



**rural development
& land reform**

Department:
Rural Development & Land Reform
REPUBLIC OF SOUTH AFRICA

REGISTRARS' CONFERENCE RESOLUTIONS 2011

A. WITHDRAWAL OF PREVIOUS REGISTRARS' CONFERENCE RESOLUTIONS

1/2011 The following Registrars' Conference Resolutions are withdrawn:

- RCR 4.3.8 of 1984: (see amendment to sections 23 and 127A of the Insolvency Act No. 24 of 1936, and section 58(2) of Act No. 47 of 1937);
- RCR 63 of 1987: (mineral right conditions are no longer incorporated into title deeds (see CRC 2 of 2011);
- RCR 37 of 1996: (see amendment to section 27(6) of Act No. 95 of 1986);
- RCR 36 of 2003: (see amendment to section 14(8) of Act No. 95 of 1986);
- RCR 41 of 2003: (see amendment to section 27(6) of Act No. 95 of 1986);
- RCR 24 of 2004: (see CRC 2 of 2011);
- RCR 38 of 2004: (see amendment of section 29(3) of Act No. 95 of 1986);
- RCR 8 of 2005: (see amendment to section 11(3) of Act No. 95 of 1986);
- RCR 15 of 2006: (see CRC 1 of 2009);
- RCR 39 of 2006: (See RCR 5 of 2011);
- RCR 54 of 2006: (see RCR 68 of 2010);

- RCR 56 of 2006:(see amendment to section 12(1)(e) of Act No. 95 of 1986);
- RCR 58 of 2006: (see amendment to section 27(5) of Act No. 95 of 1986);
- RCR 59 of 2006: (see amendment to section 25(1) of Act No. 95 of 1986);
- RCR 44 of 2007: (see amendment to section 25(1) of Act No. 95 of 1986);
- RCR 20 of 2008: (see amendment to section 34(1A) of Act No. 47 of 1937);
- RCR 62 of 2008: (see amendment to section 12(1)(e) of Act No. 95 of 1986);
- RCR 10 of 2009: (see RCR 20 of 2010);
- RCR 48 of 2009: (see CRC 2 of 2011);
- RCR 50 of 2009: (see RCR 5 of 2011);
- RCR 57 of 2009: (see RCR 5 of 2011);
- RCR 63 of 2009: (amendment to section 24(6)(d) of Act No. 95 of 1986 that provides for calculation to be done in respect of the '*relevant*' section);
- RCR 66 of 2009: (subdivided right must be identified to the satisfaction of the surveyor-general and may be indicated on the block plan or a separate section 25(4) plan);
- RCR 67 of 2009: (see amendment to section 25(1) of Act No. 95 of 1986);
- RCR 14 of 2010: (see amendment to section 25(1) of Act No. 95 of 1986);
- RCR 19 of 2010: (see RCR 2 of 2009, as amended);
- RCR 25 of 2010: (see CRC 2 of 2011);
- RCR 29 of 2010: (see amendment to section 25(1) of Act No. 95 of 1986);
- RCR 42 of 2010: (pending amendment of regulation 68(11A), guidelines in CRC 1 of 2010 must be followed);

- RCR 46 of 2010: (see *CRC 4 of 2011*);
- RCR 47 of 2010: (see *CRC 4 of 2011*);
- RCR 62 of 2010: (see *CRC 4 of 2011*);
- RCR 69 of 2010: (see *CRC 9 of 2011*);
- RCR 74 of 2010: (see amendment of section 29(3) of Act No. 95 of 1986).

B. PREVIOUS REGISTRARS' CONFERENCE RESOLUTIONS

2/2011 RCR 31 of 1987: Partition by joint developers

This resolution seems to contradict section 36 (1) of Act No. 95 of 1986.

Resolution:

It is not a contradiction of section 36(1). The parties to the partition agreement will be owners and no longer developers.

(RCR 31 of 1987 is confirmed)

3/2011 RCR 29 of 2002 and RCR 6 of 2008: Restrictive and Home Owners Association Conditions

It appears that RCR 29 of 2002 and RCR 6 of 2008 contradict one another. RCR 29 of 2002 refers that the restrictive conditions should be included in the deed of transfer (Form H of Act No. 95 of 1986), whereas RCR 6 of 2008 refers that the restrictive conditions must be incorporated in the certificates of registered sectional title and then brought forward in all successive deeds of transfer.

Resolution:

RCR 29 of 2002 and RCR 6 of 2008 are not contradictory and must be read in conjunction with one another.

(See RCR 6 of 2008 as amended).

(RCR 6 of 2008 is amended to read as follows:

"RCR 6/2008:

Incorporating restrictive / home owners association conditions contained in section 11(3)(b) schedule in new deed of transfer

The section 11(3)(b)-schedule of conditions must be checked to ascertain whether there are restrictive conditions. If there are restrictive conditions, the conveyancer must lodge the necessary consent, authorization or clearance. If such conditions are not as yet contained in the title deed, must the conveyancer incorporate it in the deed of transfer?

Resolution: - RCR29/2002 is confirmed. When a sectional title register is opened and restrictive conditions exist and/or are imposed in terms of section 11(2) of the Act, such conditions must be incorporated in the certificates of registered sectional title and certificates of real rights of exclusive use areas and real rights of extension and brought forward into all successive deeds of transfer and cession of real rights. In respect of existing schemes, where the conditions were not brought forward into the title deeds, it must be brought forward into the new deeds.")

4/2011 RCR 35 of 2005, RCR 2 of 2006, RCR 12 of 2008, RCR 6 of 2009: Consent by bondholder for alienation

These resolutions suggest that "mortgage" is the "first step" to alienation. Section 1 of the Alienation of Land Act No. 68 of 1981 defines "alienate" as sell, exchange or donate, which does not include mortgage.

Resolution:

RCR 35 of 2005, RCR 2 of 2006, RCR 12 of 2008, and RCR 6 of 2009 are hereby confirmed, for the reasons provided in the said resolutions.

5/2011 RCR 39 of 2006, RCR 57 of 2009 and RCR 50 of 2009: How must the registrar of deeds apply the case of *Sheriff Kuilsrivier v RoD CT 2011*, in sales in execution?

