



DEPARTMENT: LAND AFFAIRS
REPUBLIC OF SOUTH AFRICA

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REGISTRARS' CONFERENCE RESOLUTIONS OF 2007

A. WITHDRAWAL OF PREVIOUS REGISTRARS' CONFERENCE RESOLUTIONS

1/2007 The following Registrars' Conference Resolutions are hereby withdrawn:

- RCR 24(ii) 1962
- RCR 36/1967
- RCR 6/1994
- RCR 29/1996
- RCR 7/1997
- RCR 34/2006

B. AMENDMENT OF PREVIOUS REGISTRARS' CONFERENCE RESOLUTIONS

2/2007 **RCR43/2003 – Home Owners Association Conditions**

RCR 43/2003 contains two questions and only one of these has been answered. Regarding the first question as to whether a conveyancer's certificate can be accepted in cases where a Home Owners Association has not come into existence, the resolution must be amplified as follows:

“No. The consent must be insisted upon, failing which the matter must be referred to court”.

Regarding the second part of the question posed, it is submitted that no resolution was made to address the question of bringing the condition forward in the deed of transfer.

Resolution:

1. Consent must be insisted upon, failing which the matter must be referred to court for permission to transfer without the consent.
2. The condition must be brought forward in the title deed.

3/2007

RCR28/2006 – Proof of Intestacy

Given the fact that a death notice cannot be accepted as proof of children born out of wedlock, it should also not be accepted as proof that a person died leaving no valid will. Does conference concur and if so, what proof should be required?

Resolution:

A death notice cannot serve as evidence of intestacy. Proof, in the form of an affidavit from the executor/representative, must be insisted upon. However, in the case of a transfer by endorsement in terms of section 45 of Act No. 47 of 1937, a regulation 49(1)(g) certificate from the Master will be acceptable.

C.**PREVIOUS REGISTRARS' CONFERENCE RESOLUTIONS**

4/2007

RCR5/1987 and RCR22/2005 – Bond subject to conditions of title deed

Where a sectional title unit is subject to conditions, imposed in favour of the Home Owners Association, restricting transfer, etc., must the bond registered over such unit be made specially subject to such conditions, in the light of RCR 5 of 1987, read with RCR 22 of 2005.

Resolution:

Yes, sectional bonds must be made subject to restrictive home-owners association conditions. RCR13/2002 is hereby confirmed.

5/2007

RCR 7/1997 and RCR 28/2006 – Proof of intestacy

In RCR 7/1997 Conference resolved that a death notice can be accepted, amongst other things, as proof of intestacy. In RCR 28/2006 Conference resolved that a death notice cannot be accepted as proof of intestacy. Conference should now rectify this discrepancy by amending RCR 7/1997 so as to omit reference to intestacy.

Resolution:

A death notice may be accepted as proof of death but not as proof of intestacy or proof of descendants and ascendants. For proof of heirs, (including (illegitimate) children born out of wedlock), an affidavit of next-of-kin must be called for. (RCR 29/1996 and RCR7/1997 are hereby withdrawn).

6/2007

RCR 41/2003, RCR 41/1995 and RCR 37/1996 – Registration of Usufruct over right to extend

Can a usufruct be registered over a right to extend as provided for in terms of section 25(9) of Act No. 95 of 1986? According to RCR 41/2003 and RCR 37/1996, and Act No. 95 of 1986 it is possible to register a usufruct over an exclusive use area (this amplifies the registration of a "right over a right" which the law does not allow). Also, see RCR 44/2003.

Resolution:

No, Act No. 95 of 1986 does not provide for a usufruct to be registered over a right of extension.

7/2007

RCR 6.12/1999 – Regulation 68(11)

An authorized person/agent cannot make an oath on behalf of his/her principal (See RCR 6.12/1999). What is the position with an affidavit in terms of regulation 68(11) Act No. 47 of 1937, where the agent (conveyancer) acts in terms of a general power of attorney on behalf of the Mortgagee (The Bank)?

Resolution:

RCR 6.12/1999 must also be applied to applications and affidavits in terms of regulation 68(11) of Act No. 47 of 1937. A general power of attorney mandating an agent to make an affidavit on behalf of his/her principal is contra bonis mores and should not be allowed.

