

CHIEF REGISTRAR'S CIRCULAR NO. 2 OF 2010

APPLICATIONS IN TERMS OF SECTION 4(1)(b) OF THE DEEDS REGISTRIES ACT

1. BACKGROUND

It has come to light that section 4(1)(b) of the Deeds Registries Act ('the Act') has been abused by unscrupulous elements as a means of depriving registered owners of property of their registered rights of ownership. This illegal practice severely compromises the integrity of the deeds registration system, casts a dark shadow over the Chief Directorate: Deeds Registration and diminishes the confidence of the public in the deeds registration system. This circular is, therefore, intended to educate and sensitise both examiners and conveyancers of the requirements and limitations of the use of section 4(1)(b), as well as to map out the manner in which the section should be applied in order to curb the abuse referred to above.

2. THE BEARER OF RESPONSIBILITY

Section 4 of the Act endows the Registrar of Deeds with limited powers to rectify errors in registered deeds. With that power comes the responsibility of ensuring that any rectification is in accordance with the section and does not, specifically, have the effect of transferring real rights. The notion that the responsibility of ensuring that no real rights are transferred is borne by the preparing conveyancer in terms of regulation 44A is fallacious because a conveyancer accepts responsibility only for the matters specifically mentioned in the regulation and which do not include the fact that a 4(1)(b) application will not have the effect of transferring real rights. Furthermore sections 3(1)(b) and 15A(3) of the Act put the matter beyond doubt.

3. NATURAL PERSONS

The description of a natural person comprises of three elements, namely;

- the full name of the person, ie first name/s and surname;
- the identity number (or date of birth); and
- the marital status.

While the possible permutations for amending errors of registration by means of section 4(1)(b) are numerous, the examples of errors listed below are clearly **not permissible** in terms of section 4(1)(b).

It must be borne in mind that the provisions of section 4(1)(b) can be used only to correct **errors** which occurred **on registration of the deed**.

Where the description of natural persons has changed **after** registration of the deed due to reasons **other than errors** in registration, then the provisions of section 93 or section 17(4) of the Act may well be applicable.

Example 1: Changes in the name/s of the natural person.

A person is described *in a registered deed* as:

Michael Fanta
Identity No. 300101 5555 088
unmarried :

An application for the amendment of the description to read:

Michael Coke
Identity No. 300101 5555 088
unmarried

OR from:

Michael Fanta
Identity No. 300101 5555 088
unmarried

to

David Fanta
Identity No. 300101 5555 088
unmarried.

can clearly **not** be dealt with in terms of section 4(1)(b) of the Act **unless** there was an error in the name of the person concerned **on the date of registration of the deed.**

Where the name of the person concerned was changed as set out in the examples above **after registration** of the deed, then clearly the provisions of section 93 of the Act **must** be used in order to effect the change of name as the deed was correct on the date of registration and in these circumstances the provisions of section 4(1)(b) are clearly **not applicable.**

Example 2: Change in identity number or date of birth of a natural person.

A person is described *in a registered deed* as:

Michael Fanta
Identity No. 300101 5555 088, unmarried

An application to change the identity number of the person concerned as follows (the same principles apply to the amendment of a date of birth):

Michael Fanta
Identity No. 550730 6497 088, unmarried.

It is clearly **not** permissible to amend such a deed in terms of section 4(1)(b) of the Act unless it can be proved to the satisfaction of the Registrar of Deeds that this is one and the same person, that there was a *genuine error* in the identity number of the person concerned *on date of registration of the deed* and that *no attempt* is being made to simply vest the property into the name of a person having the same names but with a different identity number or birth date.

Unless there was such a genuine error, such a rectification would have the effect of vesting the property in the name of an entirely different person and would therefore amount to a transfer of rights as prohibited by section 4(1)(b) of the Act and **cannot** be permitted.

Each such application lodged for registration will have to be considered by the Registrar of Deeds concerned who has the discretion to call for such proof of the relevant facts as the Registrar deems reasonable and necessary in order to establish that such an application will not result in a transfer of rights and that there will be no contravention of the provisions of section 4(1)(b) of the Act.

