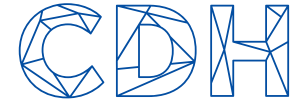


Dispute Resolution

ALERT | 25 March 2025



In this issue

SOUTH AFRICA

- When property deals turn sour: the role of the conveyancer
- From conflict to resolution: Insights into traditional global mediation practices

For more insight into our expertise and services



**DISPUTE RESOLUTION
ALERT**

When property deals turn sour: the role of the conveyancer

Property transactions do not always go as planned. Disputes may arise, leaving both the seller and the purchaser in a difficult position. In these circumstances, the role of the conveyancer may shift from facilitating the transfer of ownership to either assisting to resolve a dispute between the parties or by holding funds in trust pending the resolution of the dispute by the parties themselves or by an order of court.

While the conveyancer's primary duty is to facilitate the transfer of ownership of immovable property, a key question emerges: whose interests do they serve when the deal turns sour? The answer is not as clear as it seems.

Is there influence by the appointing party on the conveyancer

A conveyancer is required to act impartially, in accordance with the sale agreement and to generally observe legal professional ethics.

In South Africa, it is standard practice for the seller to appoint the conveyancer. This is not cast in stone as the parties may agree for the purchaser to nominate the conveyancer in the sale agreement.

It is a well-established principle that when a conveyancer accepts the appointment in terms of a sale agreement, they accept the appointment as an agent for (at least) the seller in the transaction and to fulfil the terms of the sale agreement.

In the case of *Basson v Remini and Another* [1992] (2) SA 322 (N), the High Court accepted the view that, by accepting the appointment as the conveyancer in the transaction between the seller and purchaser, the conveyancer becomes the agent of both parties.

In contrast, in *Manna v Lotter and Another* [2007] (4) SA 315 (C), the High Court found that the conveyancer appointed to attend to the transfer of the property was, in fact, the agent of the seller. Accordingly, any information received by the conveyancer or decision made by them was deemed to have been received or made by the seller as the principal.

Until the property is transferred to the purchaser, however, the conveyancer holds the purchase price on behalf of the purchaser. As confirmed in *Basson*, by accepting funds from the purchaser, the conveyancer also assumes a duty to act as the purchaser's agent in relation to those funds. This dual role raises an important question: when a dispute arises between the parties, could the conveyancer's position unfairly prejudice the rights and interests of one party over the other?

The conveyancer's duty in a dispute

It is not uncommon for disputes to arise between parties before the transfer of immovable property.

As attorneys, conveyancers have the expertise to assist parties to a sale agreement in resolving disputes without the need for litigation. They can act as facilitators in negotiations and help structure settlements to reach an amicable resolution, which can save time and costs. However, parties should be mindful that if a dispute cannot be resolved amicably, the conveyancer's role may be limited due to a potential conflict of interest.

DISPUTE RESOLUTION ALERT

When property deals turn sour: the role of the conveyancer

CONTINUED



When a dispute arises between the parties, the deposit or full purchase price may be held in trust by the conveyancer even though the transfer is no longer to take place due to the cancellation of the sale agreement.

While each case is fact dependant, South African courts have generally held that a conveyancer's duty extends beyond the party who appointed them – they are responsible for ensuring that both the buyer's and seller's rights are protected in the transaction, regardless of which party appointed them.

For instance, in *Johan Willem Bruwer and Another v Poccock and Bailey Incorporated and Another* (H84/2006, 22/2009) [2009] ZAWCHC 167, the High Court concluded that the conveyancer held a legal duty to protect both the seller's and the purchaser's interests.

Similarly, in *Heckroodt v Wall* (A836/2014) [2016] ZAGPPHC 433, the High Court emphasised that conveyancers have a legal duty to act diligently and in the best interests of all parties involved in property transactions. Failure to fulfil this duty may result in a delictual liability claim against the conveyancer.

What is of paramount importance is that the conveyancer implements and gives effect to the clauses of the sale agreement, properly construed. For example, the sale agreement may provide for payment to the seller of monies in trust as agreed liquidated damages in the event that the sale agreement is cancelled as a result of a default by the purchaser. In this instance, the conveyancer will have to comply with the terms of the sale agreement.

Not only will a conveyancer be required to give effect to the clauses of the sale agreement (regardless of who appointed them), a conveyancer will also be required to give effect to an order of court regarding monies being

held by them pursuant to the sale agreement, should the parties' dispute reach court for resolution.

What does this mean for the purchaser?

A purchaser of immovable property remains protected by law, even if the seller appoints the conveyancer. A conveyancer must act fairly and ensure compliance with the sale agreement.

Conversely, for a seller of immovable property, the right to appoint a conveyancer does not allow undue influence over the process.

