



GENERAL LAW  
and  
CONVEYANCING

South Africa

**Adams & Adams**

## General Law brochure

### An overview of Adams & Adams

Adams & Adams has been a leading South African law firm over the more than 95 years of its practice. The firm specialises in intellectual property law and in various other specialised fields, in addition to providing general legal services. The firm is internationally known and draws its large client base from around the globe. It has a professional complement of more than 80 lawyers, both partners and qualified professional staff, and is the largest law practice in South Africa dealing with all aspects of intellectual property law.

Adams & Adams is a fertile training ground for young lawyers and intensive in-house and hands-on instruction is given to our candidate attorneys. In this way the firm ensures that it will continue to show organic growth by “growing our own timber”. Apart from the necessary legal skills, trainees are imbued with the Adams & Adams culture and values of professional excellence, ethical conduct, meticulous attention to detail and accessibility to clients.

The firm has long been active across the African continent, and has gained unique and wide experience in providing international and local clients with services and advice in the various fields of its practice.

### An overview of the General Law Department

The General Law Department of Adams & Adams functions in two sections, the general litigation practice and the conveyancing practice.

Since its inception about 25 years ago, the High Court litigation team of the General Law Department has grown from strength to strength. It is well established and deals with most areas of litigation and has a well-established and dedicated conveyancing department, as discussed later in this brochure.

Depending on the relevant facts of each matter, the urgency of the relief sought and the possibility of factual disputes, litigation may be by way of action proceedings, instituted by issuing a summons, or by way of application proceedings, initiated by a notice of motion with supporting affidavits.

The Transvaal Provincial Division of the High Court of South Africa has its seat in Pretoria and has jurisdiction over any defendant/respondent who *inter alia* resides or carries on business, in the area of the old Transvaal. We are therefore in a position to act as correspondent attorneys where necessary, or to undertake litigation directly without the additional costs associated with first briefing a local firm of attorneys in your city or town that is not within an eight kilometre radius from the seat of the court.

Due to the nature of litigation, the complexity and prospective outcome of each matter will depend on its own circumstances and merits. Prospective clients are invited to contact any of the partners in the litigation section of the General Law Department for a preliminary telephonic assessment with a view to setting up a consultation, if necessary.

The department provides a wide range of legal services other than litigation and has specialists in a number of specific areas of practice.

### Areas of practice

- Arbitration, including contractual and construction disputes
- Constitutional law, administrative law and expropriations
- Insolvency, liquidations, sequestrations and rehabilitations
- Insurance law
- Litigation, all action and motion proceedings:
  - banking
  - commercial
  - divorce
  - enforcement and protection of contractual rights and interests
  - foreclosures and repossessions
  - general civil litigation
  - professional negligence
- Matrimonial law

- Third party claims, professional negligence and personal injury claims
- Property law and conveyancing (as discussed later in this brochure)
  - Negotiating and drafting of agreements relating to property transactions
  - Conventional and sectional title transfer of properties
  - Mortgage bonds and Notarial bonds
  - Sub-division and consolidation of properties
  - Township and Sectional Title developments
  - Various applications, consents and endorsements
  - Notarial leases and servitudes
  - Ante-nuptial contracts
- Corporate and commercial law:
  - preparation of agreements
  - advice on the drafting, interpretation, implementation, termination and effect of commercial agreements
  - general legal advice on statutory and common law rights
  - insolvency practice

## Specific areas of practice and person responsible

### **Property, conveyancing and related transactions**

Roelof Grové

### **Motor vehicle accidents (third party claims), material damages claims and personal injury**

Eugene Eybers, Grégor Wolter, David Scheepers, Leander Opperman

### **Litigation, arbitration, insolvency aspects, insurance law, constitutional and administrative law, corporate and commercial law**

Eugene Eybers, Grégor Wolter, David Scheepers, Leander Opperman

### **Banking, foreclosures and repossessions**

Eugene Eybers, Leander Opperman

## Specific areas of practice handled by the General Law Department

### Commercial law

Our commercial law team can assist with the drafting of contracts, furnishing advice on implementation and termination of contracts, and by rendering general legal advice and services in regard to specific factual scenarios, and issues involving commercial law, insolvency law, banking law, constitutional and administrative law.

