



**rural development
& land reform**

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Rural Development & Land Reform
REPUBLIC OF SOUTH AFRICA

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REGISTRARS' CONFERENCE RESOLUTIONS 2010

A. WITHDRAWAL OF PREVIOUS REGISTRARS' CONFERENCE RESOLUTIONS

1/2010 The following Registrars' Conference Resolutions are withdrawn:

- RCR 49 of 1962;
- RCR 14 of 1970;
- RCR 2 of 1978;
- RCR 28 of 2002;
- RCR 47 of 2005;
- RCR 59 of 2006;
- RCR 10 of 2007;
- RCR 26 of 2008;
- RCR 48 of 2008;
- RCR 11 of 2009;
- RCR 18 of 2009.

B. PREVIOUS REGISTRARS' CONFERENCE RESOLUTIONS

2/2010 RCR 6 of 1949: Form E - Purchase price paid

RCR 6 of 1949 must be withdrawn as Form E has been amended to include the sale price.

Resolution:

No, RCR 6 of 1949 is hereby confirmed.

3/2010 RCR 65 of 1949: Minor's Date of birth

RCR 65 of 1949 must be withdrawn since the responsibility for the correctness of the date of birth is covered by regulation 44A of Act 47 of 1937.

Resolution:

No, RCR 65 of 1949 is hereby confirmed.

4/2010 RCR 35 of 1955: Interpretation of wills – when Masters and Registrars differ

RCR 35 of 1955 must be withdrawn since the resolution was adopted prior to the promulgation of Act 66 of 1965.

Resolution:

No, RCR 35 of 1955 is hereby confirmed. It is the Registrar's duty to ensure that the transaction being registered is in accordance with the provisions of the will.

5/2010 Withdrawal of RCR 14 of 1970: Stamp Duty

RCR 14 of 1970 must be withdrawn as stamp duty is no longer payable.

Resolution:

- *RCR 14 of 1970 is hereby withdrawn.*

6/2010 RCR 23 of 1970: Section 35 of Act 28 of 1966

RCR 23 of 1970 must be withdrawn. It is not clear whether the provisions of section 35 of Act 28 of 1966 still find application.

Resolution:

No, RCR 23 of 1970 is hereby confirmed. There are still conditions registered against title deeds in terms of section 35 of Act 28 of 1966.

7/2010 RCR 49 of 1962: Substituting of conveyancers in powers of attorney

RCR 49 of 1962 must be withdrawn in light of RCR 18 of 2009. However, RCR18 of 2009 must also be revisited in view of the Namibian case of *Roads Contractor Company LTD v AE/ Gams Engineering Company Namibia (Pty) Ltd*.

Resolution:

The name of the conveyancer, not disclosed on the Power of Attorney, may be inserted on the Power of Attorney with full initialling. Alternatively a deed of substitution, by the conveyancer appointed in the Power of Attorney, may be lodged, provided that the Power of Attorney makes provision for substitution.

- *RCR 49 of 1962 and RCR 18 of 2009 are hereby withdrawn.*

8/2010 RCR 30 of 1987: Sectional title scheme in conflict with title condition

In terms of section 7, read in conjunction with section 4(5) of Act 95 of 1986, it seems that an alternative practice has been developed or that no uniform practice is being followed with regard to the removal of all prohibitive title conditions from the title of the land prior to the opening of the scheme. Is it correct to accept a certificate to the effect of condonation or approval by the holder of the right (usually the Municipality)?

Resolution:

RCR 30 of 1987 is confirmed. Where there is any conflict with the conditions it must be removed or amended.

9/2010 RCR 28 of 2002: Redistribution Agreements

RCR 28 of 2002 must be withdrawn and form E of Act 47 of 1937 be amended due to the ramifications of CRC 7 of 2010.

Resolution:

Form E does not need to be amended. CRC7 of 2010 must be complied with.

- *RCR 28 of 2002 is hereby withdrawn.*

10/2010 RCR 21 of 2004: Divorce orders

RCR 21 of 2004 must be extended to cover instances where the former spouse has passed away. It shall be imperative for the lodgement of the death certificate of the deceased spouse as supporting document.

Resolution:

RCR 21 of 2004 is confirmed. The matter in question has already been dealt with in RCR15 of 2005.

11/2010 RCR 45 of 2004: Usufructuary and opening of sectional title register

Where land on which a sectional title register is opened is subject to a usufruct, RCR 45 of 2004 provides that the usufructuary **may** join the *bare dominium* owner in applying for the opening of the register. Should the resolution not be peremptory or provide an alternative?

Resolution:

The usufructuary may join the owner in applying for the registration of the sectional scheme. Alternatively the usufructuary may consent to the registration of the scheme.

12/2010 RCR 24 of 2005: Unilateral notarial deeds of cession of personal servitude

Should RCR 24 of 2005 not be withdrawn, given the fact that regulation 61(2) of Act 47 of 1937 has been amended? A unilateral cession is now permissible, provided no burden is placed on the cessionary.

Resolution:

No, RCR 24 of 2005 is hereby confirmed. Regulation 61(2) is in the process of being amended to only permit unilateral cessions of personal servitudes as provided for in section 66 of Act 47 of 1937.