Protecting your interests in property transactions

A conveyancer plays a crucial role in facilitating property transactions and while they can assist in resolving disputes, their duties are ultimately guided by the sale agreement and the nature of their appointment. It is essential for both buyers and sellers to understand their rights and the conveyancer's role in the process. If a dispute arises and cannot be resolved amicably, it is important to recognise when to seek independent legal advice to ensure that your interests are properly protected.

**Claudette Dutilleux, Gabriella Schafer
and Sthembiso Chauke**

DISPUTE RESOLUTION ALERT

From conflict to resolution: Insights into traditional global mediation practices

Conflict is a natural part of human interaction, and different cultures have developed unique dispute resolution strategies to address disputes in ways that align with their traditions, values, and social structures. While some approaches focus on formal legal procedures, others emphasise relationships, morality, or community harmony. As a country practically at its infancy in its journey into the more formalistic mediation space, South Africa should continuously seek insight into various techniques employed to resolve disputes through mediation. As an alternative source of knowledge wealth, we look to certain jurisdictions where dispute resolution through mediation is steeped in long-standing tradition. Of particular interest for this article are the more traditional mediation strategies employed by communities in Eastern Asia and North America.

Confucian mediation

In cultures influenced by Confucianism (mostly in East Asia), mediation is often informal and emphasises social order, natural harmony, and moral duty. It is not the rights of the individual that are emphasised, but rather the social order and interests of the community. Often, mediators seek to persuade parties to reflect on their own mistakes, shift their focus from their own interests, and compromise for the betterment of the group.

Disputes are typically resolved through respected intermediaries, such as elders, village leaders, or senior family members. Public confrontation is



Chambers Global 2025 Results

Dispute Resolution

Chambers Global 2022–2025 ranked our Dispute Resolution practice in:
Band 2: Dispute Resolution.
Chambers Global 2018–2025 ranked us in:
Band 2: Restructuring/Insolvency.

Tim Fletcher ranked by Chambers Global 2025 as an “Eminent Practitioner”, a category in which lawyers are ranked as highly influential lawyers and exceptional individuals.

Lucinde Rhodie ranked by Chambers Global 2023–2025 in **Band 4:** Dispute Resolution.

Natascha Harduth ranked by Chambers Global 2025 in **Band 4:** Restructuring/Insolvency.

Clive Rumsey ranked by Chambers Global 2025 in **Band 5:** Dispute Resolution.

Anja Hofmeyr ranked by Chambers Global 2025 in **Band 5:** Dispute Resolution.

Jackwell Feris ranked by Chambers Global 2023–2025 as an “Up & Coming” dispute resolution lawyer.

DISPUTE RESOLUTION ALERT

From conflict to resolution: Insights into traditional global mediation practices

CONTINUED

discouraged, and avoiding embarrassment or shame is a key priority. Mediators aim to propose a compromise that satisfies both parties.

For example, in Japan, businesses often adopt a consensus-building approach called *nemawashi*, where issues are discussed informally behind the scenes before making a formal decision, reducing the risk of open conflict.

However, it also seems as though various East Asian countries are adapting the tradition of Confucian mediation to accommodate the necessities of modern day commerce, social norms and political systems. For example China, where mediation remains a very popular method of dispute resolution, has created formal mediation bodies and has enacted a “*People’s Mediation Law*”, which outlines the forms of mediation, qualifications for mediation and mediators, and procedures for judicial confirmation of mediated settlements.

Sulha mediation

Sulha is a traditional mediation practice deeply rooted in tribal customs and Islamic teachings on four elements: forgiveness, reconciliation, ritual and honour. Mediators, often religious or tribal leaders, or respected elders from the community, do not receive financial compensation for their role in the process.

Sulha is based on a mix of mediation and arbitration – on the mediation side, Sulha aims to reconcile differences and resolve conflict, while on the arbitration side, the decision of the mediator is final and binding. It is used for resolving various conflicts, including murder, physical assault, theft and conflict between social groups. The purpose is to resolve disputes within the community and to avoid major conflict. In Bedouin societies, Sulha has often been used to prevent long-term cycles of revenge and violence.

The process often involves compensation, public apology or gestures of goodwill, such as hosting a meal, to restore honour. Once an agreement is reached, it is considered sacred and binding.

This is a practice popularly employed in Middle Eastern communities, as well as other Muslim countries around the world. The process is officially separate from the country’s formal legal system.

Panchayat mediation and Lok Adalat

The Panchayat system is a centuries-old method of local dispute resolution in India, Nepal, Pakistan and Bangladesh. Decisions are based on customs, traditions and local wisdom rather than strict legal codes, with the emphasis on practical, fair resolutions that benefit the entire community. Mediators are typically elders or influential community members, ensuring that the process is less adversarial and more conciliatory than court proceedings.



