



rural development
& land reform

Department:
Rural Development & Land Reform
REPUBLIC OF SOUTH AFRICA

OFFICE OF THE REGISTRAR OF DEEDS
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REGISTRAR'S CIRCULAR NO. 1 OF 2010

IMPLEMENTATION OF REGISTRARS' CONFERENCE RESOLUTIONS OF 2009

The Purpose of this circular is to provide clarity of how the Registrars Conference resolutions of 2009 that come into operation on the 4 January 2010 will affect the office practice of the Deeds Registry, Pietermaritzburg.

PREVIOUS REGISTRARS' CONFERENCE RESOLUTIONS

RCR3/2009 - RCR6.21/1999 - Registration copies of diagrams

Act No. 47 of 1937 requires a second copy of a diagram to be lodged but this is not required in practice. Should copies of a diagram that is to be registered, be lodged in duplicate?

Resolution:

Regulation 32 of Act No. 47 of 1937 makes reference to 'a diagram'. Only one diagram must therefore be lodged. Regulation 79bis must still be complied with. RCR6.21/1999 is hereby withdrawn.

IMPACT / PRACTICE

Only one diagram needs to be lodged. The compliance of Registrars Circular 3/2009 is therefore essential, examiners must make use of the notification form provided. Where a second copy of a diagram is lodged it should be marked R and the necessary note must be raised. Deeds should not be rejected for this.

RCR 4/2009 - RCR 15 of 2002 – Copy of lost bond

The circumstances under which both the client copy and the deeds registry copy of a bond have been lost must be taken into consideration with the procedure for the cancellation of such bond. RCR15 of 2002 must be withdrawn.

Resolution:

RCR15 of 2002 is confirmed, pending the issuing of a Chief Registrar's Circular providing guidelines that include the publication of a notice of intention to the cancellation of a lost / destroyed bond.

IMPACT / PRACTICE

See Chief Registrars Circular to be issued.

RCR 10/2009 - RCR 19 of 2008 - Section 4(1)(b)

In terms of RCR 19 of 2008, a conveyancer may apply to have a title amended in terms of section 4(1)(b) of Act No. 47 of 1937. Should the resolution not be amended to read that, 'a conveyancer duly authorized thereto by the owner of the land may apply in terms of section 4(1)(b)' ?

Resolution:

The owner can apply with the consent of other interested parties. Alternatively the conveyancer can apply with the consent of the owner and all other interested parties.

- RCR19 of 2008 is hereby withdrawn.

IMPACT / PRACTICE

A conveyancer may therefore make application either with the consent by the owner or where he/she are duly authorized by the owner to do so. However where there is amendments required pertaining to the personal details of the owner/Mortgagee then application by the owner/mortgagee themselves are necessary.

C. DEEDS REGISTRIES ACT NO. 47 OF 1937

RCR 12/2009 - 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:

Section 14 is applicable. The estate of the first dying spouse must be dealt with. Thereafter the executor in the estate of the last dying spouse can transfer the property.

IMPACT / PRACTICE

This resolution is to be withdrawn.

D. REGULATIONS TO ACT NO.47 OF 1937

RCR 15/2009 - Regulation 16 – Preparation Clause

Is there an onus on the registrar of deeds to establish that the preparing conveyancer is a "conveyancer" and has thereby the authority to sign the preparation clause on deeds and documents?

Resolution:

Yes. In terms of section 15 deeds/bonds/certificates shall not be registered/attested/executed by a registrar of deeds unless it has been prepared by a conveyancer.

IMPACT / PRACTICE

Examiners must ensure that the preparing conveyancer is a registered practising conveyancer and is authorized to prepare deeds and documents. To confirm the status of the relevant conveyancer examiners should request a data print out confirming the facts.

The Chief Registrars office has updated the database for preparing conveyancers and would continue to do so on a monthly basis.

The Registrar of Deeds will keep a database for appearing (executing) conveyancers, to enable the Registrar to keep an updated and accurate register, details and certain information will therefore be requested.

Conveyancers that will be acting as appearing (executing) Conveyancers are kindly requested to furnish Mr. Venter with the following information;

- Copy of Identity Document
- Two Identity photos
- Copy of Certificate of appointment as conveyancer

It is requested that this information is forwarded to Mr. Venter by the 01 March 2010.