13/2010 Withdrawal of RCR 10 of 2007: Section 45, 45bis and 45bis(1A) and certificates of real rights of extension or real rights of exclusive use area

RCR 10 of 2007 must be withdrawn in light of CRC 1 of 2009.

Resolution:

- *RCR 10 of 2007 is hereby withdrawn.*

14/2010 Withdrawal of RCR 59 of 2006: Right of Extension about to lapse

RCR 59 of 2006 must be withdrawn. The court has no authority to extend the right of extension.

Resolution:

Yes, pending the amendment of the Act the court has no authority to extend the right of extension in view of the court case of *SP & C Catering Investments (Pty) Limited Case No: 84/09 v The Body Corporate of Waterfront Gauteng and 17 others*.

- *RCR 59 of 2006 is hereby withdrawn*

15/2010 RCR 19 of 2007: Section 4(1)(b) of Act 47 of 1937 and the schedule of conditions (Office Fees)

RCR 19 of 2007 recommends a schedule in case of lengthy conditions of title when it is impractical to endorse the title deed in terms of section 4(1)(b) of Act 47 of 1937. Is it correct to charge the office fees on the schedule of conditions simply because it is contained in a separate cover and that cover is given a code S K?

Resolution:

No, the Schedule of Fees does not provide for a separate fee in this regard. The schedule of the condition must be lodged with the application in one cover and only one fee charged.

16/2010 RCR 9 of 2008: Proof of unnamed testate heirs

What is the position if a next of kin affidavit is not filed with the Master and the Master does not want to accept a new next of kin? The Master also refuses to provide the conveyancer with a certified copy to comply with

this resolution. Can the original next of kin affidavit be accepted and will this not be in contravention of regulation 50?

Resolution:

The original next of kin affidavit cannot be accepted. The Registrar shall only accept a Master's certified copy of the document used to prove the heirs in this instance.

17/2010 Withdrawal of RCR 26 of 2008: Regulation 84: Share Block Conversion

RCR 26 of 2008 must be withdrawn in view of new schedule of fees and CRC 7 of 2010. The registration fee as prescribed under Item 1(a) must be charged.

Resolution:

- *RCR 26 of 2008 is hereby withdrawn.*

18/2010 RCR 38 of 2008: Lost Notarial Deed

The resolution only deals with notarial deeds of servitudes and not other notarial deeds filed in notaries protocol (e.g. notarial bonds, leases and Antenuptial Contracts). How must the aforesaid be dealt with if the deeds office copy is lost or destroyed?

Resolution:

RCR 38 of 2008 is confirmed. With regard to a lost notarial bond, the bond must be dealt with in terms of regulation 68(11A) of Act 47 of 1937. As far as Antenuptial Contracts and leases are concerned, a court order must be obtained.

- *RCR38 of 2008 is hereby amended to read as follows:*

“RCR 38 of 2008 Lost Notarial Deed

If an original notarial deed of servitude is lost and the deeds office copy is also lost but the protocol copy is still in possession of the notary, may a deeds registry copy be generated from the protocol copy?

Resolution

A substituted notarial deed cancelling the existing servitude and replacing the lost notarial deed must be registered.”.

19/2010 RCR 2 of 2009: Deviations from section 25(2) plans

Section 25(2)(c) refers to a schedule indicating the estimated participation quotas of all the sections. Is the word "estimated" not indicative that minor deviations such as the section now being a bit smaller or bigger, acceptable? Also see section 25(13) of Act 95 of 1986.

Resolution:

No. RCR 2 of 2009 is confirmed.

20/2010 RCR 10 of 2009: Section 4(1)(b) of Act 47 of 1937

RCR 10 of 2009 is still not being applied uniformly in deeds registries. Either the practice must be spelt out or the matter must be resolved in the form of a Chief Registrar's Circular.

Resolution:

A conveyancer, not under oath, duly authorized by a power of attorney, mandating him/her to do anything that the owner might do, can bring an application in terms of section 4(1)(b) of Act 47 of 1937, provided the error is not in connection with the personal particulars of the owner. In the latter instances, the owner must bring the application, under oath, or the conveyancer may bring the application if he/she is duly authorised thereto; documentary evidence must be provided as to the correct state of affairs. In the case of forced sales, the executor / sheriff / trustee may bring the application, not under oath, and provide documentary evidence as to the correct state of affairs.

21/2010 RCR 12 of 2009: Section 14 of Act 47 of 1937

RCR 12 of 2009 must be withdrawn or the resolution amended to provide that section 14 of Act 47 of 1937 must only be complied with in the case of testate or intestate succession.

Resolution:

- *RCR 12 of 2009 is hereby amended to read as follows:*

RCR12/2009 - Section 14 – Assets in joint estates

Where property forms an asset in a joint estate and both spouses die successively, i.e. one year apart, may the executors in both spouses' estates sell the property, or must section 14 be complied with?

Resolution: Yes, the executors in both spouses' estates may jointly sell the property. A sale by both executors is not a contravention of section 14.

22/2010 RCR 29 of 2009: Notarial Deed for Mining Methods

Is a Notarial Deed for Mining Methods registrable if it also contains paragraphs in which servitudes over surface rights are created? If registrable, should the endorsement refer only to the relevant servitude and disregard references to mining practices?