8/2007

RCR 6/1997 and RCR 3/2005 - Partnership of parties married in community of property

During the conference of 2005 and 2006, conference held that parties married in community of property could enter into a partnership with each other. A marriage in community of property is a universal partnership (see *Grotius* 3.21.3 and *Voet* 17.2.4) or *Societas Universorum*. *Grotius* and *Voet* stated that universal partnerships apart from marriages in community of property were forbidden (see also *Hare v Hare & Hare*, 1961 (1) PH G 3(W)).

Furthermore, in the case of death, it is the duty of the executor and not the survivor to liquidate the joint estate (see *Voet* 23.2.92; *Van der Keessel* N 706).

Resolution:

RCR 3 /2005 and RCR 5/2006 are hereby confirmed.

9/2007

RCR13/2005 – Rates Clearance Certificate for expropriation transfers

A rates certificate is not required for an expropriation transfer as vesting takes place upon service of the final expropriation notice. See section 118 of Act No. 32 of 2000 (for every transfer there must be a rates clearance issued) read with section 20 of the Expropriation Act No. 63 of 1975 (where land has been expropriated and falls within a municipal area, the Municipality in question must inform the Minister of any moneys owing in the respect of the property).

Resolution:

RCR13/2005 is hereby confirmed.

10/2007

RCR 15/2006 – Section 45, 45(bis), 45bis(1A) – Bonds over exclusive use areas

This resolution is inconclusive, as it does not deal with the substitution of bonds registered over exclusive use areas. Should bonds be cancelled as an only option?

Resolution:

No, the bond does not have to be cancelled, however, as an alternative the exclusive use areas may be released from the operation of the existing bond and a new (collateral) bond be registered.

- 11/2007 RCR 22/2006 – Fees of Office**
Is the police exempt from the payment of office fees?
- Resolution:**
No, information requested by the Police Force, National Intelligence Agency and Scorpions, are not exempted from office fees.
- 12/2007 RCR 34/2006 – Antenuptial Contracts – un-rehabilitation**
- RCR 34/2006 states: the following clause is inserted in an Antenuptial Contract: “The accrual system is to apply without modification to their intended marriage, provided that should either party be an un-rehabilitated insolvent at the time of the dissolution of the intended marriage then the said accrual system shall not apply”.
- Is the proviso legal and enforceable?
- Resolution:**
Such a proviso is not legal and to the disadvantage of future creditors. The Matrimonial Property Act only allows that certain assets can be excluded from the accrual system. See *Vorster v Steyn 1981 (2) SA 831 (O)*.
- In view of the comments made by the judge in *ex parte Wismer 1950 (2) 195 CPD* the above resolution should be revisited.
- Resolution:**
Registrars of Deeds must register the contract. Should any dispute arise as to the contents thereof, the parties concerned may refer the matter to court for clarification. See *ex parte Wismer 1950 2 195 CPD on pages 198 and 199*.
(RCR34/2006 is hereby withdrawn)
- D. DEEDS REGISTRIES ACT NO. 47 OF 1937**
- 13/2007 Section 3 (1) (v) endorsement – property registered only in name of the husband before 1984**
Is it correct or necessary to automatically endorse the title deed in terms of section 3 (1) (v) with regard to the vesting of the property in the name of the husband and wife married in community of property to each other?
- Resolution:**
No it is not necessary to automatically endorse the title deed. Section 17(4) may be invoked.
- 14/2007 Section 45 bis of Act No. 47 of 1937**
Can section 45 and 45bis applications be applied where spouses marry in community of property subsequent to the death or divorce of a spouse or must a formal deed of transfer take place?
- Resolution:**
Yes, section 45 and 45bis may be invoked.
(RCR6/1994 is hereby withdrawn.)
- 15/2007 Application of Section 68(1)**

Where a personal servitude has lapsed and the land encumbered thereby is transferred, is

Resolution:

Section 68(1) must be complied with in all instances where a personal servitude lapses for any reason.

16/2007

Section 68(1) – Property sold in execution

A usufructuary died and a bond was passed subject to the usufruct. The property is sold in execution. The usufructuary waived preference in favour of the bondholder. Who must apply for the cancellation of the usufruct in the abovementioned cases? The registered owner refuses to sign any documents.

