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REFUSAL OF MUNICIPAL SERVICES DUE TO HISTORIC DEBT

Municipalities often will not open a new account for a purchaser if there are any historical debt still owing to them. The clearance certificate they issue for the registration of the property, certifies that all amounts owing for the last 2 years have been paid in full. The clearance certificate does not include historical debt, and it may well be that there are outstanding amounts, older than 2 years, due to the Municipality that was incurred by a previous owner. The Municipality then refuses to open a utility account for the new owner, until the historical debt is paid.

In the matter of Jordaan and Another v The City of Tshwane Metropolitan Municipality (2017) the constitutionality of Section 118 (3) of the Municipal Systems Act 32 of 2000 was attacked. Section 118 (3) provides the Municipality with security for repayment of an unpaid debt in respect of rateable property and enjoys preference over any mortgage bond registered against the property. The following was decided by the court:

- In some instances, Section 118(3) could result in loss of ownership, and this amounts to a deprivation that is prohibited in section 25(1) of the Constitution.
- It was further held that the deprivation was substantial and drastic, especially in view of the fact that the new owner could not take steps to reduce his risk with regard to historic debts, and the fact that the Municipality has the means to collect outstanding debts.
- The form of security afforded by Section 118(3) affects not only the property owner incurring the debts but also all his successors in title.
- The court found that a Municipality has sufficient means and legal remedies to recover outstanding debts from the owners incurring the debts, without it becoming the problem of the new owner.

In summary the court concluded that municipalities are not allowed to refuse municipal services to new owners as a result of historical debts still outstanding on the property. New owners will thus be able to open new utility accounts, even if there are historical debts outstanding.