E. GENERAL (ACT NO. 47 OF 1937)

RCR 18/2009 - Substitution of executing conveyancers

It has become established practice to substitute executing conveyancers in the power of attorney to pass transfer or mortgage properties, at will, without the approval of the grantor of the power of attorney. Should the grantor not agree to such substitution, in the form of initialling the inclusion?

Resolution:

Yes, the grantor and witnesses must initial the substitution to prohibit possible fraud. However, where the power of attorney makes provision for substitution, it is permitted without full initialling.

IMPACT / PRACTICE

Examiners should take special cognizance of this resolution and must make sure that the power of attorney did not make provision for substitution before raising a query of none compliance with the Circular.

RCR19/2009 - Proof of registration

May a conveyancer request a certificate in terms of Item 1 of the Schedule of Fees of Office to prove that a deed was registered, on date of execution of the said deed or batch of deeds?

Resolution:

Yes, the conveyancer may make such a request, and the certificate may be issued, provided the prescribed fee is paid.

IMPACT / PRACTICE

The Registrar of Deeds Pietermaritzburg will only issue certificates to this effect after data capturing.

RCR20/2009 - Calculation of Registration Fee

Where a deed of transfer or mortgage bond expresses the purchase price or amount borrowed in a foreign currency, at what point in time must the registration fee be calculated according to the exchange rate?

Resolution:

The registration fee must be calculated at date of registration.

IMPACT / PRACTICE

The following practice should be followed by Examiners; Examiners must not disclose a registration fee in the fees endorsement, instead a red sticker must be placed on the lodgement cover informing the ARD that he/she must calculate the fees on execution. On production to him/her of a certificate by a Conveyancer from a commercial bank reflecting the exchange rate he/she will calculate and disclose the Registration fee in the fees endorsement.

Examiners must disclose the bond amount in the foreign currency in the bond and raise and office note data instructing them to follow the amount in ZAR contained in the certificate by the commercial bank for capturing purposes.

RCR26/2009 - Filing of documents with no code/fees

It appears that there is not a uniform procedure in deeds registries to deal with certain documentation. Certain registries will file a document with the deed requiring the document (consent) and make a note on the relevant lodgement cover that the document is now filed in another cover. Some registries give it a BC number and others lodged it as a supporting document with the deed etc.

Resolution:

Acts of registration, as provided for in regulation 39(1), must be lodged in a separate cover, have a BC code, and attracts a fee. See CRC2 of 2009. All supporting documents must be lodged with the relevant deed and not in a separate cover. This resolution is, with the necessary changes, applicable to the opening of sectional title registers.

IMPACT / PRACTICE

This resolution will be implemented as from the first of March 2010. Transactions being lodged prior to the 1 March 2010 may be drafted in accordance with the Resolution. Please take note that the sectional plans and Form W application are still to be lodged in separate lodgement covers.

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

How should parties be described if they are in a union/marriage, which union/marriage is governed by the laws of a foreign country?

Resolution:

1. *Partner 1*
Identity Number
Married which marriage is governed by the laws of (the foreign country)

2. *Partner 2*
Identity Number
Married which marriage is governed by the laws of (the foreign country)

IMPACT / PRACTICE

Examiners must take cognizance of this resolution in preamble and vestings

OTHER LEGISLATION THAT HAS AN IMPACT ON ACT 47 OF 1937**RCR47/2009 - Municipal Property Rates Act No. 6 of 2004**

Given the provisions of RCR 65 of 2008 read in conjunction with CRC 2 of 2006, is any discretion still permitted as to the non-lodgement of rates clearance certificates in respect of "property", as defined in the Municipal Property Rates Act?

Resolution:

No, only the local authorities can provide evidence in this regard.

IMPACT / PRACTICE

This resolution must be read in conjunction with Registrars Circular 6/2009.

RCR 48/2009 - Mineral Right Conditions

In terms of CRC 11 of 2004 all mineral rights, i.e. old order rights and other rights had to have been de-registered by 1 April 2009 or at the latest within 6 months thereof. It is submitted that to perpetuate mineral right conditions in title deeds is superfluous and should be discontinued.

Resolution:

Mineral right conditions must be omitted from title deeds, upon transfer of the property to a new owner.

IMPACT / PRACTICE

The omitting of mineral right conditions will only be done on transfer of properties and title deeds need not be endorsed to remove mineral right conditions. This resolution will strictly be enforced as from the 01 March 2010. Deeds that are lodged prior to the 01 March 2010 that is already complying with the resolution will be accepted for registration. However

deeds that is lodged after the 10 March 2010 will be rejected if conditions are not omitted.

