



## rural development & land reform

Department:  
Rural Development and Land Reform  
REPUBLIC OF SOUTH AFRICA

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### **REGISTRAR'S CIRCULAR 05 of 2019**

#### **1. PURPOSE**

To provide clarity regarding the procedure to be followed for the establishment of townships, the following **guidelines** are provided in order to create a uniform practice and to prevent unnecessary rejections

Application should be lodged in terms of Section 46 of Act 47 of 1937. Application must be made for the Opening of the Township register as well as for the registration of the General Plan, Amending General Plan and Re-layout plan.

#### **2. COMPLIANCE with ACT 70 OF 70**

As Township Establishment takes place on Farm property, Act 70 of 70 needs to be complied with -See CRC 6 of 2002.

No consent or letter in terms of Act 70 of 1970 is required when a township is established on FARM land which was previously registered as an Agriculture Holding in terms of Act 22 of 1919 and has been excised to revert back to the farm register.

or if any Act excludes compliance.

Note that the Local Authority as owner will also be subject to the requirements of Act 70 of 70.

#### **3. GENERAL PLAN**

- 3.1 Reference should be made that the township shall consist of erven and streets indicated on the General Plan.
- 3.2 Reference should be made to the property and the small scale diagram on which the Township is to be established.
- 3.3 Reference should be made to Amended/ Re-layout plans (if applicable).
- 3.4 Servitude notes should correspond with the Conditions of Establishment:
  - 3.4.1 The erven or streets affected should be mentioned.
  - 3.4.2 The deed of creation of Existing servitudes should be reflected (K S nr/Title nr).
  - 3.4.3 The nature of servitudes should be mentioned.
  - 3.4.4 Each servitude should be dealt with by a separate servitude note.
- 3.5 The right bottom corner should reflect if it is a Johannesburg/Pretoria township. The jurisdiction regarding bonds may not overlap to entail that the same bond is affecting farm property in the Pretoria deeds office as well as the Township in the Johannesburg deeds office. If a Township is to be dealt with in the Johannesburg deeds office, bonds needs to be dealt with as provided for in Section 49(3) of the Deeds Registries Act 47/1937.

3.6 Regulation 20(2) Act 8/1997 --No provisional plan will be approved by the Surveyor General from 11/04/1997 as section 14 of Act 8/1997 does not prescribe a time within which a provisional plan should be finalized See RCR 63 of 2013.

3.7 Cognizance must be taken that the relevant Act/Ordinance/ By-Law may require that the General Plan must be **lodged** within a specific period.

#### **4. CANCELLATION/REMOVAL OF CONDITIONS**

Some conditions need to be cancelled/removed because it is either a condition to be complied with prior to the opening of the township register and declaration of the township as an approved township

or it is a condition not to the advantage/ benefit of Township Establishment as stated in a statute.

or it is a condition that is in conflict with Township Establishment.

It is not necessary to set out the conditions *verbatim* that need to be cancelled/removed, but reference should be made to the **exact** number of the condition and the **correct** Title deed number.

##### **4.1 Excision of agricultural holdings:**

Conditions to be removed in terms of Section 6(1) of the Agricultural Holdings Act 22 of 1919.

##### **4.2 Provided for by Act:**

The applicable Act and procedure must be used to cancel these conditions e.g.

- Application by owner in terms of Section 11(9) of The Advertising on Roads and Ribbon Development Act, Act 21 of 1940;
- application in terms of section 49(6)(a) of The South African National Roads Agency Limited and National Roads Act, Act 7 of 1998 accompanied by the Agency's consent;
- application in terms of section 48(9) of The Gauteng Transport Infrastructure Act, Act 8 of 2001 accompanied by the Member of the Executive Council of the Province;
- Section 7(7) of the Upgrading of Land Tenure Rights Act, Act 112 of 1991;
- Sections 3(2), 12(1), 19(5) and 19(6A) of the Less Formal Township Establishment Act, Act 113 of 1991 **in instances where the application was approved and need to be finalized under Act 113/1991**

##### **4.3 By Court Order:**

Certain conditions may only be removed by a Court Order e.g. a Water Court Order, or a condition in favour of the General public

##### **4.4 Cognizance must be taken of CRC 2 of 2000 pertaining to the abolition of certain title conditions in terms of Act 43 of 1999.**

