



rural development  
& land reform

Department:

Rural Development & Land Reform

REPUBLIC OF SOUTH AFRICA

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## REGISTRARS' CONFERENCE RESOLUTIONS 2009

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### A. WITHDRAWAL OF PREVIOUS REGISTRARS' CONFERENCE RESOLUTIONS

**1/2009** The following Registrars' Conference Resolutions are withdrawn:

- RCR 41 of 1949
- RCR 2 of 1987
- RCR 4 of 1994
- RCR 13 of 1994
- RCR 29 of 1994
- RCR 6.21/1999
- RCR 1 of 2004
- RCR 2 of 2004
- RCR 10 of 2005
- RCR 13 of 2005
- RCR 15 of 2006
- RCR 46 of 2006
- RCR 53 of 2006
- RCR 9 of 2007
- RCR 42 of 2007
- RCR 10 of 2008
- RCR 17 of 2008
- RCR 19 of 2008

### B. PREVIOUS REGISTRARS' CONFERENCE RESOLUTIONS

**2/2009 Section 25 (RCR 4 of 1994 and RCR 10 of 2005)**

In view of the unreported case *Dolphin Whisper Trading 10 (Pty) Ltd v The Registrar of Deeds and the Body Corporate, Skilliepark 2*, it would appear that the existing practice of examiners as provided for in RCR 10 of 2005 and RCR 4 of 1994 not to establish whether the right of extension is a deviation from the plans lodged in terms of section 25(13), should be discontinued. Should the practice now be that all deviations in the extension be referred to court?

**Resolution:**

Where the registrar of deeds determines that there is a deviation from the section 25(2) plans, such a deviation must be sanctioned by an order of court.

- RCR 10 of 2005 and RCR 4 of 1994 are hereby withdrawn.

**3/2009 RCR6.21/1999 - Registration copies of diagrams**

It is practice in deeds registries to call for diagrams as provided for in terms of regulation 32, in duplicate. Should this practice still be continued?

**Resolution:**

Regulation 32 of Act No. 47 of 1937 makes reference to 'a diagram'. Only one diagram need therefore be lodged. Regulation 79bis must still be complied with.

- RCR6.21/1999 is hereby withdrawn.

**4/2009 RCR 15 of 2002 – Copy of lost bond**

The circumstances under which both the client copy and the deeds registry copy of a bond have been lost must be taken into consideration with the procedure for the cancellation of such bond. RCR15 of 2002 must be withdrawn.

**Resolution:**

RCR15 of 2002 is confirmed, pending the issuing of a Chief Registrar's Circular providing guidelines that include the publication of a notice of intention to cancel a lost / destroyed bond.

**5/2009 Expropriation and vesting transfers**

In view of the ratio contained in the unreported case of *South Africa's National Roads Agency Limited v Chief Registrar of Deeds* (Case No. 9147/2009) it would appear that the practice to request a rates clearance certificate for all expropriation and vesting transfers is no longer a requirement. Is the assumption correct?

**Resolution:**

Yes, no rates clearance certificates are required for any expropriation and vesting transfers.

- RCR1 of 2004, RCR13 of 2005, RCR 9 of 2007, and RCR10 of 2008, are hereby withdrawn.

**6/2009 RCR35 of 2005, RCR2 of 2006, and RCR12 of 2008 - Consent by bondholder for alienation**

Given the *obiter dictum* in the case of *Standard Bank of South Africa Ltd v Hunkydory Investments 188 (Pty) Ltd and Others Case No. 154/27/08*, is it still a requirement that the person in whose favour such restriction on alienation is registered consents to the registration of a bond where the property is subject to a restriction on alienation?

**Resolution:**

Yes. RCR35 of 2005, RCR2 of 2006, and RCR12 of 2008 are confirmed.

**7/2009 RCR 46/2006 – Proof of Muslim Marriages**

The Daniel's decision has been amplified in the decision of *Hassam v Jacobs, N.O. CCT 83/2008*, where it is provided that all spouses in a **polygamous Muslim marriage** are entitled to inherit in the intestate estate of their deceased spouse. What evidence may a Registrar accept to prove a valid Muslim marriage has been concluded by religious rites?

**Resolution:**

An affidavit from the surviving 'spouse', together with any other supporting documentation as determined by the registrar of deeds, must be accepted as proof of heirs.

- RCR 46 of 2006 is hereby withdrawn.