Resolution:

Section 68 need not to be applied. The sheriff acts as statutory agent on behalf of the court. See *South Africa Permanent Building Society v Levy* 1959 (1) SA 228 (T).

17/2007

Section 76 – Creation of Servitudes

Where land is subdivided into numerous portions in terms of a small scale subdivision, may the provisions of section 76 be applied to create praedial servitudes over or in favour of the respective portions, or must such praedial servitudes be created notarially, in terms of section 75 of Act No. 47 of 1937?

Resolution:

The provisions of section 76 may be applied without the necessity of applying for the issuing of CRT's.

E.

REGULATIONS TO ACT NO.47 OF 1937

18/2007

Regulation 44A

If a bond is passed in favour of the trustee of an insolvent estate, the practice, is to accept it if it is for the balance of the purchase price (the resolution of the trustees needs not to be lodged to ascertain whether the trustee or the Curator has the legal capacity to do so). It is not the duty of the registrar of deeds but the responsibility of the conveyancer in terms of Regulation 44 A of Act No. 47 of 1937. What will the position be in a scenario where an insolvent sold his/her property in June 2006 to his/her mother for R900 000-00, and thereafter declared insolvent in December 2006 and his/her mother was the applicant, and the mother registered a first bond in favour of the trustee of the Insolvent Estate in July 2007 for R190 000? The causa was not for the balance of purchase price.

Resolution:

It is not the responsibility of the registrar of deeds to determine the causa of the bond and whether the trustee acts in terms of his/her powers. It is the responsibility of the conveyancer to determine the validity of the transaction.

19/2007

Regulation 62 – Lengthy amendments

Regulation 62 of Act No. 47 of 1937 only makes provision where the nature of a praedial servitude, created in the deed of transfer, is of a lengthy or complicated nature as to render an effective reference thereto or a transcription thereof impracticable by endorsement. An extract thereof, certified by the conveyancer executing the deed of transfer, shall be lodged for annexure to the originals and

office duplicates of the deeds affected and a suitable reference to such extract shall be made upon such deeds. Can the same apply with lengthy amendments in terms of section 4(1) (b) of Act No. 47 of 1937?

Resolution:

A schedule may be requested for instances of a lengthy nature where it is impractical to endorse.

20/2007 Regulation 68(7) – VA copy already issued

Where application and affidavit is made for the issue of a certified copy of a title deed, bond, etc. for which a VA copy has already been issued, must the application be made in terms of regulation 68(7), or will an application in terms of regulation 68(1) be acceptable?

Resolution:

The application must be made in terms of regulation 68(1) and not 68(7). RCR26/1996.1 is hereby confirmed in respect of the disclosure of the full facts.

21/2007 Regulation 68(11)

Where a bond is lodged for cancellation in terms of regulation 68(11) and it is discovered on examination that the pages of the office copy, inter alia the property description page, has not been scanned/micro-filmed, what procedure must be followed to cancel such a bond?

Resolution:

An order of court must be sought unless one can ascertain that the bond is applicable to the application made.

22/2007 Regulation 73 (2) Act 47/1937 – Plotting of servitude

Is it possible to plot a servitude registered in terms of Section 65 or 75 of Act No. 47 of 1937 on an already registered general plan and not on a diagram of the property? The Surveyor-General's Office: Free State is of opinion that it is possible.

Resolution:

Yes it is possible, provided it is depicted on the general plan approved by the Surveyor- General.

23/2007 Reports to Court – Schedule of Fees of Office Regulation 83

Due to incomplete documents served on the registrar of deeds or discrepancies in the application documents, conveyancers sometimes require supplementary reports. What fee is payable? Is it correct to charge a further R250.00?

Resolution:

The fee should also be paid for a supplementary report.

F. GENERAL (ACT NO. 47 OF 1937)

24/2007 Retention of Maiden Name

In the event of a party to a deed retaining a maiden name after marriage, must proof be lodged, in the form of an affidavit from the party concerned, or is this

covered by the provisions of regulation 44A?

Resolution:

This is covered by the provisions of regulation 44A.

