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DIVORCE AND IMMOVABLE PROPERTY

When dealing with divorce and immovable property we are often asked whether it will be necessary to register the transfer by way of a formal deed of transfer in the deeds office? Will there be transfer duty payable? Does ownership pass on date of the divorce order?

The court in *Corporate Liquidators v Wiggill* ruled that ownership of immovable property vests immediately in the party on date of the divorce order, and the formal registration of the transfer is not necessary. This ruling was overturned by the Supreme Court of Appeal in *Fischer v Ubomi Ushishi Trading & others*. The court held that the Deeds Registries Act deals with the transfer of real rights in land and that the Divorce Act cannot be used to transfer ownership. The Deeds Registries Act makes provision for divorce transfers by way of a formal deed of transfer or by way of endorsement if the parties were married in community of property. This means that the spouse only becomes the owner of the property when the transfer is registered in the deeds office and not when a divorce order is granted.

In terms of the exemptions of the Transfer Duty Act, transfer duty is not payable if the transfer is in terms of a divorce order.