rural development
& land reform
Department:
Rural Development and Land Reform
REPUBLIC OF SOUTH AFRICA

REGISTRARS' CONFERENCE RESOLUTIONS 2018

A. WITHDRAWAL OF REGISTRARS' CONFERENCE RESOLUTIONS

1/2018 The following Registrars' Conference Resolutions must be withdrawn:

- RCR 52/1952 (see RCR 2/2018)
- RCR 2/1996 (see RCR 3/2018)
- RCR 26/2006 (see RCR 13/2018)
- RCR 47/2007 (see RCR 4/2018)
- RCR 75/2011
- RCR 4/2017
- RCR 21/2017

B. PREVIOUS REGISTRARS' CONFERENCE RESOLUTIONS

2/2018 Section 4 (1) (*b*) – Error in an Antenuptial Contract of which the client copy is lost

Where an application in terms of section 4 (1) (*b*) of Act No. 47 of 1937 is lodged in a deeds registry as to amend an error in the names, surname or Identity number of any of the parties in a registered antenuptial contract, and the parties allege that the original contract is lost, how should the registrar of deeds effect such a registration?

Resolution:

The office copy of the antenuptial contract must be endorsed and a caveat to that fact should be noted against the names of the parties.

- RCR 52/1952 is hereby withdrawn.
- RCR 23/1974 is hereby confirmed.

3/2018 RCR 2/1996 Section 4 (1) (*b*) – Error

RCR 2/1996 still refers to CRC 3/1983, which has been repealed by CRC 2/2009. RCR 2/1996 should be repealed and replace by the new updated resolution below.

Resolution:

See Chief Registrar's Circular 2 of 2009.

- RCR 2/1996 is hereby withdrawn.

4/2018 Deregistration of Home Owner's Association by Companies and Intellectual Property Commission

Where a Home Owner Association has been finally deregistered by the Companies and Intellectual Property Commission, may the provisions of section 68 (1) of Act No. 47 of 1937 be invoked to indicate the lapsing of servitudes/conditions in which reference is being made to such Home Owner's Association?

Resolution:

No. Section 68 of Act No. 47 of 1937 does not find application. The relevant removal of restrictions legislation and procedure to be followed or court order to be obtained.

- RCR 47/2007 is hereby withdrawn.

C. DEEDS REGISTRIES ACT, 1937 (ACT NO. 47 OF 1937)

5/2018 **Section 16 of Act No. 47 of 1937: Application to endorse a land title where property vests in a certain municipality**

Application in terms of section 16 must reflect the authority by which a municipality has become the owner of land. Reference to a municipal decision is not sufficient. Section 16 is not an authority to affect vesting into the name of a local authority, it is merely the vehicle which the Deeds Registries Act sets out to record the endorsement.

Resolution:

Section 16 of Act No. 47 of 1937 application must disclose a valid *causa*. RCR15/2017 is applicable to a section 16 application.

6/2018 **Section 76 (1)*bis* of Act No. 47 of 1937**

Section 76 (1)*bis* needs to be amended to provide for instances where all the title deeds cannot be obtained in respect of the servient tenement and the dominant tenement confirms that the temporary servitude is no longer required.

Resolution:

Pending the amendment of the Act, the registrar of deeds may dispense with the production of title deeds. Office copy of the title deed must be endorsed and a caveat be noted.

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

7/2018 **VA copy for a bond**

How do we issue a VA copy for a bond if the Deeds Registry copy is also not available?

Resolution:

Pending the amendment of the Act, the court may be approached for an appropriate order.

8/2018 **Signature by a mere mark**

A transferor "signs" a power of attorney to pass transfer by a mere mark as he/she was illiterate. The Deeds practice manual refers to a certificate by the Commissioner of Oaths, particularly referring to affidavits. What will the practice be with powers of attorney citing a mark by the mortgagor or transferor? Is a certificate required and if so, based on what authority?

Resolution:

The mark must be supported by a certificate from a commissioner of oaths.

