



**DEPARTMENT: LAND AFFAIRS  
REPUBLIC OF SOUTH AFRICA**

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## **REGISTRARS' CONFERENCE RESOLUTIONS OF 2004**

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### **A. PREVIOUS REGISTRAR'S CONFERENCE RESOLUTIONS**

**1/2004 RCR 8 of 1969: Expropriations / Rates certificates : (Bloemfontein and Legal Support)**

In view of section 118 of Local Government: Municipal Systems Act 2000 (Act No 32 of 2000) as amended, it appears that the above-mentioned resolution can be withdrawn. Expropriation transfers are no longer exempt from the lodgement of a clearance certificate.

**Resolution:**

In terms of section 118 of Act No. 32 of 2000, read in conjunction with section 20 of the Expropriation Act 63 of 1975 a clearance is required for the registration of an expropriation transfer. RCR 8 of 1969 is hereby withdrawn

**2/2004 RCR4.24/1984: Stamp Duty (Justice College)**

In terms of RCR4.24/1984 the duty still rests upon a registrar of deeds to determine whether the stamp duty calculated by the Receiver of Revenue is correct. In view of the fact that only notarial leases still need to be stamped and it is often difficult to calculate such duty, the ruling by the Commissioner for SARS is supported.

**Resolution:**

RCR4.24/1984 is hereby withdrawn. In future all notarial leases need to be referred to SARS for the calculation of stamp duty. Deeds Offices, however, still have to ensure that SARS has calculated stamp duty payable on all documents that attract

stamp duty and that the necessary endorsement has been effected to the instrument.

**3/2004 RCR 2.15.2/1999: Waiver of preference of usufruct (Cape Town)**

A is the owner of a property that is subject to a usufruct in favour of B. B waived preference of the usufruct in favour of a bond registered in favour of Absa. A sells the property to D and D is substituted under the bond in terms of section 57. In terms of RCR 2.15.2/1999 B must waive preference again. May this be done by an underhand waiver, lodged with a section 57 application, or must it be done notarially? If notarially, must B first comply with section 64 and apply for the issue of a certificate of real right?

**Resolution:**

Section 57 can be applied, however the waiver must be affected by virtue of a notarial deed as provided for in regulation 41(7). The provisions of section 64 do not have to be complied with.

**4/2004 RCR 23 of 2002: Usufruct reserved in redistribution agreement (Justice College)**

In RCR 23 of 2002 it was held that the provisions of section 67 of Act No. 47 of 1937 could not be invoked when a usufruct is **created** in a redistribution agreement, as contemplated in section 14(1)(b)(iii) of Act No. 47 of 1937. This resolution is in direct conflict with the decision in **Ex parte Jooste** 1968 (4) SA 437 (O). The former resolution has to be reconsidered.

**Resolution:**

In terms of the **Ex parte Jooste**-case the provisions of section 67 can be invoked. RCR 23 of 2002 is hereby withdrawn.

**5/2004 RCR 1/2003: Section 45 and Foreign Marriages (Cape Town)**

In terms of RCR 1/2003 a section 45 application can be done in regard to foreign marriages where the consequences of that marriage is a marriage in community of property. What proof must be lodged?

**Resolution:**

Proof from the foreign mission of the relevant country or an opinion from an expert will be required.

**6/2004 RCR 43 of 2003: Consent by Home Owners Association (Cape Town)**

A condition in the title of the land states that the property cannot be transferred without the consent of the Home Owners Association. The HOA has not been established or has ceased to exist. RCR 43/2003 requires that the consent of the HOA must be lodged. This is however not a solution as the HOA cannot grant consent because it is not in existence.

**Resolution:**

RCR 43 of 2003 is hereby confirmed.

**7/2004 RCR 6.4.6 of 2003: Act No. 13 of 2000 (Bloemfontein)**

According to Passport Control Instruction No. 9 of 2003 it appears that 'notarial co-habitation' contracts in terms of Act No 13 of 2002 are not registerable in a deeds registry.

**Resolution:**

Until such time as a law requires registration and Act No. 47 of 1937 is amended, no registrations are permitted.

**B. DEEDS REGISTRIES ACT NO. 47 OF 1937**

**8/2004 Section 38 (Vryburg)**

Can section 38 of Act No. 47 of 1937 be applied where the office copy is lost but the client still has his or her copy of such deed?

