



**RENTAL CLAIMS AND EVICTION COMPANY
PROFILE**

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INTRODUCTION

“Borne” from the corporate merger and de-merger of two of the larger law firms in the Rustenburg area, founder and spirited litigant Adriaan Wessels finally took a step in the right direction and founded the firm of WA Wessels Attorneys.

The firm of WA Wessels Attorneys have been built upon this reputation now overseeing collections, civil, commercial, criminal, family law and other litigation in more than thirty different Courts over five different provinces.

Later joined by yet another Collections Specialist as well as a family Law Veteran, the firm of WA Wessels Attorneys is distinguishable by great expertise, efficiency and success.

MISSION

- It is our mission and promise to provide sensible, professional and efficient alternative legal services proving that we do understand modern day electronic and technical advancements
- We only introduce staff of the highest quality, staff who understand the firm’s objectives and who are trained to provide professional, efficient and personal service to the client
- We recognize the delicate economy of Rustenburg and surrounding areas and have not only embraced the challenges, but have adapted by providing answers to difficult questions;
- Our promise to our clients are to provide legal services, which are transparent, personal and founded upon a strong relationship of trust and personal communication.

FACILITIES

Location:

Situated in a tranquil location just off Beyers Naude Drive at **200 Joubert Street, Rustenburg, North West Province** our office is easily accessible to all clients.

Parking:

Our facility provides ample safe parking in front of our offices.

Staff:

We have a professional receptionist able of meeting the demands of all incoming telephone calls and/or messages and provides a friendly welcome when attending our offices.

Specifically trained staff, including four secretaries, an accountant and an article clerk, our staff can meet any demand, provide to your needs and can operate all equipment and programs in our office, creating an office which is truly accessible, safe and professional.

Communication:

Our office is set up with six telephone lines, internet lines, electronic communication as well short messaging systems in order to make use of the latest technology to ensure communication with clients and to provide the efficient service we set out to meet.

Space:

Our office is set up to provide for consultations in various different offices, a consultation specific office as well as a boardroom, further providing sufficient space for those larger meetings.

Data capturing and administration:

The office makes use of the Legal Suite Practice Management system in order to ensure proper capturing of all client's details and data, collection of all file notes pertaining to work done on a file, monitoring progress, maintain a database of all documents generated, making use of an "sms" system, providing quick and accurate access to account statements and to provide correct progress reports to clients.

The firm's accounting is properly managed on the Legalsuite legal bookkeeping program, ensuring accountability and ensuring your Trust.

CLIENT FOCUS

The firm of **WA Wessels Attorneys** strive to provide the clients with a personal professional experience of the highest standard.

With a reputation for providing great legal service and an enormous knowledge of the law, founder **Adriaan Wessels** has enjoyed personal relationships with clients from a great variety of fields, which include a tremendous amount of private clients, corporations and entities, several of the largest mining houses in Rustenburg and surrounding areas, insurance companies, several industries and institutions and a great number of listed entities and property developers.

Introducing Collections and Family law to the firm created an invironment where our clients include several large property developers, the majority of the estate agencies in Rustenburg, various strong players in the mining industry, various commercial clients, several of the greatest dealerships in the motor industry and many other individual clients.

FIELDS OF PRACTISE

The office of **WA Wessels Attorneys** strive to put our money where our mouth is, to do more than just “talk-the-talk”, but to actually “walk-the-walk”. We don’t shy away from Court litigation and actually find our greatest accomplishments and successes inside the Court room.

We provide services in a great variety of fields such as the following:

<ul style="list-style-type: none"> ● Rental Claims ● Evictions ● Contractual Claims ● Debt Collection ● Damage claims and disputes ● Civil claims in both High Court and Magistrates Court ● Divorce Actions 	<ul style="list-style-type: none"> ● Children’s Court matters ● Protection from harassment ● Maintenance ● Third party claims ● Personal injuries ● Labour disputes ● Applications and interdicts ● Criminal matters
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CONTACT DETAILS

Telephone number: +27 (0) 14 592 0297
+21 (0) 14 592 1867

Fax number: +27 (0) 86 243 6450

Physical Address: 200 Joubert Street
Rustenburg
0299

Postal Address: P O Box 20517
Protea Park
Rustenburg
0305

E-mail addresses:

