

# CHIEF REGISTRAR'S CIRCULAR NO. 13 OF 2005

## HOUSING ACT, 1997 (ACT NO. 107 OF 1997) AS AMENDED BY THE HOUSING AMENDMENT ACT OF 2001, (ACT NO. 4 OF 2001)

### 1. DATE OF COMING INTO OPERATION

The Housing Amendment Act, 2001 (Act No. 4 of 2001) came into operation on 1 February 2002, (see notice number R.5, 2002 in Government gazette number 7269, dated 1 February 2002.)

### 2. IMPACT OF THE ACT ON THE REGISTRATION PROCEDURES

2.1. Act No. 4 of 2001 provides for the incorporation of sections 10A and 10B into the Housing Act, 1997 (Act No. 107 of 1997) ("the Act"). The said sections prescribe the conditions to which State subsidized housing must be made subject to when transferred.

#### 2.2. **Section 10A of Act No. 107 of 1997 – Restriction on voluntary sale of state-subsidised housing :**

2.2.1. Section 10A(1) of the Act provides that every housing subsidy, as defined in the National Housing Code and granted to a natural person in terms of any national housing programme for the purpose of purchasing a property, shall be subject to a pre-emptive right. In terms of the pre-emptive right the beneficiary shall not be permitted to sell or otherwise alienate such property within a period of eight years from the date on which the property was acquired by the beneficiary, unless it has first been offered to the relevant provincial housing department.

2.2.2. The Department of Housing has indicated that the provisions of section 10A(1) of the Act shall only be applicable with regard to first time registrations of transfers of properties to beneficiaries, for example the transfer of properties from developers to beneficiaries.

- 2.2.3. The Department of Housing has also indicated that the pre-emptive right, as referred to in section 10A(1), does not apply to properties that have been sold or transferred to beneficiaries before the coming into operation of sections 10A and 10B of the Act (1 February 2002). The pre-emptive right does also not apply to properties that were not made subject thereto at the time of registration of transfer.
- 2.2.4. In order to make the relevant property subject to the pre-emptive right, the said pre-emptive right must be created in the power of attorney to pass transfer and brought forward in the relevant deed. In cases where there are no powers of attorney, the condition must be created in the relevant deed, i.e. deeds of grant or Form DDD deeds.
- 2.2.5. The pre-emptive right must read along the following lines:
- "In terms of section 10A of Act No. 107 of 1997 the within mentioned property is subject to the condition that it shall not, without the consent of the relevant provincial housing department, be sold or otherwise alienated within a period of eight years from the date of transfer, unless it has first been offered to the relevant provincial housing department".
- 2.2.6. If a beneficiary makes an offer to the department of housing in terms of section 10A(1) of the Act and the offer is rejected by the said department, proof of the rejection must be lodged and the property must be transferred free from the pre-emptive right.
- 2.2.7. If a beneficiary wishes to vacate a property and makes an offer to the department of housing in terms of section 10A(2) of the Act, and such offer is accepted by the said department, the relevant department of housing shall, in terms of section 10A(3) of the Act, be deemed to be the owner of that property.
- 2.2.8. The registrar of deeds must, upon application and submission of the relevant title deeds by the department of housing concerned, together with proof of the acceptance of the relevant offer, effect such endorsements on the title deeds as are necessary in order to

note the vesting of the property in the name of the provincial housing department concerned. Proof of acceptance can be contained in the relevant application if it is in a form of an affidavit in which all the relevant facts must be set out.

2.2.9. The application must be filled under a T code and the title deed must be endorsed along the following lines:

**Endorsement in terms of section 10A(3) of Act No. 107 of 1997**

In terms of section 10A(3) of Act No. 107 of 1997 ownership of the within-mentioned property vests in ..... (insert the name of the relevant provincial housing department).

Vide Application filled under T .....

DATE:

REGISTRAR OF DEEDS

2.2.10 Examiners must note that only title deeds that have been made subject to a pre-emptive right (see paragraph 2.2.3. *supra*), may be endorsed to indicate the vesting of ownership of the property in the name of the relevant department of housing, as contemplated in section 10A(3) of the Act.

2.2.11 The provisions of regulation 68 of Act No. 47 of 1937 must be invoked in instances where the provincial housing department wishes to obtain transfer of a property, which has vested in the department in terms of section 10A(3), and the department is not in a position to obtain the relevant title deed.

**2.3. Section 10B of Act No. 107 of 1997 – Restriction on involuntary sale of state-subsidised housing:**

2.3.1. No distinction need be made between voluntary and involuntary sales, as provided for in sections 10A and 10B of the Act. The pre-emptive right applicable to a person, as provided for in section 10A, will automatically be applicable to such person's successors in title or creditors in law.

2.3.2. In *Bodasting vs Christie & Another, 1961 (3) SA 553(A)*, the judge ruled that a pre-emptive right proper lapses in the case of a forced sale. There are, however, two exemptions to the rule, viz:

- If a pre-emptive right is linked to a period which has not yet lapsed, it will be carried forward in the deed of transfer for the remaining period;
- If the pre-emptive right binds the owner and his/her successors in title.

2.3.3. Section 10A complies with the above-mentioned criteria and makes reference to creditors-in-law, as provided for in section 10B(1), unnecessary.



**ACTING CHIEF REGISTRAR OF DEEDS**

**DATE:**

*11th August 2005*

**REFERENCE: A.6/2/P and A.1/3/1/57**

**RINGBINDER 68**

**CHIEF REGISTRAR OF DEEDS**

**REGISTRARS OF DEEDS**

**THE CHIEF: JUSTICE TRAINING**

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