



rural development
& land reform

Department:
Rural Development & Land Reform
REPUBLIC OF SOUTH AFRICA

REGISTRARS' CONFERENCE RESOLUTIONS 2014

A. WITHDRAWAL OF PREVIOUS REGISTRARS' CONFERENCE RESOLUTIONS

1/2014 The following Registrars' Conference Resolutions are withdrawn:

- RCR 4 of 1956 (see RCR 3 of 2014)
- RCR 4 of 1958 (see RCR 28 of 2014)
- RCR 41 of 1967 (see RCR 4 of 2014)
- RCR 2 of 1991 (see RCR 45 of 2013)
- RCR 6.6 of 1999 (repeal of section 70 of Act No. 47 of 1937)
- RCR 7.3 of 1999 (see section 27(7) of Act No. 95 of 1986)
- RCR 56 of 1994 (repeal of section 60(1) of Act No. 95 of 1986)
- RCR 57 of 1994 (repeal of section 60(1) of Act No. 95 of 1986)
- RCR 30 of 2002 (see RCR 3 of 2012)
- RCR 35 of 2002 (see RCR 2 of 2014)
- RCR 43 of 2003 (see RCR 5 of 2014)
- RCR 32 of 2004 (see CRC 10 of 2014)
- RCR 34 of 2004 (see section 16D read with section 3(1)(p)bis of Act No. 47 of 1937)

- RCR 39 of 2004 (amendment of section 37 of Act No. 95 of 1986)
- RCR 40 of 2004 (see RCR 47 of 2013)
- RCR 20 of 2005 (amendment of section 93 (1) (c) of Act No. 47 of 1937)
- RCR 44 of 2005 (amendment of section 18 of Act No. 95 of 1986)
- RCR 45 of 2005 (see RCR 22 of 2013)
- RCR 2 of 2007 (see RCR 5 of 2014)
- RCR 40 of 2007 (amendment of regulation 13 of Act No. 95 of 1986)
- RCR 35 of 2008 (amendment of Item 1(b) of the Schedule of Fees of Office)
- RCR 23 of 2009 (see RCR 27 of 2014)
- RCR 59 of 2009 (amendment of section 17(5) of Act No. 95 of 1986)
- RCR 30 of 2010 (see RCR 8 of 2014)
- RCR 73 of 2010 (amendment of section 17(4) of Act No. 95 of 1986 by the inclusion of section 17(4)(4C) and see RCR 9 of 2014)
- RCR 78 of 2010 (amendment of section 27 (5) of Act No. 95 of 1986)
- RCR 89 of 2010 (see RCR 4 of 2014)
- RCR 2 of 2011 (see to RCR 44 of 2013)
- RCR 20 or 2011 (see RCR 4 of 2014)
- RCR 56 of 2011 (amendment of section 25 of Act No. 95 of 1986)
- RCR 60 of 2011 (amendment of regulation 15(4) of Act No. 95 of 1986)
- RCR 62 of 2011 (amendment of section 17(4A)(bA) of Act No. 95 of 1986)
- RCR 63 of 2011 (see RCR 3 of 2012)
- RCR 68(b) of 2011 (amendment of section 25(1) of Act No. 95 of 1986)
- RCR 68(c) of 2011 (amendment of section 25(1) of Act No. 95 of 1986)

- RCR 69 of 2011 (amendment of section 25 of Act No. 95 of 1986)
- RCR 70(c) of 2011 (see CRC 7 of 2012)
- RCR 76 of 2011 (see section 27 (5) of Act No. 95 of 1986)
- RCR 8 of 2012 (see RCR 4 of 2014)
- RCR 12 of 2012 (see section 27 (5) of Act No. 95 of 1986)
- RCR 26 of 2012 (see RCR 43 of 1967)
- RCR 49 of 2012 (see RCR 9 of 2014)
- RCR 52 of 2012 (see RCR 10 of 2014)
- RCR 56 of 2012 (see CRC 7 of 2012)
- RCR 62 of 2012 (amendment of regulation 28(2) of Act No. 95 of 1986)
- RCR 5 of 2013 (see CRC 10 of 2014)
- RCR 21 of 2013 (see RCR 2 of 2014)
- RCR 34 of 2013 (see RCR 14 of 2014)
- RCR 47 of 2013 (see RCR 15 of 2014)

B. PREVIOUS REGISTRARS' CONFERENCE RESOLUTIONS

2/2014 RCR 35 of 2002 and RCR 21 of 2013 - Power of developer to subdivide, consolidate and extend

Does the developer, prior to a body corporate being established, have all the powers entrusted upon a body corporate in terms of sections 17, 22, 23, 24, 26 and 29 of the Sectional Titles Act No. 95 of 1986?

