

What is a Life Right?

- A Life Right is a contractual right between the holder and the entity from who the holder has purchased the Life Right to live in a specific unit until his death or his spouse's death (if you pass away before your spouse).
- All Life Rights purchasers are protected by the Housing Development Schemes for Retired Persons Act, No. 65 of 1988 ("Act").
- The holder will also have to pay a monthly levy, as well as the monthly electricity and water consumed in the unit.
- The Life Right is noted against the development's title deed, which is registered in the Deeds Office.
- Depending on the contract the life right holder signed when they bought the life rights, the life-rights agreements contain a clause whereby, in the case of death, it will stipulate one of the following pertaining to the proceeds paid to the estate:
 - The original purchase price of the life right; or
 - The entire purchase price plus a portion of capital growth; or
 - The entire purchase price without capital growth; or
 - To be reimbursed on a sliding scale, deducting a percentage for every year they have lived in the unit. In this case, they or their heirs could end up with considerably less than the original purchase price; or
 - The original purchase price and a pre-agreed percentage of any profit on the resale are less than the unit's restoration costs. HOWEVER, some developments will only return the original purchase price.
- A further aspect that must be kept in mind is that the holder's estate WILL NOT receive any price other than the price THE HOLDER PAID for the right—even if the Life Right is sold for triple the amount the holder initially paid.
- Life Rights are generally more affordable than buying a property, and the Life Right purchaser will save on transfer and bond costs!
- A clear benefit of buying a Life Right is that retirees can plan ahead financially. The Act states that a Developer MUST disclose to a potential Life Right purchaser the monthly levies, what they will cover, and how they will be determined in the future.
- The Developer, in turn, MUST also provide an estimate of the levies for the next two years, giving the Life Right holder peace of mind that no hidden costs will creep in—or, for that matter, the likes of a special levy!
- Another benefit to Life Right holders is that the Developer is still responsible for all the maintenance of the unit, gardening services, security, etc.
- The following questions should be asked when thinking about purchasing a Life Right:
 - What is the purchase price and the amount that will be repaid to your estate once the Life Right has been resold?
 - Is there a mortgage bond over the property development?
 - Does the contract stipulate that the Life Right holder or their spouse can live there until death?
 - Is the security provided in the development sufficient for you to have peace of mind?
 - What type of healthcare does the development offer (if any)?
 - Is the development financially stable?
 - What facilities or amenities are on offer, and what is included in the monthly levy?
 - Has the section 6(1) certificate been received, which certifies that the development has been erected following the approved plans?
 - Does the scheme comply with the National Building Regulations?
- Once all the above questions have been answered and you are satisfied with the feedback received, you should discuss with the developer another very important aspect: the rules of development.
- Rules are a crucial part of any community scheme.
- Please peruse the rules and ask yourself whether you can abide by them BEFORE legally binding yourself to a scheme.



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Summary of Judgement: The Life Right holder and Developer must honour the contractual agreement.

Court Information

- **Court:** High Court of South Africa, Gauteng Local Division, Johannesburg
- **Date of Judgment:** 23rd July 2024
- **Date of Reasons Given:** 21st November 2024

Parties Involved

- **Applicant:** Johannes Lodewickus VenterSzabo N.O.
- **First Respondent:** Jarkie-Trust Administrators (Pty) Ltd
- **Second Respondent:** Willem Johannes Steyn N.O.
- **Third Respondent:** Alminda Sophia Kruger N.O.

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Background

Order Summary

- The Respondents are ordered to pay the Applicant an amount of **R1,274,000.00**, plus mora interest from **16 September 2022** until the final payment date.
- The Respondents must cover the Applicant's costs on a party-to-party scale.

Context of the Case

- The Applicant claims payment from the Respondents, who serve as trustees of the AmarosaAftree-Oord Trust. This claim arises from a loan provided by the late Mr Gabor Szabo and his wife for a lifelong occupational right in a retirement village unit.

Contractual Agreement

- In **2014**, the Szabos entered into a contract with the Trust, granting them **lifelong occupation** of Unit 11 in the retirement village "Amorosa". In exchange, the Szabos loaned the Trust **R1,274,000.00**.
- The contract stipulates that upon the passing of the Szabos, the unit would revert to the Trust, and the loan amount would be repaid after deducting specific charges.

Death of the Szabos

- Mrs. Szabo passed away on 9 January 2021, followed by Mr. Szabo on 16 September 2021. His death triggered the current application for repayment.



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Key Events

Occupational Rights and Responsibilities

- The Szabos had several joint responsibilities under the contract, which were transferred automatically to the survivor upon the death of one of them. The estate was to hand over the unit to the Trust for marketing and sale.

Email Communication

- An email dated 15 August 2022 from a representative named Lorraine indicated that the keys would be handed over on 16 August 2022, concluding the sale of the life right. The email also stated that interest would accrue from 16 September 2022 due to a delay in finalizing accounts.

Letter of Demand

- On 27 January 2023, the Applicant's attorneys sent a demand letter to the Respondents, asserting that the estate would receive interest on the loan amount due from 16 September 2022.

Respondent's Position

- The Respondents denied that Lorraine was authorised to represent the Trust, asserting that the Trust did not sell the right to lifelong occupation. They claimed the application was premature as no new loan agreement was established with a new occupant, nor had any amounts been paid to the Trust.

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Court Analysis

Founding Affidavit

- The Court found that the founding affidavit contained sufficient aver-means to establish a prima facie case against the Respondents, particularly relying on the acknowledgement in Lorraine's email.

Respondents' Denials

- The Respondents' denials regarding Lorraine's identity and authority were viewed as implausible, especially given the email connections between her and Juliana Steyn, the attorney for the Trust.

Arguments on Prematurity

- The Court noted that while the Respondents claimed the application was premature, the Applicant sufficiently demonstrated that the conditions for repayment were met based on the various communications and agreements.

Conclusion

The High Court ruled in favor of the Applicant, ordering the Respondents to pay the specified amount with interest. The Court emphasized that the evidence presented was adequate to support the claims made by the Applicant, despite the Respondents' assertions to the contrary.