agriculture, land reform
& rural development
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REPUBLIC OF SOUTH AFRICA

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REGISTRARS' CONFERENCE RESOLUTIONS 2021

A. WITHDRAWAL OF REGISTRARS' CONFERENCE RESOLUTIONS

1/2021 The following Registrars' Conference Resolutions are withdrawn:

- RCR19/1949 (in contradiction to RCR28/1956 – not relevant);
- RCR46/1952 (in contradiction to RCR 36/2011);
- RCR21/1953 (outdated);
- RCR47/1954 (outdated. See regulation 20(2) of Act 47 of 1937);
- RCR49/1954 (outdated);
- RCR28/1956 (in contradiction to RCR19/1949 – not relevant);
- RCR38/1959 (in contradiction to RCR15/2007);
- RCR45/1961 (outdated);
- RCR17/1967 (not relevant to all deeds registries);
- RCR50/1967 (not relevant. See regulation 65(13) of Act 47 of 1937);
- RCR52/1967 (not relevant);
- RCR48/1969 (not relevant);
- RCR29/1970 (not relevant. See section 50A of Act 47 of 1937);
- RCR55/1971 (not relevant. See RCR35/2007, Housing Act 107 of 1997);
- RCR29/1988 (in contradiction to RCR3/2020);
- RCR3/1990 (not relevant);
- RCR13/1991 (not relevant. See RCR47/2011 and CRC28/2013);
- RCR12/1994 (not relevant);
- RCR14/1994 (not relevant);
- RCR38(*a*)/1996 (Form H of Act 95 of 1986 was amended);
- RCR38(*b*)/1996 (see RCR2/2021);
- RCR43/1996 (not relevant. See RCR47/2011 and CRC28/2013);
- RCR20/1996 (not relevant. Section 72(2) of Act 47 of 1937 was repealed);
- RCR40/1996 (not relevant. See RCR5/2011);
- RCR6.5/1999 (see RCR3/2021 and RCR4/2021);
- RCR39/2003 (see RCR5/2021);

- RCR22/2004 (not relevant. See RCR36/2009);
- RCR23/2004 (not relevant);
- RCR7/2005 (see RCR6/2021);
- RCR11/2005 (see RCR7/2021);
- RCR23/2005 (Regulation 44A(*d*)(*ii*)(*aa*) Act 47 of 1937 was amended);
- RCR49/2005 (not relevant);
- RCR5/2007 (see RCR7/2021);
- RCR5/2008 (see RCR3/2021 and RCR4/2021);
- RCR8/2008 (see RCR6/2021);
- RCR25/2009 (not relevant);
- RCR10/2010 (not relevant);
- RCR28/2010 (not relevant);
- RCR75/2010 (see RCR8/2021);
- RCR31/2011 (see RCR9/2021);
- RCR58/2011 (see CRC7/2019);
- RCR34/2012 (Forms to Act 95 of 1986 and Act 47 of 1937 amended);
- RR33/2014 (Regulation 15(4) of Act 95 of 1986 was amended);
- RCR21/2018 (Regulation 15(4) of Act 95 of 1986 was amended);
- RCR4/2019 (see RCR11/2021).

B. PREVIOUS REGISTRARS' CONFERENCE RESOLUTIONS

2/2021 Reference to exclusive use area in causa

Where a unit and exclusive use area/s have been acquired in a single transaction, should reference to this fact be made in both the causa of the deed of transfer of the unit and deed of cession of the exclusive use area?

Resolution:

A cross-reference should be made in the causa of the deed of transfer and also in the notarial deed of cession of the exclusive use area.

- (RCR38(*b*)/1996 is withdrawn)

3/2021 Change of name of person in terms of section 93 of Act 47 of 1937

Section 93 of Act 47 of 1937 provides that if a person has changed his or her name, the Registrar of Deeds shall upon written application by that person, accompanied by proof of the change of name, endorse the deed or other document regarding the change of name. In which instances must a copy of the relevant notice in the Government Gazette be lodged?