Resolution:

Yes, the developer has all such powers, provided that a certificate by the conveyancer is lodged, certifying that no unit in the scheme has been sold, donated or exchanged, or if a unit was so alienated, the developer had

disclosed in writing to the acquirer thereof that application, if applicable, has been made for such acts of registration.

(RCR 35 of 2002 and RCR 21 of 2013 are hereby withdrawn.)

3/2014 RCR 4 of 1956 - Amendment of purchase price/value of property in a title deed

Where the purchase price/value of property is incorrectly reflected in a deed, how must the error be rectified?

Resolution:

The provisions of section 3(1)(v) of Act No. 47 of 1937 may be applied upon application by the holder of the title deed subject to the lodgement of satisfactory proof. Cognisance must be taken of transfer duty and fee implications.

(RCR 4 of 1956 is hereby withdrawn.)

4/2014 RCR 41 of 1967, RCR 20 of 2011, RCR 89 of 2010 and RCR 8 of 2012 - Cancellation of servitudes over the common property

Section 29(3) of Act No. 95 of 1986 does not make provision for the lodgement of bonds and consents of mortgagees where servitudes which benefit the common property are cancelled. How should this matter be dealt with?

Resolution:

The provisions of section 75(2)bis of Act No. 47 of 1937 read with section 3(1) of Act No. 95 of 1986 must be applied. Consents by bondholders as well as the bonds must be lodged and endorsed regarding the cancellation of the servitudes.

(RCR 41 of 1967, RCR 20 of 2011, RCR 89 of 2010 and RCR 8 of 2012 are hereby withdrawn)

5/2014 RCR 43 of 2003 and RCR 2 of 2007 - Home Owners Association

Where a condition prohibiting the alienation or transfer of a property without the consent of the Home Owners Association is contained in the title deed of the property and the conveyancer lodges a certificate stating that the Home Owners Association has not been established, may the Registrar of Deeds

accept this certificate, and must the condition be brought forward in the transfer deed?

Resolution:

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

(RCR 43 of 2003 and RCR 2 of 2007 are hereby withdrawn.)

6/2014 RCR 45 of 2004: Usufruct over exclusive use areas

According to Section 27(6) of Act No. 95 of 1986 personal servitudes may be registered over Exclusive Use Areas. Does this mean that the Certificates of Real Rights issued for Exclusive Use Areas when the scheme is opened, must also be made subject to a usufruct that existed over the land prior to the opening of the scheme?

Resolution:

Yes, the exclusive use areas must be made subject to the usufruct.

7/2014 RCR 60 of 2008 - Section 25 of Act No. 95 of 1986: subdivision of real right of extension

In terms of RCR 60 of 2008 the lapsing of the right may be cancelled when the whole right has lapsed. However, when a section 25 right is subdivided, each portion will exist on its own with its own title deed. Each portion will exist separately from the others and will be a "whole" section 25 right on its own. Therefore this resolution must be revisited. Each subdivided portion may be cancelled once that specific portion right has lapsed.

Resolution:

When one of the portions of a real right of extension has lapsed/been exercised, the title deed of such portion must be endorsed by noting thereon that such right has lapsed/been exercised. The section 11(3)(b) schedule of conditions must only be endorsed when the whole right has lapsed.

8/2014 RCR 30 of 2010 - Section 80 of Act No. 66 of 1965

Are the provisions of section 80 of Act No. 66 of 1965 applicable to redistribution agreements?

Resolution:

No. The provisions of section 80 of Act No. 66 of 1965 do not apply to redistribution agreements (see the Ex parte Fuad Tofie case (unreported)).

(RCR 30 of 2010 is hereby withdrawn.)

