



**rural development
& land reform**

Department:
Rural Development and Land Reform
REPUBLIC OF SOUTH AFRICA

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REGISTRARS' CONFERENCE RESOLUTIONS 2019

A. WITHDRAWAL OF REGISTRARS' CONFERENCE RESOLUTIONS

1/2019 The following Registrars' Conference Resolutions are withdrawn:

- RCR44/2003 (see RCR 3/2019);
- RCR55/2010 (see RCR 5/2019);
- RCR41/2014 (see RCR 2/2019).

B. PREVIOUS REGISTRARS' CONFERENCE RESOLUTIONS

2/2019 **Diagram of a real right of extension**

May the approved existing real right development plan of a real right of extension in terms of Section 25(4)(b), which right had lapsed or been cancelled, be utilized for subsequent cessions of portion of real rights? Where a portion of a real right of extension which have been indicated on a real right plan, lapsed or has been cancelled in terms of section 15B(1)(d), can that same real right plan in respect of the portion being cancelled/lapse be used again for the session of such portion by the body corporate to cessionary? When a real right is cancelled under section 27(5) (for example double registration of exclusive use areas) the existing plan is used.

Resolution:

No. The existing plan cannot be utilized as it has been cancelled by the Surveyor General.

- RCR 41/2014 is withdrawn.

3/2019 Servitude of right of way over exclusive use area

Is it possible to register a servitude of right of way over an exclusive use area?

Resolution:

No. Only a mortgage bond, lease contract or personal servitude of usufruct, usus or habitation may be registered over exclusive use area. See section 27(6) of Act 95 of 1986.

- RCR44/2003 is withdrawn.

4/2019 RCR 21/2004 – Protection of any rights of third parties

Property vests in an owner with a marital status of married out of community of property. The owner is subsequently divorced. The owner transfers the property now with a status of unmarried and the Registrar of Deeds request the settlement agreement to be lodged to comply with RCR 21/2004 for the protection of any rights of third parties and that the terms of the settlement agreement is adhered to. RCR21/2004 cannot be given effect to because the settlement agreement as well as the copy filed in the High Court are lost. The owner does not have any contact with the ex-spouse nor does he have any knowledge of the whereabouts of the ex-spouse. What proof will the Registrar of Deeds accept if it is impossible for the owner to comply with RCR 21/2004?

Resolution:

In this instance, a Registrar of Deeds has discretion, in terms of section 4(1)(a) of Act 47 of 1937, to call for an affidavit or other proof.

5/2019 Varying of terms in an Antenuptial Contract

What procedure and code must be used when the terms of an Antenuptial Contract are varied by an Order of Court? See the provisions of Section 89(2) and (3) of the Deeds Registries Act 47 of 1937.

Resolution:

The Order of Court together with the registered Antenuptial Contract, if available, must be lodged and gets an H - code.'

- RCR55/2010 is withdrawn.

C. DEEDS REGISTRIES ACT, 1937 (ACT 47 OF 1937)**6/2019 Section 65(1): Personal servitude over registered lease agreement**

Is a personal servitude (e.g. right of usufruct) registrable over a registered lease agreement?

Resolution:

No. Section 65(1) of Act 47 of 1937 permits the owner of *land* to grant and register a personal servitude in favour of another person over the *land*. A usufruct is such a personal servitude. Section 65(1) only refers to *land*, and not to immovable or movable property.

7/2019 Section 91: Causa - Property Transferred to Surety ship Obligation

Taking into consideration the provisions of section 91 of Act 47 of 1937, is the following *causa* contained in a deed of transfer registerable?

"...to declare that the Transferors are indebted to the Transferees in an amount of R190 000.00 in respect of a suretyship obligation and that on 30 April 2019 the parties entered into a written Agreement of Settlement in terms whereof the Transferors undertook to transfer the undermentioned property to the Transferees, who agreed to accept such transfer, in full and final settlement of the said suretyship obligation....."

Resolution:

Yes, the transaction is not in contravention with the provisions of section 91 of Act 47 of 1937.