**RCR 56/2009 - Impact of the repeal of the Stamp Duties Act
No. 77 of 1968**

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 amendment of Proclamation R. 293 of 1962 that the R2-00 fee should be dispensed with.

IMPACT / PRACTICE

No fee of R2,00 should be called for or disclosed in the Fees endorsement. Exemption in terms of Category 5 will apply.

G. SECTIONAL TITLES ACT NO.95 OF 1986

RCR 58/2009 - Section 15B(3)

In terms of section 15B (3)(b) of Act No. 95 of 1986 a clearance certificate must be produced for the land and buildings of the scheme, if provision is made by law for separate rating of units. In terms of the Municipal Property Rates Act No. 6 of 2004 this has the effect that two clearance certificates must be lodged, i.e. one for the land and one for the buildings. Is this interpretation of section 15B(3) correct?

Resolution:

No, it is not necessary for the lodgement of two clearance certificates with the transfer of a unit. However, on the first transfer of a unit that will result in the establishment of the body corporate in terms of section 36 of Act No. 95 of 1986, a clearance certificate for the land as well as

the unit / exclusive use area being transferred / ceded, are required. Thereafter, only one clearance certificate must be lodged with the transfer of a unit (not the land), and one clearance certificate with the cession of an exclusive use area (where applicable).

IMPACT / PRACTICE

Conveyancers and Municipalities to take special cognizance of this resolution. Meetings with all stakeholders will be held to ensure compliance with this resolution.

RCR 60/2009 - Section 17 - Transfer of common property

Regulation 17(3) requires the registrar of deeds to re-register a deed of transfer. This is done by means of an endorsement, providing for another T-code. From a data capturing perspective this could cause a problem - one transaction, one fee assessed, but 2 codes. Two separate fees should be assessed. The first for the actual sectional deed of transfer and the fee must be dictated by the purchase price (if applicable), whilst the second fee must be assessed for the further act of registration, i.e. the registration in terms of regulation 17(3).

Resolution:

The status quo must remain, until such time the Act is amended.

IMPACT / PRACTICE

Only one fee is assessed and that will be for the transfer until some time the Act is amended.

RCR63/2009 - Section 24(6)(d): Calculation of participation quota

Uncertainty prevails as to the calculation of the "10 per cent" in the participation quota of any section as a result of the extension, as provided for in section 24(6) (d) of Act No. 95 of 1986. In certain instances the calculation is only done on the section being extended and not in respect of the other sections in the scheme. Clarity must be provided in this regard?

Resolution:

The calculation must be done in respect to the section that is being extended, as well as all the other sections in the scheme.

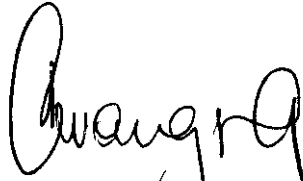
IMPACT / PRACTICE

The below mentioned calculation suggested by the Surveyor General's office at Pietermaritzburg is recommended to be utilized to determine whether there is a 10% deviation or not of any sections.

Calculation of Areas in terms of Section 24 (6) of the Sectional Titles Act

- Section 24 (6) requires " a certificate by a conveyancer stating that there is not a deviation of more than 10 % in the PQ of any sections as a result of the extension...."
- Notwithstanding anything contained in previous publications of the Deeds Journal giving personal opinions, the calculation required in terms of Section 24 (6) shall be calculated as follows:

- If the area of ANY SECTION increases through extension, the PQ of that section (i.e. ANY such section) will increase. For example, if a Scheme consist of 10 Sections, each Section being 100 square meters, then the total PQ area is 1000 square meters.
- If and ANY single section increases by 10 Square meters, the total PQ Will increase to 1010 square meters and the individual PQ of the extended section will increase from 10.0000 to 10.8911% (10/1010), or an increase in individual PQ of 8.911%, i.e. les that 10%.
- If ANY section increases by 11 square, its PQ will increase to 10.9792% (11/1011), or an increase in PQ of 9.792%, i.e. less than 10%.
- If ANY section increases by 12 square meters, its PQ will increase to 11.0672 (12/1012), or an increase in PQ of 10.672%, i.e. MORE than 10%!!!



REGISTRAR OF DEEDS: PIETERMARITZBURG
Date: 3 February 2010