9/2014 RCR 49 of 2012 - Section 14(8) and cancellation of plans by order of court

Act No. 95 of 1986 is silent with regard to the procedure to follow when a body corporate is established. Is it correct that in this case the developer's title cannot revive and that certificates of registered title must be issued to the owners in accordance with their participation quota? The units, and section 25 and 27 rights may also be mortgaged and the bonds be dealt with, i.e. cancelled or substituted.

Resolution:

Until the Act is amended the certificates of registered title must be issued and the bonds must automatically be substituted or disposed of.

(RCR 49 of 2012 is hereby withdrawn.)

10/2014 RCR 52 of 2012 - Section 18 and bonds registered over real rights

Section 18 makes sections 56 and 57 of Act No. 47 of 1937 applicable in respect of section 17 transfers, and cessions of exclusive use areas and section 25 rights of extension. However, section 18 does not apply to bonds registered over exclusive use areas and section 25 rights when such rights are cancelled due to transfer of the common property in terms of section 17. How must bonds be dealt with in respect of exclusive use areas and section 25 rights that are cancelled in terms of section 17(4B)(a) and section 17(4C)?

Resolution:

Pending the amendment of the Act the bonds must be disposed of.

(RCR 52 of 2012 is hereby withdrawn.)

11/2014 Power of developer to extend a section, to register a servitude burdening the common property in terms of section 29, application in terms of section 25(6A) or section 27(1A)

Must the consent of co-developers or prospective co-developers be obtained when a developer extends a section, registers a servitude burdening the common property in terms of section 29, makes an application in terms of section 25(6A) or section 27(1A), in instances where the body corporate has not been established?

Resolution:

The co-developer/prospective co-developers (see sale agreement entered into) must be notified of the intention of entering into such acts of registration and an affidavit to that effect must be obtained from the co-developer(s).

12/2014 RCR 70 of 2012 and RCR 23 of 2013: Section 14(6) of Act No. 95 of 1986

When application is made for the closure of a sectional title register in terms of section 14(6), a certificate by the conveyancer must be lodged to the effect that no unit and no right referred to in section 25 or 27 is encumbered by a sectional mortgage bond or a lease or in any other way (section 14(6)(c)). According to RCR 70 of 2012 such certificate should only be in respect of servitudes registered subsequent to the opening of the scheme. CRC 6 of 1988, paragraph 6, also states that the title to any real right must be produced for cancellation. This creates the impression that it is also a real right registered over the common property that must be cancelled. It is submitted that the real right over the unit and section 27 right must be cancelled and not the real rights over the common property.

Resolution:

RCR 70 of 2012 and RCR 23 of 2013 are confirmed. The real right over the unit and section 27 right must be cancelled, and not the real rights over the common property.

13/2014 Form O and Form P

RCR 19 of 2013 refers to prescribed Form O which is the application, and not the certificate of registered sectional titles in favour of the owners. It is form P that must be adapted.

Resolution:

RCR 19 of 2013 must be amended to provide for the substitution of reference to "Form O" with "Form P".

(See RCR 19 of 2013 as amended)

- RCR 19 of 2013 is amended to read as follows:

“RCR 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 No. 95 of 1986.

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

- (a) Is the section 22 application a transfer?
- (b) Form P makes no provision for the vesting of subdivided sections in the names of different owners?
- (c) As no consideration clause is provided in form P 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 P must be suitably adapted to provide for a consideration clause.

14/2014 RCR 34 of 2013 - Cancellation of pre-emptive right and transfer duty

Where a condition not binding successors in title is cancelled or renounced, is such cancellation or renunciation deemed a transaction within the ambit of section 2 of the Transfer Duty Act No. 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 "property" as defined in the definition of property in the Transfer Duty Act No. 40 of 1949. No transfer duty receipt or exemption certificate is required.

(RCR 34 of 2013 is hereby withdrawn.)

15/2014 RCR 47 of 2013 - Section 27(1A) of the Sectional Titles Act: (Lodgement of Affidavit)

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."

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

Resolution:

Subject to regulation 29 the developer has the right to apply for a certificate of real right in terms of section 27 (1A).

(RCR 47 of 2013 is hereby withdrawn.)