**Resolution:**

No, section 38 cannot be applied. The client's copy of the deed may be utilized to reproduce an office copy.

**C. REGULATIONS TO ACT NO. 47 OF 1937**

**9/2004 Regulation 18 (Justice College)**

Regulation 18 of Act No. 47 of 1937, as amended, does not make sense in application. Guidelines for the application of this regulation must be provided.

**Resolution:**

This Item must be referred to the Deeds Registries Regulations Board for a resolution.

**10/2004 Regulation 44(2) (Bloemfontein)**

It is practice to request **full initialing** by all parties (witnesses and signatory) when a material amendment is made to a power of attorney, application, consent or agreement to partition is made. The wording of regulation 44(2) of Act No. 47 of 1937 and regulation 16B(2) of Act No. 95 of 1986 however specifically indicates that only the preparer needs to initial.

**Resolution:**

RCR15 of 1988 is hereby confirmed.

**11/2004 Regulation 68 (Vryburg)**

Where properties are registered in terms of **Proclamation 293** and the title deed is lost or destroyed, is it necessary to comply with the provision of regulation 68 (1A) of Act No. 47 of 1937?

**Resolution:**

No. Regulation 68(1A) does not find application. The relevant Proclamation has prescribed in this regard.

**12/2004 Regulation 68 (Vryburg)**

The advertisement in the newspaper in terms of regulation 68 (1A) of Act No. 47 of 1937, sometimes refer to a **wrong Deeds Registry**. People are then informed to lodge objections to the registrar of deeds of that deeds registry. It then becomes the duty of the registrar, who is incorrectly mentioned in the advert, to give an affidavit that he/she has not received any objection for the issuing of the copy of the title deed or cancellation of the bond. Is this practice correct?

**Resolution:**

The Registrar of Deeds referred to in the advertisement must confirm that no objections were received, alternatively the Registrar of Deeds must request the objections to be referred to the correct deeds registry.

#### **D. GENERAL (ACT NO. 47 OF 1937)**

##### **13/2004 Change of name of a trust (Bloemfontein)**

Can a registrar of deeds accept applications in terms of section 93 of Act No. 47 of 1937 to amend the name of a trust in a registered deed and what proof should be lodged? The Master of the Supreme Court issues amended letters of authority but for different reasons and the old name of the trust does not appear on the amended letter of authority.

##### **Resolution:**

The provisions section 93 can be invoked, however, proof of the change of name must be issued by the Master of the High Court and lodged with the application. Both the old and new name must be disclosed in the proof.

##### **14/2004 Marriage governed by the laws of another country (Justice College)**

Parties are separated and the marriage is governed by the laws of another country. Can a registrar of deeds apply his/her discretion in waiving the necessity of the consent by such spouses required in terms of section 17(6) of Act No. 47 of 1937 when immovable property is alienated, or must an order of court be insisted upon?

##### **Resolution:**

Section 17(6) provides that the consent is required in the case of all foreign marriages unless the Registrar of Deeds deems it unnecessary.

##### **15/2004 Bond registered in respect of “incorporeal things” (Justice College)**

May a notarial bond be registered in respect of “incorporeal things”, such as a short-term lease, given the provision of section 1 of the Security by Means of Movable Property Act No. 57 of 1993?

##### **Resolution:**

Yes. Incorporeal things may serve as security under a notarial mortgage bond but is not afforded the security provided for in section 1 of Act No. 57 of 1993.

**16/2004 Partnership with other individuals or partnerships (Justice College)**

Does a partnership have the capacity to enter into another partnership with other individuals or another partnership?

**Resolution:**

Yes.

**17/2004 Certified copy of a title deed of property (Justice College)**

Who has the capacity to apply for a certified copy of a title deed of property that is registered in the name of a close corporation, with one member and such member has now died?

**Resolution:**

Section 29 read with section 35 of the Close Corporation Act, read together the case of **Blesovsky NO and Others v Shipper and Another** 2001 (4) SA, 1269 (W), provides that the executor may apply.

**18/2004 Servitude over agricultural land (Justice College)**

Where a servitude over agricultural land is not depicted on a diagram but described in general terms, i.e. the route will be determined at a later stage, must the consent of the Minister as contemplated in terms of section 6A of the Subdivision of Agricultural Land Act 70 of 1970 be insisted upon?

**Resolution:**

The consent must be insisted upon or proof must be provided that the provisions of Act No. 70 of 1970 are not being contravened.

