

CHIEF REGISTRAR'S CIRCULAR NO. 9 OF 2005

SECTIONAL TITLES ACT, 1986 (ACT NO. 95 OF 1986) : AMENDMENTS OF THE REGULATIONS

1. COMMENCEMENT OF AMENDED REGULATIONS

The amended regulations, published under Government Notice No. R.438, in Government Gazette No. 27561, came into operation on 13 May 2005.

2. NATURE AND/OR IMPACT OF THE AMENDMENTS

2.1. Amendment of regulation 17

The heading of regulation 17 has been amended to limit it to the transactions prescribed in the said regulation. The amended heading reads as follows:

“Alienation and letting of common property”

2.2. Amendment of regulation 27

Regulation 27 has been amended by the insertion of subregulation (3). Subregulation (3) prescribes the submission of documents that must accompany an application for the registration of a plan of extension of the common property. Subregulation (3) reads as follows:

“(3) The application contemplated in subregulation (1)(a) must be accompanied by an amended schedule as contemplated in section 11(3)(b) of the Act, where the land to be incorporated into the communal scheme concerned is subject to conditions which are different from the conditions registered at the opening of the sectional title register.”.

2.3. Amendment of Regulation 28

2.3.1. Regulation 28 has been amended by the insertion of subregulations (4) and (5).

Section 27 of Act No. 95 of 1986, as amended by Act No. 29 of 2003, provides for the devolution of an exclusive use area which remains registered in the name of a person who has ceased to be a member of the body corporate and identifies a beneficiary to whom such exclusive use area must be ceded. Subregulation (4) prescribes the procedures that must be followed in ceding such exclusive use area to the identified beneficiary.

Subregulation (4) reads as follows:

- "(4)(a) Whenever any real right to an exclusive use area vests in the body corporate as contemplated in section 27(1)(c) or section 27(4)(b) of the Act, the registrar shall upon lodgment of an application by the body corporate, nearly as practicable in the form AG in Annexure 1, issue a certificate of real right in favour of the body corporate in the form AH of Annexure 1.
- (b) If the real right to such exclusive use area is hypothecated, the registrar shall endorse the fact of the issuing of such certificate on the registry duplicate of the bond and, if the original bond is at any time lodged with the registrar's office for any purpose except cancellation, the registrar shall make a similar endorsement thereon: Provided that the issuing of such certificate shall not prejudice any claim to compensation which any person may have as a result of the vesting of such right.
- (c) The body corporate shall produce the title deed of the real right to such exclusive use area to the registrar, together with the certificate of real right, and the registrar shall thereupon endorse the fact of the issuing of such certificate on such title deed.
- (d) If the body corporate does not produce the title deed of the real right to such exclusive use area, it must submit to the registrar an affidavit stating the reasons why it has been unable to produce the title deed and the registrar shall if he or she is satisfied with the reasons, endorse the fact of the issuing of the certificate on the registry duplicate of such title deed, and if the original title deed is at any time lodged with his or her office for any purpose, the registrar shall make a similar endorsement thereon.
- (e) The registrar shall not issue the said certificate unless a certificate has been furnished by the body corporate to the effect that the provisions of section 27 of the Act in connection with the vesting of such right have been complied with."

2.3.2. Section 27 of Act No. 95 of 1986, as amended by Act No. 29 of 2003, provides for a mechanism of obtaining a separate title deed for an individual exclusive use area in cases where exclusive use areas are held by means of one title deed. Subregulation (5) of regulation 28 prescribes the procedures that must be followed in obtaining such separate title deed for an individual exclusive use area.

Subregulation (5) reads as follows:

- (5)(a) A separate title deed as contemplated in section 27(7) of the Act may be obtained by the registered holder from the registrar upon written application accompanied by the title deed of the right to the exclusive use area concerned and such title deed must be issued, nearly as practicable, in the form A1 in Annexure 1.
- (b) If the right to the exclusive use area concerned is subject to a registered mortgage bond, that bond shall be produced to the registrar by the holder thereof, upon the request by and at the expense of the applicant.
- (c) Before issuing such title deed the registrar shall cause to be made upon the title deed to the exclusive use area concerned and upon the mortgage bond an endorsement to the effect that a separate title deed as contemplated in section 27(7) of the Act, has been substituted for the one title deed in respect of the right to the exclusive use area concerned and the registrar shall further make the necessary entries in the registers of the issue of the separate title deed and shall, if the right to the exclusive use area is mortgaged, endorse that fact upon the title deed so issued.
- (d) Any separate title deed, when issued, shall in respect of the right to the exclusive use area described therein, take the place of the title deed or deeds by which such right was previously held and the issue of such title deed shall not in any manner affect any right or obligation in connection with such right to the exclusive use area concerned.”

2.4. Form G

Form G has been amended to provide for the issuing of Certificates of Real Right: Exclusive Use Areas on the registration of the sectional plan of extension.

2.5. Form H

Form H has been amended to provide for the full property description in instances where a sectional title scheme is situated on a farm property.

2.6. Form O

Form O has been amended to provide for the issuing of a Certificate of Real Right to exclusive use areas as contemplated in section 27(1) of Act No. 95 of 1986.

2.7. Form AG

The insertion of Form AG is consequential to the amendment of regulation 28.

2.8. Form AH

The insertion of Form AH is consequential to the amendment of regulation 28.

2.9. Form AI

The insertion of Form AI is consequential to the amendment of regulation 28.

3. Annexures:

Certain amendments have been affected to Annexure 8 of the Regulations to Act No. 95 of 1986. The said amendments relate to consumer issues and are not referred to in this Circular.



CHIEF REGISTRAR OF DEEDS

DATE : 20 May 2005

REFERENCE: A.6/2/P AND A.1/2/1/1/2

RINGBINDER: 44

CHIEF REGISTRAR OF DEEDS

REGISTRARS OF DEEDS

THE CHIEF: DEEDS TRAINING

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