C. DEEDS REGISTRIES ACT NO. 47 OF 1937

16/2014 Section 17(6) - Assistance of Executor by Spouse in a foreign marriage

Section 17(6) of the Act No. 47 of 1937 does not provide for assistance by a spouse if an executor acts on behalf of a deceased person who was previously married in terms of a marriage which marriage was governed by the laws of another country. Taking into account the possibility that a joint estate might exist in terms of which the surviving spouse could have an interest, should the surviving spouse not join the executor when transferring the property.?

Resolution:

Yes, the spouse must join the executor in terms of section 21 of Act No. 47 of 1937, unless the conveyancer certifies that the property does not constitute an asset in a joint estate.

17/2014 Section 68(1) - Partial lapsing of a condition

May an application be lodged in terms of section 68(1) of Act No. 47 of 1937 for the partial lapsing of a personal servitude?

Resolution:

Yes, the provisions of section 68(1) of Act No. 47 of 1937 can be utilized in this circumstance.

D. REGULATIONS TO THE DEEDS REGISTRIES ACT NO. 47 OF 1937

18/2014 Regulation 39(1)- Status of a bondholder and a consenting party

The last proviso of regulation 39(1) of Act No. 47 of 1937 requires any authority given under regulation 39(1) (a) to (j) of Act No. 47 of 1937 to disclose the marital status of the bondholder or any other consenting party, only if the bondholder or consenting party is a woman. Furthermore, the said regulation does not require the disclosure of the identity number or registration number of the bondholder or consenting party. Should the regulation not be amended to refer to the status and identity number or registration number of a bondholder and a consenting party?

Resolution:

Yes. Pending the amendment of regulation 39(1) of Act No. 47 1937, the status and identity number or registration number of all bondholders and consenting parties must be referred to (see section 17(2) of Act No. 47 of 1937, read with regulation 18.)

19/2014 Regulation 44 - Conveyancer to initial pages of draft bond together with all mortgagors and witnesses

Can a Registrar of Deeds insist on full initialling of all the pages of the draft bond, by the conveyancer, who signed the preparation clause of the power of attorney to the draft bond? Conveyancers argue that regulation 44 of the Act and RCR 26 of 2004 do not provide for the conveyancer, who signs the preparation clause of the power of attorney attached to the draft bond, to also initial the pages of the draft bond.

Resolution:

The draft bond need not be initialled by the conveyancer.

20/2014 Regulation 44A (d)(ii) (aa) and (bb) - General Power of Attorney

The amendments to regulation 44A do not cover natural persons. According to CRC 4 of 2013 the amendments to regulation 44A(d)(ii) (aa) and (bb) of Act No. 47 of 1937, resulted in the responsibility of ensuring that a representative acting under the authority of a power of attorney, has been removed from the Registrar of Deeds (examiners) and has become that of the preparing conveyancer. However regulation 44A(d)(ii) (aa) and (bb) makes no reference to a representative acting on behalf a natural person. It stands to reason that the amendments to the regulations did not remove all responsibilities from the Registrar of Deeds (examiners) and that where a person is appointed by a natural person as a representative in terms of a power of attorney it is still the Registrar of Deeds (examiners) responsibility to check the power of attorney.

Resolution:

Uncertainty exists whether powers of attorneys must be checked or not. Regulation 44A of Act No. 47 of 1937 and regulation 16C of Act No. 95 of 1986 must be referred back to the relevant boards for further discussion. CRC 4 of 2013 is to be amended.

21/2014 Regulation 44A(d)(ii) (aa) and (bb) - General Power of Attorney

In view of the amendments to regulation 44A(d)(ii)(aa) and (bb) of Act No. 47 of 1937, is it still required for a Special Power of Attorney or General Power of Attorney which is to be utilized as a special power of attorney to be lodged? The responsibility of ensuring that a person acting in a representative capacity, has been passed to the preparing conveyancer.

Resolution:

Special and General Powers of Attorneys must be lodged as provided for in regulation 65(1) of Act No. 47 of 1937.

22/2014 Regulation 68(11B)(a) - Unserviceable Deeds Registry and clients copy of mortgage or notarial bond

May the provisions of regulation 68(11B) (a) of Act No. 47 of 1937 be utilized for the cancellation of a mortgage or notarial bond where the clients copy and deeds registries copy are unserviceable?

