

Short notes on:

WHAT IS A USUFRUCT AND WHY IS IT IMPORTANT?

Introduction

Many South Africans who own property want to ensure that the rights of their loved ones are protected concerning the property. They want to ensure their loved ones have control of the property, enjoy the benefits of the property and furthermore, want to reduce the possibility of any disputes. Various mechanisms can be used ensure this. One of the most commonly used mechanisms is personal servitudes like a *usufruct*.

What Are Personal Servitudes?

Although personal servitudes are commonly used in wills concerning properties, many property owners and testators don't know what they are, or the impact servitudes may have on their loved ones. Personal servitudes establish the right to enjoy and use the property of another person. The personal servitude which we are focusing on is a *usufruct*, its importance and the implications of its use.

Usufruct

A *usufruct* provides the holder of the right to use the property of another person and consume, alienate or take any fruits that come from the property itself or anything that may be ancillary to the property, such as equipment or furniture. Ultimately, the holder of this right, also known as the usufructuary, is entitled to all the advantages, profit or utility the property produces. Furthermore, the usufructuary must use the property in the manner as its intended use and is bound to maintain the property without compensation.

Although a usufructuary may not alienate the property, they may confer the right to the use and enjoyment of the property to another through sale, loan or lease for the period that the *usufruct* has been granted. A *usufruct* is usually lifelong and expires on the death of the usufructuary; however,

they are sometimes granted for a fixed term; and the owner of the property cannot do anything that infringes on the usufructuary's rights.

This provides certainty regarding who has control over the property and who holds ownership, who enjoys certain benefits and what each party's rights are in terms of the property. It should be noted that to give effect to a *usufruct*, the title deed must be endorsed at the deeds office.

Conclusion

In conclusion, when used correctly, this mechanism can create certainty and be beneficial for your loved ones; however, it can also place a severe burden on them when misused. Therefore, it is crucial to know what it entails, the effect thereof and to make sure that you are not acting in a manner that can be detrimental to loved ones. Consult with a legal professional before having any legal documentation drafted.

Contact an attorney at SchoemanLaw for your legal needs!