**19/2004 Cancellation of personal or praedial servitude (Justice College)**

Where a personal or praedial servitude is cancelled, either in terms of section 68(1), section 68(2) or section 75(3) of Act No. 47 of 1937, must the registrar of deeds insist on a transfer duty receipt or an exemption certificate?

**Resolution:**

Yes, a transfer duty receipt or an exemption certificate must be lodged.

**20/2004 De-registration of mineral rights (Justice College)**

Must the title of the land, together with the title of the mineral rights as well as the titles of other real rights, be lodged when application is made for the de-registration of mineral rights in the deeds registry?

**Resolution:**

The title deed and titles of real rights must be lodged, if available, alternatively a caveat must be noted to the effect that the client copy must be endorsed whenever it is lodged for an act of registration.

**21/2004 Divorce orders (Justice College)**

Should the divorce court order be insisted upon where an owner who was formerly married out of community of property or whose marriage was governed by the laws of another country now deals with the land and is described as divorced or unmarried?

**Resolution:**

Yes, a divorce court order must be lodged to determine whether the rights of third parties are affected and that the terms of the divorce court order, where applicable, are adhered to.

**22/2004 Mineral rights – errors in registration (Justice College)**

Should registrars of deeds still permit acts of registration pertaining to errors in registration, change of name, conversion from a Close Corporation to a Company on mineral titles, etc? .

**Resolution:**

Yes, until de-registration or lapsing of the said right.

**23/2004 Separation of Mineral rights (Justice College)**

Where townships are established, is it the duty of the registrar of deeds to concern him/herself as to the separation of the mineral rights, or request a clearance from the Department of Minerals and Energy before opening the township register?

**Resolution:**

No clearance certificate is required.

**24/2004 Mineral right conditions (Justice College)**

With regard to the de-registration of minerals or the lapsing of old order rights, how should the mineral right conditions in the title to the land be dealt with?

**Resolution:**

Conditions remain in title deeds until de-registered or the CRD issues a directive in this regard.

**25/2004 Surface right owner and mineral rights (Justice College)**

Is it necessary for the records of the deeds registry to reflect that the surface right owner is not entitled to the mineral rights or does the latin maxim *caveat emptor* find application?

**Resolution:**

No it is not necessary.

**26/2004 Draft mortgage bonds (Bloemfontein)**

Can a registrar of deeds insist on full initialing by all parties (witnesses and mortgagors) of all the pages of the draft bond? Conveyancers argue that there is no authority for such a note which leads to unnecessary rejections especially where the power of attorney to pass the bond contains the following words: "*which has been initialed by me for purposes of identification...*".

**Resolution:**

Yes. The draft bond forms part of the power of attorney and all the pages, as well as material amendments thereto, must be fully initialled.

**27/2004 Transfer without cancellation of bond (Justice College)**

Where land is transferred without canceling the bond registered over such land, how must this error in registration be amended subsequent to the deeds being microfilmed and delivered?



**Resolution:**

The bond together with consent must be lodged for cancellation and our records updated.

**28/2004      Reservation of personal servitude in Power of Attorney (Cape Town)**

When a personal servitude (usufruct etc) is reserved by the transferor in the Power of Attorney to give transfer and appears as a condition in the deed, how can the holder of such servitude take out a bond over the servitude?

**Resolution:**

A certificate of real right in terms of section 64 must be issued.

**29/2004      Transfer 'free' of lease (Cape Town)**

A property is subject to an existing mortgage bond. The owner thereafter registers a lease in favor of Engen Pty Ltd over the property. It is a general principal in law (qui prior est tempore portior est iure) that where there is a prior mortgage bond and the property is sold in execution or insolvency, the mortgagee would be entitled to have it sold free from the lease. The question is whether it is permissible for the mortgagee to waive preference of the bond in favour of the lease. The effect of this would be that if the property were sold in execution or insolvency it would have to be sold subject to the lease. If the answer to the aforesaid is yes, shouldn't Act No. 47 of 1937 be amended to make provision for a waiver of preference of a mortgage bond in favour of a registered real right (e.g. a lease)? Conference attention is drawn to the decision in Engen Petroleum Ltd v The Registrar of Deeds Cape Town (unreported case – 3889/2000).

**Resolution:**

Registrars of Deeds must follow the decision in Engen Petroleum Ltd v The Registrar of Deeds Cape Town in that such waiver should be registered. However, cognizance should be taken of the lacuna with the revision of Act No. 47 of 1937. RCR 6.1(a) of 1999 is hereby repealed.