Resolution:

For an application lodged in terms of section 93 of Act 47 of 1937, which was as a result of any approval in terms of section 23, section 24(1) and section 26(2) of The Births and Deaths Registration Act 51 of 1992, a copy of a letter from the Department: Home Affairs confirming the change of name, alternatively a copy of the relevant page of the Government Gazette wherein the name change was published, must be lodged. In all other cases, proof of change of name accepted by the Registrar of Deeds prior to lodgement, may be accepted.

- (RCR6.5/1999 is withdrawn)

4/2021 **Change of name of partnership in terms of section 93 of Act 47 of 1937**

Section 93 of Act 47 of 1937 provides that if a partnership has changed its name, the Registrar of Deeds shall upon written application by that partnership, accompanied by proof of the change of name, endorse the deed or other document regarding the change of name. What proof should be lodged to proof the change of name of a partnership?

Resolution:

A section 93 of Act 47 of 1937 application signed by a duly authorised partner accompanied by a Resolution confirming the change of name of the partnership, must be lodged.

- (RCR6.5/1999 is withdrawn)

5/2021 **Section 25 of Act 95 of 1986: Noting of lapsing of right of extension**

A real right to extend a scheme is reserved in terms of section 25 of Act 95 of 1986. The right however lapsed. Is it permissible for an owner of a unit in the scheme or the body corporate to apply in term of section 68 (1) of Act 47 of 1937 (read in conjunction with section15B(1)(d) of Act 95 of 1986) to note the lapsing of the right to extend or must the developer apply?

Resolution:

The developer or body corporate must apply in terms of the provisions of section 68 (1) of Act 47 of 1937 (read in conjunction with section 15B(1)(d) of Act 95 of 1986) to note the lapsing of the right to extend.

- (RCR 39/2003 is withdrawn)

6/2021 **Reference to Company Resolutions**

Is there a need to refer to a resolution or power of attorney in deeds and documents?

Resolution:

The pre-amble in deeds and documents must state whether the authorisation is in terms of a resolution or power of attorney, without providing full particulars of the resolution.

- (RCR 7/2005 and RCR 8/2008 are withdrawn)

7/2021 **Proof of intestacy**

In RCR 7/1997 (as confirmed by RCR11/2005 and repealed by RCR1/2007) Conference resolved that a death notice can be accepted, amongst other things, as proof of intestacy. In RCR 28/2006 Conference resolved that a death notice cannot be accepted as proof of intestacy. Conference should now rectify this discrepancy by omitting reference to intestacy.

Resolution:

A death notice may be accepted as proof of death but not as proof of intestacy or proof of descendants and ascendants. For proof of heirs including children born out of wedlock, an affidavit of next of kin must be called for.

- (RCR 11/2005 and RCR 5/2007 are withdrawn)

8/2021 **Section 24 of Act 95 of 1986 extension and rates clearance certificate**

When a section is extended, in terms of section 24 of Act 95 of 1986, must a rates clearance certificate be lodged in terms of the Local Government: Municipal Property Rates Act 6 of 2004?

Resolution:

No, Act 6 of 2004 does not provide for this.

- (RCR 75/2010 is withdrawn)

9/2021 **Place of the execution of a power of attorney**

Regulation 24(4) of Act 47 of 1937 provides that deeds, powers and other documents, if executed outside the Republic, must disclose the place, country, and date of execution thereof. How should the matter be dealt with where the country of execution was not disclosed?

Resolution:

The registrar of deeds may require the conveyancer to provide a certificate to indicate the country of execution of such power of attorney.

- (RCR31/2011 is withdrawn)

10/2021 **Protection of any rights of third parties / RCR 2/2020**

Property vests in an owner with a marital status of married out of community of property. The owner is subsequently divorced. The owner transfers the property now with a status of unmarried and the Registrar of Deeds request the settlement agreement to be lodged to comply with RCR 2/2020 for the protection of any rights of third parties and that the terms of the settlement agreement is adhered to. RCR2/2020 cannot be given effect to because the settlement agreement as well as the copy filed in the High Court are lost. The owner does not have any contact with the ex-spouse, nor does he have any knowledge of the whereabouts of the ex-spouse. What proof will the Registrar of Deeds accept if it is impossible for the owner to comply with RCR 2/2020?