**8/2009 RCR 42 of 2007 and RCR 17 of 2008 - Right of Extension and section 15B(3) Certificates**

Forcing an owner / the body corporate to attend to the cancellation of the right to extend causes unnecessary hardship. Section 15 B(3)(ii) of Act No. 95 of 1986 only requires that the certificate must disclose that the right to extend is registered and that the necessary disclosures has been made in the deed of alienation.

**Resolution:**

- RCR 17 of 2008 and RCR 42 of 2007 are hereby withdrawn. However, it is still the registrar's duty to determine that the section 15 B(3) certificate with regard to the right of extension, is correct.

**9/2009 RCR 2 of 2008 - Rights of the *fideicommissary* heirs**

RCR 2 of 2008 fails to protect the rights of the *fideicommissary* heirs and its application is too broad. Section 69 *bis* (1) of Act No. 47 of 1937 requires that the *fideicommissary* heirs transfer the property with the executor. How should the condition be removed?

The executor in the estate of a deceased fiduciary is only entitled to sell the property which is subject to a *fideicommissum* if the estate is insolvent in terms of section 34 of Act No. 66 of 1965. RCR 2 of 2008 must be amplified to state that in these cases the section 42(2) certificate is not sufficient.

**Resolution:**

RCR2 of 2008 is confirmed.

**10/2009 RCR 19 of 2008 - Section 4(1)(b)**

In terms of RCR 19 of 2008, a conveyancer may apply to have a title amended in terms of section 4(1)(b) of Act No. 47 of 1937. Should the resolution not be amended to read that, 'a conveyancer duly authorized thereto by the owner of the land may apply in terms of section 4(1)(b)' ?

**Resolution:**

No. Section 4 (1)(b) does not require an application by the owner of the land. The owner can apply, with the consent of other interested parties. Alternatively the conveyancer can apply with the consent of the owner and all other interested parties.

- RCR19 of 2008 is hereby withdrawn.

**11/2009 RCR 48 of 2008 - Section 80 of the Administration of Estates Act, No. 66 of 1965**

When a minor is a party to a redistribution agreement, the provision of section 80 of the Administration of Estates Act No. 66 of 1965 applies (see RCR 48 of 2008). However, section 80 only relates to the prevention of a natural guardian from alienating or mortgaging any immovable property belonging to his or her minor child unless authorized by a court order or by the Master of the High Court. It is contended that redistribution does not amount to alienation or mortgaging of immovable property within the context of section 80.

**Resolution:**

RCR48 of 2008 is confirmed for the reasons set out in State Law Advisors Opinion under reference 12/4/3 R/C, as well as the ruling in the decision of *In re: Boedel wyle P M Venter 15068/80, case no 6647/84*, dated 19 April 1984 (unreported). The *Ex parte Faurd Tofie* case (C) case no 11191/89, dated 3 November 1989, will not be applied as same refers to a specific redistribution agreement and not to redistribution agreements in general.

**C. DEEDS REGISTRIES ACT NO. 47 OF 1937**

**12/2009 Section 14 – Assets in joint estates**

Where property forms an asset in a joint estate and both spouses die successively, i.e. one year apart, may the executors in both spouses' estates sell the property, or must section 14 be complied with?

**Resolution:**

Section 14 is applicable. The estate of the first dying spouse must be dealt with first. Thereafter the executor in the estate of the last dying spouse can transfer the property.

**13/2009 Section 14 – Deeds to follow sequence of relative causes**

A sold his property to B on 01/10/2008 but before the deed of sale between A and B was signed, B already sold the property to C on 01/10/2007. Will the provisions of section 14 of Act No. 47 of 1937 be contravened if these transfers are allowed in the deeds registry?

**Resolution:**

No, it will not be in contravention of section 14. A must transfer to B and B must transfer to C.

**14/2009 Section 65 – Interpretation of ‘Savings Clause’**

How does Conference interpret the savings clause: “save as provided for in any other law”, in section 65 of Act No. 47 of 1937? Does this mean that a particular piece of legislation must specifically oust the provisions of the Deeds Registries Act when it relates to a creation of personal servitudes? Alternatively, that if the piece of legislation allows an authority to impose conditions the provisions of section 65 need not be adhered to?

**Resolution:**

No. The general rule is that a personal servitude must be created by the registration of a notarial deed. However, the provisions of section 65 need not be adhered to if another law provides otherwise.

**D. REGULATIONS TO ACT NO.47 OF 1937****15/2009 Regulation 16 – Preparation Clause**

Is there an onus on the registrar of deeds to establish that the preparing conveyancer is a “conveyancer” and has thereby the authority to sign the preparation clause on deeds and documents?

**Resolution:**

Yes. In terms of section 15 deeds/bonds/certificates shall not be registered/attested/executed by a registrar of deeds unless it has been prepared by a conveyancer.

