rural development
& land reform

Department:
Rural Development and Land Reform
REPUBLIC OF SOUTH AFRICA

DEEDS REGISTRY - JOHANNESBURG

P O Box 61873, Marshalltown, 2107; Tel: 011 843 8300; Fax: 011 843 8428

REGISTRAR'S CIRCULAR NO 2 OF 2015

1. The purpose of this circular is to clarify the Deeds Registry: JHB position regarding conditions of title imposed in terms of the provisions of the *Town-planning and Townships Ordinance, 1986 (ordinance 15/1986)* in favour of the local authority which state as follows:

(a)(i) *The erven in the township lie in an area where soil conditions can affect buildings and structures and result in damage to them. Building plans submitted to the local authority for approval shall indicate measures to be take, in accordance with recommendations contained in the Engineering Geological Report for the township, to limit possible damage to buildings and structures as a result of detrimental foundation condition 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*

(ii) *The NHBRC classification for foundations is considered as C2.*

(iii) *Professional designed subsoil and surface drainage measure are required.*

(b) *The erven in the township 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 transferees accept the following condition: The local authority had limited the electricity supply to the erven in the township to 210kVA/300Amps and should the registered owners of any of the erven exceed the supply or should an application to exceed such supply be submitted to the local authority, additional electricity contribution as determined by the local authority, shall become due and payable to the local authority by such owners.*

(c) *Where in the opinion of the Local Authority, it is impracticable for storm water to be drained from higher-lying erven direct to a public street the owner of the lower lying erf shall be obliged to accept and/or permit the passage over the erf of such storm water. Provided that the owners of any higher-lying erven, the storm water from which is discharged over any lower-lying erf, shall be liable to pay a*

proportionate share of cost of any pipeline or drain which the owner of such lower-lying erf may find necessary to lay or construct for the purpose of conducting the water so discharged over the erf.

2. **Section 63 of the deeds Registries Act provides as follows:**

(1) No deed, or condition in a deed, purporting to create or embodying any personal right, and no condition which does not restrict the exercise of any right of ownership in respect of immovable property, shall be capable of registration: **Provided that a deed containing such a condition as aforesaid may be registered if, in the opinion of the registrar, such condition is complementary or otherwise ancillary to a registrable condition or right contained or conferred in such deed**

3. The following practice and procedure to be followed with regard to the abovementioned conditions:

(i) The condition at paragraph 1(a) will be accepted for registration

(ii) The condition at paragraph 1(b), Erven in the township shall not be alienated or transferred without the written consent of the Local Authority **in all instances. It is the responsibility of the Local Authority to monitor the compliance of the restrictive condition if satisfied then inform the Registrar of deeds to proceed with the registration of property by way of lodging a consent to the Registrar of deeds to transfer the property**. Acceptance from the transferees need not be lodged at the Deeds Office.
It should further be noted that until such time as the amendment has been effected, consent by the local authority to the registration of a bond over erven containing the above restriction against alienation will be insisted upon in respect of the above (see RCR 6/2009).

(iii) The condition at paragraph 1(c) will not be acceptable for registration as it does not comply with the provision s of section 63 of the Deeds registries Act 47 of 1937.Condition does not restrict the exercise of any of ownership in respect of immovable property and it is not **complementary or otherwise ancillary to a registrable condition or right contained or conferred in a deed**.

The abovementioned practice and procedure will be followed in similar title conditions.

.....
REGISTRAR OF DEEDS
DATE: 06 Feb 2014