



**rural development
& land reform**

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Rural Development & Land Reform
REPUBLIC OF SOUTH AFRICA

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REGISTRARS' CONFERENCE RESOLUTIONS 2016

A. WITHDRAWAL OF REGISTRARS' CONFERENCE RESOLUTIONS

1/2016 The following Registrars' Conference Resolutions are withdrawn:

- RCR 21/1951(see Jones' *'Conveyancing in South Africa'* 4th edition page 213);
- RCR 9/1956 (see RCR 5/2016);
- RCR 3/1991 (see section 25 (6A) of Act 95 of 1986);
- RCR 21/2003 (see section 6 of the Trust Property Control Act 57 of 1988);
- RCR 28/2003 (see section 13 of the Divorce Act 70 of 1979);
- RCR 43/2004 (see section 63 of Act 47 of 1937);
- RCR 45/2007 (see RCR 3/2016);
- RCR 27/2008 (see Rule 63 of the High Court Rules);
- RCR 55/2008 (see RCR 6/2016);
- RCR 60/2008 (see RCR 7/2016);

- RCR 29/2009 (see *Sasol Mining (Proprietary) Limited v The Chief Registrar of Deeds and Others*, North Gauteng High Court Case No. 72102/2012);
- RCR 45/2009 (see section 8(1) of Act 120 of 1998);
- RCR 9/2010 (see CRC 2/2016);
- RCR 22/2010 (see *Sasol Mining (Proprietary) Limited v The Chief Registrar of Deeds and Others*);
- RCR 38/2010 (see RCR 8/2016);
- RCR 64/2010 (see section 13 of the Divorce Act 70 of 1979);
- RCR 10/2012 (see RCR 3/2016);
- RCR 29/2012 (see Jones' *'Conveyancing in South Africa'* 4th edition page 213);
- RCR 4/2014 (see RCR10/2016);
- RCR 7/2014 (see RCR 7/2016);
- RCR 16/2014 (see RCR 5/2004);
- RCR 31/2014 (see Jones' *'Conveyancing in South Africa'* 4th edition page 213);
- RCR 42/2014 (see RCR 9/2016);
- RCR 7/2015 (see RCR10/2016);
- RCR 31/2015 (see CRC2/2016).

B. PREVIOUS REGISTRARS' CONFERENCE RESOLUTIONS

2/2016 RCR 28/2003 and RCR 64/2010 - Copies of foreign divorce orders

May the Registrar of Deeds accept a foreign divorce order?

Resolution:

Yes. In terms of regulation 44A of the Deeds Registries Act 47 of 1937, the conveyancer takes responsibility for the correctness of the marital status of the parties to deeds and documents, *inter alia* if the validity of the foreign divorce order has been recognized in terms of section 13 of the Divorce Act 70 of 1979. Therefore a copy of a foreign divorce order that is compliant with the provisions of Rule 63 of the High Court rules may be accepted.

- RCR 28/2003 and RCR 64/2010 are withdrawn

3/2016 RCR 45/2007 and RCR 10/2012 - Section 25 (6A) of the Sectional Titles Act 95 of 1986 – Reservation of Right

Where a right of extension has lapsed, must the lapsing of such right be noted prior to reserving a new right of extension?

Resolution:

Yes, lapsing of the right of extension must be noted. A section 15 B (1)(d) of Act 95 of 1986 application must be lodged to note the lapsing prior to the reservation of the new right. The provisions of section 68(1) of Act 47 of 1937 apply with the necessary changes.

- RCR 45/2007 and RCR 10/2012 are withdrawn

4/2016 RCR 21/2003 - Section 6 of the Trust Property Control Act 57 of 1988

Two conflicting decisions on property bought by a trust, prior to the authorisation of the trustees, presently exist. See *Kriel v Terblanche NO en Andere*, 2002 (6) SA 132 and *NC van der Merwe v Van der Merwe en Andere*, 2002 (2) SA 516. Which decision should be followed?

Resolution:

All unauthorized actions of a trustee are invalid and an unauthorized trustee has no capacity to litigate. Section 6 of the Trust Property Control Act 57 of 1988 finds application. See *Gabrielle Lupacchini NO and Rochelle vs Minister of Safety and Security*, Case No 16/2010.

