



rural development & land reform

Department:
Rural Development & Land Reform
REPUBLIC OF SOUTH AFRICA

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REGISTRAR`S CIRCULAR 1 /2013

Subject: Registrar`s Conference Resolutions 2012

The resolutions taken at the 2012 Registrar`s Conference came into effect on 2 January 2013. A few of these resolutions are hereby clarified for implementation.

1. RCR 2/2012, with reference to RCR 36 of 2002: Cancellation of an exclusive use area

Where, erroneously, the same exclusive use area was transferred to two owners of sections in a scheme, why does RCR 36 of 2002 state that both exclusive use areas must be cancelled and the body corporate re-reserve the right *de novo*? Should not only the faulty owned exclusive use area be cancelled?

Resolution: No. Act No. 95 of 1986 does not provide for the cancellation of an erroneously registered right of exclusive use area. (RCR 36 of 2002 is confirmed),

Practice note:

Both rights to exclusive use areas must be cancelled by notarial agreement in terms of section 27 (5) of the Sectional Titles Act and thereafter ceded in terms of section 27 (2) and (3) by the body corporate.

2. RCR 16/2012- Dealing with bonds where title is cancelled in terms of section 6

When a title is cancelled in terms of section 6 of Act No. 47 of 1937 and the old title revived and the court orders that the bonds that existed over the property, under the original title, must be re-instated, how must the said re-instatement of the bonds be endorsed on the revived title?

Resolution: Re-instated bonds must be re-endorsed and signed on the revived title and a hand written endorsement, explaining the reason for re-instatement, must be made directly above the new bond endorsements.

Practice note:

X-writing on the re-endorsed mortgage bond should be affected along the following lines:

This mortgage bond has been reinstated : see Court Order filed with BC/.....

Verbind	Mortgaged
Vir/For: R10 000 000, 00	
2345/2010	<i>J. Dreyer</i>
Date : 20 November 2010	Registrar of Deeds

- ❖ The mortgage bond must be recaptured by our data section.
- ❖ A caveat should also be noted of the revived bond.
- ❖ The x-writing on the bond should read along the following lines:
Endorsement in terms of section 3 (1) (v) of the Deeds Registries Act
This mortgage bond has been revived see court order filed with BC

3. RCR 29/2012 Diagrams for habitation: regulation 73(2)

Is it always necessary for the submission of a diagram for the registration of a *habitatio*, given the fact that a *habitatio* can only be in respect of a dwelling on the land?

Resolution: Yes, see the provisions of regulation 73(2) of Act No. 47 of 1937. Also see *Kidson vs Jimspeed Enterprises, Case No. 3857408 unreported.*
(RCR 21 of 1961 is withdrawn)

Practice Note:

Examiners should *at all time* call for a diagram when a right of habitatio (personal servitude) is lodged for registration, *since the nature of a right of habitatio is such that it can only be exercised in respect of a dwelling over land.*

4. RCR 35/2012- Portion of a public space or public street closed and converted to an ordinary erf

The ownership of public places and public streets vest in the local authority in whose jurisdiction that land is situated (section 28 of Ordinance 15 of 1985). What is the correct registration procedure when a portion of a public space or public street is closed and converted into an ordinary erf?

Resolution: A section 31 vesting transfer must precede the transfer to the 3rd party.

Practice Note:

A section 31 transfer is not required if the mother/parent erf is already registered in the name of the municipality

5. RCR 46/2012- Section 10A and 10B of the Housing Act No. 107 of 1997 conditions

A conveyancer omitted to register the section 10A and 10B of the Housing Act No. 107 of 1997 conditions on transfer of a property to the subsidized purchaser. How should these conditions be registered against the title deed?

Resolution: The conditions can be registered upon lodgment, by the owner, of an application in terms of section 3(1) (v) of Act No.47 of 1937, together with the necessary proof.

Practice note :

The application in terms of section 3 (1) (v) must be lodged in a coloured cover and allocated a "BC" code. A fee will be charged in accordance with the schedule of fees.

6. 43/2012 Section 2 of the Transfer Duty Act No. 40 of 1949

Must a transfer duty receipt or exemption from transfer duty be called for when a negative personal servitude is created in the power of attorney, and duly accepted?

Resolution: Yes, it is a transaction as per the definition of '*transaction*' in the Transfer Duty Act No. 40 of 1949, unless it is exempt for any other reason.

Practice Note:

Apart from the transfer duty receipt or exemption certificate for the transfer of the property, a further transfer duty receipt or exemption certificate should also be lodged for the servitude.

A transfer duty receipt or exemption certificate will not be required where a negative personal servitude is imposed by legislation, but only if transfer duty is exempted by the imposing legislation.

7. RCR 72/2012- Description of exclusive use areas

May an exclusive use area merely be described as an exclusive use area and not give specific reference to its use, e.g. stoep, parking, garden, etc.?

Resolution: No, the type of exclusive use area as delineated on the sectional plan must be referred to. If such use is described on the sectional plan as a general exclusive use area, then such description must be followed.

Reference to '*EUA*' without specific reference to the type must not be accepted.

Practice Note :

However a description that makes reference as being "for general use" is acceptable.

Sectional plans approved prior to 2 January 2013 need not be amended and can therefore be accepted for registration.

8. RCR 76/2012- Extension of a section onto adjoining exclusive use area

When a section is extended, in terms of section 24 of Act No. 95 of 1986, into the adjoining exclusive use area, e.g. garden or yard, it is necessary to cancel the existing exclusive use area and register a new exclusive use area (in terms of section 27). When the section and the exclusive use area are in the same ownership the two amendments have historically been shown on the same amending sectional plan and apparently registered without any problem. If amendments as outlined above are to be dealt with as one registration batch does the Registrar require separate amending sectional plans prepared in terms of sections 24 and 27 respectively or is it acceptable to show both amendments on one plan?

Resolution: Where an exclusive use area is directly affected by an amendment to the section and the exclusive use area is registered under the same ownership as the section, the two amendments may be shown on the same plan.

Practice Note:

Even though the same sectional plan may be used, the registered exclusive use area must first be cancelled in terms of section 27 (5) of the Sectional Title Act if affected by the extension.

Where a new exclusive area is delineated in place of the cancelled area and simultaneously ceded in terms of section 27 (3) of the Sectional Titles Act, the description of the exclusive use area should make reference to the sectional plan of extension "SS" number which will be issued by the Deeds Office.



K Pillay
Registrar of Deeds: Cape Town
Date: 17 January 2013