D. REGULATIONS TO THE DEEDS REGISTRIES ACT 47 OF 1937

8/2019 **Transfer of the bare dominium without lodgement of the notarial deed of usufruct**

The bare dominium owner and holder of a usufruct together pass transfer of an immovable property which is subject to a notarially registered usufruct (section 69(1) of Act 47 of 1937 refers). The notarial deed, however, was misplaced in this instance. Must a Regulation 68 (1) copy (VA) first be obtained or may transfer of the property take place without lodgement of the notarial deed?

Resolution:

The Regulation 68(1) copy must be obtained and lodged.

E. GENERAL

9/2019 **Divisibility of a common law personal servitude (*Usufruct*)**

Where property is held in undivided shares and a *Usufruct* is registered over the property in favour of two persons, is it permissible for one of the real right holders to join one of the bare dominium owners in transferring a share? This will mean that the *original* *Usufruct* is now changed in that it is only held by the remaining *Usufructuary*.

Resolution:

Yes, in terms of section 69(1) of Act 47 of 1937 read with the definition of '*land*' it is possible. The one *Usufructuary* may join the one owner and the deed of transfer must be made subject to the *usufruct* of the other *Usufructuary*.

10/2019 **Tie over immovable and movable property for the purpose of tying the movable to immovable (thus formalizing industrial accession)**

Can a purported Tie Agreement over immovable and moveable property be registered?

Resolution:

No. The Agreement is not registrable in a deeds registry.

11/2019 Consent for the release of property on ceded bond

Who must consent to the release of property for a bond that has been ceded to a person as security?

Resolution:

The bondholder and cessionary must both consent to the release of the property from the bond, which consent may be given simultaneously or in separate consents (lodged in the same cover).

12/2019 Digitally affixed signatures on Powers of Attorney or other documents lodged for registration

Is a digitally affixed signature or an advanced electronic signature on Powers of Attorney or other documents acceptable for purposes of registration?

Resolution:

No. Digitally affixed signatures and advanced electronic signatures are currently not acceptable for purposes of registration in terms of Act 47 of 1937 and Act 95 of 1986.

13/2019 Sketch plans

A sketch plan was lodged with the registration of a water right servitude to identify the servitude area expropriated and registered under section 32 of Act 47 of 1937.

1. Can the sketch plan be replaced by an approved diagram of the servitude area?
2. If yes what procedure must be utilised?
3. Does section 44 of Act 47 of 1937 have relevance to this issue?

Resolution:

1. Yes.
2. The deed must be endorsed with a factual endorsement in terms of section 3(1) (v) of Act 47 of 1937.
3. No.

14/2019 Lodgement of documentation as proof of disqualification for inheritance

Husband and Wife were married in community of property to each other. Husband murdered Wife and was duly convicted of murder. Wife died intestate, leaving several intestate heirs including the Husband. However, Husband is disqualified from inheriting, and the estate account indicates this. The above facts must be cited in the *causa* to the deed of transfer.

Question: What must be lodged to proof to the Registrar that the Husband is excluded from taking transfer of a share in the property? Will a certificate from the Master suffice or must a court order or certificate from the Head of the Correctional facility where the prisoner has been imprisoned prior to approving the Liquidation and Distribution Account be lodged?

Resolution:

A certificate in terms of section 42(1) of the Administration of Estates Act No. 66 of 1965 must be lodged together with a copy of the liquidation and distribution account accepted by the Master, which copy must be certified as a true copy by the Master.

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

15/2019 Section 45 application and Transfer Duty Receipt/Exemption

Scenario: Parties were married in community of property to each other and one spouse passed on. The surviving spouse re-marries before vesting in terms of section 45(1) of the Deeds Registries Act 47 of 1937 was made. The normal process of registration in a deed office is that the property should vest in the parties as per the current status of affairs.

However upon section 45(1) application, the South African Revenue Services indicated on the Transfer Duty Receipt/exemption that the new spouse cannot be reflected on TDR as at the date of the transaction/acquisition (date of the former spouse's death) the surviving spouse was widow/widower.