- RCR 21/2003 is withdrawn

5/2016 RCR 11/2006 - Section 4(1)(b) of Act 47 of 1937: Amendment of cancelled bonds

When a bond is registered in favour of an 'incorrect' mortgagee, who must consent to the cancellation of the bond?

Resolution:

Either the registered bondholder must consent to cancellation or an order of court must be obtained for the cancellation.

- RCR 9/1956 is withdrawn

6/2016 RCR 55/2008 – Maintenance claims in deceased estates

It sometimes happens that a maintenance claim supersedes the order in terms of testate / intestate succession.

- Should the recital refer to the maintenance claim?
- Will a section 42 (1) of Act 66 of 1965 certificate by a conveyancer suffice?

Resolution:

- The recital of the deed / application must provide all the facts.
- The section 42 (1) of Act 66 of 1965 certificate will suffice. No proof of the maintenance claim is required.

- RCR 55/2008 is withdrawn

7/2016 RCR 60/2008 and RCR 7/2014 - Endorsement of lapsing of rights of extensions

A real right of extension is subdivided into numerous portions. What procedure must be followed for purposes of the endorsement of the lapsing of the right on the section 11(3)(b) schedule of conditions?

Resolution:

When one of the portions of a real right of extension has lapsed/been exhausted, the title deed of such portion must be endorsed by noting thereon that such right has lapsed/been exhausted. The section 11(3)(b) schedule must only be endorsed in terms of section 15B (1)(d) of Act 95 of 1986, when the whole of the right has lapsed. The provisions of section 68(1) of Act 47 of 1937 must be applied with the necessary changes.

- RCR 60/2008 and RCR 7/2014 are withdrawn

8/2016 RCR 38/2010 - Section 56(1)(b) of Act 47 of 1937: Liquidation of company/close corporation and cancellation of bonds:

It is practice to accept a certificate from a conveyancer in instances where a company is unable to pay its debts. Should it not be the liquidator who certifies to this fact?

Resolution:

Yes. In order to comply with section 56(1)(b) of Act 47 of 1937 it is necessary that a transfer of property belonging to the company / close corporation in liquidation be accompanied by a certificate from the liquidator that the company/close corporation is unable to pay its debts.

- RCR 38/2010 is withdrawn

9/2016 RCR 42/2014: Lost copies of Certificates issued in terms of sections 25 and 27 of the Sectional Titles Act 95 of 1986

Where the client's copy of a section 25 right of extension, or exclusive use area created in terms of section 27, as well as the deeds office copy thereof are lost or destroyed, how must the holder of such right apply for his/her title to be replaced?

Resolution:

The provisions of section 38 of Act 47 of 1937 can be utilized, in view of section 3(1) of Act No. 95 of 1986.

- RCR 42/2014 is withdrawn

10/2016 RCR 41/1967, RCR 20/2011, RCR 89/2010 and RCR 8/2012 – Cancellation of servitudes benefitting the common property

Section 29(3) of Act 95 of 1986 does not make provision for the lodgement of bonds and consents of mortgagees where servitudes which benefit the common property are cancelled. How should this matter be dealt with?

Resolution:

The provisions of section 75(2) *bis* of Act No. 47 of 1937 read with section 3(1) of Act 95 of 1986 must be applied. Consents by bondholders as well as the bonds must be lodged. The bonds need not to be endorsed.

- RCR 4 of 2014 and RCR 7/2015 are withdrawn

C. DEEDS REGISTRIES ACT 47 OF 1937

11/2016 Section 45 *bis* of Act 47 of 1937- Application

A section 45 *bis* application incorrectly cited the transferee as '*married in community of property*' and as a result thereof the section 45 *bis* endorsement in the title deed incorrectly reflects the marital status of the transferee as '*married in community of property*' instead of '*unmarried*' or '*out of community of property*'. May the provisions of section 4 (1)(b) of Act 47 of 1937 be applied to rectify the position?

Resolution

No, the provisions of section 4(1)(b) cannot be applied in this instance. A rectification transfer must be registered, or section 6 must be applied to cancel the incorrect transfer in terms of section 45 *bis*.

D. REGULATIONS TO THE DEEDS REGISTRIES ACT 47 OF 1937

No Items.