We also register companies and close corporations and conduct company and close corporation searches. We are well positioned in Pretoria to provide these services, being in daily contact with the Companies Office and being able to address any queries in person with the Registrar or the relevant Assistant Registrar.

### Third party claims (personal injury claims)

#### What is a third party claim?

A third party claim is a claim for compensation resulting from personal injury to or the death of a person, eg. the death of a breadwinner, in a motor vehicle accident. Such a claim will lie against the RAF, a statutory body. A third party claim only relates to bodily injuries, and accordingly no claim for damage to a motor vehicle or other assets can be claimed from the RAF.

#### Who is entitled to claim?

The following persons will be entitled to claim:

- a person who was personally injured (except a driver whose negligence was the sole cause of the accident) including a claimant under the age of 21 years, provided he is assisted by a parent or legal guardian;
- a dependant of a deceased victim;
- a representative of the estate of a deceased or a close relation in respect of funeral expenses.

### Merits

It is important to establish how an accident occurred and who negligently contributed to the cause of the collision. A passenger only needs to prove 1% negligence on the part of another driver (therefore not the driver of the passenger's vehicle) to succeed with an unlimited claim against the RAF. Should the negligence of the driver of the passenger's vehicle be the sole cause of the accident the claim against the RAF will be limited to R25 000.

The balance above R25 000 can be claimed from the negligent driver personally. In the case of claims by drivers and pedestrians, an apportionment can be applied against the claim for his/her own contributory negligence. The quantum of his/her claim will be reduced by the percentage of his/her own negligence.

An assessment of the merits require investigation and collection of evidence which is done by our professional team. If appropriate, an accident reconstruction expert will be appointed to assist.

### Quantum

The quantum of damages refers to the total amount of money that the claimant will receive.

## **Banking law and foreclosures**

Our General Law litigation section has extensive experience in dealing with banking and related litigation, including recoveries, foreclosures and repossessions. We act in this regard on behalf of various large financial and banking institutions. Prospective clients are invited to contact us for more information.

## **Insurance law**

Our General Law litigation section also deals with insurance law litigation. Motor vehicle insurance claims, personal accident claims, fire insurance claims and property claims are amongst the various types of matters dealt with by this unit. Prospective clients are invited to contact us for a preliminary telephonic assessment with a view to setting up a consultation, if necessary.

## Liquidations, insolvencies and the consequences thereof

The General Law litigation section further deals with insolvency law litigation. Applications for sequestration (voluntary and compulsory), applications for liquidation (by order of court or voluntarily), as well as applications for rehabilitation are dealt with by this unit. Prospective clients are invited to contact us for a preliminary telephonic assessment with a view to setting up a consultation, if necessary.

## Family and matrimonial matters

Our General Law litigation unit has extensive experience in dealing with family and matrimonial matters. We can in this regard also assist both parties concerned in reaching an amicable settlement. Prospective clients are invited to contact us for more information.

## Conveyancing and property related matters

The Conveyancing section of Adams & Adams handles all aspects relating to property and property law in South Africa. The section is based at our head office in Pretoria from where it provides a wide range of services to the firm's private and corporate clients. The section's electronic access to its clients, which includes the major South African Banks, ensures that work is efficiently conducted.

### Services provided

The services provided by the conveyancing department include:

- Negotiating and drafting of agreements relating to property transactions
- Conventional and sectional title transfer of properties
- Mortgage bonds and Notarial bonds
- Sub-division and consolidation of properties
- Township and Sectional Title developments
- Various applications, consents and endorsements
- Notarial leases and servitudes
- Ante-nuptial contracts

## Questions frequently asked by clients

### What is the procedure to transfer a property?

- An 'offer to purchase' once signed by a purchaser and seller is a deed of sale.
- The purchaser applies directly to a bank or through a mortgage originator for a bond.
- The conveyancer requests bond cancellation figures from the current bond holder and applies for the rates clearance figures from the local authority.
- The conveyancer drafts the documents (affidavits, transfer duty declarations, power of attorney to pass transfer and draft deed of transfer).
- Parties sign the transfer documents and pay the costs.
- The conveyancer pays the amount due to the local authority to obtain a rates clearance certificate.
- The necessary documents are submitted to the Receiver of Revenue to obtain a transfer duty receipt.
- Documents are lodged in the Deeds Office (simultaneously with the bond cancellation and bond documents) for examination, the documents will then come up on preparation and be registered thereafter.