##### **4.5 Title conditions which lapse by virtue of an operation of law shall be endorsed to that effect without the cancellation thereof being specifically applied for, for example, conditions prohibiting the subdivision of agricultural land (section 5(1) of Act 67 of 1979 - CRC 5 of 1979), racially based conditions (section 2(1) Act 43 of 1999), discriminating conditions (section 28 Act 101 of 1969), outspan servitudes (section 53 of Act 22 of 1957), etc. The examiner will endorse the title deed regarding the cancellation of these conditions.**

##### **4.6 Conditions in favour of the National Government e.g. "Die regte van die Staatspresident soos in artikel 34 van die Kroongrond Nedersettings Wet 1912**

bepaal" must be cancelled by application by the Department of Public Works in terms of section 2 (2C) of the State Land Disposal Act 48 of 1961.

4.7 Removal of Restrictions Act, Act 84 of 1967, Gauteng Removal of Restrictions Act, Act 3 of 1996, Spuma or By-Law

Conditions created for the benefit of 3<sup>rd</sup> parties and conditions created by statute (unless the statute has its own provision).

4.8 Notarial Deed - by agreement:

- Section 68(2) Act 47 of 1937 - where a personal servitude is cancelled.
- Section 76(1) bis Act 47 of 1937 - where a praedial servitude has lapsed.
- If a praedial servitude is cancelled.
- If a praedial servitude is abandoned (RCR 10 of 1987).
- Any condition by a Local Authority which was not imposed in terms of a Municipal Ordinance on Establishment of a Township.

4.9 Section 68(1) Act 47 of 1937 application:

- Where a personal servitude lapses for any reason (RCR 15 of 2007).
- Where a personal condition was renounced (RCR 39 of 1972).

4.10 – Condition in respect of Act 1904 must be omitted –no endorsement on the title deed

## **5. CONDITIONS OF ESTABLISHMENT**

### **5.1 HEADING OF CONDITIONS OF ESTABLISHMENT**

The heading should refer to the following:

5.1.1 The correct name of the owner;

5.1.2 The Ordinance /Act/Bylaw in terms of which the application was approved;

5.1.3 The correct property description:

5.1.3.1 Where the township is established on more than one property, all the properties must be referred to. RCR 34 of 2009 read with RCR 2 of 2013 prohibits the opening of a township by more than 1 owner each on his own property.

5.1.3.2 Where the township is established on an agricultural holding to be excised, the farm property description after excision must be referred to.

5.1.3.3 Where the township is established on subdivided or consolidated land, the property description as it appears on the subdivision or consolidation diagram must be referred to. If components have to be consolidated examiners must ensure that such consolidation is registered simultaneously with or prior to the opening of the township register.

### **5.2 CONDITIONS TO BE COMPLIED WITH PRIOR TO THE OPENING OF THE TOWNSHIP REGISTER AND DECLARATION OF THE TOWNSHIP**

Except for a pre-proclamation condition which requires an Act of registration for example conditions to be cancelled (as dealt with in clause 5 above) , servitudes still to be registered or land to be consolidated , the Registrar of Deeds does not concern him/ herself with other pre-proclamation conditions as everything takes place outside the deeds office.

The Conditions of Establishment should make reference to all pre-proclamation conditions. The Authorizing Authority will lodge a letter of compliance indicating that the conditions to be complied with prior to the opening of the township register and

declaration of the township (except for a pre-proclamation condition which requires an Act of registration) have been complied with.

### **5.3 CONDITIONS OF ESTABLISHMENT**

5.3.1 The name of the township must be disclosed (the exact name on the General Plan should be followed).

5.3.2 The correct General Plan number as approved by the Surveyor General should be referred to. No reference made to a layout plan will be accepted, as an approved general plan is available at the time of approval of the conditions of establishment

5.3.3 Under this heading one would also encounter other clauses regarding precautionary measures, access, removal or replacement of municipal services / demolition of buildings and structures, compliance with conditions imposed by Provincial Department for Agriculture Conservation and Environment, environmental management, receiving and disposal of storm water, erection of fences, removal of litter, removal and/or replacement of Eskom Power Lines and/or Telkom Services, Telkom and other services, obligations with regards to engineering services and restrictions regarding the alienation of erven, etc. The Registrar of Deeds does not concern him/ herself with these conditions.

