



**rural development
& land reform**

Department:
Rural Development & Land Reform
REPUBLIC OF SOUTH AFRICA

REGISTRARS' CONFERENCE RESOLUTIONS 2013

A. WITHDRAWAL OF PREVIOUS REGISTRARS' CONFERENCE RESOLUTIONS

1/2013 The following Registrars' Conference Resolutions are withdrawn:

- RCR 31 of 1987 (see RCR 44 of 2013)
- RCR 2 of 1994 (see RCR 45 of 2013)
- RCR 83 of 2010 (see RCR 4 of 2013)
- RCR 36 of 2002 (see RCR 13 of 2013)
- RCR 54 of 2010 (see RCR 14 of 2013)
- RCR 19 of 2011 (see RCR 4 of 2013)
- RCR 42(a) of 2011 (see CRC 3 of 2012, as well as RCR 11 of 2013)
- RCR 70(c) of 2011 (see CRC 7 of 2013)
- RCR 2 of 2012 (see RCR 13 of 2013)

- RCR 6 of 2012 (see RCR 14 of 2013)
- RCR 7 of 2012 (see RCR 4 of 2013)
- RCR 46 of 2012 (see RCR 18 of 2013)
- RCR 57 of 2012 (see RCR 20 of 2013)
- RCR 56 of 2012 (see CRC 7 of 2013)
- RCR 61 of 2012 (see amendment to Form H of Act No. 95 of 1986)
- RCR 64 of 2012 (see RCR 21 of 2013)
- RCR 68 of 2012 (see RCR 22 of 2013)
- RCR 74 of 2012 (see RCR 24 of 2013)

B. PREVIOUS REGISTRARS' CONFERENCE RESOLUTIONS

2/2013 RCR 34 of 2009 and RCR 14 of 2011

Numerous requests have been received for the withdrawal of RCR 34 of 2009 and RCR 14 of 2011. Many townships, owned by different owners, have been opened and registered in the deeds registries in Pretoria and Johannesburg, where the relative general plans were approved by the SG and the proposed townships approved by the local authority.

In terms of section 46(1) of Act 47 of 1937 the registrar of deeds' *shall, subject to compliance with the requirements of this section and of any other law, register the plan and open a register*"

Resolution:

RCR 34 of 2009 and RCR 14 of 2011 are hereby confirmed, based on the motivation provided in RCR 34 of 2009.

3/2013 RCR 12 of 2010: Unilateral cession of personal servitude

Regulation 61(2) of Act 47 of 1937 has been amended, and a unilateral cession of a personal servitude is only permitted when ceded back to the land owner. RCR 12 of 2010 and RCR 24 of 2005 must be confirmed.

Resolution:

A unilateral cession of a personal servitude, as referred to in section 66 of Act No. 47 of 1937, will only be permitted where a cession is receded to the land owner of the land encumbered thereby.

(RCR 24 of 2005 and RCR 12 of 2010 are hereby confirmed)

4/2013 RCR 19 of 2011: Opening of sectional title register by executor

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

Resolution:

Where the deceased had sold, donated, exchanged, alienated, bequeathed, or encumbered units in the scheme, or where it has become necessary for the executor in the exercise of his/her duties in the winding up of the estate, the executor may continue with the application for the opening of the scheme.

(RCR 83 of 2010, RCR 19 of 2011 and RCR 7 of 2012 are hereby withdrawn)

5/2013 RCR 32 of 2004: Redistribution agreement and TDR

The conveyancing fraternity allege that RCR 32 of 2004 was wrongly resolved, albeit an instruction from SARS at the time, in that although a redistribution agreement is exempt from transfer duty, an exemption certificate must be lodged for VAT purposes, given the provisions of section 92 of Act 47 of 1937. What is the opinion of conference?

Resolution:

A transfer duty receipt / exemption certificate must be lodged for the estate and another transfer duty exemption certificate must be lodged for the parties to the redistribution agreement.

(RCR 32 of 2004 is confirmed)

6/2013 RCR 7 of 2007: Regulation 68(11)

Transnet is currently experiencing problems regarding the interpretation of RCR 7 of 2007. In terms of the Legal Succession to the South African Transport Services Act 9 of 1989, as amended by Act 52 of 1991, (section 24(b)) employees of the Company are empowered to carry out any act in the deeds registry. With the implementation of the abovementioned resolution, Transnet's documents are being rejected on a regular basis.

