



rural development
& land reform

Department:
Rural Development & Land Reform

REPUBLIC OF SOUTH AFRICA

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NOTICE TO EXAMINERS NO. 6 OF 2015

PROCEDURE WHERE THE LIQUIDATOR IS THE DEVELOPER IN RESPECT OF A SECTIONAL TITLE PLAN OF EXTENSION IN TERMS OF SECTION 25 OF THE SECTIONAL TITLES ACT NO. 95 OF 1986.

BACKGROUND

The developer holds the Right to Extend by virtue of a Certificate or Cession of a Right to Extension and this right to extend is subject to a mortgage bond. The Developer is a company which has been liquidated.

Questions Raised:-


1. If the developer has been placed under liquidation, may he exercise the right and apply for the Extension of the Scheme or should the Real Right of Extension not have to be sold.
2. If the liquidator is permitted to apply for the Extension of the Scheme, what should happen with the bond over the title of the Right to Extend?

Reply:-

- (1) Where a company has been placed in liquidation, the Master will grant the liquidator powers to act. This power will be set out. Where the creditors of the company have requested the liquidation of the company, the terms forced liquidation is used- this normally where the company is unable to pay its debts. Where the members of the company have requested the liquidation of the company, the term voluntary liquidation is used- this normally occurs where the company is able to pay its debts but none of the members of the company wish to continue with the business the company was performing i.e. winding up the company.
- (2) In terms of regulation 44 of The Deeds Registries Act No. 47 of 1937, the conveyancer is responsible for the verification of the appointment and powers of the liquidator, therefore the Deeds Office will not query whether the liquidator may exercise the right to apply for the Extension of the Scheme or whether he may sell the Real Right of Extension.
- (3) The question arises as to what occurs with the bond over the title for the Right of Extension. i.e. the SK title. Whether the company is in a forced or voluntary liquidation, the bondholder must consent to the registration of Sectional Plan of Extension in terms of section 25(10) (c) and (dA) of the Sectional Titles Act No.

95 of 1986. The CRST's must be made subject to the bond even through the company is in liquidation.

- (4) Where the liquidator of the company alienates a unit, the fact that the company is in a forced a voluntary liquidation is essential. Where there is a forced liquidation, a certificate is required that the company is unable to pay its debts and then section 56 (1)(b) of the Deeds Registries Act No. 47 of 1937 applies and no bondholders consent is required for the release of that unit. The bond endorsement on the CRST is endorsed with the "in liquidation" endorsement. Where there is a voluntary liquidation (members winding up), the unit must be released from the bond in terms of section 56(1) of the Deeds Registries Act No. 47 of 1937.



REGISTRAR OF DEEDS

PRETORIA

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