



rural development & land reform

Department:
Rural Development and Land Reform
REPUBLIC OF SOUTH AFRICA

REGISTRARS' CONFERENCE RESOLUTIONS 2017

A. WITHDRAWAL OF REGISTRARS' CONFERENCE RESOLUTIONS

1/2017 **The following Registrars' Conference Resolutions are withdrawn:**

- RCR 50/2005 (see RCR 2/2017)
- RCR 57/2006 (see RCR 3/2017)
- RCR 47/2007 (see RCR 4/2017)
- RCR 58/2009 (see RCR 5/2017)
- RCR 69/2009 (section 27A of Act No. 95 of 1986 was repealed by section 20 of Act No. 8 of 2011)
- RCR 87/2010 (see RCR 6/2017)
- RCR 15/2011 (section 27A of Act No. 95 of 1986 was repealed by section 20 of Act No. 8 of 2011)
- RCR 77/2011 (see RCR 7/2017)
- RCR 5/2012 (see RCR 7/2016)
- RCR 58/2012 (see RCR 9/2017)
- RCR 77/2012 (see RCR 8/2017)
- RCR 8/2013 (see RCR 3/2016)
- RCR 42/2013 (see RCR 10/2017)

- RCR 44/2013 (see RCR 11/2017)
- RCR 52/2013 (see section 10 of Act No. 8 of 2011)
- RCR 5/2015 (see section 10 of Act No. 8 of 2011)
- RCR 11/2016 (see section 4 (1) (b) of Act No. 47 of 1937)
- RCR 27/2016 (see RCR 12/2017)

B. PREVIOUS REGISTRARS' CONFERENCE RESOLUTIONS

2/2017 Section 17 (3) (a) of Act No. 8 of 2011

Section 17 (3) (a) of Act No. 8 of 2011 does not provide for a procedure to be followed when the owners, by unanimous resolution, authorise the rebuilding and reinstatement in whole or in part of the building or buildings. Regulation 31 of Act No. 95 of 1986 only provides for a procedure when the building or portion of the building is damage or destroyed and for the transfer of interest. Should the Sectional Titles not be amended to provide for a procedure where the building is to be rebuilt?

Resolution:

No. Act No. 95 of 1986 does not need to be amended. The rebuilding should be in accordance with the existing sectional plan.

- RCR 50/2005 is hereby withdrawn.

3/2017 Section 10 (7) of Act No. 8 of 2011 Rights

A sectional plan, reflecting exclusive use areas, is to be registered. No certificate of real right of exclusive use areas is included in the batch. The application for the registration of the sectional plan and opening of the sectional title register is silent with regard to the exclusive use areas. However, section 10 (7) of Act No. 8 of 2011 rights are created and assigned in the rules. In compliance with section 10 (8) (a) of Act No. 8 of 2011, with regard to the layout plan, reference is made to the sectional plan. Is this plan registerable?

Resolution:

No, if the exclusive use areas are depicted on a sectional plan, a real right of exclusive use areas must be issued and such exclusive use areas cannot be created and assigned in the rules.

- RCR 57/2006 is hereby withdrawn.

4/2017 Section 60 (3) of Act No. 95 of 1986

In terms of section 60 (3) of Act No.95 of 1986 exclusive use areas could be allocated in terms of management rules and as such did not have to be delineated in the sectional plan. May the body corporate resolve to formally cede such rights and have them registered at the deeds registry?

Resolution:

Yes, provided the provisions of section 27 (2) and (3) of Act No. 95 of 1986 and section 5 (1) (e) of Act No. 8 of 2011 are complied with.

- RCR 47/2007 is hereby withdrawn.

5/2017 Section 15B (3) of Act No. 95 of 1986

In terms of section 15B (3) (b) of Act No. 95 of 1986 a clearance certificate must be produced for the land and buildings of the scheme, if provision is made by law for separate rating of units. In terms of the Local Government: Municipal Property Rates Act No. 6 of 2004 this has the effect that two clearance certificates must be lodged, ie one for the land and one for the buildings. Is this interpretation of section 15B (3) correct?