Resolution:

Section 33(2) of Act No. 9 of 1989 authorizes an employee of Transnet to act on its behalf.

7/2013 RCR 39 of 2007 – Children's Act 38 of 2005

RCR 39 of 2007 refers to section 38 of Act 24 of 1913, instead of section 38 of Act 66 of 1965. It is proposed that same be amended.

Resolution:

Reference to Act No. 24 of 1913 to be substituted by Act No. 66 of 1965.

(See RCR 39 of 2007, as amended)

- RCR 39 of 2007 is amended to read as follows:

“RCR 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.-66 of 1965 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 Kinderberwys/Mortgage bond need not be registered. Section 38 must be proceeded with."

8/2013 RCR 45 of 2007: Section 25(6A) – Reservation of Right

RCR 45 of 2007 must be amended to be in line with RCR 60 of 2008, as amended by RCR 5 of 2012.

Resolution:

(See RCR 45 of 2007, as amended)

- RCR 45 of 2007 is amended to read as follows:

"RCR 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 15B1(d) of Act 95 of 1986 for the lapsing of the expired right."

9/2013 RCR 8 of 2009: Right of Extension and section 15B(3) Certificates

RCR8 of 2009 is incomplete as it does not address the question whether the deeds registry can insist on noting of lapsing of a real right of extension if it comes to the attention of deeds office that such real right has lapsed. The resolution only focuses on the Registrar's duty to determine that the section 15B (3) certificate, with regard to the right of extension, is correct.

Resolution:

RCR 42 of 2007, RCR 17 of 2008, RCR 8 of 2009 and RCR 55 of 2012 are confirmed.

10/2013 RCR 29 of 2009 and RCR 22 of 2010: Notarial Deed for mining methods

RCR 29 of 2009 and RCR 22 of 2010 must be revisited in view of the unreported case of *Sasol Mining Proprietary Limited v The Chief Registrar of Deeds and Others (Case No. 72102/2012)*

Resolution:

In view of *Sasol Mining Proprietary Limited v The Chief Registrar of Deeds and Others (Case No. 72102/2012)* RCR 29 of 2009 and RCR 22 of 2010 are withdrawn. However, each notarial deed must be tested in accordance with section 63 of Act 47 of 1937.

11/2013 RCR 42(a) of 2011: Name change of Home Owner's Association

RCR 42(a) of 2011 which refers that the conditions in a title deed must refer to the new and the old name, must be reconsidered given the provisions of CRC 3 of 2012.

Resolution:

Paragraph 4.4.4 of CRC 3 of 2012 must be adhered to in that the condition must be quoted verbatim, however, the consent required for an act of registration must refer to both new and the old name.

(RCR 42(a) of 2011 is withdrawn)

12/2013 RCR 61 of 2011: Section 17 - Personal servitudes

This resolution must be amended to be in line with RCR 51 of 2012 in that the whole of the exclusive use area must be cancelled when the common property, that includes part of an exclusive use area, is ceded.

Resolution:

Conference agrees that where part of an exclusive use area is included in a transfer of a portion of the common property, the whole of the exclusive use area must be cancelled, and the real rights over the exclusive use area must also be cancelled. However, RCR 61 of 2011 is confirmed insofar as parts of sections are included in the transfer of a portion of the common property.

13/2013 Erroneously registered exclusive use areas (RCR 36 of 2002 and RCR 2 of 2012)

There is no basis in law for ruling that there is no authority for the "cancellation of an erroneously registered right of exclusive use area" but which then permits both the "erroneously registered right of exclusive use area as well as the correctly registered exclusive use area" to be cancelled. This does not make sense. Section 27(5) of the Sectional Titles Act clearly authorises a cancellation of any registered exclusive use area by the holder thereof and the Body Corporate, and it is not clear where the prohibition against the cancellation of only an "erroneously registered" right of exclusive use area comes from – while a "correctly" registered EUA can be freely cancelled.