**16/2009 Regulation 39(1) – Consent to be lodged**

Regulation 39(1) provides for a separate consent to be lodged for the release of “property” from the operation of a bond. May one consent be utilized for the release of more than one “property” from the same bond?

**Resolution:**

Yes. Regulation 39(1) provides that one consent may be utilized for the release of more than one “property” from the same bond.

**17/2009 Regulation 68(1) – Reference to bondholder in application**

Does Conference agree that it is not necessary to refer to the particulars of the bond(s) registered over the property in the application (affidavit) for a certified copy in terms of regulation 68(1) of Act No. 47 of 1937?

**Resolution:**

Yes, it is not necessary to refer to the particulars of the bond(s) in the application for the issuing of a certified copy of a title deed. However, the provisions of regulations 68(1) and (2) must be complied with such that the affidavit must state that the title has not been pledged or held as security, and the bond holder must consent.

**E. GENERAL (ACT NO. 47 OF 1937)****18/2009 Substitution of executing conveyancers**

It has become established practice to substitute executing conveyancers in the power of attorney to pass transfer or mortgage properties, at will, without the approval of the grantor of the power of attorney. Should the grantor not agree to such substitution, in the form of initialing the inclusion?

**Resolution:**

Yes, the grantor and witnesses must initial the substitution to prohibit possible fraud. However, where the power of attorney makes provision for substitution, substitution is permitted without full initialing.

**19/2009 Proof of registration**

May a conveyancer request a certificate in terms of Item 1 of the Schedule of Fees of Office to prove that a deed was registered, on date of execution of the said deed or batch of deeds?

**Resolution:**

Yes, the conveyancer may make such a request, and the certificate may be issued, provided the prescribed fee is paid.

**20/2009 Calculation of Registration Fee**

Where a deed of transfer or mortgage bond expresses the purchase price or amount borrowed in a foreign currency, at what point in time must the registration fee be calculated according to the exchange rate?

**Resolution:**

The registration fee must be calculated at date of registration.

**21/2009 Authentication of Affidavits**

Must an affidavit executed outside the Republic of South Africa be authenticated in terms of Rule 63 of the High Court?

**Resolution:**

Yes, unless the affidavit is made before an officer referred to in section 8 of the Justices of the Peace and Commissioners of Oaths Act, 1963 (Act No. 16 of 1963).

**22/2009 Bond to disclose an amount?**

One of the requirements for a bond is that there must be a debt. A debt need not necessarily be monetary. Having said that, it is not a pre-requisite that a bond, other than a covering bond, must disclose an amount. No authority can be found for a bond to disclose an amount, except section 51(1), which only relates to covering bonds.



**Resolution:**

It is trite law that the amount must be disclosed and it is a necessity to determine the registration fee payable. Also see Silberberg's, "Law of Property" – page 319.

**23/2009      Mortgaging a share in a long-term lease agreement**

May an undivided share in a long term lease agreement serve as security under a mortgage bond?

**Resolution:**

No, Act No. 47 of 1937 does not provide for the mortgaging of a share in a long-term lease.

**24/2009      Acquisition of immovable property by a foreign trust**

What formalities must be complied with before a foreign trust can have immovable property registered into its name?

**Resolution:**

The foreign trust must firstly be registered with the Master of the High Court and letters of authorization issued to the trustees, as contemplated in section 8 of the Trust Property Control Act No. 57 of 1988.

**25/2009      Duty to inform conveyancer that deeds are not registered**

Is it the duty of the deeds registry to inform the conveyancer that deeds were not executed or is it the duty of the conveyancer to satisfy herself/himself that the deeds were executed before informing the bank?

**Resolution:**

It is not the duty of the deeds registry to inform the conveyancer. The conveyancer needs to satisfy herself/himself that the deeds were executed.

**26/2009      Filing of documents with no code/fees**

It appears that there is not a uniform procedure in deeds registries to deal with certain documentation. Certain registries will file a document with the deed requiring the document (consent) and make a note on the relevant lodgement cover that the document is now filed in another cover. Some registries give it a BC number and others lodged it as a supporting document with the deed etc.

**Resolution:**

Acts of registration, as provided for in regulation 39(1), must be lodged in a separate cover, have a BC code, and attract a fee. See CRC2 of 2009.

All supporting documents must be lodged with the relevant deed and not in a separate cover. This resolution is, with the necessary changes, applicable to the opening of sectional title registers.