Resolution:

RCR 29 of 2009 is hereby confirmed. However, should a notarial deed contain reference to mining methods as well as other registrable rights, reference to the mining methods must be omitted from the notarial deed.

23/2010 RCR 33 of 2009: Former TBVC states - Proof of Marriage

RCR 33 of 2009 must be amended to also apply to deeds and documents with no preparation clause in terms of section 15 of Act 47 of 1937.

Resolution:

- *RCR 33 of 2009 is hereby amended to read as follows:*

RCR33/2009: Many Deeds of Grant are registered in the name of one spouse only, and with subsequent transfers (e.g. section 18(3) transfer to the surviving spouse), proof of the marriage must be lodged. In the absence of a marriage certificate, what documentation can be accepted as proof of such marriage?

Resolution: A sworn affidavit by both parties / one of the parties to such marriage can be accepted as proof. Such a sworn affidavit may also be accepted in respect of any deed or document without a preparation clause, as required in terms of section 15 of Act 47 of 1937.

24/2010 RCR 40 of 2009: Foreign marriages: Description of same sex parties in a foreign civil union/marriage

It is not always certain whether foreign marriages must be described as a marriage or a union.

Resolution:

RCR 40 of 2009 is hereby confirmed.

25/2010 RCR 48 of 2009: Mineral Right Conditions

This conference resolution is not being applied uniformly by deeds registries. Conference must provide guidance.

Resolution:

RCR 48 of 2009 is hereby confirmed. However, where such mineral right condition contains ancillary rights, the mineral right conditions must be retained in the title deed.

26/2010 RCR 58 of 2009: Rates Clearance certificates

When a sectional title register is opened or a phase development registered and transfer is simultaneously affected of newly created sections, must a rates clearance certificate be lodged for such sections, or may one clearance certificate be lodged for the land on which such scheme is to be opened?

Resolution:

Yes, a rates clearance certificate must be lodged for each section. Alternatively, one clearance certificate may be lodged for the land on which the scheme is to be registered together with proof from the local authority that such sections have not been rated.

27/2010 RCR 56 of 2009: Impact of the repeal of the Stamp Duties Act No. 77 of 1968

This resolution is not clear regarding the amendment to Proclamation R. 293 of 1962. Is this amendment affected prior to the repeal of the Stamp Duties Act, 1968 (Act 77 of 1968)? Should it not read that due to amendment to Act 77 of 1968 no fees are payable?

Resolution:

RCR 56 of 2009 must be amended to make reference to Proclamation R9/1997 instead of Proclamation R.293 of 1962.

- *RCR56 of 2009 is hereby amended to read as follows:*

RCR56/2009:In terms of Regulation 22 of Proclamation R. 29 of 1988 a fee of R2-00 shall be payable to the registration officer in respect of any

transfer of rights or for any other act of registration required to be made under these regulations. A deed registry or a registrar shall be construed as a reference also to a registration office and a registration officer respectively. Should this not be done away with as the Stamp Duty Act has been repealed?

Resolution: It is clear from the amending Proclamation R. 9 of 1997 that the R2-00 fee should be dispensed with.

28/2010 RCR 57 of 2009: Magistrates' Courts Act, 1944 (Act No. 32 of 1944) / Section 66(4) sale in execution

It appears that RCR 57 of 2009 does not answer the question that was posed because it refers to sales in execution.

Resolution:

RCR 57 of 2009 is hereby confirmed.

29/2010 RCR 67 of 2009: Extension of schemes by addition of only exclusive use areas

Undue hardship is caused by the strict application of RCR 67 of 2009 on owners of real rights of extension of exclusive use areas only, which real rights have been registered (and sometimes mortgaged) prior to the taking of the said resolution. RCR67 of 2009 should be withdrawn in view of the above and also due to the proposed amendment to section 25 of the Sectional Titles Act.

Resolution:

RCR 67 of 2009 is confirmed.

30/2010 Withdrawal of RCR 48 of 2008 and RCR 11 of 2009: Section 80 of Act 66 of 1965

According to a discussion with the Chief Master, the provisions of section 80 of Act 66 of 1965 are not applicable to Redistribution Agreements. Should RCR 48 of 2008 and RCR 11 of 2009 not be withdrawn?

Resolution:

Section 80 of Act 66 of 1965 does not find application.

- *RCR 48 of 2008 and RCR 11 of 2009 are hereby withdrawn.*

31/2010 Withdrawal of RCR 47 of 2005 and RCR 8 of 2009: Section 25(10) lapsing of right of extension

RCR 47 of 2005 provides that the cancellation of the real right of extension is peremptory where the right has exhausted itself. This resolution is contradictory with RCR 8 of 2009. What procedure should be followed?

Resolution:

- *RCR 47 of 2005 is hereby withdrawn.*

C. DEEDS REGISTRIES ACT NO. 47 OF 1937

32/2010 Section 4(1)b of Act 47 of 1937 applications

Is it necessary to call for a bondholder's consent where the amendment to the title deed is not going to have a negative effect on the bondholder's security? How does conference interpret the words "interested parties" in section 4(1)(b)?