Resolution:

No, it is not necessary for the lodgement of two clearance certificates with the transfer of a unit. However, on the first transfer of a unit that will result in the establishment of the body corporate in terms of section 2 (1) of Act No. 8 of 2011, a clearance certificate for the land as well as the unit / exclusive use area being transferred / ceded, are required. Thereafter, only one clearance certificate must be lodged with the transfer of a unit (not the land), and one clearance certificate with the cession of an exclusive use area (where applicable).

- RCR 58/2009 is hereby withdrawn.

6/2017 Creation of servitudes on or over public land

The creation of a servitude, being the transfer of rights over a public place/ street, could well be a deprivation of the public's rights in any street. Notwithstanding the fact that it may not affect the enjoyment of its rights, it is still a transfer of rights to a party other than the general public.

- (a) Does the Local Authority have the power to act on behalf of the general public?
- (b) What public participation is necessary when their rights are impinged?

Resolution:

- (a) Yes, the Local Authority has the power to act on behalf of the general public. However, it is not necessary for the general public to be a party to the agreement. Either the Premier of the Province or the Municipality in which jurisdiction the public place/street is situated must consent on behalf of the general public. Alternatively a court order may be obtained (see section 65 (1) of Act No. 47 of 1937).
- (b) None. However, the publication notice in the Government Gazette for public comment provides the necessary interaction.
 - RCR 87/2010 is hereby withdrawn.

7/2017

Winding-up of the affairs of the body corporate

Section 17(6) (a) of Act No.8 of 2011 indicates that the Court may, on the application of a body corporate or any member thereof or any holder of a registered real right concerned, or any judgment creditor, by order make provision for the winding-up of the affairs of the body corporate, and that the Court may, by the same or any subsequent order, declare the body corporate dissolved as from a date specified in the order. There is no provision in the Act for when the affairs of the body corporate have been wound up and the Body Corporate dissolved. Where the Court has given an order to that affect and that the buildings be deemed to be demolished in terms of section 17 of Act No. 8 of 2011 and that the land comprising the scheme be sold to a 3rd party by an Administrator appointed under section 16 of Act No. 8 of 2011, does Conference agree that the provisions of section 17(5) of Act No. 95 of 1986 can be used to affect transfer to a 3rd party as once all the buildings are destroyed, then there is only common property held under the scheme. Section 17 of Act No. 95 of 1986 refers to reversion to common property whereas section 49 has reference to reversion to the land register. In addition, section 16 (3) of Act

No. 8 of 2011 of 1986 provides "An administrator has, to the exclusion of the body corporate, such powers and duties of the body corporate as the Magistrate's Court directs and must exercise these powers to address the body corporate's management problems as soon as reasonably possible," which, therefore, allows the Administrator to alienate common property. Does conference agree?

Resolution:

No, the provisions of section 17 of Act No. 8 of 2011 and section 49 of Act No. 95 of 1986 find application.

- RCR 77/2011 is hereby withdrawn.

8/2017 Partial destruction of a section

What procedure must be followed in the case of a partial destruction of a section?

Resolution:

The provisions of section 22 of Act No. 95 of 1986 (if applicable) read with section 17 of Act No. 8 of 2011 and section 49 of Act No. 95 of 1986 are applicable.

- RCR 77/2012 is hereby withdrawn.

9/2017 Section 17 (3) (a) of Act No. 8 of 2011: rebuilding of the whole or part of the building(s)

The owners may authorise for the rebuilding of the whole or part of the building(s).

- (a) What is the purpose of lodging a notification with the Registrar of Deeds for the rebuilding of the whole of a building, taking cognisance of the fact that the building must be rebuilt according to the existing plans? There is no significance in registering it, except for historical purposes. If such an application is lodged, will the Registrar of Deeds accept it and how will any of the title deeds that were affected, be endorsed, ie if endorsing is required?
- (b) Section 17 (3) (a) (ii) of Act No. 8 of 2011 provides for the transfer of the interest of owners partially or wholly destroyed, and Form X of Act No. 95 of 1986 mentions the transfer of the interest; however, if the whole of the buildings is rebuilt and reinstated, a

transfer of such interest will not take place as none of the sections in the scheme will be affected. Should the unanimous resolution referred to in section 17 (3) and the prescribed Form X omit such reference to the transfer of the interest of the owners of the affected sections?