E. GENERAL - (ACT 47 OF 1937)**12/2016 Application of a court order**

Where a Registrar of Deeds is ordered by the Court to perform a specific transaction, does the Registrar have the authority:

- (a) To refuse to comply with the Court order if it is not in accordance with the Act or if the Act does not make provision for such an act of registration as ordered by the Court? If the Registrar may refuse, what procedure should be followed?
- (b) To allow an alternative act of registration than what is ordered by the Court, having the same end result or must the Court order be followed strictly?
- (c) Comply with the Court order without following the provisions of the Act.

Resolution:

The Court order must always strictly be complied with. If the Registrar of Deeds or any interested party is aggrieved by an order of Court he/she must apply to Court to set aside the order or apply for a variation of the order.

13/2016 Partial cancellation of a Power of Attorney

A General Power of Attorney was registered in which two parties gave Power of Attorney to an agent/s. The one party wants to withdraw his Power of Attorney. Can that party withdraw his/her Power of Attorney without the entire Power of Attorney being cancelled?

Resolution:

No, a General Power of Attorney cannot be partially cancelled. The Power of Attorney will have to be cancelled in *total*, and a new Power of Attorney will have to be registered by the party who wishes to grant his/her power of attorney to the agent.

14/2016 The inclusion of the additional amounts of bonds

Must additional amounts be included in consent drafted in accordance with Form MM of the Deeds Registries Act 47 of 1937 and Form AM of the Sectional Titles Act 95 of 1986?

Resolution:

Additional amounts need not be included in Form MM of the Deeds Registries Act 47 of 1937 or Form AM of the Sectional Titles Act 95 of 1986.

15/2016 A pre emptive right

Where a pre emptive right has lapsed by effluxion of time, but the land was sold to the purchaser prior to the lapsing thereof, is it still necessary to lodge the consent?

Resolution:

Yes, the consent must be lodged. The relevant date is the date of sale.

16/2016 Consolidation of properties

Two properties must be consolidated. Prior to consolidation the position is as follows: Component one is subject to a 1st ranking and a 2nd ranking bond. The 2nd bond over component one is also a 1st ranking bond over component two. Can the bonds be substituted over the consolidated property or must it be cancelled as required by section 40 (5) (b) of Act 47 of 1937?

Resolution:

No, the bonds cannot be substituted due to it being regarded as different bonds as contemplated in section 40(5)(b). The bonds must be cancelled. The following may be a possible solution: Component two may be released from the operation of the 1st mortgage bond. Components one and two may then be consolidated and the consolidated property may then be substituted in terms of section 40(5)(a) of the Act. Alternatively one of the bonds may be cancelled as provided for in section 40(5)(b).

17/2016 A foreign trust

Should a foreign trust be registered before a bond can be registered in its favour?

Resolution:

The foreign trust must firstly be registered with the Master of the High Court and letters of authorization issued to the trustees, as contemplated in section 8 of the Trust Property Control Act 57 of 1988.

18/2016 Transfer of property into the name of the beneficiaries

A property was transferred by means of a formal deed of transfer directly into the names of the beneficiaries rather than an application in terms of section 40 of the Administration of Estates Act 66 of 1965. Is this an error and if so how must it be dealt with?

Resolution:

Yes, it is an error unless the terms of the trust deed have been complied with. To rectify the error the property can be transferred back to the deceased estate. Alternatively, the deed of transfer must be cancelled in terms of section 6 of Act 47 of 1937 and the section 40 endorsement thereafter be registered. It is not necessary to correct the error when proof has been submitted that all the terms of the trust deed have been met.

19/2016 Registration of a bond in favour of the deceased estate

Can an heir register a mortgage bond in favour of a deceased estate as security for monies advanced prior to the finalisation of the estate?

Resolution:

Yes, it is permissible for an heir to register a bond in favour of a deceased estate.

20/2016 The transaction date on a Transfer Duty Receipt

Which date should be reflected as the transaction date on a Transfer Duty Receipt where a negative personal servitude in favour of a third party has been created in the Power of Attorney and that Transfer Duty Receipt is lodged?

Resolution:

The date of acceptance by the third party will be the date of transaction on the transfer duty receipt.

21/2016 Reference to Diagram in extending clause

Must a diagram prepared in terms of a section 16 of the Land Survey Act 8 of 1997 be referred to in an extending clause, or must the general plan be referred to? According to the Surveyor General a section 16 diagram is only for information purposes, and not for registration purposes. It is long standing practice that reference must be made to the latest diagram (section 16 diagram). However, the Surveyor General's point has to be considered. It was also stated that in some offices, reference is made to the general plan and not the section 16 diagram.