Resolution:

Yes, a bondholder's consent is required in terms of section 4(1)(b)(i) of Act 47 of 1937. A bondholder will always have an interest in the rectification of the title deed.

33/2010 Section 38 of Act 47 of 1937: Updating of title references in bonds

The title reference of the title deed in the property description of bonds must be updated upon issuing of a title in terms of section 38 of Act 47 of 1937. Should all bonds not be lodged for endorsing to update the title reference in the bonds?

Resolution:

Yes, bonds registered over the property must be lodged when a title is issued in terms of section 38 of Act 47 of 1937.

34/2010 Section 38 and regulation 68 of Act 47 of 1937: Missing pages

Section 38 does not deal with missing pages and regulation 68 deals with lost or destroyed titles. How does one deal with an incomplete title or bond. Examples:

- (a) A page in the title deed of the client's copy and the deeds registry copy is missing.
- (b) The annexure of a sectional bond of the client's copy and the deeds registry copy does not contain all pages.

Resolution:

- (a) Section 38 of Act 47 of 1937 must be applied.
- (b) In respect of bonds, the provisions of regulations 68(11A) must be complied with and a substituted bond registered. Alternatively the matter must be referred to court.

35/2010 Section 45bis and section 45bis (1A)

Section 45bis and section 45bis (1A) deal with applications and contracts in terms of sections 20 and 21(1) of the Matrimonial Property Act 88 of 1984. What about situation where parties agree to marry out of community of property and the antenuptial contract was not executed prior to their marriage. The court authorizes a contract to be entered into in terms of section 88 of Act 47 of 1937. Before registration of the Notarial contract in terms of section 88 the parties have property registered in their names describing them as married in community property. Can section 45bis and 45bis (1A) be applied or will a factual endorsement in terms of section 3(1)(v) of Act 47 of 1937 suffice?

Resolution:

Section 45bis(1)(b) and section 45bis(1A) must be applied.

36/2010 Section 45bis(1A): Rates Clearance Certificate

Is a rates clearance certificate required for an application in terms of section 45 bis (1A)?

Resolution:

No, a rates clearance certificate is not required.

37/2010 Section 56(1)(b) of Act 47 of 1937: Voluntary Liquidations

Is it peremptory that where a company or close corporation is voluntary wound up by virtue of a special resolution because it cannot pay its debts, that the open bonds be lodged for disposal? The opinion is that bonds need only be lodged for disposal if the company or close corporation is wound up by a court of law.

Resolution:

Where the company or close corporation is not wound up by the High Court, the open bonds must be lodged for disposal.

38/2010 Section 56(1)(b) of Act 47 of 1937: Voluntary 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 2 of 1978 is hereby withdrawn.*

D. REGULATIONS TO THE DEEDS REGISTRIES ACT 47 OF 1937

39/2010 Copies of receipts in terms of regulation 20(7) of Act 47 of 1937

May a Registrar accept, in terms of regulation 20(7) of Act 47 of 1937, a copy of a transfer duty receipt or rates clearance certificate certified, by a conveyancer or notary, as a true copy of the original?

Resolution:

No, a copy of a rates clearance certificate may not be accepted as the original is not filed in the Government Office. However, a copy of a transfer duty receipt, certified by the Receiver of Revenue as a true copy of the original, may be accepted.

40/2010 Regulation 44A and CRC 7 of 2010: Value of property

Will the preparing conveyancer be responsible for the correctness of the value of the property? In some cases the receiver of revenue does not require a valuation (e.g. divorce order). Will valuation certificates have to be obtained?

Resolution:

No it is not necessary to lodge a valuation certificate. In the absence of a transfer duty receipt reflecting the value of the property, the amount reflected in the deed or document, based on the municipal valuation, will be accepted as proof of the value of the property.

41/2010 Regulation 68(2): Bondholder's consent on letterheads

It is practice in certain deeds registries to insist that when application is made for a certified copy of a title deed, which is mortgaged, that the bondholder's consent, as required in terms of regulation 68(2), be provided on the letterhead of the financial institution concerned. This practice causes undue hardship and no authority for the insistence thereof exists. Should the practice be perpetuated?

Resolution:

No, the practice should be stopped.

42/2010 Application of regulation 68(11A)

Regulation 68(11A) provides that "*if satisfied that no good reason to the contrary exists*" What proof must be insisted upon by a Registrar given this vague discretion?

Resolution:

Advertisement in the Government Gazette will suffice.

E. GENERAL - (ACT NO. 47 OF 1937)

43/2010 Setting out of amounts vide CRC 18 of 1973

CRC 18 of 1973 provides that the amounts in deeds and documents must be set out with a comma before the cents. Is this practice peremptory or can a full stop also be used?

Resolution:

CRC 18 of 1973 is applicable.

44/2010 Notarial Tie-Agreement

Is it permissible to register a notarial tie agreement in respect of a long term lease agreement and land, in order that same may not be separately dealt with?

Resolution:

No. In terms of section 65 of Act 47 of 1937 it is not permissible.

45/2010 Rule 63 of the High Court Rules

Who has the capacity to authenticate a document executed in the Antarctica for use in the Republic of South Africa, given the provisions of Rule 63 of the High Court?