DISPUTE RESOLUTION ALERT

From conflict to resolution: Insights into traditional global mediation practices

CONTINUED

In India, for example, mediation has historically been a preferred method of resolving conflicts and was used before the advent of law courts. It was employed to resolve civil, criminal and political disputes. Today, dispute resolution, social welfare, infrastructure development and resource management in rural India are often dealt with by Gram Panchayats. These are local self-governing bodies, comprising of selected representatives, to reflect the collective will and values of the village community. The process operates on the principles of community participation, consensus building and traditional practices.

More recently, Lok Adalat developed, which is a forum for alternative dispute resolution that is a informal, flexible voluntary and participative, and which has the ultimate the goal of encouraging settlements and avoiding litigation. While the mediators are typically retired judges, lawyers or social workers, the rulings are not legally enforceable.

India has also introduced '*judicial mediation*', in terms of which a court can now identify circumstances in which an amicable resolution is possible, construct the terms of the resolution, and request the parties to the dispute to comment on it.

Indigenous peace circles

Many indigenous communities in the Northern Americas use traditional peace-making processes as a way to resolve disputes, promote healing and facilitate community decision-making. These processes vary across indigenous cultures, but find commonality in their use of spiritual laws, traditional medicines, ceremonies and circle processes.

Circle processes involve a talking circle, where each participant speaks uninterrupted while others listen. The circle structure promotes equality and empathy. Experienced elders, spiritual leaders or community members facilitate the discussion. There will always be a male indigenous facilitator and a female non-indigenous facilitator present, which promotes harmony, balance and inclusivity. This form of mediation follows a specific ritualistic process, which may include storytelling, objects, song and prayer.

What insights can South Africa draw from these global '*alternative*' mediation practices?

South Africa's traditional mediation system is deeply rooted in the Ubuntu philosophy, which emphasises community, interconnectedness and reconciliation. This approach prioritises restoring relationships through open dialogue and mutual understanding rather than assigning blame. The Truth and Reconciliation Commission (TRC) sought to harness the power of Ubuntu-based mediation in uncovering the truths about severe human rights violations during apartheid.

Our legislature has recognised the benefit of mediation and now makes formal provision for mediation in the rules of court for both the lower courts and the High Court. Although referred to as "*court annexed mediation*", it remains for now a voluntary process. Parties are still free to choose mediation as an alternative dispute resolution mechanism before even involving the courts – otherwise referred to as "*ad-hoc*" mediation.

**DISPUTE RESOLUTION
ALERT**

From conflict to resolution: Insights into traditional global mediation practices

CONTINUED



Mediation of commercial disputes is generally facilitated by accredited mediators, including lawyers, retired judges, psychologists, teachers, etc. While it is a completely voluntary and confidential process, aimed at resolving disputes amicably and restoring/fostering relationships, it remains a more formal manner of dispute resolution.

From experience, and despite our mediation system being rooted in the Ubuntu philosophy, we do find that our attitude towards finding solutions are often based on "*principle*" and individual interests.

Breaking the mind-set of "*self*" and the need for assignment of blame sought in most commercial disputes is difficult, and mediators may well be able to take some lessons from the older, more '*traditional*' or '*indigenous*' forms of mediation to encourage parties to find a resolution that benefits the greater good, as opposed to finding a '*winner*'. Important insights can be gained from the approaches in Confucian mediation, Sulha mediation, Panchayat mediation, Lok Adalat and indigenous peace circles, where the focus is on community, shared interests and moral duties. This is especially so if one considers the globalisation of commerce in an increasingly hostile and tumultuous global political environment. Furthermore, as is seen in Japan, informal discussions aimed at considering the interests of all stakeholders may be effectively used in business negotiations and commercial disputes, while simultaneously preserving business relationships and avoiding costly litigation. Viewing mediation from a global perspective serves as a great reminder not to lose sight of our foundational principles of community and harmony in the mediation process.

Belinda Scriba, Claudia Grobler, and Azraa Patel



OUR TEAM

For more information about our Dispute Resolution practice and services in South Africa, Kenya and Namibia, please contact:



Rishaban Moodley

Practice Head & Director:
Dispute Resolution
Sector Head:
Gambling & Regulatory Compliance
T +27 (0)11 562 1666
E rishaban.moodley@cdhlegal.com



Tim Fletcher

Chairperson
Director: Dispute Resolution
T +27 (0)11 562 1061
E tim.fletcher@cdhlegal.com

