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WHO GETS THE PROPERTY IF MY COMPANY IS DEREGISTERED?

We are often asked what happens if a company fails to comply with statutory requirements and is consequently deregistered but there are properties registered in its name.

From the onset, it is the conveyancer's responsibility to determine whether the company has indeed been deregistered. This will reflect on a CIPC search. If deregistration has indeed taken place, the representative of the Company must apply for re-instatement through an application or an order of court. This must be done before any party may proceed with further transactions in respect of assets registered in the Company's name.

The assets of a deregistered Company automatically pass to the State. Our courts have in the past constantly confirmed that deregistration puts an end to the existence of the company, in the same way that a natural person ceases to exist at death.

Creditors of the Company or other interested parties are however not wholly without remedy and they can apply to the CIPC for the restoration of the registration of the Company. The requirements for re-instatement are as follows:

1. Letters from the National Treasury indicating that they have no objection to the re-instatement;
2. An affidavit indicating the reason for the non-filing of annual returns, if deregistration was as a result of non-compliance in relation to annual returns;
3. Sufficient documentary proof that the Company was in business or that it had any outstanding assets and liabilities at the time of deregistration and upon the successful processing of the re-instatement application all outstanding annual returns must be filed in order to complete the process.

It is advisable that sellers attend to re-instatement timeously as the re-instatement process will delay registration of transfer