Adriaan Wessels adriaan@walegal.co.za

Paralegal to A Wessels liesel@walegal.co.za

Leanie Smith (Collections) leanie@walegal.co.za

Candidate Attorney conrad@walegal.co.za

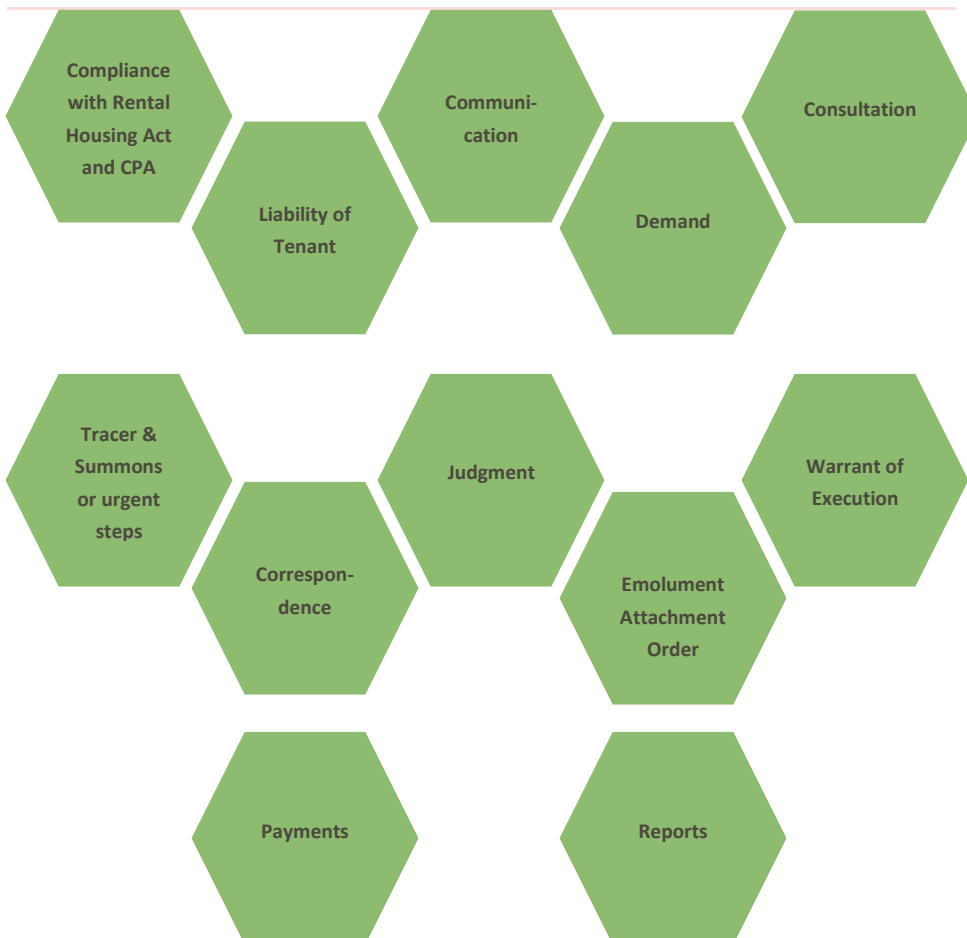
Niki Jonker niki@njonker.info



COLLECTION PROCEDURE

The collection of arrear rentals under the Law of Contract, Rental Housing Act as well as the Consumer Protection Act can be complicated and strenuous under the best of circumstances. Understanding the applicable legislation and then adopting same correctly is crucial and will result not only in effective collection of arrear rentals, but most importantly meeting the budget needs of the both the Landlord as well as the Estate Agency.

We will proceed to set out the procedure adopted by our office in the collection of arrear rentals in a short "spider" form and will thereafter proceed to provide discussion on each point provided.



OUR COLLECTION STRATEGY



Rental Housing Act and CPA

The Rental Housing Industry in particular has seen its fair share of the incorrect implementation of the rules and regulations governing the relationship between Landlord and Tenant, resulting in tremendous losses to Landlords.

It is therefore of paramount importance that we should immediately consult with the Estate Agency and its employees to ensure that the Rental Housing Act is applied and implemented.