**30/2004      DOTS Tracking Information (Office of the Chief Registrar of Deeds)**

Should DOTS tracking information be made available to the public via Deeds Web?

**Resolution:**

Yes. Selected DOTS information should be made available, as it will facilitate service-delivery.

**E. OTHER LEGISLATION THAT HAVE AN IMPACT ON ACT 47 OF 1937****31/2004 Births and Death Registration Act 1992 ..... (Justice College)**

A husband, subsequent to marriage, records the change of his surname in terms of section 93 of Act No. 47 of 1937, read in conjunction with sections 23 to 26 of the Births and Death Registration Act 1992. How does such change of surname affect the spouse's surname that adopted the former married surname?

**Resolution:**

It does not affect the surname of the spouse at all.

**32/2004 Transfer Duty Act No. 40 of 1949 (Justice College)**

Section 9(1)(e) of the Transfer Duty Act No. 40 of 1949 provides for the exemption of transfer duty in the instance of a redistribution agreement. However, section 92 of Act No. 47 of 1937, read with section 12 of Act No. 40 of 1949, still place an onus on a registrar of deeds in respect of other taxes, such as VAT. In light of the aforesaid, must a VAT-exemption be provided for the parties to the redistribution agreement and should CRC14 of 2000 spell this out?

**Resolution:**

No. A VAT-exemption certificate needs not to be insisted upon but a transfer duty exemption certificate must be lodged.

**33/2004 Administration of Estates Act No.66 of 1965 (Justice College)**

An application in terms of section 40 of the Administration of Estates Act No.66 of 1965 is not regarded as a transfer or an "acquisition". Shouldn't the provisions of CRC 14 of 2000 be applied in respect of VAT?

**Resolution:**

No. However, on eventual transfer a transfer duty receipt or exemption certificate

must be lodged.

**34/2004      Black Administration Act, 1927 (Act No. 38 of 1927)      (Pietermaritzburg)**

This registry is of the opinion that when the repeal of section 6 of the Black Administration Act, 1927 (Act No. 38 of 1927) by the schedule of the Communal Land Rights Act, 2004 (Act No. 11 of 2004) comes into effect, deeds registries will no longer be able to register transactions under GN 403/1988 and Proclamation 188/1969. Can Conference propose a solution to this issue?

**Resolution:**

The opinion of the Registrar of Deeds: Pietermaritzburg is supported. It is proposed that the provisions of Act No. 112 of 1991 be invoked before the proclamation of the Communal Land Rights Act, 2004.

**F.      SECTIONAL TITLES ACT NO. 95 OF 1986**

**35/2004      Section 18      (Cape Town)**

A body corporate sells a portion of the common property. The units in the scheme are subject to various bonds. Section 18 of Act No. 95 of 1986 requires that the **consent of all the bondholders** in the scheme must be lodged. Before the portion of the common property can be transferred various other bond are registered over the units. Is it necessary for the mortgagees of the bonds registered after the sale of the common property, but before transfer, to consent? Can there be a cut-off date to determine bonds being affected, i.e.: date of sale or date of lodgement?

**Resolution:**

The cut-off date will be the date of sale. The consents of all registered bondholders' as at date of sale must be lodged.

**36/2004      Section 25(9)      (Cape Town)**

A developer extends a scheme under the provisions of section 25(9) of Act No. 95

of 1986. The developer however wants to impose a condition, tying the units and the exclusive use areas. Should the developer lodge a new schedule of conditions or must the **tie condition** be imposed notarially or must this be created in transfer of the unit and the Cession of the Exclusive Use Area?

**Resolution:**

It can be effected notarially, provided a body corporate is in existence, alternatively it must be created in the deed of transfer and deed of cession.

**\*\*37/2004 Section 25(13) (Cape Town)**

In terms of section 25(13) of Act No. 95 of 1986, the developer or the body corporate exercising the right referred to in section 25(1) shall be obliged to erect and divide the building strictly in accordance with the documents referred to in section 25(2), due regard being had to changes in circumstances. If the developer does not extend the scheme in accordance with these plans, does the registrar have the **discretion to waive strict compliance** if it can be establish that a deviation exists? (E.g. extends the scheme on portions of the common property not reflected in the section 25(2)(a)(i) plans).

