

Registrars' Conference Resolutions

supplement to the

Self-Study Deeds Course

The Registrar's Conference Resolutions have been sorted and follows the sequence of the chapters and paragraphs in Parts 1, 2 and 3 of the course notes.

Part 1

Conveyancing Practice and the Deeds Registries Act

Chapter 1 - General Background

Paragraph 3 The Deeds Registry

Paragraph 4 The role of the conveyancer

Paragraph 8 Basic concepts

The basis on which diagrams framed in terms of section 16 of the Land Survey Act 8 of 1997

Question Currently, the office of the SG:KZN frames diagrams in terms of section 16 of the Land Survey Act 8 of 1997 for the purpose of noting subdivisions of registered properties on a general plan. Does the diagram framed in terms of section 16 of the Land Survey Act 8 of 1997 get registered?

Resolution No. With the first registration of the property, it is registered from the general plan and it does not require a diagram. However, when the property is subdivided or a servitude is registered over such property, the diagram of the parent property (i.e. the diagram of the erf shown on the general plan) must be lodged with the subdivision/servitude diagram, where necessary for endorsement/deduction purposes – ([RCR49/2014](#)).

Chapter 2 - Transfer procedures

Paragraph 4.3 Clearance figures

Paragraph 7.2 Consents needed

Paragraph 8 Lodgement, preparation and registration

Paragraph 8.3 Circumstances where the title deed need not be lodged

Act No 70 of 1970 – Lodgement of the original consent to subdivision or a certified copy

thereof

Question May a deeds registry accept a certified copy of a consent to subdivision (certified by a conveyancer)? If the Surveyor-General office has the original on their file, may a certified copy from the Surveyor-General be accepted in the deeds registry?

Resolution Yes, in terms of regulation 20(7) of Act 47 of 1937 a deeds registry may accept an originally certified copy by the conveyancer or notary public, or by the head of a government department if such document is filed in that government office – **(RCR36/2015)**.

Chapter 4 - Deed of transfer

Chapter 3 Rules applicable to preparation of deeds and registrable documents

Paragraph 4.3 Preamble

The appearer and the transferor in a deed of transfer is one and the same person

Question The appearer and the transferor/seller in a deed of transfer is one and the same person. How should the pre-amble be couched?

Resolution No reference must be made to the appearer or to the power of attorney in the pre-amble of the deed – **(RCR23/2015)**.¹

DESCRIPTION OF PERSONS ACTING IN THEIR PERSONAL CAPACITY

Transfer of property subject to condition of a deed of donation

Question Immovable property was transferred to person “X”, unmarried, out of an estate, subject to the exclusion of community of property. Person “X” subsequently got married in community of property and later decides to donate the whole of the property to his spouse “Y”, excluding community of property. Will the deeds office allow this registration?

Resolution Yes. The property must vest as follow:
“Y”

Identity number

Married in community of property to “X”, which community of property is excluded in terms of a condition contained in a deed of donation” –

(RCR30/2014)

Item 8 - Persons married under the laws of any other country

Transfer of property by donation or will

Question Immovable property was transferred to a transferee, either by donation, or in terms of a will, excluding community of property. The transferee’s marital status

¹ In other words, the preamble of the deed of transfer will read along the following lines:

Be it hereby made known that

X

ID

Marital status

appeared before me, the Registrar of Deeds at Pretoria

And the said transferor declared that he had truly and legally sold....

is cited as being married which marriage is governed by the laws of a foreign country. Should assistance by the other spouse be required if the transferee now wants to transfer the property or pass a mortgage bond?

Resolution No. Assistance is not required in view of the fact that the condition excludes community of property. RCR 4/1958 is hereby withdrawn – (**RCR28/2014**).

Parties were married in South-West Africa (now Namibia) prior to independence

Question Parties were married to each other and at the time of the marriage the husband was domiciled in South-West Africa (now Namibia), prior to independence. An antenuptial contract was registered prior to independence in terms whereof the marriage is regarded to be out of community of property. How should their status be cited in a deed after independence?

Resolution Parties must be described as “Married, which marriage is governed by the Laws of Namibia”. – (**RCR24/2015**).

Item 10 – Persons married under the Recognition of Customary Marriages Act

Item 11 - Registration in name of partnership - parties married in community of property

Vestings in partnerships

Item 17 - Nature of marriage

DESCRIPTION OF PERSONS ACTING IN A REPRESENTATIVE CAPACITY

Item 1 - Companies and close corporations

Item 2 – Trusts

Item 6 - Insolvent estates (natural persons)

Paragraph 4.4 The *causa* clause

Paragraph 4.5 The vesting clause

Item 2 - Trusts

A foreign trust

Question Should a foreign trust be registered before a bond can be registered in its favour?

Resolution The foreign trust must firstly be registered with the Master of the High Court and letters of authorization issued to the trustees, as contemplated in section 8 of the Trust Property Control Act 57 of 1988 – (**RCR17/2016**).

Paragraph 4.7 Extending clause

Reference to diagram in extending clause

Question Must a diagram prepared in terms of section 16 of the Land Survey Act 8 of 1997 be referred to in an extending clause, or must the general plan be referred to? According to the Surveyor General a section 16 diagram is only for information purposes, and not for registration purposes. It is long standing practice that reference must be made to the latest diagram (section 16 diagram). However, the Surveyor General's point has to be considered. It was also stated that in some office, reference is made to the general plan and not the section 16 diagram.

Resolution The latest diagram, prepared in terms of section 16 of the Land Survey Act 8 of 1997, has to be referred to in the extending clause – (**RCR21/2016**).

Paragraph 4.8 The conditional clause

Homeowners' consents and certificate by architects or land surveyors as contemplated in RCR61/2008

Question Conference must consider providing guidelines for the form of the certificate from a land surveyor or architect required in terms of RCR61/2008 and section 24(6)(d) of Act 95 of 1986 and the form of consent from Home Owners' Associations. Whether it must contain letterheads, practice numbers and attestation of the land surveyor's signature by witnesses.

Resolution A homeowners' association consent must be contained on its letterhead or be prepared by a conveyancer in terms of regulation 44 and certificates from architects and land surveyors must contain their names and practice numbers – (**RCR39/2014**).

RCR43 of 2003 and RCR2 of 2007² – Home Owners' Association

Question Where a condition prohibiting the alienation or transfer of a property without the consent of the Home Owners' Association is contained in the title deed of the property and the conveyancer lodges a certificate stating that the HOA has not been established, may the Registrar of Deeds accept this certificate, and must the condition be brought forward in the transfer deed?