Resolution:

In respect of sales in execution, pursuant to section 66(4) for the Magistrates' Courts Act No. 32 of 1944, after the lapse of a year from the date of attachment, the registrar of deeds must call for a certificate from the sheriff of the relevant magistrate's court which clearly states that the property is not subject to any claim preferent to that of the judgement creditor referred to in the notice of attachment.

(RCR 39 of 2006, RCR 57 of 2009 and RCR 50 of 2009 are withdrawn).

6/2011 RCR 56 of 2006: More than one Certificate of Real Right in respect of reservation in terms of section 25(1) of Act No. 95 of 1986

According to RCR 56 of 2006 it is permissible to apply section 64(1) of Act No. 47 of 1937 and issue certificates of real rights for portions of a section 25-right once a certificate of real right, issued for the whole of the section 25-right has been issued. However, section 64(1) allows for the issue of a certificate for the whole of a real right which is reserved in a title deed and not for portions of a real right when a certificate of that real right already exists. The purpose of section 64(1) is to obtain a title deed for a real right reserved in a title and not for the subdivision of such right by issuing certificates of real rights for portions of the real right. Furthermore, now that the Act allows the issue of certificates, is it still permitted to issue portions of the section 25 right subsequent to the opening of the scheme and the registration of the certificate of real right to extend in terms of section 25?

Resolution:

No, pending the amendment of the Act, the provisions of section 64 of Act No. 47 of 1937 cannot be invoked to enable the developer of a real right of extension to obtain certificates of real right of subdivided portions of such real right.

7/2011 RCR 6 of 2008: Restrictive and Home Owners Association Conditions

RCR 6 of 2008 contradicts Form C, as Form C does not make provision for restrictive conditions.

Resolution:

No, It is not necessary to amend Form C. Form C may be adapted to cater for the conditions.

(see regulation 82 of Act No. 47 of 1937).

8/2011 RCR 24 of 2008: Registration fees for leaseholds

In terms of sections 53(1) and 54(1) of Act No. 4 of 1984 the registration of leasehold is effected in terms of Act No. 47 of 1937 and not in terms of Act No. 4 of 1984. The initial grant of a right of leasehold may be considered a transaction entered into in terms of Act No. 4 of 1984, but the subsequent transfer of the leasehold is not. Section 53(6) of Act No. 4 of 1984 which deals with exemptions does not exempt leasehold transfers from office

fees. Section 52(15) refers specifically to transactions entered into or any act in terms of Act No. 4 of 1984. Subsequent transfers and mortgage bonds over leaseholds should attract the office fee as prescribed in regulation 84. Does conference agree?

Resolution:

No, the legislation indicates that subsequent transfers of leaseholds be exempt from the payment of registration fees (see section 52(15) of Act No. 4 of 1984). However, registration fees are payable for the registration of mortgage bonds.

(RCR 24 of 2008 is confirmed).

9/2011 RCR 40 of 2008: General Power of Attorneys – Destroy or deliver after registration

It is suggested that the word '*destroyed*' alluded to in the resolution be substituted with '*endorsed as to the fact that it may not be used for purposes of registration in any deeds registry*'.

Resolution:

Yes. See RCR 40 of 2008, as amended.

(RCR 40 of 2008 is amended to read as follows:

***“RCR 40/2008
General Power of Attorneys – Destroy or deliver after registration***

Before microfilming was introduced in deeds registries the agent was left without his/her instrument of appointment once the general power of attorney has been registered. The remedy for him/her was to apply for a certified copy. The question, which now arises, is whether the general power of attorney should be endorsed as to the fact that it may not be used for purposes of registration in any deeds registry?

Resolution: *–The General Power of Attorney must be endorsed after scanning as to the fact that it may not be used for purposes of registration in any deeds registry.”)*

10/2011 RCR 52 of 2008: Legal Succession of the South African Transport Services Act No. 9 of 1989

Section 35 of this Act states that no levy, taxes, transfer duty, stamp duty or any other statutory moneys are payable in connection with the transfer of any assets. Must a rates clearance certificate be lodged?

Resolution:

No. In terms of section 35 of Act No. 9 of 1989, no rates clearance certificate need be lodged for the transfer of properties, in terms of sections 3, 4, 9, 23 (3)(j), 25, 32 and 33 of that Act.

(See RCR 52 of 2008, as amended).

(RCR 52/2008 is amended to read as follows:

"RCR 52/2008***Section 33(1)(c) of Act No. 9 of 1989: Legal Succession to the South African Transport Services Act***

Must a rates clearance certificate and transfer duty receipt be lodged for a transfer by endorsement in terms of section 33(1)(c) of Act No. 9 of 1989 transfer by endorsement?

Resolution:- *A rates clearance certificate and a transfer duty receipt do not need to be lodged (see section 35 of Act No. 9 of 1989)."*

11/2011

RCR 61 of 2008: Section 68 of Act No. 47 of 1937 – Right of Extension exhausted

Section 25(2) of Act No. 95 of 1986 sets out the requirements for the plans of extension where a right to extend is reserved. To ensure compliance with the technical requirements of such plans, can a registrar of deeds make it a requirement that a land surveyor or architect certify that the plans have been drawn in accordance with section 25(2)? Given the technical nature of the plans the expertise lies with the architect or land surveyor and it would place an unfair burden on the registrar of deeds to examine such plans

Resolution:

Yes, the registrar of deeds should call for such certificate.

(See RCR 61 of 2008, as amended).

(RCR 61 of 2008 is amended to read as follows:

"RCR61/2008:***Section 25(2) of Act No. 95 of 1986 plans***

Section 25(2) of Act No. 95 of 1986 sets out the requirements for the plans of extension where a right to extend is reserved. To ensure compliance with the technical

requirements of such plans, can a registrar of deeds make it a requirement that a land surveyor or architect certify that the plans that have been drawn are accordance with section 25(2)? Given the technical nature of the plans the expertise lies with the architect or land surveyor and it would place an unfair burden on the registrar of deeds to examine such plans.

Resolution - *Yes, the registrar of deeds should call for such certificate from the surveyor or architect, with regard to compliance to section 25(2)(a) and section 25(2)(b) of Act No. 95 of 1986."*

12/2011 RCR 2 of 2009: Section 25(13)

Is it the duty of the registrar of deeds to enforce compliance with regard to deviations?