25/2007

Retention of Maiden Name

Should a party to a deed revert to her maiden name or elect to retain her maiden name, must the registrar of deeds insist on proof from such party as to the retention or reversion?

Resolution:

This is covered by the provisions of regulation 44A.

26/2007

General Power of Attorney

A General Power of Attorney was registered in 1992 in favour of the Republic of South Africa to deal with certain land parcels. May the Registrar still allow the Republic of South Africa to use such General Power of Attorney despite non-compliance with Item 28 of the Constitution No. 108 of 1996?

Resolution:

No. A General Power of Attorney may not be used to establish the vesting of property. Item 28 must be complied with.

27/2007

Joint transaction by fiduciary and fideicommissaries

An Order of Court was granted to establish the fideicommissaries and to sell the property to one of the fideicommissary heirs. Who must give transfer? Section 69 *bis* of Act No. 47 of 1937 cannot be applied. It is not a transfer "to any other person" and the fideicommissary cannot transfer to him/herself.

Resolution:

The transfer of the property must be effected by the fiduciary, in terms of the court order, to the purchaser concerned.

28/2007

Cession of Bond as a second ranking cession In securitatem debiti

Is it possible to register a cession of a bond as a second ranking cession in securitatem debiti?

Resolution:

No, Act No. 47 of 1937 makes no provision for the registration of such cessions.

29/2007

Vesting

Is it permissible to vest property as follows:

1. BELLANDIA (PTY) LTD
(Registration No. 1967/006312/07)
2. BONESS DEVELOPMENT PHASE 3 (PTY) LTD
(Registration No. 1994/008516/07)
3. SOUTHERN SPIRIT PROPERTIES 156 (PTY) LTD
(Registration No. 2005/020284/07)

trading in Joint Venture as BREE STREET JOINT VENTURE

if parties do not trade as partners, but have merely embarked on a joint venture.

Resolution:

The vesting in a joint venture is not permissible, as it is not a legal persona.

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

30/2007 MATRIMONIAL PROPERTY ACT 88 OF 1984

Where parties change their matrimonial property regime in terms of section 21 of the Matrimonial Property Act 88 of 1984 from in community of property to out of community of property, but the order of court ordering the registration does not address any immovable property registered in the name of the joint estate, how must such property be dealt with? Should the provisions of section 45*bis*(1A)(b) of the Act No. 47 of 1937 be applied or must a variation of the court order be requested?

Resolution:

Section 45*bis*(1A)(b) must be applied, however, should the parties disagree, the matter must be referred back to court.

31/2007 Section 18A of Act No. 24 of 1936

In terms of section 9(3)(a)(i) and (ii) of the Insolvency Act, 1936 the sequestration order must be noted against the spouse of the insolvent. If the name of the spouse is not disclosed on the sequestration order, how must a registrar of deeds give effect to the provisions of section 18A of Act No. 24 of 1936?

Resolution:

The registrar of deeds merely records the information provided. It is the duty of the trustee/ provisional trustee to provide the registrar of deeds with the relevant information as provided for in section 9(3)(a) of the Insolvency Act.

32/2007 Civil Partnerships

Rule applied in International Private Law - in terms of *Frankel's Estate and Another v The Master* 1950 (1) SA 220 (A) on 243 it was held that in the absence of an antenuptial contract, the proprietary consequences of a foreign marriage has to be determined in accordance with the law of the matrimonial domicile, that the domicile of the husband at the time of the marriage governs the matrimonial consequences of the marriage (see also *Sperling v Sperling* 1975 (3) SA 707 (A) and *Bell v Bell* 1991 (4) SA 195 W.

Given the above, how must the domicile be applied in same sex marriages or civil partnerships? By affording the civil union partners a choice could be discriminatory to heterosexual partners.

Resolution:

This is a *lacuna* in the Act and the matter must be referred to Department of Home Affairs for clarification.