Resolution:

Yes. The matter will be referred to the board with the proposal to amend regulation 68(11B), pending the amendment the provisions of the regulation 68(11B)(a) may be invoked.

23/2014 Regulation 73(2) – Diagrams

Pending the amendment to regulation 73(2) of Act No. 47 of 1937, must a diagram for a lease of land be insisted upon where the whole of the land on the land diagram is being leased?

Resolution:

Where the whole piece of land is being leased, the lease can be described by referring to the whole piece of land. To recreate the exact figure on a new diagram for the purpose of the lease is unnecessary. Therefore, no diagram needs to be lodged.

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

24/2014 Transfer and vesting of State Land in respect of certificates issued in terms of Item 28(1) of Schedule 6 of the Constitution of the Republic of South Africa

- (a) Where different properties are held under one title deed and same need to be transferred separately to the National Government and the Provincial Government, may the properties be transferred by means of the registration of Certificates of Registered Title in terms of section 36 of Act No. 47 of 1937, or Deeds of Transfer in terms of section 31 of Act No. 47 of 1937?

- (b) Is an office fee payable in this regard?

Resolution:

- (a) The properties may be transferred in terms of section 31. Alternatively the title deed must first be endorsed in terms of Item 28(1) and subsequently a certificate of registered title in terms of section 36 may be issued.
- (b) Item 28(2) provides for an endorsement in terms of Item 28(1) to be exempt from the payment of duties or fees.
Office fees are payable in respect of the registration of a certificate of registered title in terms of section 36 and a deed of transfer under section 31.

25/2014 Proof of spouses and descendants under Sections 1 and 2(2)(b) as well as section 3(1)(a) of the Reform of Customary Law of Succession and Regulation of Related Matters Act No. 11 of 2009

Owing to the dual capacity of spouses and descendants referred to in sections 1 and 2(2)(b) and (c) as well as section 3(1)(a) of the Reform of Customary Law of Succession and Regulation of Related Matters Act No. 11 of 2009, it is possible for some descendants to be regarded as spouses. Therefore it will be practically impossible for the Registrar of Deeds to apply the provisions of section 1(1)(a) and section 1(1)(b) of the Intestate succession Act No. 81 of 1987 without some form of proof as to the said capacity. What kind of proof must be lodged to determine if a certain beneficiary is a spouse or a descendant in terms of the foregoing provisions?

Resolution:

The Next- of- Kin affidavit must be suitably amplified and adjusted to clearly indicate the capacity of a beneficiary in line with sections 3(1)(a) and section 2(2)(b) and (c) of Act No. 11 of 2009, alternatively an executor's/Master's Representatives affidavit must be lodged.

26/2014 Registration of a notarial deed not duly notarised

How must a registered notarial deed not duly notarised be dealt with?

Resolution:

A caveat must be noted and the matter may be referred to court.

27/2014 Mortgaging of a share in a long-term lease agreement

May an undivided share in a registered long-term lease agreement serve as security under a mortgage bond?

Resolution:

Yes, provided such undivided share is held under its own separate title.

(RCR 23 of 2009 is hereby withdrawn.)

28/2014 Transfer of property by donation or a will

Immovable property was transferred to a transferee, either by donation or the terms of a will, excluding community of property. The transferee's marital status is cited as being married which marriage is governed by the laws of a foreign country. Should assistance by the other spouse be required if the transferee now wants to transfer the property or pass a mortgage bond?

Resolution:

No. Assistance is not required in view of the fact that the condition excludes community of property.

(RCR 4 of 1958 is hereby withdrawn.)

29/2014 Transfer of an undivided share in agricultural land

An Owner owns a whole of a farm (being agricultural land) in shares held under different titles. Will the Deeds registry allow the owner to transfer, for example one ½ share to person A and the remaining half share to person B by different deeds of transfer?

Resolution:

Yes, it is allowed in terms of section 3 (b) of Act No. 70 of 1970 (see CRC 4 of 1970).

30/2014 Transfer of Property subject to condition of a deed of donation

Immovable property was transferred to person "X", unmarried out of an estate, subject to the exclusion of community of property. Person "X" subsequently got married in community of property and later decides to donate the whole of the property to his spouse, "Y", excluding community of property. Will the deeds registry allow this registration?