Resolution:

No. See RCR 2 of 2009, as amended.

(RCR 2 of 2009 is amended to read as follows:

"RCR 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: *In terms of CRC 7 of 2011 it is not the duty of a registrar of deeds to enforce compliance with regard to deviations. However, it is the duty of the registrar of deeds to ensure that the extension is within the physical boundaries of the reserved right."*

13 /2011 RCR 8 of 2009 and RCR 31 of 2010: Right of Extension and section 15B(3) Certificates

These resolutions are in contradiction to CRC 6 of 1988 (paragraph 14.5). If a section 25 right has expired must a section 68(1) application be lodged to note the lapsing of the right before the developer applies for a right to extend in terms of section 25(6A)?

Resolution:

Yes, a section 68 application must be lodged to note the lapsing prior to the developer applying for a right to extend in terms of section 25(6A) of Act No. 95 of 1986.

14/2009 RCR 34 of 2009: One township on more than one property

Can a township be opened on more than one property owned by different owners, in instances where the township application was approved prior to the taking of RCR 34 of 2009, which resolution prohibits such opening?

Resolution:

No, RCR 34 of 2009 finds application.

15/2011 RCR 69 of 2009: Section 27A Rules

It was resolved by the Sectional Titles Regulations Board that RCR 69 of 2009 be amended to make it clear that these rules may be made by unanimous or special resolution.

Resolution:

See RCR 69 of 2009, as amended.

(RCR 69 of 2009 is amended to read as follows:

“RCR 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 may be incorporated in the management or conduct rules.

(b) These rules, depending whether it was created in terms of the management rules or conduct rules, may be amended by special or unanimous resolution.”)

16/2011 RCR 42 of 2010: Application of Regulation 68(11A)

Is this Resolution not in conflict with CRC 1 of 2010 insofar it relates to the number of advertisements to be placed in the Government Gazette?

Resolution:

Pending the amendment of regulation 68(11A), the guidelines in CRC 1 of 2010 must be followed in that two consecutive advertisements must be placed.

(RCR 42 of 2010 is withdrawn).

17/2011 RCR 49 of 2010: Reversionary rights

RCR 49 of 2010 does not deal with the position where the period of time has not expired and the dwelling has not been erected. How must this condition be dealt with?

Resolution:

The condition must be perpetuated in the new deed.

18/2011 RCR 80 and 81 of 2010: Sectional title register on Proclamation 293 of 1962 properties and leaseholds?

Section 4 of Act No. 112 of 1991 vests the holder of grant rights in terms of Proclamation 293 of 1962 and leaseholds in terms of Act No. 4 of 1984, with the same rights they would have had if they had been the owner of the underlying land. RCR 81 of 2010 appears to contradict section 4 of Act No. 112 of 1998. Does conference agree?

Resolution:

No, the provisions of section 4 of Act No. 112 of 1991 only becomes operative upon conversion of the right into full ownership, in terms of section 2(1)(b) of that Act.

(RCR 80 and 81 of 2010 are confirmed).

19/2011 RCR 83 of 2010: Opening of sectional title register by executor?

RCR 83 of 2010 prohibits the executor of a deceased estate of a developer, from applying for the opening a sectional title register. This resolution should be re-considered as it often occurs that the developer, prior to his/her death had sold units in a scheme for which the sectional title register had not yet been opened and the remainder of the estate including the unsold units is bequeathed to his/her heirs. The heirs can not

receive transfer of the units already sold by the deceased, as they must be transferred by the executor.

Resolution:

Conference agrees.

(See RCR 83 of 2010, as amended).

(RCR 83 of 2010 is amended to read as follows:

"RCR 83/2010:

May the executor apply for the opening of a sectional title register?

May an executor, administering the estate of a deceased "developer", apply for the opening of a sectional title register?

Resolution: *Yes, where the deceased had sold units in the scheme, the executor may continue with the application for the opening of the scheme."*)

20/2011

RCR 89 of 2010: Cancellation of servitude to which the common property is entitled and section 75(2)*bis* of Act 47 of 1937

This resolution erroneously refers to the bondholder's consents and not the bonds.

Resolution:

See RCR 89 of 2010, as amended.

(RCR 89 of 2010 is amended to read as follows:

"RCR89/2010:

Cancellation of servitude to which the common property is entitled and section 75(2)*bis* of Act 47 of 1937

*How must section 75(2)*bis* of Act 47 of 1937 be interpreted when cancelling a servitude to which the common property of a sectional title scheme is entitled? The requirement that all bonds be lodged is difficult to comply with especially in large schemes?*

Resolution: *- Section 75(2)*bis* of Act No. 47 of 1937 is clear. The bonds together with the consent of all bondholders, existing on the date of the execution of the notarial deed of cancellation of the servitude, must be lodged."*)

C. DEEDS REGISTRIES ACT NO. 47 OF 1937

21/2011 Section 3(1)(p): Amendment of leases

May an already registered lease be amended, in terms of section 3(1)(p) of Act No. 47 of 1937, to include additional properties to the said lease agreement?

Resolution:

No, section 3(1)(p) of Act No. 47 of 1937 does not allow for the inclusion of additional properties to the lease agreement. The inclusion of such additional properties will constitute a 'new' lease agreement.

22/2011 Section 6: Cancellation of deed

There is no procedure in Act No. 47 of 1937 as to how a deed must be cancelled once the Court has made such ruling. It is practice that an application be lodged with the title deeds/certified copies of the deeds, etc. In practice a court order instructing the registrar of deeds to cancel a title is served on the registrar. Usually the court order is filed and noted as a caveat against the titles. If any copy of the affected titles are requested before the application was lodged, the titles will not reflect the true facts as per the court order. What is the correct procedure to be followed?

Resolution:

On receipt of the court order, the office copy of the relevant title deed must be endorsed to cancel the title deed and to revive the previous title deed. A caveat must be noted to the effect that once the client's copy of the title deed is lodged, it must be updated with the endorsement. Data must then be updated and the office records rescanned.

