



agriculture, land reform & rural development

Department:
Agriculture, Land Reform and Rural Development
REPUBLIC OF SOUTH AFRICA

OFFICE OF THE CHIEF REGISTRAR OF DEEDS

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REGISTRARS' CONFERENCE RESOLUTIONS 2024

A. WITHDRAWAL OF REGISTRARS' CONFERENCE RESOLUTIONS

- *Deeds Registries Act, 1937 (Act 47 of 1937), (hereinafter referred to as Act 47 of 1937)*
- *Sectional Titles Act, 1986 (Act 95 of 1986), (hereinafter referred to as Act 95 of 1986)*

1/2024: The following Registrars' Conference Resolutions are withdrawn:

- RCR 60/1954 (in contradiction with regulation 26 and Forms TT and UU of Act 47 of 1937);
- RCR 19/1970 (outdated, see section 28(2) of General Law Amendment Act 101 of 1969);
- RCR 31/1988 (outdated, see regulations 20(7) and 50(1) of Act 47 of 1937);
- RCR 36/1996 (outdated, see sections 14(3) and 14(5) of Act 95 of 1986);
- RCR 40/2010 (see RCR 2/2024);
- RCR 86/2010 (see RCR 3/2024);
- RCR 80/2011 (outdated, see section 27(5A) of Act 95 of 1986);
- RCR 51/2012 (outdated, see section 17(4B)(a) of Act 95 of 1986);
- RCR 63/2012 (see RCR 4/2024);
- RCR 72/2012 (outdated vide Cadastral Conference 2023);
- RCR 81/2012 (outdated, see section 14(5) of Act 95 of 1986);
- RCR 2/2014 (see RCR 5/2024);
- RCR 10/2014 (outdated, see section 18 of Act 95 of 1986);
- RCR 8/2015 (see RCR 6/2024);
- RCR 5/2022 (see RCR 7/2024);
- RCR 4/2023 (see RCR 8/2024).

B. PREVIOUS CONFERENCE RESOLUTIONS:

2/2024 Regulation 44A - Value of property

Will the preparing conveyancer be responsible for the correctness of the value of the property? In some cases, the Receiver of Revenue does not require a valuation (e.g. divorce order). Will valuation certificates have to be obtained?

Resolution:

No. It is not necessary to lodge a valuation certificate. In the absence of a transfer duty receipt reflecting the value of the property, the amount reflected in the deed or document, based on the municipal valuation, will be accepted as proof of the value of the property.

- (RCR 40/2010 is withdrawn).

3/2024 Cancellation of a real right over a unit

Can a real right over a unit which has lapsed for any reason be cancelled in terms of section 68(1) of Act 47 of 1937?

Resolution:

Yes. The proviso in section 15B(1)(d) of Act 95 of 1986 only provides authority for the Registrar to cancel the registration of a real right which has lapsed for any reason. The said section, however, does not provide a mechanism in this regard and section 3(1) of Act 95 of 1986 is being followed in so far the cancellation of the registration of any real right, other than a reservation in terms of section 25 which has lapsed for any reason, must be effected in terms of the provisions of section 68(1) of Act 47 of 1937.

- (RCR 86/2010 is withdrawn).

4/2014 Erroneous cancellation of a real right of extension

Where a real right of extension in a sectional title scheme was erroneously cancelled in terms of section 68(1) of Act 47 of 1937 prior to 5 January 2023 (being the date of enactment of the Sectional Titles Amendment Act 13 of 2022), or in terms of section 15B(1)(e) of Act 95 of 1986 with effect from 5 January 2023, what procedure must be followed to revive such right?

Resolution:

The provisions of section 25(6) of Act 95 of 1986 may be invoked. Alternatively, a court order will have to be obtained to revive the right.

- (RCR 63/2012 is withdrawn).

5/2014 Power of developer to extend the common property and to register a servitude over common property

Does the developer, prior to a body corporate being established, have all the powers entrusted upon a body corporate in terms of sections 17 and 29 of Act 95 of 1986?

Resolution:

Yes. The developer has all such powers provided a certificate by the conveyancer is lodged certifying that no unit in the scheme has been sold, donated or exchanged, or if a unit was so alienated, the developer had disclosed in writing to the acquirer thereof that application, if applicable, has been made for such acts of registration.

- (RCR 2/2014 is withdrawn).