Resolution Consent must be obtained from a duly established Home Owners' 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. RCR5/2014³ is hereby withdrawn –

² **Scenario:** A condition prohibiting the alienation or transfer of a property without the consent of the home owners association is contained in the title deed of the property. On transfer of the property the conveyancer lodges a certificate stating the home owners association has not been established.

Question

- 1 May the registrar of deeds accept this certificate; and
- 2 may the condition be brought forward in the deed of transfer?

Resolution

- 1 No. The consent must be insisted upon, failing which the matter must be referred to court for permission to transfer without the consent.
- 2 The condition must be brought forward in the title deed - (RCR2/2007 and RCR43/2003).

³ **Resolution** Consent must be insisted upon, failing which the matter must be referred to court for permission to

(RCR8/2015).

Change of information contained in title deeds

Question When a conveyancer prepares a deed of transfer, the information contained in the conditions of the deed may have changed as a result of, for example, changes to property descriptions, metrication of dimension and areas, or changes to personal or company details. While it is agreed that property descriptions and areas in the property clause must be updated to current data, what other details must change, and what details must remain?

Resolution Conditions must be brought forward verbatim as it appears in the title deed in terms of regulation 35 of Act 47 of 1937 – **(RCR46/2014)**.

Condition of title defining use

Question The conditions of establishment of a township contain a condition that a specific property shall be used for residential purposes only. This property is owned by the municipality and it to be transferred to an ecclesiastical institution to be used as a church. May a registrar of deeds raise a query on a deed lodged to ascertain whether the property in question has been rezoned for ecclesiastical purposes?

Resolution No. The zoning of the property is of no concern to the registrar of deeds – **(RCR48/2014)**.

Paragraph 4.10 Consideration clause

Paragraph 5 Deeds to follow the sequence of their relative causes

Transfer pursuant to a divorce settlement

Question Taking into account the provisions of section 14 of Act 47 of 1937, may property from a joint estate be transferred to a third party by virtue of a divorce settlement? Scenario in the divorce settlement: *“Immovable property shall be defined and distributed as follows: The plaintiff or her nominee shall be entitled to the property situated at Erf 7689 Saulsville.”* Is direct transfer to a third party (nominee) permitted? Also, refer to CRC21/1990.

Resolution The property may be transferred to the person or entity mentioned as a nominee in instances where the divorce settlement has been made an order of court, Both former spouses must give transfer and the nominee must accept in writing – **(RCR11/2015)**.⁴

transfer without the consent. The condition must be brought forward in the title deed, unless the court provides otherwise. RCR43/2003 and RCR2/2007 are hereby withdrawn – **(RCR5/2014)**

⁴ Although from a deeds office perspective this will be allowed it is very doubtful whether SARS will regard this as only 1 transaction. If the identity of the nominee and the power of attorney by the nominee is not provided to the transferors on the same day as the divorce settlement, SARS will regard it as two transactions for transfer duty purposes. In other words, a transfer duty exemption certificate will have to be obtained in respect of the transfer from the former husband to the wife and thereafter a transfer duty receipt from the former wife to the third party. These transfer duty documents will then not correspond with the transfer documentation regarding the transferor(s) and transferee.

Paragraph 5.3 Exceptions provided by section 14

Paragraph 7.1 Transfer of two or more pieces of land by one deed

One or more deeds of transfer

Question May one deed of transfer be accepted for the same transferor and the same transferee, but in respect of two or more deed of sales for different properties and different purchase prices? If, yes, how are office fees charged?

Resolution Yes, it is permissible in terms of section 22(2) of Act 47 of 1937. The causa of the deed must make reference to both transactions. The purchase price of the transactions must be reflected separately in the consideration clause. RCR20/2012⁵ is hereby confirmed pertaining to the payment of fees – **(RCR22/2015)**

Chapter 5 - Power of attorney

Paragraph 2.2 Preparation and signing of the preparation certificate

Paragraph 2.3 Regulation 44A - Responsibility for correctness

Regulation 44 – Conveyancer to initial pages of draft bond together with all mortgagors and witnesses

Question May a registrar of deeds insist on full initialling of all pages of the draft bond by the conveyancer, who signed the preparation clause of the power of attorney to the draft bond? Conveyancers argue that Regulation 44 of the Act and RCR 26 of 2004 do not provide for the conveyancer, who signs the preparation clause of the power of attorney attached to the draft bond, to also initial the pages of the draft bond.

Resolution The draft bond need not be initialled by the conveyancer – **(RCR19/2014)**.

Regulation 44A (d)(ii)(aa) and (bb) – General Power of Attorney

Question ~~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 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 of a natural person. 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~~

⁵ **Calculation of Fee in terms of Regulation 84**

Question When more than one property is included in an application in terms of section 45, how must the office fee be calculated? Must it be calculated on each property separately or on the aggregate amount?

Resolution The fee must be calculated on the sum total of all the property values – (RCR20/2012).

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

Resolution ~~Uncertainty exists whether powers of attorney must be checked or not. Regulation 44A of Act 47 of 1937 and Regulation 16C of Act 95 of 1986 must be referred back to the relevant boards for further discussion. CRC 4 of 2013 is to be amended (RCR20/2014). Repealed by RCR1/2015 (see amendment to regulation 44A of Act 47 of 1937 and regulation 16C of Act 95 of 1986).~~

Regulation 44A(d)(ii)(aa) and (bb) – General Power of Attorney

Question In view of the amendments to regulation 44A(d)(ii)(aa) and (bb) of Act 47 of 1937, is it still required for a Special Power of Attorney or General Power of Attorney which is to be utilized as a special power of attorney to be lodged? The responsibility of ensuring that a person acting in a representative capacity is duly authorised, has been passed to the preparing conveyancer.

Resolution Special and General Powers of Attorney must be lodged as provided for in regulation 65(1) – (RCR21/2014).

Regulation 44A – General Power of Attorney

Question The amendment to Regulation 44A(d)(ii)(aa) Act 47 of 1937 to include natural persons has removed all uncertainties whether examiners must check General Power of Attorneys when referred to in deeds for examination. Where agents act in accordance with General Power of Attorneys in deeds with no preparation clauses, e.g. consents to cancellations of bonds registered over Proclamation 293/1962 property, must this General Power of Attorneys still be checked?