Resolution:

Yes. The property must vest as follow: "Y", *identity number, married in community of property to "X", which community of property is excluded in terms of a condition contained in a deed of donation.*"

31/2014 Diagram of a right of habitatio

The resolution calling for a diagram when registering a right of habitatio must be revisited. This resolution causes hardship, particularly to disadvantaged clients. The aforesaid resolution results in forfeiture of rights of habitatio particularly derived from wills in section 18 (3) Estates.

Resolution:

RCR 21 of 1951 and RCR 29 of 2012 are hereby confirmed. A diagram must be lodged.

F. OTHER LEGISLATION THAT HAS AN IMPACT ON ACT NO. 47 OF 1937

32/2014 Consents in terms of Act No. 70 of 1970)

Must the provisions of CRC 6 of 2002 still be applied to the further subdivision of agricultural land as defined in Act No. 70 of 1970, which land was previously subdivided in terms of the Development Facilitation Act No. 67 of 1995?

Resolution:

Yes. The provisions of CRC 6 of 2002 must be applied.

G. SECTIONAL TITLES ACT NO. 95 OF 1986

33/2014. Section 14 (5) and Regulation 15 (4) - Amendment of Sectional Plans

Section 14(5) and Regulation 15(4) is inconsistent with each other. Section 14(5) clearly states that on receipt of notification by the Surveyor General “the registrar shall make the necessary endorsements reflecting any change of description or extent upon the deeds registry copy of the sectional title deed and upon any other registered document affected by such change, and shall likewise endorse the owner's or holder's copy of that sectional title deed or any such other registered document whenever subsequently lodged at the deeds registry for any purpose”.

Regulation 15(4) states that “the registrar must, on the lodgement of an application by the body corporate or developer, amend the relative sectional title deed as required by section 14(5) of the Act, and endorse thereon that the amendment has been effected in accordance with an alteration, amendment or substitution of the registered sectional plan.”

- (a) What if the Registrar received notification by the Surveyor General prior to the 14 April 2013 which is the date when the Regulations were amended? Can the Registrar insist on an Application by the body corporate or developer?
- (b) Where only a section of an individual owner is affected by the section 14(5) amendment why can only the body corporate or developer apply? Can the owner in such instance not apply?

Resolution:

- (a) Yes an application must be lodged irrespective of the date of the notification.
- (b) The body corporate/ developer must make the application for the amendment of the sectional plan.

34/2014 Section 32(2) - Allocation of participation quota's

Section 32 (2) of Act No. 95 of 1986 provides *inter alia* that, in the case of a scheme other than a scheme referred to in subsection(1), the participation quota of a section shall be a percentage expressed to four decimal places, as determined by the developer, i.e. in respect of a commercial building. Is it permitted for the developer to allocate a participation quota of 0, 0000 for some of the sections in the scheme?

Resolution:

No. A participation quota of 0,0000 or a negative participation quota is not acceptable.

35/2014 Section 49: Real rights over exclusive use area

Section 49 does not deal with real rights registered over exclusive use areas or the land. There is no authority in Act No. 95 of 1986 to deal with real rights over exclusive use area or the land.

Resolution:

Until the Act is amended the real rights over the exclusive use area must be cancelled and the real rights over the land must be endorsed regarding the reversion to the land register.

H. REGULATIONS TO SECTIONAL TITLES ACT NO. 95 OF 1986

36/2014 Regulation 28(2) - Cession of Exclusive Use Areas in terms of section 60(3)

In terms of regulation 28(2) the Registrar of Deeds must endorse the section 11(3)(b) schedule when an exclusive use area created in terms of section 60(3) is transferred. However, such schemes were opened in terms of the 1971 Sectional Titles Act and section 11(3)(b) schedules do not exist in those schemes. Form H was recently amended to refer to conditions "endorsed on the sectional plan and the servitudes referred to in section 19 of the Sectional titles Act, 1971 (Act No. 66 of 1971)." What must be endorsed with the cession of an exclusive use area in terms of section 60(3)?