Several amendments to the Rental Housing Act has seen to certain updates on the requirements of inspection of the premises both prior to and after termination of the lease agreement. One example would be that the failure to properly conduct either of these inspections could ultimately lead to a scenario where the Landlord shall be deemed to acknowledge receipt of the dwelling in a proper state of repair, which will severely hamper any claims against those unforgiving tenants.

The Consumer Protection Act on the other hand also provides certain governing provisions pertaining to the termination of a fixed term agreement, which too has resulted a great misunderstanding as to the implementation thereof. Essentially any tenant may cancel a fixed term lease agreement by the giving of at least 20 (TWENTY) day's formal notice. This is however subject to a certain penalty clause, but if an agent accepts cancellation with the contemplation that the CPA is applied, whilst this has not explicitly been stated, it could result in a verbal acceptance of repudiation by the Tenant in which event the penalty clause cannot be invoked.

It is of utmost importance for Estate Agency to have direct access to a specialized firm, whom would not only be able to provide proper legal advice when needed, but also to provide regular training.

Interesting notes on the Applicable Legislation

In terms of Section 14 of the CPA a tenant may cancel a fixed term agreement by virtue of 20 day's notice, but shall such cancellation be subject to a penalty, which is currently "safely" found in forfeit of the deposit.

Lease agreements may no longer be concluded verbally and has to be deduced to writing

A lease agreement MAY NOT include any penalty for late payment, whilst interest is acceptable

If a tenant fails to sign and deliver a written lease signed and delivered to him, acceptance of possession and payment of rent gives the lease the same effect as if it had been signed

Failure to comply with the provisions of the Rental Housing Act may result in imprisonment not exceeding two years, a fine or both imprisonment and a fine



WHO IS LIABLE FOR PAYMENT OF THE LEGAL FEES?

Essentially the Estate Agency acts as agent for the Landlord and therefore, apart from acts of gross negligence, cannot be held liable for the payment of any legal fees incurred in the collection of arrear rentals or in event of an eviction application.

Ultimately upon successful judgment the legal fees and disbursements incurred shall be collected from the Tenant on the scale as provided for in the Lease agreement, but unfortunately the initial obligation to pay legal fees in order to get the ball rolling will fall upon the Landlord, alternatively the Agency if so agreed.

It is important that a proper mandate agreement should be concluded between the Estate Agency and the Landlord wherein the obligations of the Estate Agency is specified and wherein the issue of legal fees in event of default is discussed.

Once our office receives an instruction from the Estate Agency the Landlord is contacted immediately and are various options discussed. The legal fees payable shall depend on the instruction and steps to be taken, but are our fees governed both in terms of the Magistrates Court Act 32 of 1944 as well as the rules of the Law Society of the Northern Provinces.

Whilst our fees are highly competitive our fees always have to comply with the abovementioned and shall jurisdictional boundaries therefore also play a role. Certain jurisdictional areas therefore generally may charge greater fees, while smaller provinces such as the North West may be slightly lower.

Communication with Tenants

Tenants will be contacted by telephone, "SMS" and e-mail or letter as soon as instruction is received

Our goal is to make suitable arrangements with tenants for payment by way of acknowledgment of debt and consent to judgment in terms of Section 57 (judgment follows only when payment is not received) in order to prevent further legal costs

We have to rely on the Estate Agency to provide the most recent information of tenants and therefore count on the Agency's assistance



LETTER OF DEMAND

TRACER AND SUMMONS

Once Tenants are in default the race against the clock commences and should legal steps be followed quickly as possible.

Even though summons is issued a dedicated tracer is appointed to still make physical attendance in order to ensure alternative arrangements when possible.



Subject thereto that consultation with the tenants proved fruitless and unless urgent steps such as a rental interdict or eviction needs to be followed a letter of demand will follow. Depending on the scenario this will either be a formal default letter of demand or demand in terms of Section 56 of the Magistrates Court Act

CONSULTATION WITH TENANTS

The goal is to make suitable arrangements with the Tenant for payment by way of acknowledgment of debt and consent to judgment in terms of Section 57 (judgment follows only when payment is not received) in order to prevent further legal costs.

For many years members of the public have been fooled to believe that a consent to judgment when signing an acknowledgment of debt is “merely part of the process”. A consent to judgment is a particular clause included into the agreement, whereby the client ensures that judgment may be obtained when the tenant defaults on payment. No person in their right mind will consent to judgment unconditionally, whilst making payment in terms of an agreement. Our Courts have shown their displeasure with this approach and do we now follow conditional consents to judgment, which allows the tenant to maintain a clean credit record, whilst making payment. It is only once they default and fail to rectify the default that judgment is obtained.