Resolution Proof of appointments of agents in deeds with no preparation clauses must still be checked and lodged where necessary – (RCR16/2015).

Paragraph 2.5 Initialling of powers of attorney, applications and consents

Paragraph 2.6 Authentication

Paragraph 2.7 Analysis of a power of attorney

Person authorizing the power of attorney

The agent (Appearer)

Paragraph 5 General Power of Attorney

Partial cancellation of a Power of Attorney

Question A General Power of Attorney was registered in which two parties gave power of attorney to an agent/s. The one party wants to withdraw his power of attorney. Can that party withdraw his/her power of attorney without the entire power of attorney being cancelled?

Resolution No, a general power of attorney cannot be partially cancelled. The Power of Attorney will have to be cancelled *in toto*, and a new power of attorney will have to be registered by the party who wishes to grant his/her power of attorney to the agent – (RCR13/2016).

Chapter 6 - Servitudes

Paragraph 3.3 Types of personal servitudes

Diagrams for habitatio: regulation 73(2)

Question — Is it always necessary for the submission of a diagram for the registration of a *habitatio*, given the fact that a *habitatio* can only be in respect of a dwelling on the land?

Resolution — Yes, see the provisions of regulation 73(2) of Act No. 47 of 1937. Also see *Kidson vs Jimspeed Enterprises*, Case No. 3857408 unreported. (RCR 21 of 1961 is withdrawn) — **(RCR29/2012)**.

Diagram of a right of habitatio

Question — The resolution calling for a diagram when registering a right of habitatio must be revisited. This resolution causes hardship, particularly to disadvantaged clients. The aforesaid resolution results in forfeiture of rights of habitatio particularly derived from wills in section 18(3) estates

Resolution — RCR 21 of 1951 and RCR 29 of 2012 are hereby confirmed. A diagram must be lodged — **(RCR31/2014)**.

The Registrars (in RCR1/2016) have withdrawn the above RCR21/1951, RCR29/2012 and RCR31/2014 and the future practice will be as follows: If a habitatio is ceded in respect of a building on a piece of land, no diagram will be required if that building is the only building on the land, the fact which the conveyancer must confirm.

Paragraph 3.5 Creation of personal servitudes

Registrability of conditions that no rates may be levied – Local Government – Municipal Property Rates Act 6/2004

Question — May conditions in respect of the exemption from the payment of rates be registered against a property on transfer to a land reform beneficiary?

Resolution — No, the conditions do not restrict the exercise of any right of ownership in respect of immovable property and shall therefore not be capable of being registered. See Section 63(1) of Act 47 of 1937 – **(RCR32/2015)**.

A The General Rule

B Exceptions to the general rule

C Other exceptions to the general rule

The transaction date on a transfer duty receipt

Question — Which date should be reflected as the transaction date on a transfer duty receipt where a negative personal servitude in favour of a third party has been created in the power of attorney and that transfer duty receipt is lodged?

Resolution — The date of acceptance by the third party will be the date of transaction on the transfer duty receipt – **(RCR20/2016)**.

Paragraph 3.6 Registration of lapse or cancellation of personal servitudes

Waiver of preference of usufruct

Question Can a usufructuary waive preference of his/her usufruct over a property in favour of a lease to be registered over that property? The effect will be that the lease ranks prior to the usufruct on insolvency of the landowner

Resolution Pending the amendment of the Act, the Registrar of Deeds must allow such a waiver of preference of the rights of the usufructuary in favour of a lease over the property – (RCR28/2015).

Paragraph 3.6 Mortgage bonds and personal servitudes

Paragraph 3.8 Transfer and mortgage of land with personal servitude thereon

Paragraph 3.9 Joint transactions by fiduciary and fideicommissary

Paragraph 3.10 Transfer duty and personal servitudes

RCR 34 of 2013 – Cancellation of pre-emptive right and transfer duty

Question Where a condition, not binding successors in title, is cancelled or renounced, is such cancellation or renunciation deemed a transaction within the ambit of section 2 of the Transfer Duty Act 40 of 1949? Must a transfer duty receipt or exemption certificate be lodged, as provided for in RCR5 of 2005?

Resolution No, it is not “property” as defined in the definition of property in the Transfer Duty Act 40 of 1949. No transfer duty receipt or exemption certificate is required. RCR34/2013 is hereby withdrawn – (RCR14/2014).

Paragraph 4.3 Creation of praedial servitudes

Paragraph 4.6 Mortgage bonds and praedial servitudes

RCR41/1967 – Section 75(2)bis Act 47 of 1937: Endorsement of bond

Question Why should the bond be produced, should it be endorsed, and if so, how should the endorsement read? ⁶

Resolution As the production of the bond facilitates examination, the section should remain unchanged. The bond need not be endorsed.⁷

⁶ This question pertains to the situation where a praedial servitude is to be cancelled and there is a mortgage bond registered over the dominant tenement. In other words, the mortgagee of the dominant tenement must consent to the cancellation of the servitude, as the effect would be to take rights away from the dominant tenement. Section 75(2)bis requires the lodgement of the bond that is registered over the dominant tenement as well.

⁷ In other words, although the deeds office does not need to endorse the bond regarding the cancellation of the servitude, the bond registered over the dominant tenement must still be lodged when a servitude that is registered in favour of the dominant tenement is to be cancelled.

Paragraph 5 **General**

Unregistered servitudes

Question When a subdivisional diagram is to be registered, can unregistered servitudes (delineated on another unregistered servitude diagram) be shown on the diagram being transferred remain unregistered, only to be registered in the future?

Resolution No. Servitudes shown on a diagram must already be registered or be registered simultaneously with the deed, subject to regulation 60(1) of Act 47 of 1937 and regulation 21(4) of the Land Survey Act 8 of 1997 – (**RCR44/2015**).

Registration of Servitudes

Question If more than one servitude is shown on one servitude diagram over the same piece of land, can the servitudes be registered piecemeal in favour of different parties?

Resolution No. Servitudes shown on a single servitude diagram, which are not already registered, must be registered simultaneously, either in one deed or more than one deed in favour of the relevant parties – (**RCR45/2014**).

Registration of servitudes which have conflicting rights

Question Can a road servitude be registered when there is an underlying planting servitude and how do the beneficiaries of both these servitudes enjoy their rights?

Resolution Yes. The holder of the existing servitude must consent to the registration of the second servitude (section 65(3) of Act 47 of 1937) – (**RCR51/2014**).

Chapter 7 - Estate transfers

Paragraph 2.2 Who transfers the property out of the deceased estate?