Resolution:

Documents executed in the Antarctica does not require authentication as a result of the provisions of section 2(1) of the South African Citizens in Antarctica Act, 1962 (Act No. 55 of 1962). The said section provides that the laws in the Republic shall apply to South African citizens while they are in the Antarctica.

46/2010 Forced sales and home owner's association consents

Where property is sold in execution or by the trustee of an insolvent estate, or the liquidator of an insolvent company, the question arises as to whether the consent from the Home Owners Association must be lodged

where the title contains a condition that the property may not be transferred without the consent from the Home Owners Association.

Resolution:

No, this is a sale sanctioned by law and it is therefore not necessary that the consent of the Home Owner's Association be lodged.

47/2010 Pre-emptive right condition and forced sale

Where property is subject to a pre-emptive right proper, such condition lapses on transfer emanating from a forced sale. However a pre-emptive right condition which binds successors in title does not lapse and must be perpetuated. Must the consent by the enforcer of the condition be lodged in the latter instance?

Resolution:

No, this is a sale sanctioned by law and it is therefore not necessary that the consent of the enforcer be lodged.

48/2010 Land Use conditions

May land use conditions be incorporated into a form DDD transfer or any other deed of transfer or are they mainly restricted to leaseholds and should only be perpetuated in transfers of leaseholds?

Resolution:

Yes, land use conditions may be incorporated in a form DDD deed of transfer or any other deed of transfer.

49/2010 Lapsing of reversionary rights

What is the correct position in instances where a title deed contains a condition (reversionary right) that binds successors in title, that a dwelling must be erected within a specific period of time?

(a) Must the condition automatically be left out from further title deeds upon transfer of the property, in instances where the dwelling has indeed been erected?

(b) Must the condition automatically be left out upon transfer of the property in instances where the period of time has expired?

(c) What is the position where the period of time has expired and the dwelling has not been erected?

Resolution:

- (a) No, the provisions of section 68(1) of Act 47 of 1937 must be complied with. Consent must be lodged to indicate that the building has been erected.
- (b) No, section 68(1) of Act 47 of 1937 finds application. The holder must exercise or waive his/her right.
- (c) Section 68 applies, provided that the imposer of the condition waives such condition.

50/2010

Value of property

An executor in the estate of B who died in 1979 is transferring from the estate to the heir. At the time of the executor's appointment (1980) the value of this property was R80 000.00 as reflected in the liquidation and distribution account. The children of the deceased (the heirs) have concluded a sale transaction with Q and are selling this property for R400 000.00 being its current value. These two transactions are linked and lodged simultaneously.

In the consideration clause of the first deed of transfer between the executor and the heirs, which value must be reflected: R80 000.00 or R400 000.00?

Resolution:

In the first deed of transfer the value will be R80 000.00 as reflected in the liquidation and distribution account. In respect of the second transfer the registration fee must be calculated on R400 000.00.

51/2010

Is it obligatory for sheriff to go to public auction?

An owner has taken a mortgage loan with a bank. Due to inability to properly service the loan, the bank decides to attach the property. Just before the sheriff goes to auction A makes an offer to buy the property. The bank agrees to the sale and does not want to proceed with the sale in execution.

- (a) Who must pass this transfer?
- (b) Is it obligatory for the sheriff to go to public auction?

Resolution:

- (a) The owner must pass transfer and the attachment must be uplifted.
- (b) No, it is not necessary in this case as the owner will pass transfer.

52/2010 Redistribution Agreements

It is practice that: *'Redistribution agreements are nothing less than a contract (see Bydowell v Chapman NO and Others 1953(3) SA 514 (A)) and thus all the requirements pertaining to contracts must be complied with'*. Deeds are rejected to have the agreements redrawn if the identity numbers and marital status of parties to the agreement have not been included in the agreement. Is this practice correct?

Resolution:

No, the Registrar cannot require the redistribution agreement to be redrawn solely due to the omission of the identity number and marital status. Documentary evidence may be called for if the identity numbers and marital status of the parties to the agreement are not apparent from the agreement.

RCR 22 of 2002 is hereby confirmed.

53/2010 Lodgement of proof

Property is bequeathed to certain persons with the **option** to transfer it to a company/close corporation/trust if it is not possible to transfer it to the persons, for example in terms of the provisions of Act 70 of 1970. Is it the responsibility of the deeds registry to call for proof that the persons named in the will as heirs are members of the close corporation, share holders of the company or beneficiaries of the trust created?

Resolution:

No, it is not the responsibility of the deeds registry to call for proof.

54/2009 Property sold in execution

If property was sold in execution and the debtor is sequestrated after such sale, does the sequestration prevent the sheriff from transferring the property to the purchaser of the sale in execution?

Resolution:

Yes. However in *Dirk Cornelius De Jager NO and others v Balju van die Hooggeregshof, Bloenfontein-Wes and others* dated 4 June 2010, the sale of the property is not suspended when application for sequestration is made. However once the sequestration order has been granted, only the trustee may pass transfer subject to the provisions of section 5 of the Insolvency Act.

55/2010 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?