Resolution:

The latest diagram, prepared in terms of section 16 of the Land Survey Act 8 of 1997, has to be referred to in the extending clause.

22/2016 Deeds office copy and client's copy of a bond lost / destroyed

Where the deeds office copy of a bond as well as the client's copy are lost it is not always prudent to apply regulation 68 (11B) of the Deeds Registries Act 47 of 1937 and to register a new bond in view of the insolvency implications etc. To approach the court is time consuming and costly. Can section 38 of the Deeds Registries Act 47 of 1937 not also apply to bonds?

Resolution:

No. The bond must be cancelled in terms of regulation 68(11B) of the Deeds Registries Act 47 of 1937 and a new bond must be registered.

F. OTHER LEGISLATION THAT HAS AN IMPACT ON ACT 47 OF 1937

23/2016 Consent in terms of Act 70 of 1970

Act 70 of 1970 consent to subdivision contains a clause that states that the consent is valid for a period of 5 years from the date of the consent. Does this mean that the developer must transfer all the portions before the end of the 5 years period, or does the approval of the surveyor general diagrams suffice?

Resolution:

Registration of all the portions must take place within five years. If not, approval for an extension must be obtained.

G. SECTIONAL TITLES ACT 95 OF 1986

24/2016 Section 27 of Act 95 of 1986 – cession by endorsement of exclusive use areas

May exclusive use areas be ceded by means of an endorsement in terms of section 45 and 45 *bis* of Act 47 of 1937?

Resolution:

Yes. However, cession may still be effected by means of the registration of a notarial deed of cession.

H. REGULATIONS TO SECTIONAL TITLES ACT 95 OF 1986

25/2016 Form Z to Annexure 1 of the regulations to the Sectional Titles Act 95 of 1986: Annexure to the sectional bond

- (a) Uncertainty exists when sectional bonds without annexures are lodged for cancellation. The annexure to the bond may be lost. Is the annexure necessary when cancelling the sectional bond?

- (b) A sectional bond with the annexure is lodged and registered in the office. However, at a later stage it is lodged without the annexure to perform further acts of registrations, i.e. releases, cessions. The mortgagor says the mortgagee has lost the annexure. When registering the sectional bond, it is a requirement for the annexure to be attached, taking Form Z to Annexure 1 of the Regulations into account. Is it necessary that the annexure be called for in respect of other further acts of registration relating to the sectional bond?

Resolution:

- (a) No. It is not necessary to lodge the annexure when a sectional mortgage bond is cancelled.
- (b) Yes. An annexure must be called for in respect of other further acts of registration.

I. GENERAL (ACT 95 OF 1986)

26/2016 Section 24 of the Sectional Titles Act 95 of 1986

No uniformity exists in respect of the sectional plan numbers to be used after an extension of a section has been registered in terms of section 24 of the Sectional Titles Act 95 of 1986.

Resolution:

The new sectional plan number as provided for in regulation 23(1)(b) must be referred to.

27/2016 Error in a section 11(3)(b) Schedule of Conditions

- (a) May an error in a section 11(3)(b) Schedule of Conditions be amended in terms of section 4(1)(b) if it will not have the effect of transferring a real right? If so, who must consent to such amendment?
- (b) How does one fix an error in the schedule of conditions (Section 11 (3)(b) certificate) if the error for example relates to a condition carried forward in the certificate or perhaps the property description. Further, who should bring the application, the Developer or the Body Corporate?

Resolution:

An application in terms of section 4(1)(b) of Act 47 of 1937, by either the developer, if the body corporate is not established, or the body corporate if so established.

28/2016 A title deed for exclusive use areas

A title deed for exclusive use areas has more than one paragraph. One or more of the exclusive use areas listed are incorrect double registrations. May partial cancellation of erroneous registration be done?

Resolution:

RCR 4/2015 may be applied.

29/2016 Leases on undivided shares in section 25 extension rights or portions thereof

Is a lease of the whole or a fraction of an undivided share in a section 25 extension right registrable?

Resolution:

No, the amendment to the provisions of section 15B(5)(b) of Act 95 of 1986 was not intended to allow for the lease of the whole or a fraction of an undivided share in a section 25 right of extension.