**27/2009 Conditions in favour of Home Owners' Association – last proviso to Section 65(1) of Act No. 47 of 1937**

Is it correct to accept only a clearance/certificate from the Home Owners' Association that the transferee has bound him/herself to become a member of the Association and that the Constitution of the Association have been complied with whenever property subject to such conditions in favour of an Home Owners' Association is transferred? Should consent from the transferee him/herself not be lodged signifying that he/she has accepted? In many cases these conditions are proclaimed conditions.

**Resolution:**

Yes, it is correct. No acceptance by the transferee is necessary as this is a registered condition.

**28/2009 Trust Deeds filed and registered in deeds registries – Chief Masters Directive 2 of 2009**

Chief Masters Directive 2 of 2009 imposed stricter control with regard to information / copies of trust documents registered in the offices of the Master. There are still many trust deeds previously registered and filed in deeds registries. Can deeds registries still give information and copies to clients as previously?

**Resolution:**

Yes, deeds registries can still give information and copies to clients.

**29/2009 Notarial Deed for mining methods**

Is a notarial deed, which defines what mining methods the holder of mineral rights must use when exercising her / his rights, registrable in a deeds registry?

**Resolution:**

No. It may not be registered in the deeds registry. The notarial deeds must be referred to the Department of Minerals and Energy.

**30/2009 Partitioning of land that is registered in the name of the deceased – Regulation 52(1) of Act No. 47 of 1937**

Where, in a partition of land / undivided shares in such land , it is registered in the name of a deceased person, or in his or her estate, or in the surviving spouse, the registrar of deeds shall, if such share has been bequeathed, require not only the consent of the Master in terms of section 53 of the Administration of Estate Act, 1913, on behalf of heirs or legatees who may be minors, but also prove to his/her satisfaction by documentary evidence that the partition was agreed upon during the lifetime of the testator.

Will the consent by the Master be required if a deceased died after 01 October 1967? Even with documentary evidence that the partition was agreed upon during the lifetime of the testator? Act No. 66 of 1965 does not require the Master's consent. Only if the deceased died prior to 1 October 1967, the Master's consent in terms of section 53 of the repealed Administration of Estate Act of 1913 will be required.

**Resolution:**

The consent of the Master is required in terms of the provisions of section 94 of Act 66 of 1965. (See *Prinsloo v Swart en Andere 1965(3) 686 at 689 (OPD)*).

**31/2009 Certificate of Consolidation**

A certificate of consolidation of three properties, A, B, and C is registered in 2006, under T1/ 2006, and the new property is called D. In 2009, it is realised from the diagram attached to T1/2006 that property B has not been included in the certificate of consolidation together with its distinct conditions. How must the situation be rectified?

**Resolution:**

The situation can be rectified with a section 4(1) (b) application.

**32/2009 Conditions in title deeds of former TBVC States**

Township conditions were omitted from certain title deeds of the former TBVC States when Deeds of Grant were registered. Such conditions need to be brought forward into the new deeds of transfer upon subsequent registrations. Does section 4(1)(b) of Act No. 47 of 1937 find application? If yes, who must make such an application?

**Resolution:**

Yes, section 4(1)(b) of Act No. 47 of 1937 finds application. The conveyancer may apply with the consent of the owner and all interested parties.

**33/2009 Former TBVC states - Proof of Marriage**

Many Deeds of Grant are registered in the name of one spouse only, and with subsequent transfers (e.g. section 18(3) transfer to the surviving spouse), proof of the marriage must be lodged. In the absence of a marriage certificate, what documentation can be accepted as proof of such marriage?

**Resolution:**

A sworn affidavit by both parties / one of the parties to such marriage can be accepted as proof.

**34/2009 One township on three properties**

May three different owners, who own three different properties separately, open one township on all three properties (e.g. one general plan approved and depicting that the township is laid out on all the properties)?

**Resolution:**

This is not allowed. The provisions of section 22 of Act No. 47 of 1937 cannot be applied where the remainder of the township is to be transferred. The owners also do not have *locus standi* (in respect of the property not owned by them) to jointly open such a township.

**35/2009 Transfer of the remainder of a township**

Can a formal transfer of the remainder of property in a township be allowed where only the streets remain in such township?

**Resolution:**

No, a formal transfer cannot be utilized. Section 31 of Act No. 47 of 1937 must be invoked.

**36/2009 Mineral Rights**

Can the deeds registry attend to the modification of mineral certificates?

**Resolution:**

No, it may not be registered in the deeds registry. The notarial deeds must be referred to the Department of Minerals and Energy.