Resolution:

Where the same exclusive use area is erroneously registered in the names of two or more owners by virtue of separate title deeds, such exclusive use area may be cancelled in terms of section 27(5), redelineated on a plan in terms of section 27(2) and ceded to the rightful owner, alternatively section 6 of Act 47 of 1937 must be applied.

(RCR 36 of 2002 and RCR 2 of 2012 are hereby withdrawn)

14/2013 Property sold in execution and subsequent sequestration of the estate of the debtor (RCR 6 of 2012 and RCR 54 of 2010)

If property was sold in execution and a notice has been published in the Gazette of the intention to sequester the estate of the debtor, does the notice of sequestration prevent the sheriff from transferring the property to the purchaser of the sale in execution?

Resolution:

Yes, Section 20 of the Insolvency Act finds application. In *JP Fourie N.O. and M Barnard N.O v GV Edkins (No. 740/12)* the Supreme Court of Appeal ruled that upon publication of the notice of sequestration of an estate, which estate includes property under attachment or the proceeds thereof which are in the hands of the sheriff, such property / proceeds first vest in the Master and thereafter in the trustee upon their appointment. It includes immovable property sold in execution but not yet transferred at the date of sequestration.

(RCR 54 of 2010 and RCR 6 of 2012 are hereby withdrawn)

15/2013 RCR 22 of 2012: Description of a Commandite Partnership

RCR 22 of 2012 should be revisited to allow for registrations in the names of "Silent Partnerships" as well as "En Commandite Partnerships".

Resolution:

The matter will be referred to the Deeds Registries Regulation Board, however, in the interim RCR 22 of 2012 is confirmed

16/2013 RCR 27 of 2012: Date of transaction where massing and adiation take place

RCR 27 of 2012 should be revisited. This resolution is in direct conflict with the transfer duty handbook which holds that the date of adiation must be the date of the transaction and not the date of death.

Resolution:

RCR 27 of 2012 is confirmed.

17/2013 RCR 28 of 2012: Description of parties to a polygamous marriage

The resolution must be reconsidered given the judgment handed down by the Constitutional Court in *Ngwenyama v Mayelane & another CCT 57/12 [2013] ZACC 14*

Resolution:

RCR 28 of 2012 is hereby confirmed.

18/2013 RCR 46 of 2012: Section 10A and 10B of the Housing Act 107 of 1997 conditions

RCR 46 of 2012 must be revisited in that not only an application by the "owner" must be accepted, but also an application from the board or a conveyancer, provided the necessary proof of the existence of the conditions is provided.

Resolution:

The conditions can be registered upon lodgment, by the owner / conveyancer / Housing Board, of an application in terms of section 3(1)(v) of Act No.47 of 1937, together with the necessary proof that such conditions are applicable in terms of the Housing Act no. 107 of 1997.

(RCR 46 of 2012 is withdraw

19/2013 RCR 54 of 2012: Section 22 and Bonds

It is clear from RCR 54 of 2012, especially par. (b), that Certificates of Registered Sectional Title may be issued to separate co-owners on partitioning where there is a partition agreement on subdivision of a section(s) in terms of section 22 of Act 95 of 1986.

In the aforementioned scenario, can we consider the following burning issues?

- (a) Is the section 22 application a transfer?
- (b) Form O makes no provision for the vesting of subdivided sections in the names of different owners?
- (c) As no consideration clause is provided in form O how would you know if consideration was paid and whether TDR or TDE must be lodged or not?
- (d) Must rates certificates be lodged?
- (e) If no body corporate is established and the developers are subdividing as above would a body corporate not have been established?
- (f) If owners/developers are subdividing, would a section 15B(3) not be required?

Resolution:

Section 22 is deemed to be a transfer in respect of partition agreements. Form O must be suitably adapted to provide for a consideration clause.

The necessary rates clearance certificates, TDR and form W, if applicable, as well as a section 15B(3) certificate must be lodged.

However, in order to eliminate potential problems arising from the adaptation of the prescribed forms it is recommended that conveyancers firstly subdivide and thereafter partition.

Pending the amendment of the Act, RCR 54 of 2012 is hereby confirmed.