- 33/2007 **Acceptance of Surname****
Where parties enter into a civil union, is the one party permitted to assume the surname of the other party without formally applying for the change of surname?
- Resolution:**
Yes, provided that the parties assumed such surname as provided for in Form D of the Regulations of the Civil Unions Act.
- 34/2007 **Cross Border Insolvency****
A Foreign Court has issued a judgment to liquidate a company that owns property in South Africa. A foreign trustee now requests the registrar of deeds to note a liquidation order against the company. Does the registrar of deeds have the power to note such an order to enable a foreign trustee to deal with company's assets?
- Resolution:**
The registrar of deeds must decline to note such an order, unless it has been recognized by a South African Court. See *Deutsche Bank AG v Moser and Another 1999 (4) SA 216 (C)*.
- 35/2007 **Section 10B of the Housing Act 107 of 1997****
Section 10B of the Housing Act makes provision for the endorsement of a title deed in instances where the owner receives subsidy for the purchase of the property. Can / should the endorsement also apply to title deeds already registered in an owners name?
- Resolution:**
Section 10B of the Housing Act applies to any property to which a housing subsidy has been granted.
- 36/2007 **Section 4 (C) of the Housing Development Schemes for Retired Persons Act No. 65 of 1988****
The Housing Development Schemes for Retired Persons Act does not make provision for the cancellation of endorsements in terms of Section 4 (C). What procedure should the Registrar apply in canceling such endorsements?
- Resolution:**
Endorsements in terms of section 4C can only be cancelled on the authority of an order of Court.
- 37/2007 **Act 66 of 1965 – Property sold by executor on death by fiduciary****
Does conference agree that a section 42 (2) of Act No. 66 of 1965 endorsement is all that is needed when an executor in the estate of a fiduciary sells and transfers immovable property, which is subject to a fideicommissum?
- Resolution:**
A section 42 (2) Act No. 66 of 1965 endorsement by the Master is necessary, provided the fideicommissary heirs have waived their rights.
- 38/2007 **Act 70 of 1970 - Agricultural land – transferee married in community of property****

Is it not the responsibility of the registrar of deeds to call for proof of a marriage in community of property where the transferee of agricultural land is married in community of property?

Resolution:

No, in terms of the provisions of regulation 44A it is the responsibility of the conveyancer.

39/2007

Children's Act 38/2005

With regards to CRC 10/2007: The testator dies in May 2006. He was married out of community of property. They have to register a take-over by the surviving spouse in terms of section 38 of the Administration of Estates Act No. 24 of 1913 together with a "Kinderbewys" Mortgage Bond. The child became 18 in February 2007. The executor transferred the property in August 2007 with the PA signed in July 2007. In terms of section 17 of the Children's Act 38 of 2005 the age of Majority of a child is now upon reaching the age of 18 years, in terms of section 17 of the Act. It means that with signature of the PA the child is already a major but vesting took place on the date of death of the Testator. Must the section 38 transfer and "Kinderbewys" mortgage bond still be proceeded with.

Resolution:

A Kinderbewys/Mortgage bond need not be registered. Section 38 must be proceeded with.

H.

SECTIONAL TITLES ACT NO.95 OF 1986

40/2007

Copy of Section 11(3)(b) – Schedule of Conditions

Should the office copy and client's copy of the section 11(3)(b)-schedule of conditions be lost, under what authority can application be made for a copy thereof?

Resolution:

The principles contained in section 38 of Act No. 47 of 1937 can be used.

41/2007

Section 14(8) - Cancellation of registered Sectional Plans

The Surveyor General is of the opinion that they have the authority to cancel registered sectional plans of extension irrespective of the provisions of section 14(8) of Act No. 95 of 1986. Is this permissible and, if so, what act of registration must be followed in the deeds registry to give effect thereto?

Resolution:

Section 14(8) is peremptory.

42/2007

Right of Extension and Section 15B(3) Certificates

Is it the duty of the registrar of deeds to check the right of extension on transfer of a unit to determine if same has lapsed, and if so, how must the 15B(3)-certificate be couched or must section 68(1) be complied with, where same has lapsed.

Resolution:

No, it is not the duty of the registrar of deeds to check the right of extension on

transfer of a unit. It is the duty of the conveyancer to determine whether or not the right of extension has lapsed. If it has been determined that such right has lapsed, then a section 68(1) application by the body corporate must be lodged. The 15B(3) certificate must reflect that a right of extension has been registered, but that such right has lapsed.

