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**REGISTRAR`S CIRCULAR 6 /2012**

**RE: PROCESSES IN RESPECT OF THE LAND TITLES ADJUSTMENT ACT 111 OF 1993**

1. General

1.1 The purpose of this Act is to regulate the allocation or devolution of certain land in respect of which one or more persons claim ownership, but do not have registered title deeds in respect thereof, and to provide for matters incidental thereto.

1.2 The land must be designated by the Minister by notice in the Government Gazette in terms of Section 2(1).

1.3. The “title adjustment commissioner” is appointed in terms of Section 3 by the Minister and must be described as such in the deeds and documents. Upon appointment the commissioner may:

1.3 .1 Allocate land in terms of Section 10 (1) and transfer it to an applicant in terms of either Section 10 (5) or Section 10 (6) or;

1.3.2 Allocate it in terms of Section 10 (1) and may if certain conditions have not been met by the applicant, sell and transfer it in terms of Section 11 ( 1) or;

1.3.3 With the approval of the Minister designate it as land for sale in terms of Section 12(1) and sell and transfer it.

NB: This “designation”/ decision by the commissioner is not published and must not be confused with the designation by the Minister in terms of Section 2(1).

**2. Processes applicable to Deeds Office:**

2.1 When the Notice in terms of Section 2(1) is published and upon receipt of the notice, a caveat must be noted against all the properties designated in the notice. A copy of the Notice must be filed with the caveat.

2.2 If a Notice of withdrawal in terms of Section 2(2) is published, the caveat must be purged against the relevant properties. A copy of the Notice must be filed.

2.3 When examining a transfer the junior examiner must check the notice referred to above and make sure that their property has been designated. This must be indicated on the cover of the deed, as follows:

Property designated i.t.o. Act 111/1993. See item…..GN…..dated…..”

Section 5 (7): Applicable / not applicable.

(Examiners must note paragraph 2.10.3 below)

The senior examiner must verify and sign this note.

2.4 In terms of Section 4(1) the commissioner is deemed to be the “owner “of the designated property and thus any dealing with the property except by the commissioner is prohibited. This section must be read with the definition of “owner” in Section 102 of Act 47/1937.

2.5 The commissioner may, in terms of Section 4(2) sign all documents to affect transfer including the power of attorney to transfer. Proof of appointment of the commissioner need not be produced to the deeds office. The transfer of designated land takes place in terms of the Deeds Registries Act, and the provisions of Regulation 44 apply.

2.6 The preamble of the transfer must refer to the Title Adjustment Commissioner without mentioning her/ his name.

2.7 The preamble of the power of attorney must refer to the title adjustment commissioner, state his full names and refer to authority under which he/she acts.

2.8 The causa of the transfer and the power of attorney must:

2.8.1 Disclose the names of the person(s) in whose names the land is registered and the title by which the land is held.

2.8.2 Refer to the fact that the land has been designated and that it has been allocated in terms of Section 10(1) and/or sold in terms of either Section 11(1) or Section 12(1), as the case may be;

2.8.3 Mention the authority to transfer in terms of Section 4 (2) and whether Section 5 (7) is applicable or not.

2.9 The divesting clause shall mention the registered owner and not the commissioner. The property is not vested in the commissioner.

2.10 Transfer Duty and Deeds Office fee may be payable. In this regard the following must be noted:

2.10.1 Fees and duties are not payable if a directive has been published under Section 5(7) in the notice containing the designation in terms of Section 2(1).

2.10.2 If the direction referred to above is not included in the proclamation, a transfer Duty receipt must be lodged and deeds office fees are payable in the usual manner.

2.10.3 In either of the above cases the examiner must check the notice and indicate on the cover of the deed whether or not the direction is contained in the Notice, for example:

Section 5(7) Applicable/ not applicable

2.11 Rates clearance certificates must be lodged. Section 5(5) makes Section 33(1)) Act 47/1937 applicable to all transfers under the Act.

2.12 In terms of Section 13(1) laws relating to the subdivision of land (Act 70/1970, Ordinance 27/1949 etc.) do not apply to the transfer of a subdivision or an undivided share in terms of the Act.