~~Section 17(6) – Assistance of executor by spouse in a foreign marriage~~

~~Question~~ ~~Section 17(6) of the Act 47 of 1937 does not provide for assistance by a spouse if an executor acts on behalf of a deceased person who was previously married in terms of a marriage, which marriage was governed by the laws of another country. Taking into account the possibility that a joint estate might exist in terms of which the surviving spouse could have an interest, should the surviving spouse not join the executor when transferring the property?~~

~~Resolution~~ ~~Yes, the spouse must join the executor in terms of section 21 of Act 47 of 1937, unless the conveyancer certifies that the property does not constitute an asset in a joint estate – (**RCR16/2014**).~~

RCR16/2014 has been withdrawn by RCR1/2016. See RCR5/2004.

RCR5/2004

Question In terms of RCR1/2003 a section 45 application can be done in regard to foreign marriages where the consequences of that marriage are a marriage in community of property. What proof must be lodged?

Resolution Proof from the foreign mission of the relevant country or an opinion from an expert will be required.

- Paragraph 3.1** **Section 42(1) certificate**
- Paragraph 3.2** **Section 42(2) certificate**
- Paragraph 5.1** **The causa clause for an inheritance**
- Paragraph 5.4** **Supporting documents for estate transfers due to inheritance**

Proof of spouses and descendants under Sections 1 and 2(2)(b) as well as section 3(1)(a) of the Reform of Customary Law of Succession and Regulation of Related Matters Act 11 of 2009

Question Owing to the dual capacity of spouses and descendants referred to in section 1 and 2(2)(b) and (c) as well as section 3(1)(a) of the Reform of Customary Law of Succession and Regulations of Related Matters Act no. 11 of 2009, it is possible for some descendants to be regarded as spouses. Therefore it will be practically impossible for the Registrar of Deeds to apply the provisions of section 1(1)(a) and section 1(1)(b) of the Intestate Succession Act 81 of 1987 without some form of proof as to the said capacity. What kind of proof must be lodged to determine if a certain beneficiary is a spouse or a descendant in terms of the foregoing provisions?

Resolution The next-of-kin affidavit must be suitably amplified and adjusted to clearly indicate the capacity of a beneficiary in line with sections 3(1)(a) and Section 2(2)(b) and (c) of Act 11 of 2009, alternatively an executor's/Master's Representative affidavit must be lodged – ([RCR25/2014](#)).

Proof of “discarded wife”

~~**Question** — A “discarded wife”⁸ is deemed to be a surviving spouse for purposes of intestate succession. However, as such marriage was never registered, what documentation must a registrar of deeds insist upon as proof that such “spouse” can inherit in terms of the **Reform of Customary Law of Succession and Regulation of Related Matters Act 11 of 2009**?~~

~~**Resolution** — An affidavit of next-of-kin, certified a true copy by the Master, disclosing such discarded wife — ([RCR45/2009](#)).~~

RCR45/2009 has been withdrawn by RCR1/2016. See section 8(1) of the Recognition of Customary Marriages Act 120 of 1998.

RCR55/2008⁹ – Maintenance claims in deceased estates

⁸ A discarded wife is a woman who entered into a customary union and thereafter her husband entered into a civil marriage with another wife before 2 December 1988. The first wife is regarded as not married, in other words her “marriage” is nul and void.

⁹ **Transfer in favour of minor children & maintenance claim on behalf of minor children**

Question It sometimes happens that the terms of a will are completely altered by virtue of a maintenance claim which was served on the Master's office, during liquidation of the estate by the guardian, in terms of the Children's Act 38 of 2005. Which documentary proof must be lodged with an estate transfer or section 40 of the Administration of Estates Act endorsement in favour of children, originating from a maintenance claim against the parent's estate? Will the section 42(1) of the Administration of Estates Act conveyancer certificate suffice?

Question It sometimes happens that a maintenance claim supersedes the order in terms of testate / intestate succession.

- a) Should the recital refer to the maintenance claim?
- b) Will a section 42(1) of Act 66 of 1965 certificate by a conveyancer suffice?

Resolution a) The recital of the deed / application must provide all the facts.
b) The section 42(1) of Act 66 of 1965 certificate will suffice. No proof of the maintenance claim is required.

(RCR55/2008 is withdrawn) – (**RCR6/2016**).

Paragraph 5.5 Divesting clause

Paragraph 6.1 Section 45(1) endorsement

Paragraphs 6.2 & 6.3 Sections 39(2) and 39(3) endorsements

Paragraph 6.4 Section 40 endorsement

Transfer of property into the name of the beneficiaries

Question A property was transferred by means of a formal deed of transfer directly into the names of the beneficiaries rather than an application in terms of section 40 of the Administration of Estates Act 66 of 1965. Is this an error and if so how must it be dealt with?

Resolution Yes, it is an error unless the terms of the trust deed have been complied with. To rectify the error the property can be transferred back to the deceased estate. Alternatively, the deed of transfer must be cancelled in terms of section 6 of Act 47 of 1937 and the section 40 endorsement thereafter be registered. It is not necessary to correct the error when proof has been submitted that all the terms of the trust deed have been met – (**RCR18/2016**).

Paragraph 7.7 Restriction on minor's interests - section 80

RCR30/2010¹⁰ – Section 80 of the Administration of Estates Act

Question Are the provisions of section 80 of the Administration of Estates Act applicable to redistribution agreements?

Resolution No. The provisions of section 80 of the Administration of Estates Act do not apply to redistribution agreements – (see Ex Parte Fuad Tofie case, unreported) – (**RCR8/2014**).

Resolution Yes, the section 42(1) of the Administration of Estates Act will suffice. The causa of the deed / application must set out all the facts - (**RCR55/2008**).

¹⁰ **Question:** According to a discussion with the Chief Master, the provisions of section 80 of the Administration of Estates Act are not applicable to redistribution agreements (*entered into by a minor where immovable property belonging to such minor forms the subject of the distribution*).¹⁰ Should RCR 48 of 2008 and 11 of 2009 no be withdrawn?

Resolution: Section 80 of the Administration of Estates Act 66 of 1965 does not find application. RCR 48/2008 and 11/2009 are hereby withdrawn - (RCR30/2010).