20/2013 RCR 57 of 2012: Creation of servitudes under section 29(3)

May a developer, prior to the establishment of the body corporate, enter into a notarial deed as envisaged under section 29, restricting the common property of a sectional title scheme?

Resolution:

Yes, the developer has the right to enter into a notarial deed restricting the common property. However, a Registrar shall not register such servitude unless an affidavit by the developer is lodged to the effect that no unit in the scheme has been sold, donated or exchanged, or if a unit was so alienated, the developer discloses in such affidavit that the acquirer thereof has been informed in writing of the servitude.

(RCR 57 of 2012 is withdrawn)

21/2013 RCR 64 of 2012: Power of developer to subdivide, consolidate and extend

RCR 64 of 2012 must be amended by the deletion of "*or in the absence thereof the written consent of the acquirer to such acts of registration is obtained*" as this will have the result that the deeds registry will not be aware who must consent.

Resolution:

Yes, the developer has the right to enter into such acts of registration. However, a Registrar shall not register such acts of registration unless an affidavit by the developer is lodged to the effect that no unit in the scheme has been sold, donated or exchanged, or if a unit was so alienated, the developer had disclosed in such affidavit that the acquirer thereof had been informed in writing of such acts of registration.

(RCR 64 of 2012 is withdrawn)

22/2013 RCR 68 of 2012: Description of real right of extension

Where a real right of extension is sold or mortgaged and it is determined that only the remainder of the real right still exists, as certain phases have already been exercised, how must the description of such real right of extension read in the notarial deed of cession / bond?

Resolution:

The description must read along the following lines:

“The right to erect and complete from time to time within a period of five years with effect as from the date of the registration of the real right of extension, for his/her personal account on the specified portion of the common property as indicated on the plan referred to in section 25(2)(a) of the Act, filed in this office, and to divide such building or buildings into a section or sections and common property, and to confer the right to exclusive use over a portion of such common property upon the owner or owners of one or more units in the scheme known as Ivory Park in respect of the land and building or buildings situated at Erf 1234, Zwartkops Province Gauteng, Registration division JR, and shown on Sectional Plan No. SS 43 / 2002, with the exclusion of the rights of extension already ceded.”

(RCR 68 of 2012 is withdrawn)

23/2013 RCR 70 of 2012: Application for cancellation of plans and cancellation of servitudes

Will this Resolution also apply in instances where the sectional title plans are cancelled in terms of the following sections:

- (a) Section 14(8) of Act 95 of 1986;
- (b) Section 17(5) of Act 95 of 1986;
- (c) Section 19 of Act 95 of 1986.

Resolution:

- (a) Yes.
- (b) Yes.
- (c) Yes.

24/2013 RCR 74 of 2012: Description of common property

Where a servitude is to be registered by the body corporate over common property, uncertainty prevails as to the manner in describing the servient tenement.

Resolution:

Par. 3 of form H will be utilized with the following wording:

“ the common property of the scheme known as, situated on (description of underlying land)”.

(RCR 74 Of 2012 is hereby withdrawn)

C. DEEDS REGISTRIES ACT 47 OF 1937

25/2013. Conversion of a Company and endorsement in terms of section 3(1)(v)

Where a company, subsequent to 1 May 2011, has converted from a private company to a public company or *vice versa*, no procedure presently exists for the recordal of such conversion, as it cannot be registered in terms of section 93 of Act 47 of 1937. Conference must please provide guidance as to the procedure to be followed.

Resolution:

The provisions of section 3(1)(v) of Act No. 47 of 1937 must be invoked to record the conversion. An application by a conveyancer / owner / holder must be lodged, duly supported by documentary evidence of the conversion.

26/2013 Application of section 36 of Act 47 of 1937

Are the provisions of section 36 of Act 47 of 1937 peremptory when more than one piece of property is held under a title deed and the bond must be registered over the respective properties (i.e. different properties) in favour of different bondholders?

Resolution:

No. However, the provisions of section 36 must be referred to the Deeds Registries Regulation Board for consideration.

