

# The Sale of an Immovable Property Registered in a Minor Child's Name

By **Marius van Rensburg** (Partner)

04 November 2024

## INTRODUCTION

A child is defined in the Children's Act, No. 38 of 2005, as a person under the age of 18 years. Under South African law, a minor child may not enter into contracts without the express or implied consent of their natural or legal guardian i.e. the minor child's parents or appointed guardian by the courts / specified in a will. Whilst there are no legal impediments on transferring immovable property into a minor child's name, a minor child may only sell his / her immovable property if such alienation has been authorised by the Master of the High Court or the High Court as upper guardian of all minor children.

## LEGAL CAPACITY

As a minor child has no or limited legal capacity (depending on his / her age) and by extension of this restriction of contractual ability, a minor child is not eligible to purchase / sell immovable property without consent of the natural / legal guardian.

Therefore, the minor child's guardian must sign the deed of transfer and transfer documents on behalf of a minor child younger than 7 years old. If the minor child is between the ages of 7 and 18 years old, the minor child has limited contractual capacity and may be authorised to sign legal documents but only if he / she is assisted by his / her guardian.

Although the minor child is the owner of the immovable property, the natural / legal guardian is responsible for administering the property until the child reaches the age of majority and is considered fit to manage his / her own affairs.

## SALE OF IMMOVABLE PROPERTY

To protect the minor child's interests, restrictions are implemented in relation to the actions natural / legal guardians are permitted to take in the administration of the minor child's property.

In terms of Section 80 of the the Administration of Estates Act 66 of 1965 ("the Act"), it states that: "*no natural guardian shall alienate or mortgage any*

*immovable property belonging to his minor child ... unless he is authorised thereto by the Court or by the Master...*" Accordingly, the guardian may not sell / dispose / mortgage an immovable property registered in the minor child's name without the consent of the Master of the High Court, alternatively, the High Court. In order to do so, the guardian will have to apply to the Master of the High Court or the High Court who will determine whether or not to approve the sale having regard to the best interests of the minor child.

## PROCEDURE TO OBTAIN CONSENT

In terms of Section 80(2) of the Act, the Master may authorise a sale if the value of the immovable property registered in the minor child's name does not exceed the amount of R250 000.00. If the value of the property exceeds R250 000.00, the natural or legal guardian should apply to the High Court for consent to sell the immovable property.

The court application is an *ex parte* court application supported by affidavit. An advocate is needed to appear in court to argue the application and take the court order. Applications for consent can be time consuming and expensive and where not done in advance will delay the transfer process.

The sale of the immovable property will only be authorised if it can be demonstrated that the sale will benefit the minor child. The natural / legal guardian would have to provide reasons as to why the property is being sold, and details of how the proceeds of the sale will be distributed / invested in order to benefit the minor child. If the proceeds are not utilised to acquire another property / investment for the minor child, the proceeds of the sale must be paid to the Guardian's fund and administered on behalf of the minor child.

## CONCLUSION

The decision to purchase and register an immovable property in the name of a minor child should not be made lightly and must be well considered, having regard to the onerous legal implications of the subsequent sale / alienation of such an immovable property.

It is therefore important to establish early in the process of selling or buying an immovable property whether the property is owned by a minor so as to avoid unnecessary delays in the transfer.



**Marius van Rensburg**  
(Partner)