9/2018 Electronic Signature

Conveyancers more often can only come up with electronic copies, with electronic signatures. Over the counter certified copies, particularly in first world countries are phasing out. What do we do if conveyancers can only obtain copies of documents electronically and no longer over the counter? Should the Regulation Board not look at regulation 20 (7) and propose a regulation which speaks to modern day trends and practices?

Resolution:

A certificate by the conveyancer, similar in format to the conveyancer certificate reflected on clearance certificates and Transfer Duty receipts must be provided for electronically downloaded documents. (See CRC 8/2014)

10/2018 Waiver of real rights not registered in favour of the bond

A mortgage bond was registered but the waiver by the holder of a real right in favour of the bond was not registered. How should this waiver now be included in the mortgage bond after registration?

Resolution:

The waiver must be notarially registered as provided for by regulation 41 (7) of Act No. 47 of 1937 and the bond must then be suitably endorsed.

11/2018 Removal of Condition in title deed

Conditions in a title deed were removed in terms of the Removal of Restrictions Act. The due processes were correctly followed. The property was however subsequently transferred without the endorsement of the title reflecting the removal. Can the title subsequently be endorsed?

Resolution:

Yes, the removal of condition becomes effective on publication of the notice, the subsequent title to be endorsed.

12/2018 Pre-lodgement full initialling on the Power of Attorney

Powers of Attorneys are lodged with full initialling on clauses that contain names of parties, property descriptions, purchase price, place of signature and dates. How must the matter be dealt with?

Resolution:

Material amendments after examination must be fully initialled. Regulation 44 (2) of Act No. 47 of 1937 is applicable. Pre-initialling for possible future amendments is discouraged.

13/2018 Suspicious signatures/initials

Can the examiner question the signatures or initials where it is evident from the deed or document that the signatures and or initials of signatories could have been forged.

Resolution:

Each situation must be dealt with on its merit by the registrar of deeds.

- RCR26/2006 is hereby withdrawn.

14/2018 Transfer in pursuance of a claim: Deceased Estate

A deceased person incorrectly acquired ownership of immovable property to which he/she was not entitled to. The legal owner has laid a claim from the estate. The executor admits the claim. May the executor of a deceased estate sign a rectification transfer?

Resolution:

Yes. It is part of the liquidation of an estate.

15/2018 Lost divorce settlement

If a divorce settlement is lost and the court has also lost the copy can an Affidavit be lodged?

Resolution:

No. A new settlement agreement or a court order must be lodged. This resolution has to be read in conjunction with CRC 21/1990.

16/2018 Sheriffs Transfer

Can a sheriffs' transfer be proceeded with when the property is subject to a preservation order and the attachment order was issued later? What should be lodged?

Resolution:

The preservation order must be uplifted prior to the sheriff transfer taking place.

17/2018 Amended Regulation 44 A – Reference to nature of authorization

Is it still necessary for a conveyancer to refer to the nature of authorization on documents with a preparation clause, in the light of the amended Regulation? There is a high number of rejections on this matter and conveyancers argue that such references are no longer required.

Resolution:

Proper reference to nature of authorization must be provided on such documents in accordance with resolutions and the deeds practice manual – (*status quo* remains).

18/2018 Application for a change of name

Property is registered in the names of parties whose marriage is governed by the laws of a foreign country and they are seeking to register an application for a change of name in terms of section 93 (1) of Act No. 47 of 1937.The change of name was done by the applicants in the country of their origin. Must the Registrar insist on the proof from the Department of Home Affairs or Government Gazette as it is practice currently? If not what proof must be lodged.

Resolution:

If the foreigner does not fall within the ambit of section 2 of the Births and Deaths Registration Act 51 of 1992, sufficient proof must be lodged, section 4 (1) (*a*) of Act No. 47 of 1937 finds application. If the proof is not sufficient, a court order must be lodged.

19/2018 A notarial lease agreement

Must a lessee, who is married in community of property, obtain the consent in terms of section 15 of Act 88 of 1984 when concluding a notarial lease agreement?

Resolution:

No. The consent in terms of section 15 of the Matrimonial Property Act 88 of 1984 is not required.