23/2011 Sections 6(1) and 6(2): Revived title deed

Problem statement: - A portion of a farm is subdivided into portion 1 and the remainder. Portion 1 is then transferred. An order is granted cancelling the transfer of portion 1. In terms of section 6(2) the previous title must revive. What happens to the subdivided land parcel? How must the title be endorsed?

Resolution:

The title deed of the subdivision must be endorsed regarding its cancellation. The previous title deed must be revived and endorsed regarding the cancellation of the title deed of the subdivision.

The office of the surveyor general must be notified with regard to the cancellation of the registration of the subdivision.

24/2011 Section 33 transfers: rates clearance certificates and transfer duty receipts

Must a rates clearance certificate and transfer duty receipt be lodged with a section 33 transfer?

Resolution:

Yes, see sections 33(10) and 92(1) of Act No. 47 of 1937, as well as section 118 of the Municipal Systems Act No. 32 of 2000.

25/2011 Section 34 (1A): joint estates

Will it be a contravention of section 34(1A) of Act No. 47 of 1937 if parties, married in community of property to each other, apply for a certificate of registered title for a fractional share of the property they own?

Resolution:

No, it is not a contravention if they together obtain a certificate for their fractional share of the undivided share in the property.

26/2011 Section 40: Consolidation of properties situated in different local authorities

May two contiguous pieces of land, which complies with all the requirements of section 40, be consolidated if they are situated in different local authorities?

Resolution:

Yes, it can be done as it is not a contravention of section 40 of Act No. 47 of 1937.

27/2011 Section 53(2): "Reversionary right proper"

Does conference agree that section 53(2) of Act No. 47 of 1937 can only be applied in respect of a “reversionary right proper” and not a “reversionary right condition”?

Resolution:

Yes, section 53(2) can only be applied in respect of a reversionary right not binding successors in title.

28/2011 Section 92: Transfer by endorsement

Is it peremptory for the lodgement of a rates clearance certificate for the following acts of registration:

- (a) transfer by endorsement in terms of section 24 *bis* (2);
- (b) transfer by endorsement in terms of section 25(3);
- (c) transfer by endorsement in terms of section 45(1);
- (d) transfer by endorsement in terms of section 45 *bis* 1(a)/(b);
- (e) transfer by endorsement in terms of section 45 *bis* (1A)(a)/(b); and
- (f) transfer by endorsement in terms of section 58(2).

Resolution:

- (a) No;
- (b) No;
- (c) Yes (also see RCR5 of 2002);
- (d) Yes;
- (e) No (also see RCR 36 of 2010);
- (f) No.

29/2011 Section 97: Court Reports

What must the registrar do with regard to Notices of Motion (where no report to court has been requested) which are served on him/her and which requires a performance of an act of registration in contravention of legislation?

Resolution:

Where a Notice of Motion contains an order requiring the registrar to perform an act in contravention of legislation it would be incumbent on the registrar of deeds to inform the applicant/applicant's attorney of the contravention. Should the applicant/ applicant's attorney fail to amend

the order, the registrar must provide the court with a report, or alternatively give notice of intention to oppose.

D. REGULATIONS TO THE DEEDS REGISTRIES ACT 47 OF 1937

30/2011 Regulation 23: Font size of words in deeds

There are circulars regarding the font size in deeds drafted for purposes of legibility on Microfilm. Can a smaller font be accepted or not?

Resolution:

No, a font size smaller than 2 *mm* shall not be accepted.

31/2011 Place of the execution of a power of attorney

Should regulations 25 and 65(2) not be given a wide interpretation with regard to the place of the execution of a power of attorney to include the particular country of execution.

Resolution:

No. However, where uncertainty exists, the registrar of deeds may require the conveyancer to provide a certificate to indicate the country of execution of such power of attorney.

32/2011 Regulation 51(2)

This regulation provides for the transfer of immovable property without the production of the title deed. May factual endorsements be made on the office copy of the title deed which are necessary for effecting transfer? (May applications be endorsed on the office copy of the title deed, e.g. section 4(1)(b) application, in order to effect transfer?)

Resolution:

Yes, the wording of the regulation must be interpreted to mean that all acts of registration necessary to effect transfer may be done on the office copy of the title deed, provided that the applicant has *locus standi* to bring the relevant application.

33/2011 Regulation 65: Use of copies of General Powers of Attorney

A copy of a General Power of Attorney ('GPA') is issued by the deeds registry of first registration for use in another registry in accordance with regulation 65(6). Can a copy of such registered GPA be lodged as a supporting document in another registry or must it be registered in such registry?

Resolution

No, the copy certified in terms of regulation 65(6) by the registrar in the first registry must be registered in subsequent registries to facilitate easy location should the mandant decide to revoke/cancel the GPA.

34/2011 Regulation 84: Office Fee on transfer of unit together with exclusive use area

Where a sectional title unit together with the exclusive use area are purchased for a combined amount and a registration fee is paid on such combined amount, must the relevant registration fee still be charged on the cession of the exclusive use area as this may be tantamount to a double fee?

Resolution:

Yes, a registration fee on both acts of registration is payable.

E. GENERAL - (ACT NO. 47 OF 1937)**35/2011 Sequestration and divorce**

It often occurs in practice that immovable property is registered in the names of spouses married in community of property to one another who, subsequent to the registration of the immovable property, got divorced and thereafter one of the spouses was declared insolvent. The question is who is entitled to deal with such immovable property : the person entitled to such property in terms of the divorce agreement, or the trustee appointed in the insolvent estate of the former spouse?

At present we are confronted with two contradictory judgments viz: *Corporate Liquidators (Pty) Ltd v MA Wiggill 2007 (2) SA 520 T* and

Middleton v Middleton 2010 SA 179 (D). What practice should be followed?

Resolution:

The case of *Corporate Liquidators (Pty) Ltd v MA Wiggill*, should be followed as it was heard on appeal by a full bench. The division of ownership takes place upon the grant of the divorce.

36/2011 Rates Clearance Certificates for transfer of same property

Problem statement: A transfers property to B who immediately transfers the same property to C. The transaction between B and C is not lodged simultaneously with the one of A to B. The rates clearance certificate issued for the transaction involving A to B is valid for a period of 60 days and within this period a transaction involving B to C is lodged with the rates clearance certificate lodged in the previous transaction of A to B. The understanding is that if the whole batch was lodged simultaneously only this rates clearance certificate would have been accepted. Does the conference agree?

