjusted Strategy - and referred to hereinafter as the “draft document”) and the briefings by Ministers Nkosazana Dlamini-Zuma (Cooperative Governance and



Traditional Affairs) and Ebrahim Patel (Trade and Industry) on Saturday, 25 April 2020.

7. The regulations adopt a prohibitive approach. In so far as movement or business is not specifically permitted, one must assume that it is prohibited.
8. The draft document sets out the sectors / services / activities in respect of which the current restrictions will be relaxed.
9. Due to the prohibitive nature of the regulations, if a specific industry or sector is not included, it is deemed to remain subject to lockdown.
10. Simply stated, the relaxation of restrictions is seemingly aimed at a “*gradual and phased recovery of our economic activity*”. At this stage, there is nothing much more to it than that.

WILL A TENANT BE ABLE TO MOVE OUT DURING LEVEL 4 OF THE RISK-ADJUSTED STRATEGY, ALLOWING THE NEW TENANT TO MOVE IN?

11. Based on the information available, and until such time as further regulations under the Disaster Management Act are published, the short but almost inconceivable answer is “NO”.
12. Clearly, government does not consider moving into or out of a property for residential purposes to be an essential service or activity. Based on the documents and briefings available, relocation is neither permitted during Level 5 restrictions, nor does it seem that it will be permitted during Level 4 restrictions.
13. Therefore, during the implementation of Level 4 and as from 1 May 2020, a tenant cannot be forced to vacate a rented property, even in circumstances where another tenant has been secured. Moreover, the incoming tenant will also not be able to vacate their current premises.



14. The situation may however change as and when further regulations are published. Until such time, tenants will have to stay put, notwithstanding what may be stated in lease agreements.
15. Currently, it seems that only upon the implementation of level 1 of the risk-adjusted strategy, can we expect the restrictions on personal movement to be lifted and only then, by implication, will relocation be permitted.

HOW WILL EXIT AND ENTRY INSPECTION BE CONDUCTED?

16. Based on what is stated above, no exit or entry inspections will be conducted until the regulations provide for relocation.

WILL YOU BE ABLE TO VIEW A PROSPECTIVE PROPERTY IN PERSON?

17. Based on the information available, the short answer is once again “NO”.
18. One should take note that personal movement of South Africans has been restricted in Levels 5, 4, 3 and 2 of the draft framework. As such, the physical viewing of properties will not be permitted until such time as level 1 is implemented, or until such time as same is permitted by published regulations.
19. The draft framework sets out the following under Personal Movement during level 1;

“No limitation on personal movement but persons are encouraged to limit movement to essential travel”

20. Real estate agents and property owners should however attempt to minimise the downside of this situation. Albeit that property viewing in person is not permissible, you are permitted to make use of technology to view properties, or to have your property viewed. Virtual tours, making use of technology, will be



vital during this period. For the foreseeable future they may virtually be the only viable means to market or view a property.

WILL PARTIES BE ABLE TO ENTER INTO LEASE AGREEMENTS WITHOUT THE TENANT HAVING PERSONALLY VIEWED THE PROPERTY

21. Even though physical “house hunting” and viewing are not permitted during levels 4 to 2 of the draft document, one can still enter into a lease agreement during the current stage of lockdown.
22. A valid lease agreement may be concluded if a tenant waives his right to view the property and is satisfied with the state, condition, location, features etc, as provided by the landlord or the agent, regarding the property.
23. Tenants are advised to exercise caution when entering into lease agreements without a proper viewing of the property. To protect tenants, it advisable to insert a suspensive condition that stipulates that the lease agreement will be subject to;
 - 23.1. the physical viewing of the property by the tenant once the lockdown has been lifted to the point where people are once again allowed to move about with moderate freedom; and
 - 23.2. the tenant being satisfied with the property condition after such viewing;
24. Specific legal clauses can also be inserted into a lease or sale agreement that allow for it to be signed remotely or electronically, whilst being fully compliant and legally enforceable.
25. In closing, it appears that we are still some time away from the property industry retuning to relative normality. Until then, we need to weather the storm as best we can and notwithstanding the limitations, draw on our inspiration to create



novel ways to do business in these trying times. In the words of Theodore Roosevelt, “*do what you can, with what you have, where you are*”.

R HEERSCHOP

SCHÜLER HEERSCHOP PIENAAR ATTORNEYS