Resolution:

- (a) It must be lodged and filed on the sectional title file for purposes of updating the status of the scheme and for a true reflection of the history of the scheme. The deeds of the sections that were affected must be endorsed with a factual endorsement to indicate that it had been deemed to be destroyed but the whole of the section has been rebuilt and reinstated, with reference to the BC number allocated to the notification.
- (b) The unanimous resolution and Form X will have to be adapted to omit reference to the transfer of the interest of owners of affected sections.
 - RCR 58/2012 is hereby withdrawn.

10/2017 Section 49 of the Estate Act No. 66 of 1965

In the event of a sale of land to a person as envisaged in terms of section 49 (1) of the Estates Act No. 66 of 1965, is the section 42 (2) approval by the Master sufficient to allow transfer of the immovable property?

Resolution:

Yes, the section 42 (2) of the Estates Act No. 66 of 1965 consent by the Master is sufficient.

- RCR 42/2013 is hereby withdrawn.

11/2017 Section 10 of Act No. 95 of 1986

When co-developers enter into a partition agreement, must the provisions of section 10 of Act No. 95 of 1986 be complied with?

Resolution:

No, section 10 does not find application.

- RCR 44/2013 is hereby withdrawn.

12/2017 Error in a section 11(3) (b) Schedule of Conditions

May an error in a section 11(3) (b) Schedule of Conditions be amended in terms of section 4(1) (b) of Act No. 47 of 1937 if it will not have the effect of transferring a real right?

Resolution:

Yes. Section 4(1) (b) (i) of Act No. 47 of 1937 finds application.

- RCR 27/2016 is hereby withdrawn.

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

13/2017 Reference to diagram in extending clause Form UU of Act No. 47 of 1937

It wasn't always the requirement for extending clauses for title deeds registered in terms of the Deeds Registries Act to refer to the diagram or general plan for that property, and older deeds do not reflect the reference thereto in its extending clauses. The first footnote to Form UU in the Deeds Registries Act is also clear in that if no diagram/general plan reference is made in the extending clause of the previous deed, that it need not to be included in the extending clause of the new deed. When an erf in a township is subdivided, a new parent diagram is usually framed for the purpose of noting the deduction of the subdivision, and which parent diagram is compulsory to be lodged for registration in the deeds registry. It is also practice in deeds registries to endorse the title deed of that erf, regarding the new parent diagram.

Taking the above in consideration, in that the title deed now do reflect the new parent diagram, albeit not in the extending clause, can a Registrar of Deeds insist that in any subsequent deed drawn for that property, that the diagram must be reflected in the extending clause of that deed?

Resolution:

Yes. The endorsement of the title deed to reflect the new parent diagram must be construed as an updating of the extending clause in that title deed, and it must therefore be insisted that same be reflected in the extending clause of the subsequent deeds.

14/2017 Deregistration of Home Owner's Association by Companies and Intellectual Property Commission

Where a Home Owner's 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 does not find application.

15/2017 *Causa* of deeds of transfers

There appears to be a need in practice to extend a *causa* beyond the scope of what is discussed in the Deeds Practice Manuals, RCR 38/2009 and RCR 42/2015.

What constitutes a valid *causa*?

Resolution:

A valid *causa* is anything in law that authorizes the transaction, in other words, any legal action. The *causa* must be properly articulated at all times.

- RCR1/1949, RCR38/2009 and RCR42/2015 are hereby confirmed.

16/2017 Validity of clearance certificates worded to the extent that the municipality is not in a position to rate the property / issued certificate for compliance

- (a) Currently, different municipalities are not in a position to rate exclusive use areas. Municipalities are allowed to issue letters that they are not in a position to rate certain properties. In some cases those certificates are lodged on files in the deeds registry. These certificates do not contain validity dates. Certificates with no validity dates remain on township/sectional title files indefinitely. When those properties become rateable, certificates are not removed from the files and examiners do not call for clearance certificates. Should these certificates have validity dates?
- (b) Some by-laws also require certificates of compliance to be lodged. Where a municipality is not in a position to issue these certificates, the Department of Cooperative Governance and Traditional Affairs

has instructed the municipalities to lodge with the Registrar of Deeds a certificate indicating that they are not in a position to do so. Are these certificates acceptable, and should they contain a validity date after which date they will become invalid?