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

27/2013 Underhand consents for waiver of a fideicommissum

In terms of *Van der Merwe v Registrar of Deeds NO 1975 (4) SA 636 (T)*, a registrar of deeds is permitted to accept underhand waivers from the fideicommissary heirs where they waive their rights on transfer of the land by the fiduciary. Can these underhand waivers be accepted, without invoking the provisions of section 68(1) of Act 47 of 1937?

Resolution:

The provisions of section 68(1) of Act 47 of 1937 must be complied with.

28/2013 Lease agreement entered into by executor

May the executor of a deceased lessor proceed with the notarial lease agreement entered into during the lifetime of a deceased?

Resolution:

Yes, the executor's duty is to administer and liquidate the estate and ordinarily he/she has no authority to enter into a lease of estate property, unless he is given this power by the will, or the deceased had bound himself to enter into a lease (see paragraph 12.40 Meyerowitz on the Administration of Estates, 6th Edition.)

29/2013 Cancellation of bond where bondholder is a finally deregistered company and not capable of being traced

Where a bond must be cancelled and the bondholder is a company which has been finally de-registered, how must the bond be dealt with?

Resolution:

The court must be approached for consent to cancellation of the bond. However, in terms of the case of *Rainbow Diamonds v SANLAM 1984(3) SA 1 (A)*, the bond can be regarded as *bona vacantia*, in which case the Minister of Finance may consent to the cancellation.

30/2013 Registration of servitude over leased land

Where land is subject to a lease agreement which has been sub leased, and the owner of the land anticipates registering a servitude over such land, may the lessee and sub lessee join in, in registering the servitude, or can they merely consent to the registration thereof.

Resolution:

On the analogy of section 65(3) and 76(2) of Act No. 47 of 1937, the lessee and sub lessee must consent to the registration of the servitude. They must not be joined in the deed itself.

31/2013 Leases and sub leases of land

May a sub-lessee of land sub lease the land?

Resolution:

Yes. Act No. 47 of 1937 does not prohibit a lessee from sub leasing and similarly a sub lessee from also further sub leasing (see section 3(1)(p) of Act No. 47 of 1937).

32/2013 Cancellation and registration of servitude

Is there any legal objection to the registration of one notarial deed encompassing the cancellation of an existing servitude and the simultaneous registration of a new servitude over the same property?

Resolution:

No objection exists, provided that two transfer duty receipts/exemptions are lodged as this constitutes two separate transactions for purposes of the Transfer Duty Act 40 of 1949.

33/2013 Defunct Home Owner's Association

Where a Home Owners' Association is defunct or does not exist, and the court is approached to transfer land without the consent from the Home Owners' Association. How must the other erven in the Township be dealt with?

Resolution:

Another court order must be obtained in respect of the other erven.

34/2013 Cancellation of pre-emptive right and transfer duty

Where a pre-emptive right, not binding successors in title, is cancelled, is this deemed a transaction within the ambit of section 2 of the Transfer Duty Act 40 of 1949? Must a transfer duty receipt or exemption certificate be lodged, as provided for in RCR 5 of 2005?

Resolution:

No, it is not a "property" as defined in the definition of property in the Transfer Duty Act 40 of 1949. No transfer duty receipt or exemption certificate is required.

35/2013 Transfer duty on cancellation of notarial lease agreement

Is transfer duty payable on the cancellation of a long term lease agreement which is being cancelled before the expiry date of the lease?

Resolution:

A lease does not fall within the definition of "property" in the Transfer Duty Act No. 40 of 1949 and therefore no transfer duty is payable.

36/2013 Black-booking of holders of vested rights who have waived such rights

In the instance where massing and adiation has occurred and the surviving spouse has waived his/her right to the limited interest subsequent to the acceptance thereof, must such holder of the vested right be checked for interdicts to determine *locus standi*?

Resolution:

Yes. It is not a *spes* as such right has already vested, and should such person be insolvent, he/she will have no *locus standi* to waive such right.

37/2013 Power of attorney

A power of attorney is lodged for registration in a deeds registry in terms of section 3(1)(u) of Act 47 of 1937. However, same contains the new appointment as well as the revocation of a previously registered power of attorney. Must the Registrar accept such a document for registration purposes?

Resolution:

RCR 42/2008 is hereby confirmed.