\*\*\*\*\***Resolution:**

RCR4/1994 is hereby confirmed. Act No. 95 of 1986 does not place a responsibility on the Registrar of Deeds in this regard (also see the **Sandlewood**-case (case reference ...)).

**38/2004 Section 29 (Bloemfontein)**

Uncertainty exists as to whether all mortgagees, also those who have bonds on the units of the first phase(s) of the scheme, must consent to the registration of a servitude burdening the land of the scheme which forms part of the right of extension. Conveyancers argue that it is virtually impossible to get all the **bondholders' consents** due to the fact that new bonds are registered (added) everyday especially with the bigger schemes.

**Resolution:**

Section 29(3) must be adhered to. The written consent of every mortgagee must be lodged. The practicality of section 29(3) must be investigated with the revision of Act No. 95 of 1986. However, only the consents of mortgagees as at the date of the **execution** of the notarial deed will be required.

**39/2004      Section 37(2)      (Bloemfontein)**

The wording of section 37(2) of Act No. 95 of 1986 as amended by the Sectional Titles Amendment Act, 2003 (Act 290 of 2003), " ... from the persons who were owners of units at the time when [such contributions became due] such resolution was passed," appears to be incorrect and in conflict with section 15B(3)(a)(i)(aa). The "old" wording is the correct wording. Conveyancers must now draw tri-partite agreements to rectify the situation and experience a lot of problems with the new wording of the section.

**Resolution:**

This matter has been addressed in the Sectional Titles Amendment Bill, 2005 which will be published for public comment.

**40/2004      Section 27(1A)      (Justice College)**

CRC 18 of 1997 (paragraph 14) prohibits the obtaining of a title in respect of further rights to exclusive use areas. Does Conference agree with the interpretation of the Office of the Chief Registrar of Deeds in this regard?

**Resolution:**

Section 27(1A) of Act No. 95 of 1986 empowers a developer to apply for a further certificate of right in respect of a right to exclusive use areas. Conference does therefore not agree with the interpretation of CRC18 of 1997 (paragraph 14). CRC18 of 1997 (paragraph 14) will be referred to the Office of the Chief Registrar of Deeds for amendment.

**G.      GENERAL      (ACT NO. 95 of 1986)****41/2004      Act No. 68 of 1981      (Justice College)**

May a contract as envisaged by section 20 of the Alienation of Land Act 68 of 1981 be recorded against a right to an exclusive use area, as defined in Act No. 95 of 1986?

**Resolution:**

The definition of 'land' in Act No. 68 of 1981 does not provide for the recordal of a section 20 contract against a right to an exclusive use area. Conference, however, is of the opinion that it could not have been the intention of the legislator to exclude an exclusive use area from the ambit of the definition of 'land' and therefore resolves that the recordal of section 20 contracts against rights to exclusive use areas, should be allowed.

**42/2004      Removal or consent to condition      (Justice College)**

A title condition provides that only one building may be erected on the land or that a building of not more than two stories may be erected, etc. May a sectional title register be opened on such land without the removal or consent to such condition?

**Resolution:**

No. Conditions must be removed in terms of the Removal of Restrictions Act, 1967 or an Order of Court must be sought. RCR30/1987 is confirmed.

**43/2004      Tie Conditions      (Justice College)**

An exclusive use area is tied to a section in a sectional title scheme. Must such condition be incorporated in the certificate of registered sectional title of the section and the title of the exclusive use area as a restrictive condition? Who may authorize the untying of such condition once the developer no longer exists?

**Resolution:**

All tie-conditions are regarded as restrictive conditions and must be contained in the titles. The Body Corporate and owner must apply for the un-tying of such condition.

**44/2004      Number of title in advertisement for copy of title deed      (Justice College)**

Where an advertisement for a certified copy of a sectional title unit refers to the number allocated to the endorsement whereby the land was transferred, instead of the number of the Certificate of Registered Sectional Title, must new advertisements be insisted upon.

**Resolution:**

No new advertisements are necessary. Either title references may be referred to.

**45/2004      Property subject to a usufruct      (Cape Town)**

If the property is subject to a usufruct and the owner wants to open a sectional title register, must the usufructuary consent to the opening of the sectional title register or must the owner and the usufructuary jointly apply for the opening of the sectional register?

**Resolution:**

The usufructuary may join the bare dominium owner in applying for the opening of a sectional title register. However, all certificates of title must be made subject to the usufruct.