Resolution:

Cession of exclusive use areas created in terms of section 60(3) must be endorsed on Annexure A to sheet 1 of the sectional plan.

I. GENERAL (ACT NO. 95 OF 1986)

37/2014 Description of an owner in a Certificate of Registered Sectional Title

A registered owner (natural person) dies before he could register the opening of a sectional scheme over his property. How should the owner/holder be cited in the certificate of registered sectional titles, and certificates of real

rights in respect of exclusive use areas and section 25 rights of extension? This may also be applicable to consolidations and subdivisions of sections.

Resolution:

The owner/holder must be cited as provided for in regulation 54 (2) of Act No. 47 of 1937. It must be registered in the name of the owner/holder, including identity number and status (deceased).

38/2014 Servitude on an approved sectional plan

A new servitude is noted on an approved sectional plan which is submitted for registration simultaneous with the opening of a scheme at the deeds registry. The conveyancer linked the notarial deed for registration of the servitude with the opening of the scheme. Must a servitude diagram be lodged with the notarial deed or would it be acceptable to delineate the servitude on the sectional plan?

Resolution:

An approved diagram as provided for in regulation 73(2) of Act No. 47 of 1937 must be lodged with the notarial deed, unless one of the exceptions to regulation 73(2) is applicable.

39/2014 Home owners' consents and certificates by architects or land surveyors as contemplated in RCR 61 of 2008:

Conference must consider providing guidelines for the form of the certificate from a land surveyor or architect required in terms RCR 61 of 2008, and section 24(6)(d) of Act No. 95 of 1986 and the form of consent from Home Owners Associations. Whether it must contain letterheads, practice numbers and attestation of the land surveyor's signature by witnesses.

Resolution:

A home owners' association consent must be contained on its letterhead or be prepared by a conveyancer in terms of regulation 44 and certificates from architects and land surveyors must contain their names and practice numbers.

40/2015 Fees for certificate of replacement of Form W

Is a fee payable for the issuing of the replacement certificate in terms of regulation 16(1)(d) of the Sectional Title Regulations, and if so, what fee?

Resolution:

Yes. A fee is payable in terms of Item 2 of the Schedule of Fees of Office.

41/2014. Diagram of a real right of extension

May the approved existing real right development plan / diagram of a real right of extension in terms of Section 25(4)(b), which right had lapsed or been cancelled, be utilized for subsequent cessions of portion of real rights?

Where a portion of a real right of extension which have been indicated on a real right plan, lapsed or has been cancelled in terms of section 15B(1)(d), can that same real right plan in respect of the portion being cancelled/lapse be used again for the session of such portion by the body corporate to cessionary? When a real right is cancelled under section 27(5) (for example double registration of exclusive use areas) the existing plan/diagram is used.

Resolution:

No. The existing plan/diagram cannot be utilized as it has been cancelled by the Surveyor General.

42/2014 A lost copy of a Notarial Deed

Where the client's copy of a section 25 right of extension, or exclusive use area created in terms of section 27, as well as the deeds registry copy are lost, how must the holder of such right apply for his/her title to be replaced?

Resolution:

Until Act No. 95 of 1986 is amended, the provisions of section 38 of Act No.47 of 1937 can be utilized, in view of section 3(1) of Act No. 95 of 1986.

J. INPUTS RECEIVED FROM THE OFFICES OF THE SURVEYOR GENERAL FOR DISCUSSION**43/2014 Estuarine areas/tidal rivers below high water mark/low water mark**

- a) By proclamation, the areas of jurisdiction of Registrars of Deeds in coastal areas extend to the low water mark. Many rivers that flow into

the sea are tidal, some for several kilometres. Does the area of jurisdiction of the Registrars of Deeds extend to the middles of the rivers where they are tidal, or must the area of jurisdiction extend to the low water mark on either side of the “coastal waters” as defined in Act No. 24 of 2008.

- b) It is generally accepted that the areas of jurisdiction of the Surveyors-General extend to the low water mark, based on the areas of jurisdiction of the Registrars of Deeds. Can the area of jurisdiction of the Surveyors-General extend to the middle of river where it is tidal, or must the area of jurisdiction extend to the low water mark on either side of the coastal waters?
- c) Can a state land diagram of an estuary cover the entire estuary, or must the diagram extend to the low water mark only?