Resolution:

No, the same rates clearance certificate may not be used.

37/2011 Pre-emptive right in favour of a deregistered company

How must a pre-emptive right in favour of a deregistered company be cancelled?

Resolution:

A pre-emptive right can be cancelled in terms of section 68(1) of Act No. 47 of 1937, only upon receipt of proof that such company has been finally de-registered.

38/2011 Transactions with land on which a Land Claim Interdict is noted –

A transaction involving a property which has a land claim interdict noted against it was rejected because the interdict was not uplifted.

- (a) Is it correct to reject such a transaction?
- (b) How must such an interdict be uplifted?

Resolution:

(a) No.

(b) The interdict does not have to be uplifted, as the interdict is not a prohibition on the alienation of the property.

39/2011 Mortgages and Land Claim interdicts

Can the owner of a property against which a land claim interdict is noted, mortgage such property?

Resolution:

Yes, there is no prohibition against the mortgaging of the property.

40/2011 Land claim caveat and bonds

If an interdict relating to a land claim is noted against property about to be hypothecated, must the bond specifically be made subject to the claim?

Resolution:

No.

41/2011 Sales in execution

In *Elsie Gundwana v Steko Development CC and Others CCT 44/10 [2011] ZACC 14*, it was held that “*where execution against the homes of indigent debtors who run the risk of losing their security of tenure is sought after a judgement on a money debt, further judicial oversight by a court of law*” is a must. Does this place a responsibility on the deeds registry to ask for a court order authorising a sale of the property, in addition to an attachment order?

Resolution:

No, there is no duty on the registrar of deeds to call for such an order.

42/2011 Name change of a Home Owner’s Association

In the event of a Home Owners Association changing its name sometime after the township was proclaimed in the Provincial Gazette, how must the change of name be dealt with?

(a) Must the Proclamation be followed *verbatim*?

(b) What will be the position where the company registration number was incorrectly published in the Proclamation?

Resolution:

(a) No. The new name must be followed. Proof of the change of name must be filed on the township file and the affected deeds must be endorsed in terms of section 3(1)(v) of Act No. 47 of 1937 regarding the new name. A caveat must be noted against all relevant erven in the township to the effect that the new name must be followed.

(b) The correct registration number must be followed. Proof of the correct number must be filed on the township file and the affected deeds must be endorsed in terms of section 3(1)(v) of Act No. 47 of 1937 regarding the correct number. A caveat must be noted against all relevant erven in the township to the effect that the correct registration number must be followed.

43/2011 VA copy where property is attached

Can the registrar of deeds refuse to issue a certified copy of a deed on the grounds that the property in question is attached?

Resolution:

No, an application for a certified copy of a deed is not deemed as a dealing with the property.

44/2011 Section 42(1) certificate in terms of Act No. 66 of 1965

Must a section 42(1) of Act No. 66 of 1965 certificate for an application in terms of section 45 be accepted or must the registrar insist on a certificate in terms of regulation 49(1)(f)? Alternatively, must a section 42(1) of Act No. 66 of 1965 certificate in all instances follow the wording in regulation 49(1)(f)?

Resolution:

Yes, the wording of the section 42(1) certificate must follow regulation 49(1)(f) of Act No. 47 of 1937.

45/2011 Reversionary right condition and the option to extend the time period

If a reversionary right condition has the option to extend the time period, must the extended time period be disclosed in the consent? If so, must this new time period be disclosed in the condition? Is the consent to transfer sufficient, or must the provisions of section 68 first be complied with and a new condition imposed reflecting the extended time?

Resolution:

No, it's not necessary to disclose the extended time period in the consent. The condition will only lapse once the holder of the reversionary right has consented to the cancellation, or the condition has been fully complied with, in which case section 68(1) finds application.

F. OTHER LEGISLATION THAT HAS AN IMPACT ON ACT NO. 47 OF 1937

46/2011 Rule 63 of the High Court Rules

May a document executed in Namibia for use in South Africa be duly authenticated before a Notary Public?

Resolution:

No. However, the formalities as prescribed by the Hague Convention, dated 5 October 1961, may be followed as Namibia is a party to the said Convention.

47/2011 Transactions entered into by a foreign company

In terms of section 23(2), read with section 23(2A) of the Companies Act No. 71 of 2008, it is uncertain whether a foreign company can acquire immovable property or be a mortgagee without being registered as an external company. Can conference provide guidance?

Resolution:

Notwithstanding CRC 6 of 2011, a foreign company can acquire property or act as mortgagee provided the conveyancer provides the registrar of deeds with documentary evidence, for example an auditors certificate or affidavit from a director of such foreign company to the effect that the

company need not register as an external company, in terms of section 23 (2) of Act No. 71 of 2008.

48/2011 Section 20 of the Land Survey Act No. 8 of 1997

The extent of properties often differs when consolidations and sub-divisions are registered, for instance where a consolidated property is subdivided the combined measurement of the sub-divisions differ slightly from the size in the title. For many years it was accepted practice that where the differences are minor the deeds registry does not reject the deeds, as the surveyor general acknowledged that there is a certain percentage tolerance allowed because of the fact that on re-survey it can be explained. Can Conference provide guidance in this regard?

Resolution:

The extent given on diagrams is the responsibility of the surveyor-general and not that of the registrar of deeds.

49/2011 Authority to sign documentation: Constitution of South Africa, Act 108 of 1996

In terms of section 139(1)(b) of the Constitution of the Republic of South Africa, 1996, the Provincial Cabinet appoints an administrator for a struggling municipality to take full responsibility of administration inclusive of staff, financial and technical functions of that municipality. Does this taking of full responsibility include the authority to sign form DDD deeds for transfer of immovable properties?

Resolution:

Yes, the appointment letter covering such powers of the administrator must be lodged for filing.

50/2011 Master Notices

Where there is a Master's Notice (interdict) noted that a minor has an interest in property and such property is being transferred to any person other than the minor, how must the Master's Notice be dealt with?

Resolution:

If there is a section 42(2) certificate or consent by the Master, the deeds registry must purge the Master's Notice with the understanding that the Master has taken cognizance of the interest of the minor.