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

20/2018 The authority for appointment of a curator by the Master

Where a High Court order authorizes the appointment of a curator, is it still necessary to refer to letter of appointment issued by the master of the high court?

Resolution:

Yes. Section 71 of the Administration of the Estate Act 66 of 1965 is applicable.

F. SECTIONAL TITLES ACT 95 OF 1986

21/2018 Section 14 (5) of Act No. 95 of 1986: (Deeds Training)

Section 14 (5) of Act No. 95 of 1986 stipulates that the client's title must be endorsed when notification from the Surveyor General Office is received and the office copy of the title must be endorsed. Section 14 (3) also provides for the discretion of the registrar to allow transfer of the property where hardship may be caused in which case the title will be

endorsed and the caveat purged. However the danger is that the application in terms of Regulation 15 (4) may never be lodged.

Resolution:

Pending the amendment of the Act, the caveat may only be purged on application of amendment of the sectional plan and not when the title is lodged in the deeds office.

G GENERAL (ACT 95 OF 1986)

22/2018 The holding clause of a notarial cession of exclusive use area

Uncertainty exists regarding the wording of the holding clause of a notarial cession of exclusive use area in terms of section 27 (2) of Act 95 of 1986 in which case the 11 (3) (*b*) certificate is endorsed with the cession and no title exists for the real right.

Resolution:

The holding clause should read: "as will appear from Sectional Plan D_____ filed with SS_____." (the first phase if applicable). Section 13 (2) of the Sectional Titles Act No. 95 of 1986 finds application.

23/2018 Lost Notarial Deeds of Cession of Exclusive Use Area

RCR 38/2008, RCR 18/2010 and RCR 9/2016 does not deal with lost copies of Notarial Deeds of Cession of Exclusive Use Area.

May the provisions of section 38 of Act No. 37 of 1947 be invoked in view of Section 3(1) of the Sectional Titles Act No. 95 of 1986 in relation to the following:

(a) Where the client's Notarial Deed of Cession of exclusive use area copy as well as the Deeds Office copy is also lost or destroyed, however the Notary gross Protocol copy is available.

(b) Where the clients Notarial Deed of Cession of Exclusive Use Area copy, the Deeds Office copy as well as the Notary's gross Protocol copy is lost or destroyed.

Resolution:

The provisions of section 38 of Act No. 37 of 1947 finds application in this circumstances. (See Annexure A as an example).

H. GENERAL MATTERS

24/2018 **Compliance with section 38 of Act No. 47 of 1937 with transfer of expropriated land when Deeds Office copy is also not available**

Who should comply with section 38 of Act No. 47 of 1937 if a portion or the whole of land already expropriated needs to be formally transferred and where the client's title and deeds office copy is also not available?

Resolution:

Where the whole of property is expropriated the expropriating authority should comply with section 38 of Act No. 47 of 1937. However, where a portion only is expropriated, the expropriation authority cannot apply. The owner must apply, alternatively, a court order must be obtained.

Annexure A

Prepared by me

.....
CONVEYANCER

.....
(State full name and surname in block letters)

SK	**S**

Whereas .....has applied for the issue to him/her of a Certificate of Registered Title in lieu of Notarial Deed of Cession No. SK.....S dated.....which has been lost or destroyed, and whereas it appears that he/she is the registered holder of the exclusive use area, hereinafter described.
Now, therefore, in pursuance of the provisions of the said Act, I, the Registrar of Deeds at.....do hereby certify that the said ....., is the registered holder of

An Exclusive Use Area described as....., measuring....., being as such part of the common property comprising the land and the scheme known as.....in respect of the building or buildings situated at....., as shown and more fully described on Sectional Plan No. SS.....

HELD BY Notarial Deed of Cession No. SK.....S

and subject to the conditions contained therein.

And that by virtue of these presents the said.....,
In witness whereof I, the said Registrar, have subscribed to these presents, and have caused the seal of office to be affixed thereto.

Thus done and executed at the Office of the Registrar of Deeds at Pretoria on this ..... day of ..... in the year of Our Lord, One thousand Nine hundred and .....

.....
Registrar of Deeds