Resolution:

- a) The areas of jurisdiction of the Registrars extend to the low water mark. Only where the river is no longer tidal will the areas of jurisdiction extend to the middle of the river where applicable.
- b) The areas of jurisdiction of the Surveyors-General follow the limits of the areas of jurisdiction of the Registrars of Deeds and extend to the low water mark of the tidal rivers.
- c) The boundaries shown on the state land diagram can only extend to the low water mark and not the middle of the tidal river.

44/2015 Unregistered Servitudes

When a subdivisional diagram is to be registered, can unregistered servitudes (delineated on another unregistered servitude diagram) be shown on the diagram being transferred remain unregistered, only to be registered in the future?

Resolution:

No. Servitudes shown on a diagram must already be registered or be registered simultaneously with the deed, subject to regulation 60(1) of Act No. 47 of 1937, and regulation 21(4) of the Land Survey Act No. 8 of 1997.

45/2014 Registration of Servitudes

If more than one servitude is shown on one servitude diagram over the same piece of land, can the servitudes be registered piecemeal in favour of different parties?

Resolution:

No. Servitudes shown on a single servitude diagram, which are not already registered, must be registered simultaneously, either in one deed or more than one deed in favour of the relevant parties.

46/2014 Change of information contained in Title Deeds

When a conveyancer prepares a deed of transfer, the information contained in the conditions of the deed may have changed as a result of, for example, changes to property descriptions, metrication of dimensions and areas, or changes to personal or company details. While it is agreed that property descriptions and areas in the property clause must be updated to current data, what other details must change, and what details must remain?

Resolution:

Conditions must be brought forward *verbatim* as it appears in the title deed, in terms of regulation 35 of Act No. 47 of 1937.

47/2014 Rezoning of agricultural land

If the Department of Agriculture, Forestry and Fisheries (DAFF) grants consent for the re-zoning of farm land, does this land become exempt from the provisions of Subdivision of Agricultural Land Act No. 70 of 1970 for future transactions?

Resolution:

No. Only in instances where agricultural land is being rezoned into a sub-divisional area for township establishment purposes, will Act No. 70 of 1970 not be applicable. CRC 6 of 2002 prevails.

48/2014 Condition of Title defining use

The conditions of establishment of a township contain a condition that a specific property shall be used for residential purposes only. This property is owned by the municipality and is to be transferred to an ecclesiastical institution to be used as a church. May a registrar of deeds raise a query on a deed lodged to ascertain whether the property in question has been rezoned for ecclesiastical purposes?

Resolution:

No. The zoning of the property is of no concern to the Registrar of Deeds.

49/2014 The basis on which the diagrams framed in terms of section 16 of The Land Survey Act No. 8 of 1997

Currently, the office of the SG: KZN frames diagrams in terms of section 16 of the Land Survey Act No. 8 of 1997 for the purpose of noting subdivisions of registered properties on a General Plan. Does the diagram framed in terms of Section 16 of The Land Survey Act No. 8 of 1997 get registered?

Resolution:

No. With the first registration of the property, it is registered from the general plan and it does not require a diagram. However, when the property is subdivided or a servitude is registered over such property, the diagram of the parent property (i.e. the diagram of the erf shown on the general plan) must be lodged together with the sub-divisional/servitude diagram, where necessary, for endorsement/deduction purposes.

50/2014 Creation of a servitude over a section

Is an amending sectional plan for the creation of a servitude framed in terms of section 15(B)(1)(d) of Act No. 95 of 1986 registerable in the deeds registry?

Resolution:

Yes. An amending sectional plan may be registered.

51/2014 Registration of Servitudes which have conflicting rights

Can a road servitude be registered when there is an underlying planting servitude, and how can the beneficiaries of both these servitudes enjoy their rights?

Resolution:

Yes. The holder of the existing servitude must consent to the registration of the second servitude (section 65(3) of Act No. 47 of 1937).

52/2014 Order of registration of Sectional Title phases

Must the order of registration of sectional title phase developments be strictly in accordance with that shown on the endorsement sheet?

Resolution:

No. The developer has the right to exercise his right of extension in any sequence he so wishes, however the plans for the respective phases must contain the correct information.