Chapter 8 - Partition transfers

Paragraph 3 The power of attorney to pass partition transfers

Paragraph 8 – Partition of land subject to fideicommissum

Chapter 9 - Certificates of registered title

Paragraph 1 Section 34 CRT for a joint owner's undivided share

Paragraph 4 – Section 36 – CRT of two or more properties held under one deed

Paragraph 5 Section 38 CRT to replace lost deed

Section 38 of Act 47 of 1937 – issuing of one certificate of title in respect of more than one title deed

Question In instances where a number of title deeds (or some pages thereof) of the same owner have been lost or destroyed, and the deeds registry copies thereof has also been lost or destroyed, it is possible to invoke section 38 of Act 47 of 1937 and issue one certificate of registered title in respect of the many title deeds that have been lost (each property with its conditions to be referred to in a separate paragraph).

Resolution Yes. One certificate of registered title may be issued in terms of section 38 of Act 47 of 1937 in respect of two or more title deeds that are lost or destroyed, provided all title deeds are registered in the name of the same person or entity – **(RCR32/2015)**.

RCR42/2014:¹¹ Lost copies of Certificates issued in terms of sections 25 and 27 of the Sectional Titles Act 95 of 1986

Question Where the client's copy of a section 25 right of extension, or an exclusive use area created in terms of section 27, as well as the deeds office copy thereof are lost or destroyed, how must the holder of such right apply for his/her title to be replaced?

Resolution The provisions of section 38 of Act 47 of 1937 can be utilized, in view of section 3(1) of Act 95 of 1986.

RCR42/2014 is withdrawn – **(RCR9/2016)**.

¹¹ **A lost copy of a notarial deed**

Question Where the client's copy of a section 25 right of extension, or exclusive use area created in terms of section 27, as well as the deeds office copy are lost, how must the holder of such right apply for his/her title to be replaced?

Resolution Until the Act is amended, the provisions of section 38 of Act 47 of 1937 can be utilized, given the provisions of section 3(1) of Act 95 of 1986 – **(RCR42/2014)**.

Paragraph 6 CRT to correct an error in registration – section 39

Section 39(1) of Act 47 of 1937 – Double Registrations

Question The same property (Proclamation R293/1962) has been registered in the name of “A” vide two titles (e.g. T11/2014 and T12/2015). The same is further registered in the name of “B” by means of another deed of transfer, i.e. three title deeds exist for one property. May the provisions of section 39(1) of Act 47 of 1937 be invoked or must the matter be referred to court?

Resolution The provisions of section 39(1) of Act 47 of 1937 can be invoked. However, where proclamation R293/1962 makes provision for the cancellation of a title deed, such procedure may be followed – ([RCR14/2015](#)).

Paragraph 8 Certificate of consolidation - section 40

Paragraph 8.8 Disposal of mortgage bonds of properties to be consolidated

Consolidation of properties

Question Two properties must be consolidated. Prior to consolidation the position is as follows: Component one is subject to a 1st ranking and a 2nd ranking bond. The 2nd bond over component one is also a 1st ranking bond over component two. Can the bonds be substituted over the consolidated property or must it be cancelled as required by section 40(5)(b) of Act 47 of 1937?

Resolution No, the bonds cannot be substituted due to it being regarded as different bonds as contemplated in section 40(5)(b). The bonds must be cancelled. The following may be a possible solution: Component two may be released from the operation of the 1st mortgage bond. Components one and two may then be consolidated and the consolidated property may then be substituted in terms of section 40(5)(a) of the Act. Alternatively one of the bond may be cancelled as provided from in section 40(5)(b) – ([RCR16/2016](#)).

Consent in terms of section 40(3) or 40(5)(a) and (b) of Act 47 of 1937

Question Two or more properties are held by one title deed. These properties are mortgaged with the same bond/different bonds. The trustee of an insolvent estate first consolidates these properties and simultaneously transfers the consolidated property. Is a bondholder’s consent in terms of section 40(3) or 40(5)(a) and (b) required, keeping in mind that section 56(1)(b) of Act 47 of 1937 does not require a bondholder’s consent to be lodged if the trustee in the insolvent estate is the transferor?

Resolution If the transactions are registered simultaneously, no consents is/are required – ([RCR20/2015](#))

Paragraph 9 CRT for a portion of land - section 43

Paragraph 9.3 Prerequisites for issuing of Section 43 certificates

Paragraph 11 Description of the vesting clause in a CRT

Description of an owner of a Certificate of Registered Sectional Title

Question A registered owner (natural person) dies before he could register the opening of a sectional title scheme over his property. How should the owner/holder 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? This may also be applicable to consolidations and subdivisions of sections.

Resolution The owner/holder must be cited as provided for in regulation 54(2) of Act 47 of 1937. It must be registered in the name of the owner/holder, including identity number and status (deceased) – (**RCR37/2014**).¹²

Chapter 10 - Township establishment

Paragraph 3 Township on a portion of a piece of land

Paragraph 4 Township laid out on two or more pieces of land

Paragraph 8 Transfer of a whole township or of a portion thereof

Paragraph 9 Miscellaneous

Section 82 of the Townships and Town-planning Ordinance 15 of 1986 (TVL)

Question In terms of section 82 of Ordinance 15 of 1986, the registrar shall not register a deed of transfer of an erf in a township until such time as the local authority within whose area of jurisdiction the township is situated, has certified that it will, within a period of 3 months from the date of the certificate, be able to provide the erf with such services as it may deem necessary and that it is prepared to consider an application for the approval of a building plan in respect of the erf. The question is whether the aforesaid section must be complied with if the developer transfers a unit in a scheme opened on an erf in a township of which a section 82 certificate has not yet been provided?

Resolution Yes, section 82 must be complied with upon the opening of the sectional title scheme and the transfer of units in such scheme. However, where a certificate of registered title is issued, a caveat must be noted against the property concerned to the effect that on the transfer of the erf or the unit/s in the scheme by the developer, the provisions of section 82 must be complied with – (RCR70/2010).

~~Purchase date of a first transfer before the proclamation date of the township~~

~~**Question** In terms of Ordinances land in a township cannot be sold, exchanged, leased or disposed of in any manner before the proclamation date. Can the owner, based-~~

¹² For example: Joe Jackson
Identity number 440919 5096 08 2
Unmarried
(now deceased)

~~on the *Huntrex 148 (Pty) Ltd vs JA van Jaarsveld*, case 217/2010, sell property before the township is proclaimed?~~

~~**Resolution** The Ordinances must be adhered to. Alternatively a court order is required (RCR45/2012). Repealed by RCR1/2015 (see *Basfour 2994 (Pty) Ltd v Registrar of Deeds: Bloemfontein* (497/2014) [2014] ZAFSHC 38).~~

Chapter 11 - Endorsements

Paragraph 1 Section 3(1)(v) endorsement

RCR 4 of 1956 – Amendment of purchase price /value of property in a title deed

Question Where the purchase price/value of property is incorrectly reflected in a deed, how must the error be rectified?