51/2011 Interpretation of the provisions of a will

In the administration of estates, the interpretation of the law of succession and wills are the function of the executor, Master or the Court. Can the deeds registry question such interpretation when the liquidation and distribution account has lain for inspection without objection?

Resolution:

Yes, see RCR 4 of 2010 which applies *mutatis mutandis* to intestate succession.

52/2011 Changes to the terms of marriage contracts

Does *Ex Parte Venter et Uxor (1948 (2) SA 175 O)* still find application in light of the provisions of the Matrimonial Property Act No. 88 of 1984?

Resolution:

Yes, *Ex Parte Venter et Uxor* still finds application where parties apply to court for the change of the terms of their antenuptial contract. The Matrimonial Property Act No. 88 of 1984 only allows for the change of the matrimonial property regime of parties.

53/2011 Proclamation 293 of 1962

Is regulation 51(2) of Act No. 47 of 1937 applicable to Proclamation 293 of 1962 deeds?

Resolution:

No. Regulation 51(2) relates to titles issued under Act No. 47 of 1937 and cannot find application where a different mode of transfer is effected e.g. the same grant being endorsed with consecutive transfers.

54/2011 Section 20 of Act 68 of 1981 endorsements

Problem statement: - A section 20 of Act No. 68 of 1981 endorsement was endorsed against a title deed. The owner of the land died and the property was transferred to his heir. Section 20 was not dealt with but a condition referring to the section 20 endorsement was inserted in the deed of transfer. How must this condition be dealt with?

Resolution:

The endorsement was incorrectly brought forward into the title deed. The transfer, therefore, is *ultra vires* the provisions of section 20(2)(b) of Act No. 68 of 1981, and the matter must be referred to court.

55/2011 Kwazulu-Natal Provincial Roads Act No. 4 of 2001 and Existing Advertising on Roads and Ribbon Development Act No. 21 of 1940 conditions

The Kwazulu-Natal Provincial Roads Act No. 4 of 2001 repealed and replaced the Advertising on Roads and Ribbon Development Act, 1940 (Act No. 21 of 1940) in KZN, only as from 22 June 2011. According to sections 20 and 21 of Act No. 4 of 2001 the Minister may impose and remove conditions only in terms of Act No. 4 of 2001. The question is how to deal with the existing Advertising on Roads and Ribbon Development Act, 1940 conditions contained in title deeds of immovable property?

Resolution:

Where the conditions are not cancelled, the Advertising on Roads and Ribbon Development Act, 1940 will not be enforced and consents will no longer be called for. The consents in terms of Kwazulu-Natal Provincial Roads Act 4 of 2001 will now be called for.

G. SECTIONAL TITLES ACT NO. 95 OF 1986

56/2011 Section 11: Issuing of certificates

Section 11(3)(d) allows for the issuing of more than one certificate, whilst the following sections still allow for only one certificate: section 25(6), section 25(6A), section 25(10)(d), section 25(11)(c). How must this be applied in the deeds registries?

Resolution:

Pending the amendment of the Act, the issuing of more than one certificate must be allowed.

57/2011 Section 11 (3)(d): Applications for opening of sectional title registers

The recent amendment to section 11(3)(d) now provides that where the developer has made application for the opening of a sectional title register, exclusive use areas and rights of extension (portions of rights of extension) may have separate titles for each exclusive use area/rights. The question is whether or not the developer may reserve a general right of extension together with portions of real rights?

Resolution:

The developer cannot reserve a general right of extension together with portions of real rights in a section 11(3)(b) schedule. Where the developer wishes to reserve real right areas together with a general real right, he/she will have to reserve the general real right as such and thereafter cede portions of rights of extension off the general real right title.

58/2011 Section 14: Substitution of sectional plans

Deeds registries and the offices of the surveyors-general are being inundated with requests to substitute sectional plans which are alleged to be incorrect in respect of the numbering in that the *de facto* position and the *de jure* position do not correspond. Should these plans be capable of being substituted, if they are not patently incorrect?

Resolution:

Rectification transfers must be registered to amend the situation, or a court order must be obtained to authorise the substitution of plans in terms of section 14 of Act No. 95 of 1986.

59/2011 Section 14: Application of section 14(6) to 14(7)

Sections 14(6) and 14(7) of Act No. 95 of 1986 are clear about the procedure to be followed when sectional plans are cancelled. However, when the plans are cancelled by an order of court in terms of section 14(8), no provisions or procedures are spelt out.

Resolution:

Regulation 15(8) of Act No. 95 of 1986 makes the provisions of subregulations (5) to (7) applicable to section 14(8) of the Act.

60/2011 Section 14(3): Amendment of Sectional Plans

Where an amendment of a sectional plan in terms of section 14(3) is being done, should an application for the registration of the amendment of the plan be lodged?

Resolution:

Yes, an application must be lodged which will be afforded a *SBC* code and will attract a registration fee.

61/2011 Section 17: Personal servitudes

Section 17 does not deal with a personal servitude (e.g. usufruct) registered over a section or exclusive use area when the whole or part of the section or exclusive use area is included in the transfer of common property. It is submitted that the title deed of such servitude must be lodged together with the consent of the holder thereof to the cancellation of the unit/exclusive use area or part thereof. The title deed of the servitude must be cancelled if the whole of the unit/exclusive use area is transferred. If only a portion is involved, the title deed must bear a factual endorsement to that fact. Does Conference agree?

Resolution:

Yes. Pending the amendment of the Act, the title deed of such servitude must be lodged together with the consent of the holder thereof to the cancellation of the unit/exclusive use area. If only a portion is involved, the title deed of the servitude must be lodged together with the consent of the holder thereof. A factual endorsement must be placed upon such title deed.

62/2011 Section 17: Consent to be lodged

When a whole section is included in the transfer of common property, the owner of the section must consent to the cancellation of the section (section 17(4)(a)). However, when a part of a section is included in the transfer of the common property it is not clear whether the consent must be lodged. Conference must give guidance.

Resolution:

Pending the amendment of the Act, the consent must be lodged.

