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Panhandle Access to Properties – The Mistakes to Avoid

"You aren't buying a house, you're buying a lifestyle." (Anon)

As more and more residential properties are subdivided and developed, an increasing number of homes are effectively cut off from direct access to the nearest public street or road.

That's where the "panhandle" comes into play, a narrow strip of land (looking on diagrams very much like the handle of a pan, hence the name) which gives the needed street access to the "landlocked" property. The panhandle can be owned by the property using it as an access road, or it can be a right of way in favour of the property over neighbouring land.

A recent High Court run-in between two neighbours over a panhandle right of way highlights the mistakes made by the various parties involved, and so provides a neat "must do" checklist for everyone in such a situation – buyers, sellers and neighbours alike.

"Wait, what right of way?"

You can imagine the reaction of a property buyer when he was told, only after taking transfer, that his nice little plot was lumped with a registered servitude. Not only did he have the neighbour freely crossing his land at will via a four-metre wide panhandle road, but he also found himself blocked from part of his own land by the neighbour's gate.

Luckily for the buyer, the servitude turned out to be a temporary one. The wording stated clearly that it was to provide a right of way only until alternate access became available to the neighbour. And a consolidation of neighbouring properties (involving the creation of eight mini subdivisions for a property development) had indeed opened up such an alternative access route.

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The buyer accordingly asked the High Court to declare the servitude lapsed, and to order that all "barriers and obstructions" to the panhandle be removed. His neighbour fought back, arguing amongst other things that he had paid R35,000 to the original owner of the buyer's property as part of a verbal agreement to increase the panhandle's width from four to six metres.

The neighbour's problem here is that a servitude has to be in writing, so his verbal agreement with the original owner for a six-metre servitude was unenforceable – certainly against this buyer who had never agreed to it. For a servitude to bind a subsequent buyer of the property, it needs to be registered against the title deed.

The Court accordingly held that the registered four-metre servitude had lapsed and that the supposed six-metre servitude agreement was unenforceable against the buyer. End result, the neighbour loses his right of way and must remove all "obstructions" (the gate, presumably) on it.

Buyers, sellers and neighbours: Mistakes to avoid

Buyers: Don't only wake up after transfer to the fact that your new property is subject to a right of way or other right of access – it could do serious harm both to your property value and to your enjoyment of it. Check the title deed **before** making an offer. As we shall see below, relying on the seller to disclose a servitude during the sales process can be wishful thinking…

Sellers: The seller in this case didn't disclose the servitude, as he was obliged to, in the mandatory disclosure form – the form that every property seller must sign and provide to the buyer. In it a seller must disclose not only any known property defects, but also things like encumbrances, zoning and title deed restrictions, unapproved alterations or additions, and so on. Presumably the seller's omission in this case was just an oversight, but he could still easily have been sued by the buyer. It's vital that you always complete that form fully and accurately.

Neighbours: As the neighbour in this case found out to his cost, if you are reliant on a right of way, make sure it's granted in a written and registered servitude. He might perhaps have been able to enforce his verbal agreement against the original owner, but it was worthless against a subsequent buyer who knew nothing of the agreement.