Resolution The provisions of section 3(1)(v) may be applied upon application by the holder of the title deed subject to the lodgement of the satisfactory proof. Cognisance must be taken of transfer duty and fee implications. RCR4/1956 is hereby withdrawn – (**RCR3/2014**).

Paragraph 2 Section 4(1)(b) endorsement

RCR11/2006 – Section 4(1)(b) of Act 47 of 1937: Amendment of cancelled bonds

Question When a bond is registered in favour of an ‘incorrect’ mortgagee, who must consent to the cancellation of the bond?

Resolution Either the registered bondholder must consent to the cancellation or an order of court must be obtained for the cancellation (RCR9/1956 is withdrawn) – (**RCR5/2016**).

Paragraph 4 Section 17(4) endorsement

Paragraph 5 Section 24bis(2) endorsement

Section 24bis of Act 47 of 1937 – Transfer from firm or partnership

Question Where a sectional title unit and an exclusive use area in a scheme is owned by a firm or partnership and the firm or partnership is dissolved, may the application in terms of Section 24bis(2) of Act 47 of 1937, to vest the unit and exclusive use area in the members or partners, be lodged in one application or must there be separate applications for the unit and the exclusive use area respectively?

Resolution A single or separate application(s) for the unit and the exclusive use area may be lodged – (**RCR13/2015**).

Paragraphs 8, 9, 10 & 11 - Section 45 and 45bis endorsements

Sections 45 and 45bis endorsements

Section 45bis of Act 47 of 1937 – Application

Question A section 45bis application incorrectly cited the transferee as “married in community of property” and as a result thereof the section 45bis endorsement in

the title deed incorrectly reflects the marital status of the transferee as “married in community of property” instead of “unmarried” or “married out of community of property”. May the provisions of section 4(1)(b) of Act 47 of 1937 be applied to rectify the position?

Resolution No, the provisions of section 4(1)(b) cannot be applied in this instance. A rectification transfer must be registered, or section 6 must be applied to cancel the incorrect transfer in terms of section 45bis – **(RCR11/2016)**.

Section 45, Section 45bis and Section 45bis(1A) of Act 47 of 1937 – Transfer by endorsement

Question If a sectional title unit and an exclusive use area in a scheme forms part of a joint estate and is dissolved through death, divorce or change in matrimonial property system, may the application in terms of section 45, section 45bis and section 45bis(1A) of Act 47 of 1937, to vest the unit and the exclusive use area in the surviving spouse, former spouse or individual spouses/former spouses, be lodged in one application or must there be separate applications for the unit and the exclusive use area respectively?

Resolution Yes, a single or separate application(s) for the unit and the exclusive use area may be lodged – **(RCR15/2015)**.

Paragraph 9 - Section 45bis(1)(a) endorsement

RCR28/2003 and RCR64/2010¹³ – Copies of foreign divorce orders

Question May the Registrar of Deeds accept a foreign divorce order?

Resolution Yes. In terms of regulation 44A of the Deeds Registries Act 47 of 1937, the conveyancer takes responsibility for the correctness of the marital status of the parties to deeds and documents, inter alia if the validity of the foreign divorce order has been recognized in terms of section 13 of the Divorce Act 70 of 1979. Therefore a copy of a foreign divorce order that is compliant with the provisions of Rule 63 of the High Court Rules may be accepted – **(RCR2/2016)**

(RCR28/2003 and RCR64/2010 are withdrawn)

Paragraph 11 - Section 45bis(1A)(b) endorsement

Paragraph 12 Section 58 endorsement

Paragraph 13 Section 68(1) endorsement

¹³

Copies of foreign divorce orders

Question Who may certify a copy of a foreign divorce order, where property situated in South Africa is dealt with? Must the foreign divorce order be accepted in a South African Court?

Resolution

- a) A foreign order does not have to be accepted by the High Court of South Africa.
- b) The foreign court order may be certified as a true copy of the original, by a conveyancer or notary – (RCR64/2010).

A pre-emptive right

Negative Personal Servitude/Restrictive condition

Question May a negative personal servitude/restrictive condition hidden behind the pivot¹⁴ reference be cancelled in terms of section 68 of Act 47 of 1937?

Resolution Yes, it may be cancelled in terms of section 68(2)¹⁵ of Act 47 of 1937 or the lapsing thereof may be noted in terms of section 68(1) of Act 47 of 1937 – (RCR27/2015).

RCR 34 of 2013¹⁶ – Cancellation of pre-emptive right and transfer duty

Question Where a condition, not binding successors in title, is cancelled or renounced, is such cancellation or renunciation deemed a transaction within the ambit of section 2 of the Transfer Duty Act 40 of 1949? Must a transfer duty receipt or exemption certificate be lodged as provided in RCR 5 of 2005?

Resolution No, it is not “property” as defined in the definition of property in the Transfer Duty Act 40 of 1949. No transfer duty receipt or exemption certificate is required. RCR34/2013 is hereby withdrawn – (RCR14/2014)

Section 68(1) – Partial lapsing of a condition

Question May an application be lodged in terms of section 68(1) of Act 47 of 1937 for the partial lapsing of a personal servitude?

Resolution Yes, the provisions of section 68(1) of Act 47 of 1937 can be utilized in this circumstance – (RCR17/2014).

Paragraph 14 Section 78(1) endorsement

Paragraph 16 Section 93(1) endorsement

Hyphenated Surname

Question Does the taking of a hyphenated surname by a person on marriage or civil union require a Government Gazette, if a section 93(1) of Act 47 of 1937, application is brought?

Resolution Where a person wishes to update his/her title deed, proof in the form of a copy of the government gazette or a letter by the Department of Home Affairs must be submitted. In the case of any of the exceptions in terms of section 26(1) of the

¹⁴ The pivot clause is only found in deeds registered in the Cape Town deeds office.

¹⁵ In other words, cancellation by means of a notarial deed.

¹⁶ **Question:** Where a pre-emptive right, not binding successors in title, is cancelled, is this deemed a transaction within the ambit of section 2 of the Transfer Duty Act 40 of 1949? Must a transfer duty receipt or exemption certificate be lodged, as provided for in RCR5/2005?