**37/2009 SANRAL transfers**

The South African National Roads Agency Limited expropriates a portion of a property measuring 200 square meters. When ownership of the expropriated property must be transferred, it transpires that in the interim another agreement was reached with the owner of the property to transfer an additional 400 square meters. One diagram is presented in respect of the whole 600 square meters. In the transfer deed reference is made to a dual causa namely the expropriation of the 200 square meters and to the written agreement to transfer the other 400 square meters. Can this be done in one deed of transfer?

**Resolution:**

No, as the causa is not the same the expropriation transfer and the transfer by agreement must be done separately. The causa for a Section 31 transfer is either a vesting or an expropriation. However, where the expropriation notice is uplifted ownership of the whole property can be transferred by one deed of transfer. Alternatively, it can be effected in one vesting transfer as provided for in section 31 of Act No. 47 of 1937, provided the provisions of 41 (3) of the South African National Roads Agency Limited and National Roads Act, 1998 (Act No. 7 of 1998), have been complied with.

**38/2009 Causa for transfer**

Is mere reference to an agreement a valid causa?

**Resolution:**

No, a mere reference to an agreement is not sufficient.

**39/2009 Foreign marriages - Vesting in the names / in favour of spouses married by the laws of a foreign country when acquiring agricultural land**

If parties are married to each other in community of property then Act No. 70 of 1970 is not contravened in terms of section 17(5)(a) of Act No. 47 of 1937. How should vesting take place if spouses are married according to the laws of a foreign country to comply with Act 70 of 1970, if the marriage is deemed to have the effect of a marriage in community of property?

**Resolution:**

Where the property was purchased by both spouses the vesting must read as follows:

(1) *Joseph Dreyer*  
*Date of Birth/ID No.....*

*Married, which marriage is governed by the laws of (the foreign country)*

(2) *Elizabeth Dreyer*  
*Date of Birth/ID No.....*

*Married which marriage is governed by the laws of (the foreign country)*

Consent by the Minister in terms of Act No. 70 of 1970 must be lodged if the property vests in the name of both spouses.

**40/2009 Foreign marriages: Description of same sex parties in a foreign civil union/marriage**

How should parties be described if they are in a union/marriage, which union/marriage is governed by the laws of a foreign country?

**Resolution:**

1. *Partner 1*  
*Identity Number .....*

*Married which marriage is governed by the laws of (the foreign country)*

2. *Partner 2*

*Identity Number .....*

*Married which marriage is governed by the laws of (the foreign country)*

**41/2009 Cancellation of bonds**

T1/99 is registered in the name of Mr. Y and the property is subject to B1/99. Mr. X applies to court to cancel T1/99 as he contends that Mr. Y acquired the property by a sale in execution. Mr. X applies to revive his title, T 2/87. Mr. X had registered B9/88 over the property when he was the registered owner.

How must B1/99 (existing bond over the property) be cancelled?  
How will B9/88 be revived? Will Mr. X now receive a bond-free title?

**Resolution:**

The matter must be referred back to the court for an order to state the manner in which both the bonds must be dealt with.

**42/2009 Usufruct for a specific period of time**

Is the following usufruct registrable? - 'Subject to a usufruct in favour of the surviving spouse for a period of one year less than the life expectancy of the surviving spouse' ?

**Resolution:**

Yes, it is registrable. The period can be determined in terms of the Tables contained in the Estate Duty Act No. 45 of 1955.

**43/2009 Diagrams to effect a boundary adjustment**

Land is subdivided but no additional land parcel is created. Is the condition of title that prevents a subdivision applicable in this instance, as the subdivisional portions are consolidated simultaneously at registration?

**Resolution:**

Registrars of deeds will not permit this subdivision as it is not legally provided for. The title condition preventing subdivision, without the option of consent, must first be removed prior to subdivision.

**F. OTHER LEGISLATION THAT HAS AN IMPACT ON ACT 47 OF 1937**

**44/2009 Proof of Heirs**

What proof must a registrar of deeds insist upon as prove of a descendant as defined in section 1 of the Reform of Customary Law of Succession and Regulation of Related Matters Act No. 11 of 2009 ( i.e. a person not being a descendant of the deceased, but was accepted by the deceased person as his or her own child) ?

**Resolution:**

An affidavit of next-of-kin, certified as a true copy by the Master, which makes reference to such "descendant".

**45/2009 Proof of "Discarded wife"**

A "discarded wife" is deemed to be a surviving spouse for purposes of intestate succession. However, as such marriage was never registered, what documentation must a registrar of deeds insist upon as prove that such "spouse" can inherit in terms of Act No. 81 of 1987, read with Act No. 11 of 2009?