ERRORS IN REGISTRATION NOT COVERED BY SECTION 4(l)(b) of the Act:

Where errors in registration have occurred and which **cannot** be rectified as provided for in section 4(1)(b), then other means of rectification will need to be considered such as a rectification transfer, an application to Court or the like.

JURISTIC PERSONS

The description of a juristic person comprises of two elements, namely, the **name** and the **registration number**. The possible permutations are numerous, but the examples listed below are definitely not covered by section 4(1)(b).

Example 1: Change of name and registration number of a close corporation/company:

A juristic person is described in a *registered deed* as

Fanta **11** CC
Registration No. 2006 / 00**3001** / 23

An application in terms of section 4(1)(b) for a change of the name to

Fanta **18** CC
Registration No. 2006 / 00**7291** / 23,

can clearly **not** be permitted in terms of section 4(1)(b) as, **on the face it**, there are two different close corporations involved here and if so, the rectification would have the effect of a transfer of rights, and such an application would be in clear contravention of section 4(1)(b) of the Act and is not registerable.

Example 2: Change of name of close corporation or company – **after** registration of the registered deed:

A juristic person is described in a *registered deed* as:

Fanta CC

Registration No. 2006 / 003001 / 23

and an application is made to the Registrar of Deeds for a change to

Coke CC

Registration No. 2006 / 003001 / 23.

It is clear that in these circumstances a change of name has taken place, that is the same juristic person, and the matter should be dealt with in terms of the procedure applicable for changes of names of juristic persons in the normal way – accompanied by proof of the change of name from the Registrar of Close Corporations. In such a case the provisions of section 4(1)(b) are clearly not applicable.

Example 3: Change of name of close corporation or company – **prior to** registration of the registered deed:

Where the change of name of the juristic person occurred prior to the registration of the deed to be amended, then there has been an obvious error in registration and the provisions of section 4(1)(b) can clearly be used to correct the error – provided that the appropriate proof of the alleged facts is submitted to the Registrar together with the application.

5. **SECTION 4(1)(a): Proof of alleged facts:**

It is imperative that the provisions of section 4(1)(**a**) should be considered whenever an application in terms of section 4(1)(**b**) is made because the responsibility for ensuring the correct application of section 4(1)(b) rests with the Registrar of Deeds, and not with the conveyancer as alluded to above. It is also imperative that the proof which is called for in terms of section 4(1)(a) should be carefully and meticulously scrutinised to ensure that it supports the facts alleged in the section 4(1)(b) application as it is pointless to call for proof and then not scrutinise such proof. It has happened in a case that proof was called for but not properly scrutinised resulting in the scenario sketched below.

A juristic person was described in the registered deed as: ABC 1 CC Registration No. 2010 / 007575 / 23. An application in terms of section 4(1)(b) was lodged for the amendment of the description of the juristic person in the deed to read ABC 9 CC Registration No. 2010 / 007575 / 23. Proof of registration of the relevant close corporation was requested, and proof of registration of ABC 9 Registration No. 2010 / 007899 / 23 was duly lodged and accepted. It then transpired that the two close corporations referred to above were two distinct entities in law and that the registration of the application in terms of section 4(1)(b) to 'amend' the name of the registered owner therefore clearly constituted a transfer of rights in contravention of section 4(1)(b).

6. REFERRAL TO HIGHER AUTHORITY

In cases of doubt, chief deeds controllers / monitors are implored to refer the relevant matter to higher authority for guidance.

7. SECTION 99 OF THE ACT

The business of deeds examination requires due diligence. The concerned parties are, therefore, duly advised to take all the necessary care otherwise run the risk of having liability for losses suffered the members of the public imputed upon them. The notion that section 99 of the Act only relates to malice is as self destructive as it fallacious because the section also relates to *not exercising reasonable care*.



CHIEF REGISTRAR OF DEEDS

DATE: 28 April 2010

REFERENCE: A. 6/2/P

RINGBINDER: 23

CHIEF REGISTRAR OF DEEDS

REGISTRARS OF DEEDS

THE CHIEF: JUSTICE TRAINING

DIRECTOR: LAW SOCIETY OF SOUTH AFRICA

MANAGER: BUTTERWORTHS PUBLICATIONS

CHAIRPERSON: PROPERTY LAW COMMITTEE

: PRETORIA

: DURBAN

: PRETORIA