43/2007

Reservation of Right of Extension – Section 25(1)

What procedure must be followed where it is ascertained subsequent to registration that the reservation of a right of extension does not disclose a period of time in which the right must be exercised?

Resolution:

A notarial variation agreement entered into between the body corporate and the developer, with the written consent of all members of the body corporate as well as with the written consent of the mortgagee of each unit in the scheme, failing the agreement or the obtaining of all consents, an order of court must be obtained.

Should a body corporate not be in existence, a section 4(1)(b) application may be lodged where a right has been reserved, from time to time, but no specific period has been stipulated in the condition.

44/2007

Section 25(1) – Right of Extension

Section 25(1) of Act No. 95 of 1986 affords the developer the right to reserve a right of extension to “erect and complete from time to time ... a further building or buildings”. Does this mean that it is peremptory that it must be a further building still to be erected or can the extension take place in respect of existing (already built) buildings?

Resolution:

Pending the amendment to Act No. 95 of 1986, the extension may be registered in respect of existing buildings.

45/2007

Section 25(6A) – Reservation of Right

Where a developer has reserved a right of extension, but such right of extension has lapsed due to effluxion of time, may such developer, **prior to the establishment of the body corporate** reserve a further/another right of extension, given the wording of section 25(6A) of Act No. 95 of 1986, viz: “Where no right of extension was reserved.”

Resolution:

Yes, provided application is made in terms of section 68(1) of Act No.47 of 1937 for the lapsing of the expired right.

46/2007

Section 25(6) – Consent of usufructuaries

Where a right of extension is reserved by the body corporate and thereafter alienated, the consent of the members of the body corporate must be obtained and lodged. Is the consent of the usufructuaries over the units required?

Resolution:

No.

47/2007

Section 60(3)

In terms of Section 60 (3) of Act No. 95 of 1986 exclusive use areas could be allocated in terms of management rules and as such did not have to be delineated in the sectional plan. May the body corporate by special resolution resolve to formally cede such rights and have them registered at the deeds registry?

Resolution:

Yes, provided the provisions of section 27 is complied with.

I. OTHER LEGISLATION THAT HAS AN IMPACT ON ACT NO. 95 OF 1986

48/2007 Subdivision of Agricultural Land Act 70 of 1970

Where a sectional title register is opened on land encompassing the word “farm” in the property description must CRC 6 of 2002 be applied in that the consent of the Minister must be obtained, alternatively proof that such land is not deemed to be agricultural land?

Resolution:

Yes, CRC 6 of 2002 is applicable.

49/2007 Advertising on Roads and Ribbons Development Act 21 of 1940

Where a sectional title register is opened on land within 95 meters from a main or building restriction road, must the provisions of section 11(4) of Act No. 21 of 1940 be applied as per the uniform practice applicable to conventional transfers of land to two or more persons?

Resolution:

Yes, section 11(4) of Act No. 21 of 1940 must be adhered to.

50/2007 Share Blocks Control Act 59 of 1980 – Share Block Scheme on Agricultural land

Does the consent granted in terms of section 5 (1) (a) of the Share Blocks Control Act 59 of 1980 to operate a share block scheme on agricultural land as defined in Act 70 of 1970, read with the definitions in Act 59 of 1980 imply that consent to the conversion to a sectional title scheme is granted or is a separate consent required?

Resolution:

The consent granted in terms of section 5 (1) (a) of the Share Blocks Control Act 59 of 1980 to operate a share block scheme on agricultural land as defined in Act 70 of 1970, read with the definitions of Act No. 59 of 1980 implies that consent to the conversion to a sectional title scheme is granted. No further consent in terms of Act No.70 of 1970 is necessary.

J. GENERAL

51/2007 Right of way

In practice it often occurs that an owner of a section affords a right of way in favour

of other sections or the general public over a portion of the section, for example a walk way etc.

Is such a right of way registerable?

Resolution:

Yes, provided it is depicted on the sectional plan.

52/2007

Couching of waiver of preference of usufruct

Uncertainty at present prevails as to how the waiver of preference of a real right, such as a usufruct, must be couched in a sectional bond.

Resolution:

The usufructuary must either personally or in terms of an agent appear before the conveyancer. The bond must be made subject to the usufruct and the waiver must be contained in the bond and not the annexure.
