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

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REGISTRAR CIRCULAR 4/2015

2014 REGISTRARS CONFERNCE RESOLUTIONS

1. PURPOSE

To provide guidance regarding the implementation to some resolutions taken at the Registrars Conference in 2014.

2. RCR 3/2014 (RCR 4 of 1956 – Amendment of purchase price/value of property in a title deed)

The resolution withdrew RCR 4/1956 and ruled that where the purchase price/value of property is incorrectly reflected in a title deed that the provisions of section 3(1)(v) may be applied upon application by the holder of the title deed on production of satisfactory proof.

Conference also ruled that cognisance must be taken of transfer duty and fee implications and therefor examiners will need to call for a Transfer Duty Receipt in these circumstances.

3. RCR 17/2014 (Section 68(1) – Partial lapsing of a condition)

Conference ruled that the provisions of section 68(1) of Act No. 47 of 1937 can be utilized for the noting of the partial lapsing of a personal servitude.

When an application in terms of Section 68(1) of Act 47 of 1937 is lodged, examiners must carefully read the application as to confirm whether the application is for the cancellation of the condition or only the partial lapsing thereof.

If the application only calls for the partial lapsing of the servitude the following procedure must be followed for the endorsing of the affected title.

- The endorsement in terms of Section 68(1) of Act 47/1937 on the Title Deed must be properly qualified by quoting the segments of the condition which has lapsed.

- The examiner must also rule through, in pencil, the segments in the condition in the affected Title deed, which has lapsed.

On subsequent transfers only the remaining segments of the condition which has not lapsed, must be brought forward into the new deed.

4. RCR 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 it has to be pointed out that regulation 44A(d)(ii) (aa) and (bb) makes no reference to a representative acting on behalf a natural person.

Conference correctly concluded that 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.

Pending the amendment of Regulation 44A of Act 47 of 1937 and regulation 16C of Act 95 of 1986, Examiners should with immediate effect:

- Check any PA in which a representative has been appointed by a natural person, to act on his/her behalf.

- and indicate that it has been checked on the document referring to the PA.

5. RCR 29/2014 (Transfer of an undivided share in agriculture land)

Conference ruled that where an Owner owns a whole of a farm (being agricultural land) in shares by different titles, that he will be allowed to transfer, for example one ½ share to person A and the remaining half share to person B by different Deeds of Transfer as provided for in terms of section 3 (b) of Act 70 of 1970 (see CRC 4 of 1970).

Examiners must take note that this will not be a contravention of CRC 6/2002 (para 6) which prohibits the transfer of farm land, without the written consent of the Minister of Agriculture, which will result in the increase of the number of

registered owners and must therefore not call for a letter from the said Minister in this regard.

6. RCR 37/2014 (Description of an owner of Certificate of Registered Sectional Title)

A question was posed to Conference on how the owner/holder should 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 where a registered owner (natural person) dies before he could register the opening of a sectional scheme over his property.

Conference ruled that the owner/holder must be cited as provided for in regulation 54 (2) of Act No. 47 of 1937 and that it must be registered in the name of the owner/holder, including identity number and status (deceased), e.g.

James Bond
Identity number 450719 5626 086
Deceased

It is important that examiners take note not only of this ruling but to take cognisance of the provisions of Section 54(2) of Act 47 of 1937.

Regulation 54(2) of Act 47 of 1937:

"A certificate of title of immovable property which is registered in the name of a person since deceased shall be issued in the name of the registered owner (deceased), and not in favour of his estate."

7. RCR 39/2014 (Homeowners consents and certificate by architects or land surveyors as contemplated in RCR 61 of 2008)

Conference was requested to provide 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 Association and to give guidance whether it must contain letterheads, practice numbers and attestation of the land surveyor's signature by witnesses.

Conference ruled that:

7.1.1. A home owners' association consent must be contained on its letterhead or be prepared by a conveyancer in terms of Regulation 44 of Act 47 of 1937.

If the Home owners' association consent is lodged on their official letter head, the Registrar of deeds cannot insist that the conveyancer allocate a Regulation 44 of Act 47 of 1937 preparation clause thereto.

The examiner my request for the conveyancer to comply with Regulation 44, where no letterhead was utilized.

7.1.2. If the conveyancer prepared the consent document for the Home owners association then he/she must comply with Regulation 44 of Act 47 of 1937 since it was prepared by the conveyancer.

7.2. Certificates from architects and land surveyors must contain their names and practice numbers.

Examiners must take note of the fact that only an Architect or a Land surveyor who is registered with the relevant professional board my issue this certificate and therefore if he/she cannot provide the said practice number, the certificate will not be accepted as it will be regarded that RCR 61/2008 has not been complied with.

The Registrar of deeds cannot compel the Architect or Land surveyor to provide the certificate on a document containing a letterhead but examiners must insist that if the certificate is not issued on an official letterhead of the relevant Architect or Land surveyor that the conveyancer must comply with Regulation 44 of Act 47 of 1937 by allocating a preparation clause to the certificate.

8. RCR 46/2014 (Change of information contained in Title Deeds)

Conference was requested to provide guidance on what information contained in the conditions of the deed may be changed, for example, changes to property descriptions, metrication of dimensions and areas, or changes to personal or company details, when a conveyancer prepares a deed of transfer.

8.1. Conference ruled that Conditions must be brought forward *verbatim* as it appears in the title deed in terms of Regulation 35 of Act 47 of 1937 and therefore examiners must take note of the following:

8.1.2. Property descriptions in any condition should never be updated.

8.1.3. Money values in conditions should remain unchanged. (Should not be calculated through existing formulas to reflect the Rand value at the time when the deed is prepared)

8.1.4. Imperial measurements in conditions should not be metricated.

8.1.5. If the title deed measurements in the new deed have been drafted with the metricated measurements, examiners should not call for the conveyancer to redraw the pages of the new deed, as long as the metricaredd measurements are correct.

8.1.6. Examiners should take note that it may sometimes be necessary to Deviate from the *Verbatum* rule, e.g.

8.1.6.1. (Subdivisions/Consolidations, etc.)
Where there is reference to any figure indicated on a diagram, the new figure and diagram reference should be reflected in the condition of the new deed.

8.1.6.2.Where qualification of, or in a condition will become necessary as provided for in RC 22/2001

8.2. The information in the property clause must be updated to current data, e.g.:

8.2.1. Property description

8.2.2. Metrication of extent of property

8.2.3. Province description.

9. This circular is effective immediately.

REGISTRAR OF DEEDS

PRETORIA

DATE: 10/2/2015