Resolution: No, it is not a “property” as defined in the definition of property in the Transfer Duty Act 40 of 1949. No transfer duty receipt or exemption certificate is required – (RCR34/2013).

Births and Deaths Registration Act 51 of 1992,¹⁷ an affidavit by such person may be accepted – (RCR29/2015).

Chapter 12 - Lost deeds

Paragraph 2.1 Regulation 68(1)

RCR7/2007¹⁸ and RCR 6.12/1999 – Regulation 68(11) of Act 47 of 1937

Question RCR 7/2007 prohibits an agent authorized by way of a registered General Power of Attorney from making an affidavit on behalf of someone else. What is the correct position in respect of Regulation 68(1) and (11) applications? May an agent lodge an affidavit?

Resolution An agent is allowed to make an affidavit if the facts contained therein are within the personal knowledge of the agent. See *Hiltunen v Hiltunen* 2008 ZWHC 99. RCR 7/2007 and RCR6.12 of 1999 are hereby withdrawn – (RCR3/2015).

Paragraph 2.2 Application for copy where land is mortgaged – (regulation 68(2))

Paragraph 2.4 Regulation 68(11)

Paragraph 2.5 Application by the mortgagee of a lost or destroyed mortgage bond where the registration duplicate has also been lost or destroyed for cancellation thereof – Reg 68(11B) & 68(11C)

Deeds office copy and client's copy of a bond lost/destroyed

Question Where the deeds office copy of a bond as well as the client's copy are lost it is not always prudent to apply regulation 68(11B) of the Deeds Registries Act 47 of 1937 and to register a new bond in view of the insolvency implications etc. To

¹⁷ The exceptions in section 26(1) of the Births and Deaths Registration Act are:

- (a) woman after her marriage assumes the surname of the man with whom she concluded such marriage or after having assumed his surname, resumes a surname which she bore at any prior time;
- (b) a married or divorced woman or a widow resumes a surname which she bore at any prior time; and
- (c) a woman, whether married or divorced, or a widow adds to the surname which she assumed after the marriage, any surname which she bore at any prior time.

¹⁸ **General power of attorney mandating agent is unacceptable**

Statement An authorized person (agent) cannot make an oath on behalf of his/her principal (in terms of RCR 6.12 of 1999).

Question What is the position with an affidavit in terms of regulation 68(11), where the agent (conveyancer) acts in terms of a general power of attorney on behalf of the Mortgagee (the Bank)?

Resolution RCR 6.12 of 1999 must also be applied to applications and affidavits in terms of regulation 68(11). A general power of attorney mandating an agent to make an affidavit on behalf of his/her principal is *contra bonis mores* and should not be allowed - (RCR7/2007).

approach the court is time consuming and costly. Can section 38 of the Deeds Registries Act 47 of 1937 not also apply to bonds?

Resolution No. The bond must be cancelled in terms of regulation 68(11B) of the Deeds Registries Act 47 of 1937 and a new bond must be registered – (RCR22/2016).

Regulation 68(11B)(a) – Unserviceable Deeds Registry and client's copy of mortgage or notarial bond

~~**Question** — May the provisions of regulation 68(11B)(a) of Act 47 of 1937 be utilized for the cancellation of a mortgage or notarial bond where the client's copy and deeds registry's copy are unserviceable?~~

~~**Resolution** — Yes. The matter will be referred to the board with the proposal to amend regulation 68(11B). Pending the amendment of the provisions, regulation 68(11B)(a) may be invoked — (RCR22/2014). Repealed by RCR1/2015 (see amendment to regulation 68(11B) (a) of Act 47 of 1937).~~

Chapter 14 - Mortgage bonds

Paragraph 1 Background

Paragraph 3.4 Acknowledgement clause

Registration of a bond in favour of the deceased estate

Question Can an heir register a mortgage bond in favour of a deceased estate as security for monies advanced prior to the finalisation of the estate?

Resolution Yes, it is permissible for an heir to register a bond in favour of a deceased estate – (RCR19/2016).

Paragraph 3.7 Ranking clause

Paragraph 7.5 Consent to various registration procedures

Paragraph 3.5.1 Amount of the bond

A new conversion certificate in which the bond amount is expressed in foreign currency

Question Does conference agree that a new conversion certificate is needed in cases where a notarial bond, in which the bond amount is expressed in foreign currency, is to be registered in more than one deeds registry?

Resolution Yes, a new certificate must be lodged for calculating registration fees – (RCR30/2015).¹⁹

Paragraph 3.8 Property or security clause

Mortgaging of a share in a long-term lease agreement

¹⁹ The purpose for such a certificate is to enable the deeds office to calculate their fee.

Question May an undivided share in a registered long-terms lease agreement serve as security under a mortgage bond?

Resolution Yes, provided such undivided share is held under its own separate title. RCR23/2009²⁰ is hereby withdrawn – **(RCR27/2014)**

Paragraph 7 Consents - Regulation 39

The inclusion of the additional amounts of bonds

Question Must additional amounts be included in consents drafted in accordance with Form MM of the Deeds Registries Act 47 of 1937 and Form AM of the Sectional Titles Act 95 of 1986?

Resolution Additional amounts need not be included in Form MM of the Deeds Registries Act 47 of 1937 or Form AM of the Sectional Titles Act 95 of 1986 – **(RCR14/2016)**.

Regulation 39(1) – Status of a bondholder and a consenting party

Question The last provisio of regulation 39(1) of Act 47 of 1937 requires any authority given under regulation 39(1)(a)-(j) of Act 47 of 1937 to disclose the marital status of the bondholder or any other consenting party, only if the bondholder or consenting party is a woman. Furthermore, the said regulation does not require the disclosure of the identity number or registration number of the bondholder or consenting party. Should the regulation not be amended to refer to the status and identity number or registration number of a bondholder and a consenting party?

Resolution Yes. Pending the amendment of regulation 39(1) of Act 47 of 1937, the status and identity number or registration number of all bondholders and consenting parties must be referred to (see section 17(2) of Act 47 of 1937, read with regulation 18) – **(RCR18/2014)**.

RCR38/2010²¹ – Section 56(1)(b) of Act 47 of 1937: Liquidation of company/ close corporation and cancellation of bonds:

Question It is practice to accept a certificate from a conveyancer in instances where a company is unable to pay its debts. Should it not be the liquidator who certifies to this fact?