Resolution:

In this instance, a Registrar of Deeds has discretion, in terms of section 4(1)(a) of Act 47 of 1937, to call for an affidavit or other proof.

- (RCR 4/2019 is withdrawn)

C. GENERAL

11/2021 **Regulation 68(11) of Act 47 of 1937**

May an agent authorized by way of a registered General Power of Attorney make an affidavit on behalf of someone else. What is the correct position in respect of regulation 68(1) and regulation 68(11) applications.

Resolution:

An agent is allowed to make an affidavit if the facts contained therein are within the personal knowledge of that agent.

12/2021 Incorrect amount in Bond

A bond is registered with the bond amount in numeral and words not the same. The conveyancer alleges that the bond amount in numeral is correct and lodges a section 4(1)(*b*) of Act 47 of 1937 application to amend the error in words. Can section 4(1)(*b*) be invoked if the bond amount is cited correctly in numerals but the amount in words incorrect or vice versa?

Resolution:

No, section 4(1)(*b*) of Act 47 of 1937 cannot be used. The bond must be cancelled, and new bond must be registered.

13/2021 Cancellation of bond - Bondholder passed on and bond not dealt with

A mortgage bond is registered in the name of a private person and the mortgagor was the son of the bondholder. The bondholder passed on but the bond was not dealt with. Years later the conveyancer wants to deal with the bond but the executor was not only discharged from his duties by the Master, he has passed away. The conveyancer wants to lodge a consent to cancellation signed by the Master. Can a consent signed by the Master be allowed for registration?

Resolution:

No, the Master of the High Court does not have the capacity to sign the consent to cancellation of the bond. A new executor must be appointed to sign such consent.

14/2021 Creation or cancellation of notarial tie agreements

There is no uniformity regarding the lodgement of transfer duty or exemption certificates on the creation or cancellation of notarial tie agreements. Transfer Duty Receipt or exemption certificates are not lodged in all circumstances. There is also no authority that addresses the matter. Regarding the creation of notarial tie agreements, the Deeds Practice Manual states the following:

A tie agreement is a negative servitude which prevents separate alienation of two or more properties. Since time immemorial registrars of deeds have been registering notarial tie-agreements, which have the status of a personal servitude, and are capable of being registered under the provisions of s 65 of the Deeds Registries Act 47 of 1937.

The explanation in the Deeds Practice Manual seems to suggest that a transfer duty receipt or an exemption certificate might be required since the notarial tie is regarded as a personal servitude. What is the actual position?

Resolution:

Subject to the provisions of CRC 14/2000, a transfer duty receipt or transfer duty exemption certificate must be lodged on creation or cancellation of a notarial tie agreement.

15/2021 Cancellation of a Section 20 Contract

On cancellation of a section 20 contract we are often confronted with a situation where the Transfer Duty or Exemption Certificate is not lodged. The Deeds Practice Manual, CRC7/1969 and RCR 5.15/1999 give the impression that there are transactions where a Transfer Duty Receipt or an Exemption Certificate is not required. In those instances, a conveyancer's certificates appears to be sufficient. What is the actual position?

Resolution:

A transfer duty receipt/exemption certificate must be lodged.

16/2021 Permanent same sex life partnership

Two partners are in a permanent same-sex life partnership and have undertaken reciprocal duties of support. One of the parties died intestate. The surviving partner inherit the property in terms of Intestate Succession act. In accordance with the Gory v Kolver 2007 BCLR 249(CC), section (1)(1) of the Intestate Succession Act is to be read as though the following words appear therein after the word spouse, wherever it appears in the section: or partner in a permanent same-sex life partnership in which partners have undertaken reciprocal duties of support. In light of Gory v Kolver case, which documents must be lodged with the Deeds Registry as

a proof that partners where in a permanent same-sex relationship where they have undertaken reciprocal duties of support?

Resolution:

The same documents as per any other intestate estate must be lodged.