Question: Is it allowed to include the details of both the surviving spouse and the new spouse in the application and endorsement and also accepting the Transfer duty Receipt/exemption wherein the surviving spouse is omitted, taking in to account the South African Revenue Services' argument that the new spouse cannot be included on the transfer duty receipt /exemption on the ground that as at the date of acquisition the surviving spouse was widow/widower.

Resolution:

Yes. Taking into account the date of acquisition (i.e. date of the former spouse's death) the Transfer Duty Receipt/Exemption certificate can be accepted even though the details of the new spouse is omitted. The application must reflect the current state of affairs.

16/2019 Tie Conditions imposed in terms of Subdivision of Agricultural land Act 70 of 1970

Two farm properties are tied to each other subject to the following condition:

"dat die eiendomme nie sonder die Minister van Landbou se skriftelike toestemming afsonderlik oorgedra of afsonderlike met 'n Verband beswaar of op enige ander wyse afsonderlike mee gehandel mag word nie."

One farm was sold by separate deed of sale to a separate purchaser, in clear violation of the title deed condition prohibiting certain separate dealings and the Minister later granted consent for waiving of the said restrictive condition.

Problem question: Is/can the deed of sale be declared *ab initio void* on the grounds that the parties failed to obtain the Minister's consent prior to the conclusion of the respective deed of sale, as envisaged in section 3(e)(i) of the Subdivision of Agricultural Land Act 70 of 1970?

Resolution:

No. The consent of the Minister is not necessary for the establishment of a contract of sale between the parties. The court in *Naude and Another v Terblanche and another 2008 4 SA 178 CPD* analysed a similar condition and held that the consent of the Minister is prerequisite for the transfer or vesting of such rights but not for the creation of the agreement creating the contract, which entitles the person to claim acquisition or transfer of the rights.

17/2019 South African National Road Agency Act (Section 40 (4) Act 7 of 1998)

The Registrar of Deeds shall, upon being requested by the South African National Road Agency endorse the fact that by notice in a Government Gazette a road has been declared a national road by the Minister (Section 40 (4) of Act 7 of 1998). CRC 1/2013 Para.4.3.3 is clear that if the application is not accompanied by the title deed, the office copy should be endorsed and a caveat should be noted to the effect that only the office copy is endorsed. What practice should be followed in cases where both the client's copy as well as the office copy is lost?

Resolution:

A caveat must be noted against the land involved to the effect that both the client's copy and the office copy of the title deed must be endorsed. The prescribed endorsement must also be endorsed on the caveat.

G. SECTIONAL TITLES ACT, 1986 (ACT 95 OF 1986)

18/2019 Passing of a mortgage over a section and erf which is notarially tied

A unit in a sectional title scheme is notarially tied to an erf to the extent that none of the aforesaid properties shall be transferred or separately dealt with without a written consent of person "X" and further, that for all intents and purposes the two properties be regarded as one property. How does one deal with a scenario where it is intended to register a mortgage bond over both properties? One property is in the sectional title register

and the other in the conventional land register. The mortgagor and mortgagee are the same for both properties.

Resolution:

One mortgage bond cannot be registered over both properties as the sectional unit does not form part of the erf-register. A sectional bond as well as a conventional bond must be registered with the consent of the holder of the right.

19/2019 Vesting of exclusive use areas of spouses divorced / deceased

A couple were married in community of property and then got divorced. Alternatively they were married in community of property and one of the spouses died. A section 45*bis* application (or section 45(1)) was made to vest the unit in the name of the ex-spouse (or surviving spouse) entitled thereto. However, the exclusive use area (EUA) was not dealt with. Does the EUA vest in the body corporate in whole or with respect to half share in terms of s27(4)(a) of Act 95 of 1986, or may the ex-spouse (or surviving spouse) entitled thereto, apply in terms of s45*bis* (or s45(1)) to vest the EUA in his or her name?

Resolution:

Yes the surviving spouse must still apply in terms of section 45 of Act 47 of 1937 as she/he already acquired the share by operation of law in terms of testate or intestate succession or by virtue of a divorce court order.