5.3.4 Conditions to be registered affecting erven:

A condition stating that certain erven in the township should be tied or consolidated must be complied with before or simultaneously when these erven are transferred. Such a condition of establishment requires an act of registration.

A condition can be imposed that a specific erf/erven must be transferred to a Non Profit Company/Association. The wording of the condition will determine whether transfer of erven to the Non Profit Company/Association must be registered prior to or simultaneous with the transfer of any other erven in the township. Unless it is specifically stated that transfer to the Non Profit Company/Association must be registered prior to or simultaneously with the transfer of the rest of the erven in the township, the Registrar can and will not enforce registration of these erven prior to registration of any other erven in the township

5.3.5 Conditions to be complied with before erven in the township become registerable:

5.3.5.1 Where endowment is payable, proof of payment must be lodged prior to or simultaneously with the first transfer of any erf in the township (e.g. see section 82(b) (ii) (bb) of Ordinance (Transvaal) 15 of 1986 or applicable section in relevant by-law).

5.3.5.2 Endowment erven to be transferred to the local authority should be listed. All endowment erven must be transferred prior to or simultaneously with the first transfer of any erf in the township in cases where the condition requires it. If not the examiner's duty is only to ensure that endowment erven are transferred to the body as indicated in the condition once the erven are to be transferred.

5.3.5.3 Installation of internal and external services: Proof of compliance is required.

A certificate issued in terms of section 82 of the Town Planning and Townships Ordinance (Ordinance (Transvaal) 15 of 1986) must be lodged with the first transfer of an erf in cases where the application was approved in terms of Ordinance (Transvaal) 15 of 1986. In respect of a Township establishment in terms of any other Act or By-Law the relevant Act or By-Law will prevail regarding proof of compliance of services. (Service certificate)

**-During a meeting held on the 18 September 2018 with the Chief Registrar of Deeds which meeting was attended by three conveyancers, officials from the Pretoria Deeds registry, Johannesburg Deeds registry and the City of Tshwane the following decisions were taken :**

**a) The Registrar of Deeds will not accept any condition in the COE , requiring a section 82 of the Town Planning and Townships Ordinance (Ordinance (Transvaal) 15 of 1986) service certificate to be lodged before any other act of registration (e.g. CRT, CCT or opening of a scheme) can take place.**

**b) The conditions requiring the municipality to consent to the taking out of a CRT, Sectional title schemes or any other act of registration must be separated from the section 82 condition and must be qualified to refer to the enabling legislation being section 98(2) of Ord. 15/1986(Tvl).**

**c) Should an applicant be aggrieved by the imposition of conditions of establishment as part of their approval, the applicant should follow the appeal process as provided for in section 104 of Ord. 15/1986. The said appeal process must be dealt with between the applicant and the local authority, and the Registrar of deeds will not be a party to this process.**

**d) The same principal will be followed in respect of a Township establishment in terms of any other Act or By-Law. The Registrar of Deeds will not accept any condition in the COE, requiring a service certificate to be lodged in terms of that relevant section of the Act or By-Law before any other act of registration (e.g. CRT, CCT or opening of a scheme) can take place, unless that section makes provision for such requirement.**

### **5.3.6 Disposal of existing servitudes and existing title conditions:**

#### **5.3.6.1 Existing servitudes:**

Existing servitudes will appear in the Title deed. The servitude notes on the General Plan will make reference to a small scale diagram as well as the deed of creation (K S/Title nr). If no reference to the deed of creation is made, the General Plan should be referred back to the Surveyor General for completion.

New servitudes to be registered over the farm property, simultaneously with the opening of the township register, will not appear as existing conditions on the farm title. The servitude notes on the General Plan will only make reference to a small scale diagrams (prior to opening of the township register) without any reference to a deed of creation. These conditions could be-but not necessarily) be a pre-proclamation condition and be disclosed under the heading "Conditions to be complied with prior to the opening of the township register and declaration of the township". These servitudes need to be registered simultaneously, however be linked before the application for the opening of the Township register and dealt with under this heading ("Disposal of existing conditions of title") and **not** under the heading of "Conditions of Title". A condition dealt with under this heading **cannot** be repeated under "Conditions of Title".