63/2011 Section 18 of Act No. 95 of 1986 and the application of sections 56 and 57 of Act No. 47 of 1937

Section 18 of Act No. 95 of 1986 makes sections 56 and 57 of Act No. 47 of 1937 applicable to transfers in terms of section 17 of Act No. 95 of 1986. Is it possible to apply section 57 when a transfer takes place in terms of section 17(5), i.e. where the whole of the land is transferred by the body corporate? There will most likely be different owners with different bonds. It is submitted that section 57 (substitution of bonds) cannot be applied with section 17(5) transfers.

Resolution:

Pending the amendment of the Act, the bonds will have to be cancelled.

64/2011 Section 24(6)(d): Application

Does conference agree that section 24(6)(d), as amended, must be applied as follows:

- (a) If there are no bonds registered over any of the units in the scheme, compliance of this section is not necessary?
- (b) If only the extended section is mortgaged it will only be necessary for the lodgement of that bond?
- (c) If the extended section is not mortgaged, but any of the other sections are mortgaged, the certificate/s must be lodged with the application?

Resolution:

- (a) Yes.
- (b) Yes.
- (c) Yes.

65/2011 Section 25 (1): Extension of schemes

The recent amendment to section 25(1) provides that the time period may be extended if agreed upon by unanimous resolution of the body corporate and the bondholders prior to the expiry of the stipulated time period as indicated in the original right, by way of a notarial deed. With

reference to bilateral notarial deed, it is obvious that the bilateral deed must be entered into between the body corporate and the holder of the real right or the portion of real right. A question raised is whether the notarial deed indicating the amendment to the time period must be registered before the expiry of the time period originally reserved, or whether the unanimous resolution must be taken before the expiry of the original time period reserved?

Resolution:

The notarial deed extending the time period must be attested prior to the lapsing of the right to be extended.

66/2011 Section 25 (1) of Act No. 95 of 1986: Extension of schemes

May the developer, prior to the body corporate being established, unilaterally extend the time period? And, where the original developer has ceded a portion of a right to extend (thereby becoming a co-developer in the scheme), can the co-developer, prior to the body corporate being established, extend the time period by entering into a bi-lateral deed with the original developer to extend the time period of his right of extension?

Resolution:

No, the developer may not unilaterally extend the time period prior to the body corporate being established, nor may the co-developer extend the time period of the right of extension prior to the body corporate being established. The developer must cancel the existing right and register a new right.

67/2011 Section 25 extensions and transfer duty

If the developer deviates from the section 25 plans when he/she extends the scheme, must the registrar insist on a transfer duty receipt for the rights he/she acquire to extend the scheme on the portions of the common property on which the right was not reserved?

Resolution:

The developer has encroached on areas of the common property where rights were not reserved and the extension of the scheme will not be registerable until such time as the extended right has been acquired, on which acquisition transfer duty will then be payable.

68/2011 Section 25: Extension of schemes

With reference to the bilateral notarial agreement as provided for in section 25 to extend the period in which a right of extension must be exercised, the following concerns must be clarified:

- (a) is transfer duty payable on the registration of the extension?
- (b) must the consent of the bondholders be lodged?
- (c) must the unanimous resolution be lodged?

Resolution:

- (a) Yes, transfer duty is payable as it qualifies as a transaction as defined in section 1 of the Transfer Duty Act No. 40 of 1949.
- (b) No, however, the bondholders' consent must be obtained and filed in the notary's protocol.
- (c) No, it must be filed in the notary's protocol.

69/2011 Section 25: Issuing of Certificates of Real Right of Extension

Where a right of extension is exercised in respect of exclusive use areas, the Act is silent whether more than one certificate of real right may be issued in respect of the exclusive use areas, as is the position on the opening of a sectional title register. This would appear to be an oversight by the legislature and conference must give guidance as to whether more than one certificate may be issued, pending the amendment of the Act.

Resolution:

Pending an amendment to the Act, the issuing of more than one certificate of real right must be allowed.

70/2011 Section 25(4)(b): Subdivision of section 25 right

- (a) With the subdivision of the section 25 right, such subdivisions may not be indicated on the initial plan of the sectional title scheme and the deed of cession of the subdivided right must be accompanied by a plan indicating the portion ceded. However, it is not executable when the right is subdivided simultaneously with the opening of the scheme. Cessions of all the subdivided rights may also not be registered simultaneously with the opening of the scheme. How must the position be dealt with?
- (b) If the subdivisional plan is filed on the main file, must plans still be lodged with the cessions of each of the subdivided section 25 rights?

- (c) Must the extent of the subdivided rights be included in the plans?

Resolution:

- (a) The subdivided right must be identified to the satisfaction of the surveyor – general, and may be indicated on the block plan or a separate section 25(4) plan.

(RCR 66 of 2009 is withdrawn)

- (b) No.
(c) Yes.

71/2011 Section 25(5): Cession of exclusive use areas

Section 25(5) of the Act, as amended, provides that the rights of exclusive use must be ceded within 12 months of their date of creation. What is the deciding date for the commencement of the 12 months: the date of the transaction or the date of execution of the notarial deed?

Resolution:

The date of registration of the certificate of real right creating the exclusive use areas will be the deciding date.

72/2011 Section 25(5): Exercising of real right

A right reserved in terms of section 25(1) may be exercised by the developer or his or her successor in title thereto, even though the developer or his or her successor in title, as the case may be, has no other interest in the common property, by the addition of rights of exclusive use: Provided that the rights of exclusive use must be **ceded** within 12 months after their creation either to the body corporate of the scheme or to one or more registered owners of a section in the scheme. The question is when does **cession** take place?

Resolution:

On the date of execution of the notarial deed.

73/2011 Section 25(5): Cession of exclusive use area to developer

What will the position be if the developer is still the owner of a unit in the scheme and the exclusive use area is allocated to the owner of that unit. Must it still be ceded within the prescribed period of 12 months? This will result in the developer having to cede the exclusive use area to himself.

Resolution:

Section 25(5) will not find application where the developer is still an owner of a section in the scheme.

74/2011 Section 25(5): Exercising of real right

A right of extension may be reserved by the developer or his or her successor in title thereto, even though the developer or his or her successor in title, as the case may be, has no other interest in the common property, by the addition of rights of exclusive use: Provided that the rights of exclusive use must be ceded within 12 months after their creation either to the body corporate of the scheme or to one or more registered owners of a section in the scheme.