38/2013 Cancellation of charges that were registered in favour of the South African Development Trust

There is uncertainty on who must consent to the cancellation of charges that were registered in favour of the SOUTH AFRICAN DEVELOPMENT TRUST (SADT). The SADT was dissolved as a statutory body in 1991. Can conference give guidance?

Resolution:

In terms of Proclamation R 28 of 1992 the Premier of the Province concerned or his/her delegate is empowered to cancel those charges.

39/2013 Vesting in Partnerships

A property is held by two persons each holding a 50% undivided share. These co-owners subsequently form a partnership and include the aforesaid property in the partnership agreement. Can the property now be vested in the name of the partnership by means of a section 3 (1) (v) application?

Resolution:

No. If registration into the name of the partnership is required, it must be transferred by means of a deed of transfer into the name of the partnership.

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

40/2013 Administration of Black Estates

Where a Black person has died intestate prior to 1994, and the estate was administered in terms of the Administration of Estates Act, 1965 and the Intestate Succession Acts, must the matter be rejected for the estate to be wound up in terms of the Regulations issued under the Black Administration Act 38 of 1927 (R200 of 1987)?

Resolution:

Yes. The estate must be administered in terms of Act No. 38 of 1927.

41/2013 Act 70 of 1970

An Act 70 of 70 consent sets out how two farm properties, situated in the same registration division, should be subdivided, i.e. the one farm, "Farm 1", is subdivided into portion A and a Remainder and the other farm, "Farm 2", is subdivided into portion B and the remainder. The consent further states that portion A of "Farm 1" should be consolidated with the remainder of "Farm 2" and portion B of "Farm 2" with the Remainder of the 1st mentioned farm, "Farm 1". However, the two farms were consolidated prior to any subdivisions but subsequently subdivided. The end result was the same as set out in the consent. Do we accept this as compliant with the consent and register the transactions?

Resolution:

It may be accepted as the same result is achieved as set out in the consent.

42/2013 Section 49 of the Estate Act

In the event of a sale of land to a person as envisaged in terms of section 49 (1) of the Estates Act 66 of 1965, is the section 42 (2) approval by the Master sufficient to allow transfer of the immovable property?

Resolution:

Yes, the section 42 (2) consent by the Master is sufficient. However, when it is clear that the executor is also the purchaser, further confirmation is necessary.

F. SECTIONAL TITLES ACT 95 OF 1986

43/2013 Dealing with real rights - section 49(4)(d)

How must real rights, such as rights of way, registered over sections, subsequent to the opening of a sectional title scheme be dealt with where the scheme is cancelled and the land reverts back to the land register?

Resolution:

These rights must be cancelled by virtue of a bilateral notarial deed, before the register can be closed.

44/2013 Section 10

Where co-developers enter into a partition agreement, must the provisions of section 10 of Act 95 of 1986 be complied with? Alternatively, must a *caveat* be noted against the relevant sections to indicate that on the sale of the sections, the provisions of section 10 must be complied with?

Resolution:

A body corporate is established on the registration of the partition transfer, however, section 10 does not find application. A caveat must be noted for the provisions of section 10 to be complied with on subsequent transfer of the sections by the respective owners.

(RCR 31 of 1987 is hereby withdrawn)

45/2013 Section 10 affidavit

The sheriff has been authorised by court order to conduct a sale in execution of a section which is still registered in the name of the Developer. Is a section 10 affidavit required?

Resolution:

In terms of a legal opinion received from the Department of Justice dated 5 July 1989 a sale in execution does not require that the provisions of section 10 be adhered to.

(RCR 2 of 1994 is hereby withdrawn)

46/2013 Section 15B(5)

The Act does not contain a mechanism on how the provisions of section 15B(5) must be applied.

- (a) To address bonds, may section 37 of Act 47 of 1937 be applied in respect of the unit which is deemed to be land, and not in respect of the Exclusive Use Area or section 25 right?
- (b) Form I of Act 95 of 1986 has been amended to include Exclusive Use Areas and section 25 in respect of the application. Form J is for the Certificate of Registered Sectional Title in respect of the unit, but there is no prescribed form for the Certificates of Real Rights. (There is a form for a separate title deed for an Exclusive Use Area as prescribed in section 27(7)(a) – regulation 28(5)(a), form AI).
- (c) Real rights registered over the Exclusive Use Area must also be addressed, i.e. consent of holder of real right (not necessary), the title deed, if available must be lodged for endorsement.