Newly created servitudes, registered simultaneously with the opening of the township register, should be described with regard to the figure, diagram and nature of the servitude in a way that it is clearly identifiable as no reference number for the creative deed exists as yet.

These conditions should be set out **verbatim**. Reference to the number/s of the title conditions will not be allowed.

Note: Whether the servitudes are to be created over farm properties (existing servitudes over the former property on which the township is established) or for the first time over erven (which need to be dealt with under the heading of "Conditions of Title"), will depend on the property description on the servitude diagrams and the servitude notes on the General Plan.

A servitude situated on more than one component indicated by different figures, can be indicated more than once under the heading of "Existing Conditions of Title". If the servitude is indicated as one servitude note on the General Plan, the figure indicated, should comprise the full servitude described as more than one servitude under the "Existing Conditions of Title"

These conditions should be set out verbatim. Reference to the numbers of the title conditions will not be allowed .

Existing servitudes (which will exclude newly created servitudes registered simultaneously with the opening of the township register), however can be described with reference to the servitude number and the nature of the servitude if it is not set out verbatim. It is not necessary to repeat the conditions that had been cancelled prior to the Opening of the Township e.g. excision conditions, Act 21 of 1940 etc. under this heading (if reference are made to these conditions, it should be regarded as pro-non-scripto).

All conditions applicable on the farm title (on which the township is to be opened), and should not be carried forward to all erven in the township, must be set out and dealt with under this heading.(e.g.)

**All erven should be made subject to the existing title conditions:**

- i) Excluding the following servitudes which do not affect the township due to its locality/location/situation (This servitude does not affect any erf in the township)*
- (ii) Excluding the following servitudes which only affect erven ## and ## in the township (This servitude only affects certain erven in the township).*
- iii) Excluding the following servitudes which only affect Jorrisen street. (This servitude only affects a street in the township).*

#### **Subject conditions:**

All the erven should be made subject to these conditions or else the conditions need to be cancelled / removed before the Opening of the Township takes place in terms of the normal practices as referred to in paragraph 5 supra.

It cannot just be stated that conditions to which the farm property is subject to, should not be brought forward onto the erven or that it does not affect the erven due to locality. If the farm property is subject to the conditions and the Township is opened on the full farm property, the township is automatically affected by all the same conditions. All erven should be made subject to servitudes /conditions in general terms e.g. the property is obliged to receive stormwater or conditions referring to soil conditions or building restrictions etc.

#### **5.3.6.2 Entitlement conditions:**

Should entitlements not be passed on to township erven, it must be disclosed as follows: *"The following Entitlements/Rights will not be passed on to the erven in the Township"*.

**5.3.6.3 Water Court orders:**

Water Court conditions should be brought forward onto the erven **or be cancelled by court order**

**5.3.6.4 Servitudes with ancillary rights:**

If the servitudes do not affect erven in the township due to their location, the servitude holder must lodge consent with the Local Authority/ Authorizing Authority indicating that the erven are not subject to the servitudes in the township due to their location.

These conditions should be dealt with under the heading *"excluding the following servitudes which do not affect the township due to its locality"*

*Or if no such consent is submitted to the Local Authority or the consent states that the servitude affects the township area, and then the servitudes should be brought over onto the erven.*

**NB:** The Deeds Office will not require proof that a Servitude holder's consent has been submitted to the Local Authority. It will be the responsibility of the Local Authority to ensure they have the required consent.

**5.3.6.5 Servitude notes on General Plan:**

Existing servitudes reflected on the general plan affecting only specific erven should be dealt with under the heading *"excluding the following servitudes which only affect erven ## and ## in the township only"*.

**5.3.6.6 General Servitudes whereof the routes had not yet been determined:**

If the route of servitude has not yet been determined, the condition should be brought over onto all the erven.

**5.3.6.7 Servitude whereof the route is only reflected on the General Plan.**

A servitude indicated in the Title deed whereof the route is only reflected on the General Plan for the first time, will only affect specific erven and should be dealt with under the heading *"excluding the following servitudes which only affect erven ## and ## in the township only"*.

## **6. CONDITIONS OF TITLE**

Servitudes dealt with under this heading will be indicated on the general plan without reference to a prior diagram.