Should reference that such right must be ceded within 12 months be included as a restrictive condition against the certificate of exclusive use area to distinguish it from any other certificate of exclusive use area?

Resolution:

A caveat must be noted against the exclusive use areas to indicate that it must be ceded within the 12 month period.

75/2011 Section 27 (1)(c) to be in line with section 27(4)(b)

Section 27(1)(c) of Act 95 of 1986 must be amended to be in line with section 27(4)(b) of the Act so as to include registered real rights (free from the bond or registered real right). How must same be applied in the deeds registries until the Act is amended?

Resolution:

Pending an amendment to the Act, it will vest in the body corporate free from any mortgage bond or any other registered real rights.

76/2011 Section 27(5): Cancellation of exclusive use area

Section 27(5) of the Act was amended to make provision for the consent of the mortgagee of the exclusive use area (not section) and holder of a registered real right. It does not mention holder of a registered real right registered over the exclusive use area. What if a real right is registered over the relevant section to which the exclusive use area is linked?

Resolution:

The consent of the holder of the registered real right must also be lodged.

77/2011 Winding-up of the affairs of the body corporate

Section 48(6)(a) indicates that the Court may, on the application of a body corporate or any member thereof or any holder of a registered real right concerned, or any judgment creditor, by order make provision for the winding-up of the affairs of the body corporate. And that the Court may, by the same or any subsequent order, declare the body corporate dissolved as from a date specified in the order.

There is no provision in the Act for when the affairs of the body corporate have been wound up and the Body Corporate dissolved. Where the Court has given an order to that effect and that the buildings be deemed to be demolished in terms of section 48 and that the land comprising the scheme be sold to a 3rd party by an Administrator appointed under section 46 of the Act, does Conference agree that the provisions of section 17(5) can be used to affect transfer to a 3rd party as once all the buildings are destroyed, then there is only common property held under the scheme. Section 48 refers to reversion to common property whereas section 49 has reference to reversion to the land register. And, in addition, section 46(3) of the Sectional Titles Act provides "*The administrator shall, to the exclusion of the body corporate, have the powers and duties of the body corporate or such of those powers and duties as the Court may direct,*" which, therefore, allows the Administrator to alienate common property. Does conference agree?

Resolution:

No, the provisions of sections 48 and 49 of Act No. 95 of 1986 find application.

H. OTHER LEGISLATION THAT HAS AN IMPACT ON ACT NO. 95 OF 1986

78/2011 Section 20 of the Alienation of Land Act No. 68 of 1981

May a contract as envisaged by section 20 of the Alienation of Land Act No. 68 of 1981 be recorded against a real right of extension, as defined in Act No. 95 of 1986?

Resolution:

No, it does not fall within the definition of 'land' in Act No. 68 of 1981.

I. GENERAL (ACT NO. 95 of 1986)

79/2011 Certificate of registered title of aggregate share

Section 15B(5A) of Act No. 95 of 1986 has been inserted to provide for a person who is the sole owner of a unit to obtain a certificate of registered sectional title of any fraction of his or her undivided share in such unit. This amendment was mainly to provide for time share. There is no provision in Act No. 95 of 1986 for the owner of undivided shares in a unit to obtain a certificate of registered title of aggregate share, as provided for in section 35 of Act No. 47 of 1937. Can an owner who has acquired various titles for individual shares in a unit within a scheme make use of the provisions of section 35 of Act No. 47 of 1937 to obtain a certificate of registered title of aggregate share?

Resolution:

The provisions of section 35 of Act No. 47 of 1937 may be used (see section 3(1) of Act No. 95 of 1986).

80/2011 Cancellation of exclusive use areas

How should an exclusive use area be cancelled where no body corporate is in existence, as section 27(5) provides that an exclusive use area can only be cancelled in term of a bilateral notarial deed between the body corporate and the registered cessionary?

Resolution:

A unilateral notarial cancellation by the developer must be entered into and the provisions of section 27(5) of Act No. 95 of 1986 must be invoked.

81/2011 Sectional mortgage bonds and exclusive use area

Should it not be made compulsory for the section and an exclusive use area, so closely related to the section, to be mortgaged under the same bond? The non registration of the bond causes unnecessary headaches on attachment, etc. Alternatively should exclusive use areas, which are incapable of existing separately from the section, not be notorially tied simultaneously with the opening of the sectional title register?

Resolution:

No, mortgaging of such section and exclusive use area cannot be enforced.

82/2011 Names allocated to sectional title schemes

It was a practice that developers should peruse the indices of the deeds registries to prohibit the duplication of names allocated to sectional title schemes, but it would appear as if this practice has fallen away. However, the duplication of names does cause confusion and legal battles. Should there not be some kind of control regarding the names allocated to sectional title schemes?

Resolution:

No, the uniqueness lies in the registration number.

83/2011 Creation of servitudes in favour of a sectional title scheme

Problem statement: - Company X is the owner of property A. On property B a sectional title scheme has been registered and company X is the developer and also the owner of all units and holder of all rights, i.e. the body corporate is not established. Company X wants to sell property A and reserve a servitude in favour of property B. However, the body corporate is not established to create the servitude in terms of section 29 of Act No. 95 of 1986. How should the servitude be created?

Resolution:

The provisions of section 76(1) of Act No. 47 of 1937 can be applied.

J. PROPOSALS FROM THE SURVEYORS-GENERAL**84/2011 Town planning approval in Matatiele and Cedarville**

The Natal Town Planning Ordinance, 1949 (Ordinance No. 27 of 1949) was applicable to Matatiele and Cedarville immediately before 1 March 2006, because the two townships were part of the Province of KwaZulu-Natal. The Thirteenth amendment to the Constitution adjusted the boundaries of the Eastern Cape and KwaZulu-Natal. With effect from 1 March 2006, Cedarville and Matatiele fell within the Province of the Eastern Cape. What Town Planning approval legislation is applicable in Matatiele and Cedarville?

Resolution:

The Natal Town Planning Ordinance, 1949 (Ordinance 27 of 1949) is still applicable to the townships of Matatiele and Cedarville, notwithstanding its repeal in Kwazulu-Natal.