**Resolution:**

An affidavit of next-of-kin, certified a true copy by the Master, disclosing such discarded wife.

**46/2009 Section 21(3) of the Insolvency Act No. 24 of 1936**

How must the pre-amble of a deed of transfer be couched, where property is registered in the names of A, married out of community of property, and B, married out of community of property, and the Trustee in the insolvent estate of A also sells the property belonging to B (being the spouse of A), in terms of section 21(3) of the Insolvency Act, 1936?

**Resolution:**

*The trustee in the Insolvent Estate of A.....  
Identity Number .....  
Married out of community of property,  
and acting in terms of section 21(3) of Act 24 of 1936 in the solvent*



*estate of*  
*B .....*  
*Identity Number .....*  
*Married out of community of property*

**47/2009      Municipal Property Rates Act No. 6 of 2004**

Given the provisions of RCR 65 of 2008 read in conjunction with CRC 2 of 2006, is any discretion still permitted as to the non-lodgement of rates clearance certificates in respect of "property", as defined in the Municipal Property Rates Act?

**Resolution:**

No, only the local authorities can provide evidence in this regard.

**48/2009      Mineral Right Conditions**

In terms of CRC 11 of 2004 all mineral rights, i.e. old order rights and other rights had to have been de-registered by 1 April 2009 or at the latest within 6 months thereof. It is submitted that to perpetuate mineral right conditions in title deeds is superfluous and should be discontinued.

**Resolution:**

Mineral right conditions must be omitted from title deeds, upon transfer of the property to a new owner.

**49/2009      Section 11(8) of Act No. 21 of 1940**

Where conditions contained in a title deed are cancelled in terms of section 11(8) of the Advertising on Roads and Ribbons Development Act No. 21 of 1940, does such cancellation necessitate the lodgement of a transfer duty receipt or exemption certificate?

**Resolution:**

No, a transfer duty receipt / exemption certificate is not required.

**50/2009      Lapsing of attachment**

Section 66(4) of the Magistrates Court Act No. 32 of 1944 provides that if the relevant property has not been sold in execution or released from the

attachment within a period of one year from the date of attachment, the attachment lapses. What date must be regarded as the date of the attachment?

**Resolution:**

Due to lack of clarity as to the date of the attachment, registrars must regard the date of service of the attachment on the registrar of deeds, as the date of commencement of the calculation for the one year period.

**51/2009 Section 18(3) of Act No. 66 of 1965 - application for endorsement of title in terms of sections 39(2) and (3)**

Does Conference agree that it is not possible to apply for sections 39(2) and (3) of Act No. 66 of 1965 endorsement on a title deed where the estate is administered in terms of section 18(3) of Act No. 66 of 1965?

**Resolution:**

It is not permissible. The provisions of sections 39(2) and (3) of Act No. 66 of 1965 only refer to the executor. However, should the Master give a Directive that undue hardship exists, or that there are unascertained heirs in a section 18(3) estate, and requests the registrar of deeds to apply similar provisions as provided for in the above section 39, registrars will give effect to such Directive.

**52/2009 Title deed erroneously endorsed in terms of section 40 of Act No 66 of 1965**

Property was bequeathed in a will to an existing trust. The title deed was erroneously endorsed in terms of section 40 of Act No. 66 of 1965 instead of the registration of a formal transfer to the trust. How can this be rectified?

**Resolution:**

The **executor** in the estate must do a formal transfer, setting out the full details of the erroneous endorsement in terms of section 40, in the causa of the deed of transfer.

**53/2009 Civil Unions Act No. 17 of 2006 – Description in the antenuptial Contract**

Civil union partners have a choice between a marriage or a civil partnership. Must the antenuptial contract indicate which option was exercised by the partners?

**Resolution:**

No, it is not necessary. The contents of the antenuptial contract reflecting whether there is a contemplated marriage / civil partnership, or civil union is the responsibility of the notary and not that of the registrar of deeds.

**54/2009      Schedule Y Application- Proclamation R. 293 of 1962**

Who must sign the Schedule Y application in terms of Proclamation R. 293 of 1962, to register a bond?

**Resolution:**

The mortgagee must sign the Schedule Y application for the registration of the bond and the owner must consent thereto.

**55/2009      Cession of a bond registered under Proclamation R. 293 of 1962**

Is a cession of a bond registered under Proclamation R. 293 of 1962 exempted from office fees?

**Resolution:**

Yes, it is exempt from the payment of office fees. See Regulation 10 of Proclamation R. 293 of 1962, as amended.