Resolution:

- (a) Section 37 must be applied for units and section 27 and 25 rights, until the Act is amended
- (b) Form AI must be used with the necessary changes until the Act is amended.
- (c) Title deeds of real rights must be lodged for endorsement, if available. No consents are necessary.

47/2013 Section 27(1A)

Section 27(1A) provides as follows: *“Notwithstanding section 27 (1) (a), if no reservation was made by a developer in terms of subsection (1) and the body corporate has not yet been established, the registrar may issue a certificate of real right in respect of a right of exclusive use as contemplated in section 12 (1) (f) on application by the developer accompanied by the sectional mortgage bond and the written consent of any bondholder.”*

The sections allow for the developer to apply for a Certificate of Real Right for exclusive use area if he/she had not reserved EUAs in terms of section 27(1), i.e. with the opening of the scheme. May the developer apply section 27(1A) if EUAs had been reserved with the opening of the scheme? Scenario: Developer extends a section, affecting an EUA. The EUA is cancelled. Can the Developer create another EUA in terms of section 27(1A) taking into account that EUAs have been reserved with the opening of the scheme?

Resolution:

Yes, the developer has the right to apply for a certificate of real right in terms of section 27(1A). However, a Registrar shall not issue such certificate of real right unless an affidavit by the developer is lodged to the effect that no unit in the scheme has been sold, donated or exchanged, or if a unit was so alienated, the developer had disclosed in such affidavit that the acquirer of the unit had been informed in writing of such issuing of the certificate of real right.

48/2013 Section 25 - Extension of a right to extend a scheme

When the time period of a right of extension is extended, in terms of section 25 (1) of Act No. 95 of 1986, the consent of the bondholder of the bond registered over the real right of extension is not required. However, must the bond over that real right be lodged for endorsement?

Resolution:

The bonds registered over the section 25 right must be lodged for endorsement of the extension of the period.

G. REGULATIONS TO SECTIONAL TITLES ACT 95 OF 1986

49/2013 Form W

Where the form W was erroneously lodged and filed on the exercising of a right of extension, how must the correct form W be dealt with on the transfer of the first section in the scheme?

Resolution:

The erroneously recorded form W must be endorsed as to the cancellation thereof, in terms of section 3(1)(v) of the Deeds Registries Act 47 of 1937, and a new form W must be issued in terms of regulation 16(1)(c) of the Sectional Title Act 95 of 1986.

H. GENERAL (ACT 95 OF 1986)

50/2013 Sale of exclusive use area by holder and usufructuary

Where an holder of an exclusive use area together with the usufructuary have together sold the exclusive use area to a new purchaser, may the holder and usufructuary together cede the exclusive use area, on the analogy of section 69 of Act 47 of 1937?

Resolution:

Yes, section 69 may be applied pending the amendment of the Act.

51/2013 Establishment of body corporate

If all the units in a scheme are transferred individually, but in one transfer deed by the developer to one owner, will the body corporate be established upon transfer taking place?

Resolution:

Yes, the body corporate will be established upon registration of the transfer. However, where the transaction is being registered in terms of section 34(3), in terms of which all the right, title and interest in the scheme is transferred, no body corporate will be established.

52/2013 Lost or destroyed rules of scheme

What procedure must be followed where the amended rules of a Sectional Title Scheme have been lost or destroyed?

Resolution:

Lost or destroyed rules may be substituted by lodging the substituted rules, supported by a unanimous resolution.

53/2013 Closure of sectional Title Scheme and bonds

Where a sectional title register was opened on two properties, and only one of the properties was mortgaged and such bond was substituted in respect of the scheme as a whole, how must the bond be dealt with when the scheme is closed in the case where certificates of registered title are issued to the respective owners or where the title revives.

Resolution:

The bond must be substituted in respect of the certificates of registered title or in respect of both revived title deeds.