### How long will the transfer take?

Under ideal circumstances a transfer takes between 50 and 65 days. The following aspects influence the period to transfer a property:

- Is the purchaser paying cash for the property and are the funds available?
- Mortgage finance – did the purchaser apply for mortgage finance?
- Does the purchaser qualify for the loan?
- Does the property have sufficient value according to the valuation conducted by the mortgagee's valuator?
- Are there any restrictive conditions in the title deed?
- Can the mortgagor comply with the conditions of the bank?
- Is there a bond registered over the property that needs to be cancelled (cancellation figures must be furnished by the relevant mortgagee)?
- Are the security documents (title deeds and mortgage bonds) available?
- The period the local authority takes to issue rates clearance figures and the rates clearance certificate.
- The period it takes the Deeds Office to examine the transfer documents.

### What are the costs to transfer a property

There should be a distinction between professional fees and disbursements made by the conveyancer on behalf of the parties.

The professional fees charged by the conveyancer are in accordance with national guidelines prescribed by the Law Society of South Africa. This prescribed tariff makes provision for a sliding scale based on the purchase price of the property. The Purchaser usually pays the professional fees, but the parties can contract otherwise.

The conveyancer collects the following funds before registration from the seller and purchaser:

#### From the Seller

- Amounts due to the local authority to obtain a rates clearance certificate.
- Bond cancellation costs (should there be insufficient funds from the proceeds of the sale to pay the bond cancellation attorney directly).

#### From the Purchaser

- Deeds Office registration fees.
- Provision for rates and taxes due to the local authority.
- Transfer duty payable to the Receiver of Revenue.
- Professional fees

Transfer duty is currently calculated as follows based on the purchase price:

- Natural persons:
  - R0 to R190 000 - exempt
  - R190 000 to R330 000 - 5 %
  - R330 000 and above - 8%
- Legal Entities (Companies, Close Corporations and Trusts):
  - 10% of the purchase price.

## Professional staff (partners & associates)



### **Eugene Eybers**

Partner

BProc

Joined 1973, partner 1984. Chairman: General Law

Areas of practice:

- professional negligence claims
- banking law
- commercial litigation
- aviation law litigation
- personal injury litigation

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### **Grégor Wolter**

Partner

BBus Sci (Hons) LLB

Joined 1994, partner 1998

Areas of practice:

- general corporate and regulatory law
- commercial and civil litigation
- personal injury litigation

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### **David Scheepers**

Partner

Bluris LLB

Joined 1997, partner 2001

Areas of practice:

- family law
- commercial litigation
- professional negligence claims
- construction disputes
- personal injury litigation

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### **Leander Opperman**

Partner

BLC LLM

Joined 1997, partner 2004

Areas of practice:

- banking law
- insurance law
- general commercial litigation
- personal injury litigation

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**Roelof Grove**

Partner

Bluris LLB LLM

Joined 2002, partner 2005

Areas of practice:

- conveyancing
- property related matters
- notarial work

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**Nicolette Koch**

Associate

BCom LLB BCompt

Joined 2001, associate 2004

Areas of practice:

- commercial litigation
- personal injury law

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**Michael Gwala**

Associate

LLB LLM (Corporate law)

Joined 2003, associate 2005

Areas of practice:

- general corporate law
- commercial litigation
- professional negligence claims
- personal injury litigation

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Professional Assistants and Support staff

Carla Almeida-Grobler

BLC LLB

Sean White

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Darren Willans

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The team is supported by 10 candidate attorneys, 6 paralegals, 16 secretaries and 8 other support staff.

For further information regarding any of these services please visit our website [www.adamsadams.com](http://www.adamsadams.com) or contact any of our General Law department partners mentioned herein for preliminary telephonic advice.