Resolution:

- (a) Yes. In terms of the Municipal System Act 32 of 2000, the clearance certificate must have a validity date.
- (b) Yes. These certificates are acceptable and it must have a validity date.

17/2017 Determination of the value of a Notarial bond in a foreign currency

When is the value of a Notarial bond determined, when in foreign currency, for the purposes of calculating the fee for registration? Is it the day of execution of the bond, or the day of registration in the deeds office?

Resolution:

The value of the notarial bond is determined on the day of registration in the deeds registry.

- RCR 30 of 2015 is hereby confirmed.

18/2017 Conditions in the deed of alienation

The following conditions have been imposed by the Municipality in the deed of alienation:

- 1.1 For a period of TWO (2) years from the date of transfer, the PURCHASER shall not in any manner alienate his rights to the UNIT or sub-let his UNIT, or in any other manner dispose of or part with, whether temporarily or otherwise his rights of occupation thereof except with the prior written consent of the SELLER being first obtained, provided always that no such consent shall be required for the alienation of the PURCHASER'S rights by testamentary disposition.
- 1.2 The PURCHASER shall sign an acknowledgement of debt in favour of the Municipality for all rental arrears owing to the Municipality in respect of the UNIT, excluding penalty charges, provided that the PURCHASER shall not be entitled to alienate or encumber the UNIT until all such rental arrears have been paid and/or

discharged. This condition shall lapse and shall be of no force and effect on the provision of a certificate by the Municipality or its successors-in-title to the effect that all rental arrears due to it by the PURCHASER have been paid in full or that satisfactory arrangements have been made for the payment thereof.

- 1.3 The Municipality reserves in perpetuity, without being required to pay compensation therefore, the right to erect, lay, maintain, renew, replace, use and remove standards, lines, cables, pipes and the like under, on and over the common property apportioned to the above section for the purpose of conveying electric current, water, drainage and sewerage and the owner agrees not to obstruct or interfere with or allow any obstruction or interference with any such standards, lines, cables, pipes and the like without the prior express consent of the Municipality provided that any damage done during the process of erecting, laying, maintaining, renewing, replacing, using or removing such standards, lines, cables, pipes, and the like shall be made good by the Municipality. The owner also agrees that the Municipality by themselves or others may enter upon the common property at all reasonable times for the purpose of enforcing the rights reserved and the obligations accepted in this clause.
- (a) If the above conditions are incorporated in a section 11(3) (b) certificate which conditions, if any, may be incorporated in the deed of transfer?
- (b) If the above conditions are not incorporated in the section 11(3) (b) certificate may such conditions or any of them be created in the power of attorney to transfer and incorporated as conditions in the deed of transfer?

Resolution:

- (a) Only conditions 1.1 and 1.2 may be incorporated into the deed of transfer as these conditions are restrictive in nature.
- (b) Only conditions 1.1 and 1.2 may be created in the power of attorney to transfer. Condition 1.3 affects the common property and may not be created in the power of attorney to transfer. It must therefore be created notarially in terms of section 29 of Act 95 of 1986 and then be incorporated in the section 11(3)(b) Schedule of Conditions.

May a Notarial Deed be registered in respect of a servitude area if such area is to be used for multiple purposes?

Resolution:

There is no legislative provision that restrict the registration of a servitude area for multiple purposes.

20/2017 Immovable property of a company in liquidation

May a trustee or liquidator subdivide or consolidate immovable property? If so, what must be done to the bonds registered over the immovable property?

Resolution:

Yes, a trustee or liquidator, duly authorised thereto, may subdivide or consolidate the immovable property. The bondholder must consent to such dealing and the bonds must be brought forward onto the title deeds.