Resolution:

The Order of Court together with the registered Antenuptial Contract, if available, must be lodged and gets an H - code. The said documents must be lodged in the deeds registry in which the Antenuptial Contract was registered.

56/2010 Transfer to Departments of Government

If a deed of transfer was registered and property was vested in the name of a Department of Government, for an example Department of Land Affairs, how must vesting be changed to reflect the owner as being the National Government of the Republic of South Africa?

Resolution:

An application in terms of section 3(1)(v) of Act 47 of 1937, to reflect either the National or Provincial Government of the Republic of South Africa as owner of the property, must be made by an authorised official of the relevant Government Department.

57/2010 Transfer of a Grant Right

If a Grant Right was incorrectly transferred by means of a deed of transfer (form E), how must the error be amended?

Resolution:

A caveat must be noted against the property indicating that no other acts of registration may be permitted until such time as an application has been made, in terms of section 3(1) (v) of Act 47 of 1937, for the deed to be endorsed to reflect the correct position. All subsequent acts of registration must be affected in terms of the relevant proclamation.

58/2010 Registration Fee and section 45 of Act 47 of 1937

A Transfer duty receipt usually refers to the value of the whole property and not to the value of the half share being acquired (where applicable). Is the registration fee payable on the whole property as indicated on the Transfer duty receipt or only on the half share being acquired?

Resolution:

A registration fee is payable on the value of a half share of the property.

59/2010 Revocation of inheritance by Executor

Has an executor the capacity/authority to revoke an inheritance belonging to an heir?

Resolution:

No.

60/2010 Transfer by a Master's representative of property donated by the deceased during his lifetime

Will approval be required if property was donated during the lifetime of the deceased and the Master's representative is now required to transfer the property?

Resolution:

No. The value of the property is disclosed. If the value exceeds the prescribed amount published, then the matter must be referred back to the Master for consent.

61/2010 Cancellation of PA registered in more than one office

General Powers of Attorney, especially by financial institutions, are registered separately in each deeds registry. Implementation of cancellation of Powers of Attorney by financial institutions registered in multiple deeds registries poses practical challenges.

Resolution:

The status quo must remain.

62/2010 Home Owner's Association consents with transfer by the Sheriff of property in a sale in execution or by a trustee in an insolvent estate?

Is it necessary to lodge the consent of a Home Owners Association where a title condition restricts the owner from transferring the property without the consent of such Home Owners Association?

Resolution:

The consent of the Home Owner Association is not required. The Sheriff acts in terms of an order of court. In an insolvent estate the Home Owner's Association is only a concurrent creditor and should institute action or lodge a claim to recover outstanding debts or levies.

In the matter of *Ivorol Properties (Pty) Ltd v Sheriff of Cape Town & Others 2005 (6) SA 96 (C) at Para 65*, it was held that "When a Sheriff disposes of property in pursuance of a sale in execution he acts as an "Executive of the Law" and not as an agent of any person. When a Sheriff as part of the execution process commits himself to the terms of the Conditions of Sale, he by virtue of his statutory authority, does so in his own name and may also enforce it his own name." See also *Syfrets Bank Limited & others v Sheriff of the Supreme Court & Others 1993 (3) SA 671 (T)*.

63/2010 Removal of restrictive conditions

A title condition (contained in all the title deeds in a township) in favour of the developer (or any other beneficiary) provides that the owner shall not become the owner of more than one property in a specific township. How should the condition be dealt with when it is clear that transfer of the property will lead to the contravention of such registered condition? The condition does not provide for the beneficiary to consent.

(a) Is the Removal of Restrictions Act or a court order the only means of cancellation given that this condition has been imposed against all properties in the township?

(b) Can the developer consent to the transfer?

Resolution:

- (a) Conference cannot take a resolution in this regard because every condition must be decided on upon its own merits.
- (b) No, the developer cannot consent to the transfer as the condition does not provide for consent.

64/2010 Copies of foreign divorce orders

Who may certify a copy of a foreign divorce order, where property situated in South Africa is dealt with? Must the foreign divorce order be accepted in a South African Court?

Resolution:

- (a) A foreign divorce order does not have to be accepted by the High Court of South Africa.
- (b) The foreign court order may be certified as a true copy of the original, by a conveyancer or notary.

65/2010 Property attached by the sheriff after death of owner:

A property is attached by the sheriff after the death of the owner and sold in execution. Who is responsible for transferring the property, the sheriff or the executor in the deceased estate?

Resolution:

The sheriff must pass transfer.

66/2010 Selling of deceased person's property prior to an executor being appointed:

A person passed away. After death a family member sells the deceased person's property prior to an executor being appointed. How must the matter be dealt with?

Resolution:

Had the family member purported to act on behalf of the deceased person, such transaction is null and void.

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

67/2010 Section 18(3) of the Administration of Estates Act 66 of 1965

Where land is inherited in terms of an estate that is administered in terms of section 18(3) of the Administration of Estates Act 66 of 1965, and subsequently sold for a purchase price in excess of R125 000,00 and the transfer is being effected simultaneously, must the Master be approached to approve the subsequent sale?

Resolution:

No. The subsequent sale is of no concern to the Master, neither the Registrar.