**56/2009      Impact of the repeal of the Stamp Duties Act No. 77 of 1968**

In terms of Regulation 22 of Proclamation R. 29 of 1988 a fee of R2-00 shall be payable to the registration officer in respect of any transfer of rights or for any other act of registration required to be made under these regulations.

A deeds registry or a registrar shall be construed as a reference also to a registration office and a registration officer respectively. Should this not be done away with as the Stamp Duty Act has been repealed?

**Resolution:**

It is clear from the amendment of Proclamation R. 293 of 1962 that the R2-00 fee should be dispensed with.

**57/2009      Magistrates' Courts Act, 1944 (Act No. 32 of 1944) – Section 66(4) – sale in execution**

Does this section refer only to preferent claims sales in execution attachments issued by the Magistrate Court or all sales in execution attachments issued by the Magistrate Court against immovable property? See *September and another v Nedcor Bank Ltd and another 2005 (1) SA 500*, for the actual reason for the section.

**Resolution:**

The existing practice must prevail in that either the attachment must be withdrawn or proof must be submitted that it has not lapsed or has been extended.

**G.            SECTIONAL TITLES ACT NO.95 OF 1986**

**58/2009      Section 15B(3)**

In terms of section 15B (3)(b) of Act No. 95 of 1986 a clearance certificate must be produced for the land and buildings of the scheme, if provision is made by law for separate rating of units. In terms of the Municipal Property Rates Act No. 6 of 2004 this has the effect that two clearance certificates must be lodged, i.e. one for the land and one for the buildings. Is this interpretation of section 15B(3) correct?

**Resolution:**

No, it is not necessary for the lodgement of two clearance certificates with the transfer of a unit. However, on the first transfer of a unit that will result in the establishment of the body corporate in terms of section 36 of Act No. 95 of 1986, a clearance certificate for the land as well as the unit / exclusive use area being transferred / ceded, are required. Thereafter, only one clearance certificate must be lodged with the transfer of a unit (not the land), and one clearance certificate with the cession of an exclusive use area (where applicable).

**59/2009      Section 17(5) – Consent**

Section 17(5) provides for titles of units and rights registered over such units and for titles of exclusive use areas to be surrendered for cancellation. However, no provision is made for the consent of holders of registered rights over exclusive use areas and such titles to be surrendered. In this regard one can refer to section 27(6), which provides for the registration of various rights over exclusive use areas. It should also be contemplated whether or not holders of such registered rights should be required to consent to cancellation of their rights. The rights cannot be "converted" to rights over the land, thus they will have to be cancelled.

**Resolution:**

Pending the amendment of the Act, the rights registered over exclusive use areas must first be cancelled.

**60/2009**

**Section 17 - Transfer of common property**

Regulation 17(3) requires the registrar of deeds to re-register a deed of transfer. This is done by means of an endorsement, providing for another T-code. From a data capturing perspective this could cause a problem - one transaction, one fee assessed, but 2 codes. Two separate fees should be assessed. The first for the actual sectional deed of transfer and the fee must be dictated by the purchase price (if applicable), whilst the second fee must be assessed for the further act of registration, i.e. the registration in terms of regulation 17(3).

**Resolution:**

The status quo must remain, until such time the Act is amended.

**61/2009**

**Section 24(4) – Extension of sections**

**(a)** Where only one plan is provided for the extension of numerous sections belonging to different owners, may one application be lodged with reference to each owner, or must different applications be lodged and each be charged a fee, provided only one SS number is afforded?

**(b)** Must all the extensions be registered simultaneously?

**Resolution:**

(a) One application may be lodged in one cover setting out the different owners / or different applications may be lodged in one cover. One fee is payable in both instances.

(b) All the extensions on the sectional plan must be registered simultaneously.

**62/2009                    Section 24 - Extension of a section**

When extending a section, there is no necessity to lodge a block plan. How will examiners determine whether the extension encroaches on the real right of extension or on any adjacent property? Should the block plan not always be insisted upon?

**Resolution:**

A block plan must also be lodged with the extension of a section. However, where the block plan has not changed, and there is a note on the floor plan to that effect by the surveyor / architect, it need not be lodged.

**63/2009                    Section 24(6)(d): Calculation of participation quota**

Uncertainty prevails as to the calculation of the "10 per cent" in the participation quota of any section as a result of the extension, as provided for in section 24(6) (d) of Act No. 95 of 1986. In certain instances the calculation is only done on the section being extended and not in respect of the other sections in the scheme. Clarity must be provided in this regard?

**Resolution:**

The calculation must be done in respect to the section that is being extended, as well as all the other sections in the scheme.