Imraan Abdullah

Director:
Dispute Resolution
T +27 (0)11 562 1177
E imraan.abdullah@cdhlegal.com

Timothy Baker

Director:
Dispute Resolution
T +27 (0)21 481 6308
E timothy.baker@cdhlegal.com

Eugene Bester

Director:
Dispute Resolution
T +27 (0)11 562 1173
E eugene.bester@cdhlegal.com

Neha Dhana

Director:
Dispute Resolution
T +27 (0)11 562 1267
E neha.dhana@cdhlegal.com

Denise Durand

Director:
Dispute Resolution
T +27 (0)11 562 1835
E denise.durand@cdhlegal.com

Claudette Dutilleux

Director:
Dispute Resolution
T +27 (0)11 562 1073
E claudette.dutilleux@cdhlegal.com

Jackwell Feris

Sector Head:
Industrials, Manufacturing & Trade
Director: Dispute Resolution
T +27 (0)11 562 1825
E jackwell.feris@cdhlegal.com

Nastascha Harduth

Sector Head: Corporate Debt,
Turnaround & Restructuring
Director: Dispute Resolution
T +27 (0)11 562 1453
E n.harduth@cdhlegal.com

Anja Hofmeyr

Director:
Dispute Resolution
T +27 (0)11 562 1129
E anja.hofmeyr@cdhlegal.com

Corné Lewis

Director:
Dispute Resolution
T +27 (0)11 562 1042
E corne.lewis@cdhlegal.com

Nomlayo Mabhena-Mlilo

Director:
Dispute Resolution
T +27 (0)11 562 1743
E nomlayo.mabhena@cdhlegal.com

Sentebale Makara

Director:
Dispute Resolution
T +27 (0)11 562 1181
E sentebale.makara@cdhlegal.com

Vincent Manko

Director:
Dispute Resolution
T +27 (0)11 562 1660
E vincent.manko@cdhlegal.com

Khaya Mantengu

Director:
Dispute Resolution
T +27 (0)11 562 1312
E khaya.mantengu@cdhlegal.com

Richard Marcus

Director:
Dispute Resolution
T +27 (0)21 481 6396
E richard.marcus@cdhlegal.com

Burton Meyer

Director:
Dispute Resolution
T +27 (0)11 562 1056
E burton.meyer@cdhlegal.com

Desmond Odhiambo

Partner | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E desmond.odhiambo@cdhlegal.com

Lucinde Rhodie

Director:
Dispute Resolution
T +27 (0)21 405 6080
E lucinde.rhodie@cdhlegal.com

Clive Rumsey

Sector Head: Construction & Engineering
Director: Dispute Resolution
T +27 (0)11 562 1924
E clive.rumsey@cdhlegal.com

Belinda Scriba

Director:
Dispute Resolution
T +27 (0)21 405 6139
E belinda.scriba@cdhlegal.com

Tim Smit

Sector Head:
Consumer Goods, Services & Retail
Director: Dispute Resolution
T +27 (0)11 562 1085
E tim.smit@cdhlegal.com

Marelise van der Westhuizen

Director:
Dispute Resolution
T +27 (0)11 562 1208
E marelise.vanderwesthuizen@cdhlegal.com

Joe Whittle

Director:
Dispute Resolution
T +27 (0)11 562 1138
E joe.whittle@cdhlegal.com

Roy Barendse

Executive Consultant:
Dispute Resolution
T +27 (0)21 405 6177
E roy.barendse@cdhlegal.com

BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

PLEASE NOTE

This information is published for general information purposes and is not intended to constitute legal advice. Specialist legal advice should always be sought in relation to any particular situation. Cliffe Dekker Hofmeyr will accept no responsibility for any actions taken or not taken on the basis of this publication.

JOHANNESBURG

1 Protea Place, Sandton, Johannesburg, 2196. Private Bag X40, Benmore, 2010, South Africa.
Dx 154 Randburg and Dx 42 Johannesburg.
T +27 (0)11 562 1000 F +27 (0)11 562 1111 E jhb@cdhlegal.com

CAPE TOWN

11 Buitengracht Street, Cape Town, 8001. PO Box 695, Cape Town, 8000, South Africa. Dx 5 Cape Town.
T +27 (0)21 481 6300 F +27 (0)21 481 6388 E ctn@cdhlegal.com

NAIROBI

Merchant Square, 3rd floor, Block D, Riverside Drive, Nairobi, Kenya. P.O. Box 22602-00505, Nairobi, Kenya.
T +254 731 086 649 | +254 204 409 918 | +254 710 560 114
E cdhkenya@cdhlegal.com

NAMIBIA

1st Floor Maerua Office Tower, Cnr Robert Mugabe Avenue and Jan Jonker Street, Windhoek 10005, Namibia
PO Box 97115, Maerua Mall, Windhoek, Namibia, 10020
T +264 833 730 100 E cdhnamibia@cdhlegal.com

STELLENBOSCH

14 Louw Street, Stellenbosch Central, Stellenbosch, 7600.
T +27 (0)21 481 6400 E cdhstellenbosch@cdhlegal.com

©2025 14498/MAR