6/2014 Home Owner's Association

Where a condition prohibiting the alienation or transfer of a property without the consent of the Home Owner's Association is contained in the title deed of the property and the conveyancer lodges a certificate stating

that the Home Owner's Association has not been established, may the Registrar of Deeds accept this certificate, and must the condition be brought forward in the deed transfer?

Resolution:

Consent must be obtained from a duly established Home Owner's Association, failing which the matter must be referred to court for permission to transfer without the consent. The condition must be brought forward in the title deed, unless the court provides otherwise.

- (RCR 8/2015 is withdrawn).

7/2024 Lapsing of negative personal servitude:

Does a negative personal servitude (restrictive condition) registered in favour of a company that has since been finally deregistered, lapse?

Resolution:

Where the negative personal servitude (restrictive condition) was statutory imposed or imposed by the common vendor (developer) as a restriction to benefit even in the development, the condition does not lapse and should be removed in terms of the relevant Removal of Restriction legislation, or a court order be obtained.

Where the negative personal servitude (restrictive condition) was created as a result of a mere agreement between the owner of the property and the holder of the right, or where the condition was intended to be binding on the owner of the property and his/her successors in title only, section 68(1) of Act 47 of 1937 may be invoked on lodgement of proof of the final de-registration of the company.

- (RCR 5/2022 is withdrawn).

8/2024 Ranking clause of Mortgage Bond

Does section 4(1)(b) or section 3(1)(v) of Act 47 of 1937 find application when the ranking clause of a mortgage bond requires amendment?

Resolution:

The ranking clause of a mortgage bond does not fall within the provisions of what may be amended in a registered deed or document in terms of section 4(1)(b) of Act 47 of 1937. There is no requirement in any law for a mortgage bond to disclose its ranking clause and section 3(1)(v) of Act 47 of 1937, therefore, does not find application. Regardless of what ranking, if any, is disclosed in a registered mortgage bond, and in the absence of a registered waiver of preference by the holder of any registered mortgage bond, the legal principle of the priority in time gives priority in law (*qui prior est tempore potior est jure*) applies.

- (RCR 4/2023 is withdrawn).

C. GENERAL - DEEDS REGISTRIES ACT, 1937 (ACT 47 OF 1937)**9/2024 Transaction date on TDR**

What is the correct transaction date when two parties get divorced and enter into a settlement agreement, which agreement is made an order of court, wherein property is to be sold? Thereafter the parties enter into an addendum to this settlement agreement wherein one of the former spouses is awarded the entire property.

Resolution:

The date of divorce is the correct transaction date.

10/2024 Signatures on a stand-alone page

May a deed of transfer, notarial deed or any other document lodged for registration and execution contain signatures on a separate page?

Resolution:

Signatures should not stand alone on a separate page as this may be a risk to fraud. Deeds or documents must be drafted in such a way that the signatures always form part of the content.

D. GENERAL - SECTIONAL TITLES ACT, 1986 (ACT 95 OF 1986)

11/2024 Description of exclusive use areas:

May an exclusive use area ('EUA') merely be described as an exclusive use area and not give specific reference to its use, e.g. stoep, parking, garden, etc?

Resolution:

No. The type of exclusive use area as delineated on the sectional plan must be referred to. If such use is described on the sectional plan as a general exclusive use area, then such description must be followed.

EUA's may for example be described as follows:

1. An exclusive use area described as PARKING BAY P18 measuring ...
2. An exclusive use area described as PARKING BAY No. P18 measuring...
3. An exclusive use area described as PARKING BAY Number P18 measuring ...
4. An exclusive use area described as Exclusive Use Area PARKING BAY P18 measuring ...
5. An exclusive use area described as Exclusive Use Area PARKING BAY No. P18 measuring ...
6. An exclusive use area described as Exclusive Use Area PARKING BAY Number P18 measuring ...

Reference to 'EUA' without specific reference to the type will not be accepted.

Sectional plans approved prior to 2 January 2013, or approved after that date without specific reference to the type of use, need not be amended.

- (RCR 72/2012 is withdrawn).

12/2024 Encroachment over neighbouring land

Where a sectional title register that is to be opened encroaches over neighbouring land and the encroachment is shown on the plans, must this encroachment be registered before the scheme is registered or will a certificate from the conveyancer stating that the developer is aware of the encroachment suffice?

Resolution:

In the absent of By-Laws or other relevant legislation, the encroachment must be registered before the scheme is opened or simultaneously with the registration of the Sectional Title Scheme.