All servitudes which appear on the General Plan except pre-existing servitudes affecting the farm title must be set out as conditions of title.

Only registrable conditions may be imposed. Conditions that do not comply with Section 63 of Act 47 of 1937 may not be imposed.

### **6.1 CONDITIONS IMPOSED BY THE AUTHORIZING AUTHORITY IN TERMS OF...**

The statute/ Act in terms whereof the condition is imposed by the authorizing authority should be mentioned. Reference should also be made to which erven will be subject thereto to these conditions.

#### **Conditions imposed by the Local Authority:**

##### **6.1.1 The 3 omnibus conditions:**

- The erf ...

- No building ...
- The Local Authority ...

6.1.2 Geo-Technical conditions even though strictly speaking do not form a subtraction of dominium but are inserted for the protection of the public e.g.

6.1.2.1 Certain erven in the township are situated in an area where soil conditions can affect and damage buildings and structures. Building plans submitted to the local authority for consideration shall indicate measures to be taken, to limit possible damage to buildings and structures as a result of detrimental foundation conditions. These measures shall be in accordance with the recommendations contained in the Geo-technical report for the township, unless it is proved to the local authority that such measures are unnecessary or that the same purpose can be achieved by other more effective means. The NHBRC classification for foundations is considered as C2.

6.1.2.2 Certain erven in the township lie in an area with soil conditions that can cause serious damage to buildings and structures. In order to limit such damage, foundations and other structural elements of buildings and structures must be designed by a competent professional engineer and erected under his supervision unless it can be proved to the local authority that such measures are unnecessary or that the same purpose can be achieved by other more effective means.

6.1.2.3 As this erf form part of land which may be undermined and which may be liable to cracking ... where liability is accepted due to settlement and shock (If not imposed by statute).

6.1.2.4 The condition where the Local Authority limited the power supply to the erf e.g.

Erven 596 and 597

The erven shall not be alienated or transferred without the written **consent** of the Local Authority first having been obtained and the Local Authority shall have an absolute discretion to withhold such consent, unless the transferee **accepts** the following condition: The Local Authority has limited the electricity supply to the erven to 2 MVA and should the registered owner of the erven exceed the supply or should an application to exceed such supply be submitted to the Local Authority, additional electrical contributions as determined by the local authority, shall become due and payable by such owner/s to the Local Authority.

**NB** Note, the reference to the consent of the local Authority and the acceptance of the transferee makes it registrable. If no reference thereto is made, the condition is not registrable.

6.1.2.5 Conditions **imposed by the Local Authority on behalf of another entity. In this instance the Local Authority will be in possession of consent from the entity which consent is subject to a condition. The heading of the condition must also indicate that the condition is imposed by the Local Authority on behalf of the entity e.g**

Imposed by the Local Authority in terms of section 98(2) Ordinances 15/1986 or relevant Act or By/Law on behalf of the Department of Mineral Resources

As this erf forms part of land which may be undermined and which may be liable to cracking... where liability is accepted due to settlement and shock.

6.1.2.6 Conditions imposed by any other statute:



The statute/ Act in terms whereof the condition is enforceable should be referred to in a heading e.g.

Conditions of Title imposed by the Department of Housing in terms of the Housing Act as amended (section 10(A) (1) Act 107/1997 as amended by Act 4/2001

The transferee will not be allowed to sell or otherwise dispose of the property within a period of 10 years without the consent of the relevant provincial housing Department

**Once such legislation is amended or repealed, the same legislation will not be acceptable as authority to impose any conditions in further developments.**

6.1.2.7 Any other condition that is not a subtraction from the dominium in accordance to Section 63 is **not** registrable. This will include conditions dealing with building plans, building restrictions, pollution, re-zoning etc.

#### 6.1.3 Servitude notes on General Plan:

Servitudes affecting only erven in the Township should be dealt with under this heading and NOT under paragraph 6.2 under the heading of "Servitudes in favour of third parties to be registered".

Praedial Servitudes should be avoided **except** where servitudes are over and in favour of erven in the same township. Servitudes reflected on the general plan affecting only specific erven in the Township should be dealt with. e.g.