**64/2009                    Section 25 – right of extension**

A real right in terms of section 25 was reserved by the developer on opening of the scheme. All the documents required under section 25(2)(c) were lodged and section 25(2)(a) and (b) plans correctly reflected all the units that were going to form part of the extension. However, it transpired that when the scheme was opened the schedule indicating the estimated

participation quotas of all the section in the scheme, including the section to be extended was incorrect (e.g. it did not reflect all the units depicted on the 25(2)(a) and (b) plans). How can this error be rectified?

**Resolution:**

If the omission is determined before the exercise of the right of extension, such omission must be rectified by requesting the correct participation quota sheet from the relevant conveyancer.

**65/2009**

**Lapsing of right of extension and obtaining of title for the right to extension by the body corporate**

**(a)** Where a right of extension has lapsed and the body corporate obtains title for the right in terms of section 25(6), must such certificate of real right be for a specified period of time?

**(b)** Furthermore, where the body corporate cedes the right to extension so reserved in terms of section 25(6), must the cession be for a specified period of time?

**Resolution:**

**(a)** Yes, when a body corporate obtains a certificate of real right as contemplated in section 25(6), such right must be for a specified period of time.

**(b)** Yes, when the right is ceded it must be ceded for a specified period of time.

**66/2009**

**Registration of plan of subdivision in terms of section 25**

**(a)** Is the subdivision of the right to extend indicated in the initial plan of the sectional scheme registrable or must it be a separate plan of subdivision of the section 25 right as in section 25(4)?

**(b)** If found not to be registrable, how must the registration of already registered sectional plans be corrected?

**Resolution:**

**(a)** No, it is not registrable. The notarial deed of cession must be accompanied by a plan indicating the portions ceded.

(b) An amending sectional plan as provided for in section 14(1) may be registered.

**67/2009                    Extension of schemes by addition of only exclusive use areas**

The SGO is approving sectional plans of extension for exclusive use areas only, and these are being lodged for registration. At this point in time the Act does not allow for same and would create the anomaly that those exclusive use areas vest in the body corporate, should the developer not be an owner of a section in the scheme (see section 27(4)(b) of the Act). It is proposed that, pending the amendment to the Act, such plans not be registered.

**Resolution:**

Until the Act is amended, such plans of extension should not be registered.

**68/2009                    Section 27 (2) and (3) Exclusive Use Areas**

Should the bondholders of all units and rights of extension consent to the creation of exclusive use areas? The Act is silent in this regard.

**Resolution:**

No. The Act does not provide for the consent of bond holders to be lodged.

**69/2009                    Section 27A Rules**

Section 27A provides that a body corporate or developer may make rules which confer rights of exclusive use and enjoyment of parts of the common property upon members of the body corporate:

(a) Are these rules to be incorporated in the management or conduct rules, or are they *sui generis* rules?

(b) How and with whose consent may these rules be amended?

**Resolution:**



- (a) These rules are management rules.
- (b) The rules can be amended by unanimous resolution only.

## **H. GENERAL**

### **70/2009 Reservation of a right of extension**

Where a sectional title register is opened and a right of extension is reserved over land, contiguous or non-contiguous, and it is evident that the extension envisages sections on such land, must the notarial tie-agreement occur simultaneously with the initial opening of the scheme, or only when the right is exercised?

**Resolution:**

It must be registered simultaneously on the opening of the sectional title register.

### **71/2009 Certificate of Registered Title for defined portion of common property**

Does Act No. 95 of 1986 permit the body corporate to apply for a certificate of registered title in respect of a defined portion of the common property?

**Resolution:**

No, the Act does not provide in this regard.

### **72/2009 Cancellation of right of extension**

Act No. 95 of 1986 does not provide for the cancellation of a right of extension. Given this lacuna, what authority exists for such cancellation?

**Resolution:**

The right can be cancelled in terms of section 15 B(1)(d). Where a body corporate is established, a bilateral notarial deed of cancellation of such right is required.

**73/2009 Sectional Titles - leases over exclusive use areas**

Can a developer grant a lease over exclusive use areas? If yes, can the developer grant a lease over an exclusive use area to a person who is not an owner in the scheme? When the developer ceases to be an owner, who enjoys the benefits of the lease now that the body corporate becomes the owner of the exclusive use area? Can an owner grant a lease over an exclusive use area to a person who is not an owner in the scheme? How should section 27(6) of Act No. 95 of 1986 be interpreted?

**Resolution:**

Yes, a developer may grant a lease over an exclusive use area in terms of section 27(6).

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