D. OTHER LEGISLATION THAT HAS AN IMPACT ON ACT NO. 47 OF 1937

21/2017 Sections 82 and 113 of the Town-Planning and Townships Ordinance (Transvaal), No 15 of 1986 service certificates

May a Registrar of Deeds refuse to accept a condition imposed in the conditions of establishment by a local authority who approved a township application in terms of the Town-Planning and Townships Ordinance, No 15 of 1986, which condition require that a services certificate must be issued first in respect of an erf before a Certificate of Registered Title in terms of section 43 of Act No. 47 of 1937 for that erf may be registered by the Registrar of Deeds?

Resolution:

Yes. Sections 82 and 113 of the Town-Planning and Townships Ordinance (Transvaal), No 15 of 1986 is clear in that the prescribed services certificates are only required when the ownership of an erf in a township is transferred. It is also clear that it does not require for such a services certificate to be submitted for the registration of a Certificate of

Registered Title in terms of section 43 of Act No. 47 of 1937, and where the ownership of the erf is not transferred at the same time.

22/2017 Donation or exchange of Agricultural land

In terms of section 3 (e) (i) of the Subdivision of Agricultural Land Act No.70 of 1970 no portion of agricultural land may be sold without the Ministers consent, and in terms of case law, such sale without the Minister's consent is *void ab initio*. Is a donation or exchange of a portion of agricultural land entered into prior to the obtaining of the Ministers consent also *void ab initio*?

Resolution:

No, the provisions of 3 (e) (i) of the Subdivision of Agricultural Land Act No. 70 of 1970 only refers to sale.

23/2017 Vesting of land in terms of the Transformation of Certain Rural Areas Act No. 94 of 1998

Section 3 (13) of the Transformation of Certain Rural Areas Act No. 94 of 1998 (TRANCRAA) provides as follow:

"Any trust land which is not transferred at the expiry of the transitional period vests in the Minister, who may continue to hold such land in trust and may at any time thereafter dispose of that land in accordance with the principles of this Act."

The said Act does not provide for the endorsement of the title deed to reflect the vesting. What mechanism must be used to reflect the vesting and how must the vesting clause read?

Resolution:

The provision of section 3 (1) (v) can be used and an application to endorse the title deed, together with proof of vesting, must be submitted. The property vest in the Minister in trust and the vesting must read along the following lines:

"The Minister of Rural Development and Land Reform, in terms of section 3 (13) of Act No. 94 of 1998, as trustee of (insert name of community)....."

24/2017 Minister Consent in terms of Act No. 70 of 1970

If an order of court is provided that a portion of agricultural land has vested by virtue of acquisitive prescription, will a Registrar of Deeds still insist on the Minister's consent in terms of Act 70 of 1970?

Resolution:

No. Transfer must take place without insisting on consent from the Minister of Agriculture in terms of Act No. 70 of 1970, in order to give effect to the court order, unless the court orders otherwise.

E. GENERAL (ACT 95 OF 1986)

25/2017 Termination of Sectional Titles Scheme -- Extending clause in Form SS of Act No. 47 of 1937

Where a sectional titles scheme is terminated, the title for the land has to be registered as a Certificate of Registered Title in the prescribed Form SS to Act No. 47 of 1937. The said Form SS does not provide a format for the extending clause which must be inserted in the said form, but merely require that the diagram and deed, where the diagram has been annexed, must be referred to. This causes confusion on the subsequent transfer of the property, where the prescribed form for the extending clauses will have to be complied with in terms of Act No. 47 of 1937. Taking in account that the Certificate of Registered Title in the prescribed Form SS is nothing else than a further title for the land, which format for the prescribed extending clause in Act No. 47 of 1937 must be followed in this certificate of registered title?

Resolution:

The prescribed Form UU in Act No. 47 of 1937 must be followed, with the title deed on which the sectional titles scheme has been opened as reference to the last title.

26/2017 Consolidation of sections

May sections that are not contiguous be consolidated with each other?

Resolution:

Yes, sections that are not attached to each other may be consolidated as section 23 of Act No. 95 of 1986 does not require contiguity of sections.

Also see section 5 (6) of Act No. 95 of 1986.