68/2010 Redistribution agreements

From a legal opinion it is evident that a redistribution agreement need not be entered into by the Executor. The Agreement is only final once the Master has accepted such agreement. The following questions emanate from the said legal opinion:

- (i) Must the agreement contain an acceptance endorsement from the Master, or will a certified copy suffice?
- (ii) Estates administered in terms of section 18(3) are not advertised and therefore the agreement is not lodged with the Master. May the original agreement be accepted as a supporting document by the Registrar? In the same vein may an originally signed affidavit of next-of-kin be accepted for estates administered in terms of section 18(3) of Act 66 of 1965?

Resolution:

- (i) No, a certified copy is not acceptable. Only a redistribution agreement containing the acceptance certificate by the Master may be accepted.
- (ii) No. Only certified copies by the Master of the redistribution agreement duly accepted and affidavits of next-of-kin are acceptable.

69/2010 Conditions imposed in terms of Act No. 21 of 1940

There is no uniformity in the deeds registries with regard to the lodgment of the consent to subdivision by the Controlling Authority where the land concerned is acquired by the South African National Roads Agency Limited. The question to be answered by conference is whether the endorsement of a title deed in terms of section 40(4) of Act 7 of 1998 renders conditions imposed in terms of the Advertising on Roads and Ribbon Development Act, 1940 (Act 21 of 1940), inoperative.

Resolution:

No, in the case of vesting or expropriation of a portion of the land in the South African National Roads Agency Limited, the consent of the controlling authority is not required.

70/2010 Section 82 of Ordinance 15 of 1986

In terms of section 82 of Ordinance 15 of 1986 the Registrar shall not register a deed of transfer of an erf in a township until such time as the local authority within whose area of jurisdiction the township is situated, has certified that it will, within a period of 3 months from the date of the certificate, be able to provide the erf with such services as it may deem necessary and that it is prepared to consider an application for the approval of a building plan in respect of the erf. The question is whether the aforesaid section must be complied with if the developer transfers a unit in a scheme opened on an Erf in a township of which a section 82 certificate has not yet been provided?

Resolution:

Yes, section 82 must be complied with upon the opening of the sectional title scheme and the transfer of units in such scheme. However, where a Certificate of Registered Title is issued, a caveat must be noted against the property concerned to the effect that on the transfer of the erf or the unit/s in the scheme by the developer, the provisions of section 82 must be complied with.

71/2010 Legislation governing development aid townships

Development Aid Townships are governed by the regulations contained in Proclamation R.29 of 1988, Government Notice R.402 of 1988, Proclamation R.30 of 1988, and Government Notice R.403 of 1988. However these regulations do not provide for all transactions that may be

registered nor do the regulations provide to invoke the deeds registries where the regulations are silent.

The eThekweni Municipality have expropriated various portions of land as well as various servitude rights. Notice of expropriation was served and noted in the deeds registry and now the expropriating authority wants to take transfer and cession. The problem is that the provisions of section 31 and 32 of Act 47 of 1937 cannot be utilized.

Resolution:

Transfers and cessions cannot take place until such time the properties are upgraded and the Deeds Registries Act made applicable.

72/2010 Cancellation of conditions imposed in terms of sections 10A and 10B of Act 107 of 1997

Section 10B(6)(b) of Act 107 of 1997 provides a procedure for the cancellation of conditions imposed in terms of section 10A and 10B of the Housing Act 107 of 1997. What procedures must be followed for the cancellation of conditions and should a transfer duty receipt / exemption certificate be called for?

Resolution:

- (a) Section 68(1) must be followed. Transfer duty receipts or exemption certificates are not required for the cancellation of these conditions.
- (b) Conditions imposed in terms of section 10A and 10B of the Housing Act 107 of 1997 must be cancelled by section 10B(6)(b) Act 107 of 1997 by way of an endorsement as provided for in the Act.

G. SECTIONAL TITLES ACT NO. 95 OF 1986

73/2010 Section 17 of Act 95 of 1986: Transfer of part of real right of extension

Section 17 provides for instances where part of a section or exclusive use area is transferred. It is silent about when part of a section 25 right of extension is transferred. How must it be dealt with when a part of a section 25 right is transferred together with the common property?

Resolution:

The procedure contained in section 17(4B) of Act 95 of 1986 pertaining to the cancellation of a portion of an exclusive use area must be applied with the necessary changes until the Act is amended.

74/2010 Section 29(3) consent of bondholders

Where a servitude is registered over the common property in a sectional title scheme, the consent of each bondholder must be lodged, i.e. bonds over the units. What will the cut-off point be for the bondholders' consents?

Resolution:

The date of the execution of the notarial deed will be the cut-off date.

75/2010 Section 24 extension and rates clearance certificate

When a section is extended, in terms of section 24 of Act 95 of 1986, must a rates clearance certificate be lodged in terms of the Municipal Rates Act, 2000?

Resolution:

No. Act 32 of 2000 does not provide for this.

76/2010 Section 24: Extension of a section

Where a section is extended, without increasing the floor area of such section, must a transfer duty receipt or exemption certificate be lodged? In RCR 40 of 1989 it is a requirement where the floor area is increased.