- **Erf 100**

The above mentioned Erf 100 is subject to right of way servitude as indicated on the General Plan in favour of Erf 105 to Erf 112.

- **Erf 105 to Erf 112**

The above mentioned Erf 105 to Erf 112 is entitled to right of way servitude over erf 100.

Note the subject and entitled erven should be repeated separately.

#### 6.1.4 Conditions not on General Plan:

Conditions that are more general of nature which is not reflected on the General Plan and do **not** require registration but affect erven, should be dealt with under this heading e.g. Erf 1 may only be alienated with the consent in writing of the Local Authority.

### 6.2 SERVITUDES IN FAVOUR OF THIRD PARTIES TO BE REGISTERED

These conditions must be clearly separated from the conditions imposed in favour of the Authorizing Authority (e.g. Conditions in terms of the provisions of the Town Planning and Townships Ordinance or relevant By-Law) by way of a separate paragraph number under the heading "Conditions of Title".

Conditions must be disclosed in full and there must be an indication which erven are affected by the servitudes.

Ensure that there is a clear indication to the erven / farms / entities / individuals in whose favour the servitudes are to be registered.

A prerequisite set out under the heading of "Conditions of Establishment" and requires a servitude in favour of a third party to be registered, **must** be set out under this heading e.g. A Home Owners Association must be registered and all owners to become members of the Home Owners Association etc.

6.2.1 Conditions in favour of a Non Profit Company/Association will be dealt with under this heading.

No servitudes may be imposed in favour of the local authority as well as the Home Owners Association. It is imperative that conditions in favour of the local authority and the Home Owners Association be separated and clearly indicated under a separate paragraph numbers.

The Non Profit Company/Association can be referred to in the Conditions of Establishment without reference to the name of the Home Owners Association. The deeds and documents however must refer to the correct full name and registration number of the Home Owners Association at the time when the condition is created.

Conditions in favour of a Non Profit Company/Association set out under this heading, don't need to be created in the Power of Attorney with written acceptance by the Non Profit Company/Association (section 65(1) of DRA). It will also result in no lodgment of a TDR for the creation of a negative personal servitude. Conditions created by proclamation do not need to be created again in the power of attorney, but can be brought forward directly in the deed of transfer.

Other servitudes as depicted on the General Plan to be registered over Home Owners Association properties may be imposed, for example servitudes for refuse purposes and right of way servitudes to provide access to erven in the township in favour of all other erven in the township (save for those to be transferred to the Home Owners Association). These servitudes will be imposed as praedial servitudes as envisaged in paragraph 6.1.4 supra.

6.2.2 Servitudes in favour of ESKOM, GASKOR etc. must be registered by Notarial Deed.

6.3.3 Servitudes can be created in favour of owners or occupiers from time to time of all or certain erven (section 65(1) of DRA). Make sure that there is a clear indication of the entity / individual in whose favour the servitudes are to be created.

6.3.4 Servitudes affecting an erf and a piece of land adjacent to the Township must be registered by Notarial Deed  
or created in the Power of Attorney with compliance to Section 76 of Act 47 of 1937 e.g. Erf 1 is subject to a right of way in favour of Portion 21 of the farm ...  
This servitude should be dealt with under the heading of "Servitudes in favour of third parties to be registered" and NOT under paragraph 6.1 above.

## **7. PROCLAMATION**

If Proclamation is required in terms of Act/Ordinance/By- Law, the Proclamation needs to take place in accordance to the Conditions of Establishment which was approved at registration of the Township. If the Proclamation deviates from the Conditions of Establishment, the Authorizing Authority needs to inform the Deeds office of the deviation. The deviation would only be acceptable if it is in accordance with all registration requirements.

First transfer of erven needs to take place in accordance to the Proclamation.

**NB Cognizance** must be taken if proclamation is a requirement before erven in a township can be transferred e.g. Section 101 (4) Ordinance 15 of 1986 or relevant section in applicable By-Law.

## **8. TOWN PLANNING SCHEME CONDITIONS**

These conditions (e.g. section 125 conditions) must not be brought forward into the new deeds of transfer.

## **9. DATE OF EFFECT**

This Circular will be effective from **12 November 2019** and withdraw **RC 2/ 2019**

  

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Registrar of Deeds  
Pretoria  
Date: 15/11/2019