2.13 Section 13(2) of Act 111 of 1993 provides that the designated land may be transferred from the registered owner directly to the person to whom it may have been sold or allocated. Section 14 of Act 47/1937 is not applicable.

2.14 The title deed needs to be lodged. However Section 13(3) provides that the commissioner may lodge, in lieu of the title, an affidavit stating that he/she has been unable to obtain the title to the land to be transferred.

2.15 If the title is not lodged the deeds office copy thereof must be endorsed and an office note must be made for it to be submitted for signature;

NB: if only a share or a portion is being transferred a caveat must be made to ensure that the client’s copy is endorsed when produced for any reason.

2.16 If the title deed is lodged with a transfer by the commissioner, it must be endorsed in the usual manner.

3. Procedure in respect of rights for allocated land :

3.1 Designated land, allocated in terms of Section 10(1) is transferred to an applicant in terms of either Section 10(5) or Section 10(6) of the Act.

3.2 In terms of Section 10(7) the designated land, undivided share or defined portion thereof shall be transferred subject to all rights registered against the land (or the parent property in the case of a subdivision) at the date of transfer. Conditions of title must be brought forward in the usual manner.

3.3 Mortgage bonds against the land must be disposed of in accordance with the provisions of Section 56 of Act 47/1937.

4. Procedure applicable to partitions:

4.1 The designated land may be partitioned in terms of Section 10(2). In the event of such a partition:

4.1.1 Section 10(8) provides that, where an applicant is allocated a subdivision of the land is lieu of his undivided share and such share was subject to a registered mortgage bond or the subject of a trust, fideicommissum, usufruct or other encumbrance by virtue of a will or other disposition in writing, the subdivision shall, on transfer, be deemed to be subject to the mortgage or the above rights;

4.1.2 Section 10(9) provides that a reference to an undivided share in a mortgage bond referred to above shall be construed as a reference to the subdivision;

4.2 Section 10(10) directs the Registrar of Deeds to make endorsements on the office copy and on production thereof, the original also, of any registered document relating to a mortgage, trust, fideicommissum or encumbrance referred to in subsections (8) and (9) in order to give effect to such subsections. This endorsement will read as set out below. (Section 10(9) relating to a mortgage bond is used as an example):

Endorsement in terms of Section 10(10) of Act 111/1993

In terms of the provisions of Section 10(9) of the above act the following property…….. (full description and extent of defined portion)… held by … (full description of (new) mortgagor/ owner )….. under Deed of Transfer T… (Title number)… is substituted for the undivided share previously held by (him/her or full description of original mortgagor where the transferee was not an original owner of the land). “

(Where the office copy is endorsed, the usual caveat must be made).

4.1.4 The transfer deed of the subdivision which is subject to the bond must be endorsed with the “substituted bond” endorsement. Refer to Section 10(9) of Act 111/1993 therein.

5. Procedures applicable to a sale:

5.1 Designated land may be sold and transferred in terms of Section 11(1) or Section 12(1). According to Section 11(2) such transfer shall take place :

5.1.1 Free from any existing mortgage or any trust, fideicommissum, usufruct or any other encumbrance by virtue of a will or other disposition in writing, but subject to all other registered real rights ;

5.1.2 All conditions of tile, other than those referred to in the preceding paragraph, must therefore be brought forward, i.e. servitudes etc.

5.1.3 Note that in terms of Section 11(1) an undivided share in or a defined portion of the piece of designated land may be sold. Section 12(1) provides only for the sale and transfer of the whole of a piece of land.

5.2 Mortgage bonds over the land must be dealt with as follows:

5.2.1 Endorse the bond itself with a transfer endorsement identical to that placed on the title. If the client’s copy is not available the office copy must be endorsed.

5.2.2 “Sold in terms of Section…..Act 111/1993” must be endorsed across the bond endorsement on the title (adapt the ‘sold in execution/insolvent estate” endorsement for this purpose).

5.2.3 In the event of a portion or a share in a piece of land (in the case of Section 11(1) only), being sold, a caveat for the endorsement of the client’s copy must be made. In such a case the bond endorsement on the title is not disposed of.

Registrar of Deeds

Deeds Office

Cape Town.

Date: 10 September 2012