Resolution:

In terms of section 5(1)(b) of the Transfer Duty Act, 1949 (Act 40 of 1949), a transfer duty receipt / exemption must be lodged.

77/2010 Section 25(a) and lost plans

When it is discovered upon lodgement for the registration of a real right of extension that the plans as provided for in section 25(2)(a) and (b) of Act

95 of 1986 were never lodged or have been lost, how must the matter be addressed? The mere lodgement of plans can be detrimental to existing and potential owners.

Resolution:

The matter must be referred to court. However, the developer may cancel such right of extension and, in terms of section 25(6) of Act 95 of 1986, the body corporate can *de novo* cede the rights back to the developer.

78/2010 Section 27(5)

Section 27(5) of the Sectional Titles Act 95 of 1986 provides for the cancellation of an exclusive use area with the consent of the mortgagee of the relevant section. Is the consent always necessary even where the exclusive use area is not secured by the bond over the section?

Resolution:

The consent of the bondholder is only required when the exclusive use area is also hypothecated under the bond.

H. REGULATIONS TO SECTIONAL TITLES ACT 95 OF 1986

79/2010 Form AK

Must the new form for a sectional surety bond Form AK strictly be followed or may it be deviated from even if same is incorrect?

Resolution:

It may be adjusted to exclude reference to 'appearer'.

I. GENERAL (ACT 95 OF 1986)

80/2010 Leaseholds

May a sectional title register be opened in respect of leasehold?

Resolution:

No, in terms of the definition of owner in section 1 of Act 95 of 1986, this is not permissible.

81/2010 A sectional title register on Proclamation 293 of 1962 properties?

May a sectional title register be opened on proclamation R. 293 of 1962 properties?

Resolution:

No, see the definition of owner in section 1 of Act 95 of 1986. The holder of the Grant/Leasehold rights is not the registered owner of the land. The right must first be upgraded.

82/2010 May a liquidator apply for the opening of a scheme?

May a Liquidator of a company under liquidation apply for the opening of a sectional title register over the property of the Liquidated Company? If so, what must be done to the bonds registered over the property over which the sectional title scheme is to be registered?

Resolution:

Yes, a Liquidator may apply if duly authorised thereto by the second meeting of the creditors. The bondholder must consent to the opening of the register as prescribed under Act 95 of 1986. The bonds must be carried forward onto the Certificates of Registered Sectional Title and Certificates of Real Rights if any.

83/2010 May the executor apply for the opening of a sectional title register?

May an executor, administering the estate of a deceased "*developer*", apply for the opening of a sectional title register?

Resolution:

No, the land must be transferred to the heirs and they must make the application.

84/2010 Leaseholds

Section 56(3) of the Black Communities Development Act, 1984 (Act 4 of 1984) provides that a township developer may grant a right of leasehold without first obtaining a certificate of registered title in respect of the premises concerned. Analogous to this, may the township developer issue leasehold in respect of a portion of an erf appearing on a general plan, without firstly obtaining a certificate of registered title for the parent property?

Resolution:

No, a certificate of title must firstly be obtained.

85/2010 Notarially tied two pieces of land

A scheme is opened on two pieces of land that are contiguous and notarially tied. The developer builds on one of the pieces of land but not on the other. Is it correct to accept a rates clearance certificate for the property built on and note a caveat in respect of the other piece of land to the effect that a rates clearance certificate shall be lodged whenever building takes place on such other piece of land?

Resolution:

No. The two pieces of land that are notarially tied for the purposes of opening a sectional title scheme form part of one scheme. Therefore rates certificates for both pieces of land must be lodged.

86/2010 Cancellation of a real right over a unit

Can a real right over a unit which has lapsed for any reason be cancelled in terms of section 68 of Act 47 of 1937?

Resolution:

No, a real right over a unit which has lapsed must be cancelled in terms of section 15B(1)(d) of Act 95 of 1986.

87/2010 Creation of servitudes on or over public land

The creation of a servitude, being the transfer of rights over a public street, could well be a deprivation of the public's rights in any street. Notwithstanding the fact that it may not affect the enjoyment of its rights, it is still a transfer of rights to a party other than the general public.

- (a) Does the Local Authority have the power to act on behalf of the general public?
- (b) What public participation is necessary when their rights are impinged?

Resolution:

- (a) No, it is not necessary for the general public to be a party to the agreement. The Premier of the Province must consent on behalf of the general public, and not the municipality. Alternatively a court order may be obtained. See section 65(1) of Act 47 of 1937.
- (b) None. However the publication notice in the Government Gazette for public comment, provide the necessary interaction.

88/2010 Encroachment agreements for Sectional Title surveys

What proof is required when an approved sectional plan shows an encroachment over an existing servitude?

Resolution:

The consent of the holder of the servitude must be obtained and lodged with the Registrar.

89/2010 Cancellation of servitude to which the common property is entitled and section 75(2)*bis* of Act 47 of 1937

How must section 75(2)*bis* of Act 47 of 1937 be interpreted when cancelling a servitude to which the common property of a sectional title scheme is entitled? The requirement that all bonds be lodged is difficult to comply with especially in large schemes?

Resolution:

Act 95 of 1986 is clear. The consent of all bondholders must be lodged.