54/2013 *Bona vacantia* property

A company, having *only* a section and an exclusive use area registered in its name, was de-registered and the properties therefore became *bona vacantia* (to the state) what is the position with regard the exclusive use area? Can one argue that it should vest in body corporate in accordance with section 27(4) as a result of the company "losing" its interest in the scheme?

Resolution:

Section 27(4) does not find application. Both the section and exclusive use area become *bona vacantia* to the state.

55/2013 Form W

How does one issue a Form W subsequent to the registration of the first transfer, should the Form W not have been lodged upon registration of the first transfer?

Resolution:

A Form W must be requested and filed in the sectional title register. A caveat may be noted to prevent further dealings with the scheme until such form is submitted.

56/2013 Registration of a sectional plan of extension of a scheme

Where the deeds office failed to register all the sections shown on the sectional plan of extension. Can the same sectional plan be used to register the remaining sections not so registered?

Resolution:

No, section 25(11) is clear that all sections reflected on the plan must be registered simultaneously.

57/2013 More than one section in a sectional title deed

A title deed contains more than one section. Can section 36 of Deeds Registries Act be used to obtain CRT for one or more sections?

Resolution:

Yes. The matter must be referred to the Regulation Board to provide for a prescribed form in this regard.

58/2013 Divorcees as joint developers

A property is owned jointly by a husband and wife, married in community of property. They have opened a scheme and thereafter are divorced. They want to transfer one section to one of the spouses. How may they do so as the one spouse will hold an half share a developer and another half as an owner? Does the body corporate come into existence upon transfer?

Resolution

A section 45bis(1A)(a) of Act No. 47 of 1937 must be applied prior to the transfer of the half share to the former spouse. A body corporate comes into existence upon the registration of such transfer.

59/2013 Use of existing plan of real right where right has lapsed

May an existing plan for a real right of extension filed in terms of section 25(2)(a) and (b) be utilized for a further real right of extension where the initial real right of extension has lapsed by to effluxion of time?

Resolution:

No. New section 25(2)(a) and (b) plans must be lodged.

I. INPUTS RECEIVED FROM THE OFFICES OF THE SURVEYOR GENERAL FOR DISCUSSION

60/2013 Upgrading of quitrent titles in the former Transkei

Can a quitrent title (i.e. building lot or garden lot) surveyed in 1917 in the former Transkei be upgraded?

Resolution:

No. Only quitrents granted in terms of Proclamation R 188 of 1969 and quitrents created by proclamations repealed by Proclamation R 188 of 1969 have been upgraded in terms of Act No. 112 of 1991.

61/2013 Applicability of Act 70 of 1970 for subdivisions required by SANRAL

Is Approval from the Department of Agriculture required for the subdivision of any agricultural land required for national road purposes?

Resolution:

No. SANRAL is a statutory body and is therefore, in terms of section 2 of Act No. 70 of 1970, exempt from the provisions of the said Act.

62/2013 Numbering of duplicate servitude diagrams

Mining Company A (owner of the land) is giving a servitude over a property to Mining Company B for mining infrastructure purposes (pipes, access, power lines etc.). Mining Company C wants to register a right of way servitude over the same area. Can more than one servitude deed be registered against a single diagram?

Resolution:

No. In terms of regulation 73(2) of Act No. 47 of 1937 a new servitude diagram must be lodged for every other right.

63/2013 Regulation 20(2) of Act No 8 of 1997

This regulation, making provision for the 12 month time period by which a provisional plan must be finalised, has been repealed, leaving no prescribed time period as required in terms of section 14 for the certificate which is submitted to the Registrar when accepting the plan for acts of registration.

- (a) Can the SG continue to approve provisional general plans lodged after the amendment came into effect?
- (b) Can the Registrar accept such provisional plans lodged at the SG after the amendment came into effect?

Resolution:

- (a) No.
- (b) No.

64/2013 General Plans - Section 14 Act No. 8 of 1997

Can registrars again confirm, as minuted at the Conference of 2011 that it is in order to accept caveats preventing registration for all unbeaconed erven on a "normal" general plan? Once survey records for those unbeaconed erven have been approved these caveats will be uplifted to allow registration.

Resolution:

Yes. See the provisions of regulation 11 of Act No. 8 of 1997.