It is very important to remember that we are working with people, fathers, mothers, parents and ultimately members of our community and therefore they have the right not to be deceived and should the process therefore be explained to them correctly.

Concluding an acknowledgement of debt provides for speedy and more cost efficient collection, therefore the assistance from the Estate Agency to provide the relevant and most recent information is paramount.



COMMUNICATION WITH TENANTS

We maintain telephonic communication with the Tenants, Estate Agency and Landlord throughout the process of collection.

We constantly attempt to make arrangements with Tenants for payment, but also provide them with feedback in order to allow them to understand which procedures are being taken against them;

The tenant is provided with every opportunity to prevent legal steps and costs from being incurred during collection.

JUDGMENT

Once a Tenant has failed to make any arrangements, summons has been issued and the Tenant remains in default, judgment will be taken against them.

Judgment will also follow in event where Tenant has made arrangement by virtue of acknowledgement of debt and conditional consent to judgment, but has then defaulted on payment and has failed to rectify the default.

ATTACHMENT OF EMOLUMENTS

When a Tenant signs a conditional consent to judgment (acknowledgement of debt), our office will conduct a discussion with the Tenant in order to establish the income and expenditures of the Tenant. The purpose is to establish an amount to be deducted from the salary of the Tenant by virtue of emolument attachment order in event of their default.

Should a Tenant not make suitable arrangements for payment and we have obtained judgment following the issue of a summons, we will proceed to apply for an emolument attachment order against the Tenant as per the latest legislation.

WARRANT OF EXECUTION

It is important to note that, although we follow other alternatives first, warrant of execution is sometimes obtained and/or used as a “scaring tactic” in order to get the Tenant’s attention. We find that the attachment by the sheriff does not necessarily have the desired effect, whilst at times the notion of the sheriff approaching you home for removal of assets to be sold the following day does have the desired effect;

Warrant of execution is otherwise also used as a last resort when the amount of the claim is considerably large and other processes prove unsuccessful. It is important to bear in mind that items are sold for ridiculous amounts at sheriff auction and therefore this process hardly ever provides sufficient revenue

PAYMENTS

As per the fee structure to be discussed our office will create a wallet where all credits payable to the Agency and Landlords shall be held.

As per the agreement to be concluded with the Landlord, alternatively the Estate Agency should the Agency wish to take this burden upon itself, the relevant fees and disbursements will be deducted. These could include sheriff fees, tracing fees, registered post, correspondent fees (when Tenant leaves our jurisdiction), ITC investigations, windeed searches as well publication costs, where applicable.

Once per month we will account and will all available credit to the wallet be paid to the agency in order to allow them to account to their client as well as to obtain their commission.

Full account of credits and disbursement wallets will be rendered to the Agency in order to allow the Agency to account for the respective collection matters and maintain their administration to date.

Once a matter is handed to our office for collection no payment in respect of that collection should be made to the Agency, whilst new or current rentals should be received. In event that payment is made the tenant should either be referred to our office, alternatively payment should be transferred to our office.



REPORTS

Our office uses a system called Legalsuite to capture all payments, credits, debits, file notes, documentation, communication and progress

We are able to provide full account, explanation and progress literally at the press of a button.

In order to secure regular update and communication with the Agency a unique report shall be provided to the Agency on a monthly basis ensuring full transparency and facilitating your administration of matters handed over for collection.

REFERENCES

1. Complete Estate Management
Benita Braine
(c) 081 018 7373
info@cemproperty.co.za
2. Chas Everitt - Rustenburg
Deon du Plessis
(t) 086 148 2584
(c) 071 354 2178
deon.duplessis@everitt.co.za
3. Impala Housing Department – Rustenburg
Linda Breetvelt & Braam Heystek
(t) 014 569 2405
Linda.Breetvelt@implats.co.za
4. Harcourts - Rustenburg
Pam Smit
(t) 014 594 2298
(c) 082 372 6519
pam.smit@harcourts.co.za
5. VDW Group
Christo Henning
(t) 044 695 0573
(c) 083 383 2675
christo@vdwgrp.co.za