Resolution Yes. In order to comply with section 56(1)(b) of Act 47 of 1937 it is necessary that a transfer of property belonging to the company/close corporation in

²⁰ **Question:** May an undivided share in a long-term lease agreement serve as security under a mortgage bond?
Resolution: No, the Deeds Registries Act does not provide for the mortgaging of a share in a long-term lease - (RCR23/2009).

²¹ **Section 56(1)(b) of the Deeds Registries Act: Voluntary liquidation of company / close corporation and cancellation of bonds**

Question It is practice to accept a certificate from a conveyancer in instances where a company is unable to pay its debts. Should it not be the liquidator who certifies as to this fact?

Resolution Yes. In order to comply with section 56(1)(b) of the Deeds Act, it is necessary that a transfer of property belonging to the company / close corporation in liquidation be accompanied by a certificate from the liquidator that the company / close corporation is unable to pay its debts – **(RCR38/2010)**.

liquidation be accompanied by a certificate from the liquidator that the company/close corporation is unable to pay its debts.

RCR38/2010 is withdrawn – ([RCR8/2016](#)).

Chapter 15 - General

Paragraph 1 - Expropriation transfers

Transfer and vesting of State Land in respect of certificates issued in terms of Item 28(1) of Schedule 6 of the Constitution of the Republic of South Africa

- Question**
- a) Where different properties are held under one title deed and same need to be transferred separately to the National Government and the Provincial Government, may the properties be transferred²² by means of the registration of Certificates of Registered Titled in terms of section 36 of Act 47 of 1937, or Deeds Transfer in terms of section 31 of Act 47 of 1937?
 - b) Is an office fee payable in this regard?

RCR 24/2014:²³ Transfer and vesting of State Land in respect of certificates issued in terms of Item 28(1) of Schedule 6 of the Constitution of the Republic of South Africa

- Question**
- a) Where different properties are held under one title deed and same need to be transferred separately to the National Government and the Provincial Government, may the properties be transferred²⁴ by means of the registration of Certificates of Registered Titled in terms of section 36 of Act 47 of 1937, or Deeds Transfer in terms of section 31 of Act 47 of 1937?
 - b) Is an office fee payable in this regard?

- Resolution**
- a) The properties may be transferred in terms of section 31 of Act 47 of 1937. Alternatively the title deed must first be endorsed in terms of Item 28(1)²⁵ and simultaneously a certificate of registered title in terms of section 36 of Act 47 of 1937 must be issued.

²² Note that no transfer can take place by means of the issuing of a certificate of registered title. In this regard, the question was worded badly.

²³ **Resolution**

- a) The properties may be transferred in terms of section 31. Alternatively the title deed must first be endorsed in terms of Item 28(1)²³ and subsequently a certificate of registered title in terms of section 36 may be issued.
- b) Item 28(2) provides for an endorsement in terms of Item 28(1) to be exempt from the payment of duties or fees. Office fees are payable in respect of the registration of a certificate of registered title in terms of section 36 and a deed of transfer under section 31 – ([RCR24/2014](#)).

²⁴ Note that no transfer can take place by means of the issuing of a certificate of registered title. In this regard, the question was worded badly.

²⁵ Item 28(1) of Schedule 6 to the Constitution, 1996 provides that a registrar of deeds must on production of a certificate by a competent authority that immovable property owned by the State is vested in a particular sphere of government in terms of section 239 of the 1993 Constitution, make the necessary endorsements in or on any relevant register, title deed or other document to register that immovable property in the name of that particular government organ.

- b) Item 28(2) provides for an endorsement in terms of Item 28(1) to be exempt from the payment of duties or fees. Office fees are payable in respect of the registration of a certificate of registered title in terms of section 36 of Act 47 of 1937 and a deed of transfer under section 31 of Act 47 of 1937. RCR 24/2014 is hereby withdrawn – (RCR9/2015).

Paragraph 3 – Transfers in terms of section 18(3) of the Administration of Estates Act

Appointment of representative in terms of the Administration of Estates Act 66 of 1965

Question Section 18(3) of Act 66 of 1965 have been amended by Gazette dated November 2014 thereby changing the amount to R250 000,00. The effect of the amendment on the application of Section 18(3) is, where a person has died and the value of the estate does not exceed R250 000,00 the Master may dispense with the appointment of an executor and give directions as to the manner in which any such estate shall be liquidated and distributed. Is it the duty of the Registrar of Deeds to ensure this provision is correctly complied with?

Resolution No, in terms of section 18(3) of Act 66 of 1965 it is clear that it is the discretion of the Master to dispense of the appointment of an executor, provided that the amount of the estate does not exceed with amount determined by the Minister from time to time for the purposes of section 18(3) of Act 66 of 1965 – (RCR34/2015).²⁶

16 - Miscellaneous

Question Where a pre-emptive right has lapsed by effluxion of time, but the land was sold to the purchaser prior to the lapsing thereof, is it still necessary to lodge the consent?

Resolution Yes, the consent must be lodged. The relevant date is the date of sale – (RCR15/2016).

Application of a court order

Question Where the Registrar of Deeds is ordered by the Court to perform a specific transaction, does the Registrar have authority:

- To refuse to comply with the Court order if it is not in accordance with the Act or if the Act does not make provision for such an act of registration as ordered by the Court? If the Registrar may refuse, what procedure should be followed?
- To allow an alternative act of registration than what is ordered by the Court, having the same end result or must he Court order be followed strictly?
- Comply with the Court order without following the provisions of the Act.

Resolution The court order must always strictly be complied with. If the Registrar of Deeds or an interested party is aggrieved by an order of Court he/she must apply to Court

²⁶ Note however, that the deeds office will query the appointment of a section 18(3) representative in instances where the value of the property transferred exceeds R250 000,00. In other words, the deeds office will reject such a transfer to be referred back to the Master for the appointment of an executor.

to set aside the order or apply for a variation of the order – (**RCR12/2016**).

Section 6: Cancellation of deed

Tie conditions

Question How should an attachment against a component of a tie condition be noted? Does the condition fall away upon attachment? If the interdict is noted, is the ultimate transfer by the sheriff permissible without any notification to the enforcer of the tie?

Resolution The registrar must note the attachment against the relevant property. The condition does not fall away and the issue in respect of the tie condition must be dealt with upon transfer of the property – (**RCR18/2015**).²⁷

Expropriation of attached property

Question When an expropriation transfer is lodged at the deeds registry and there is an attachment noted against the property, how must the attachment be dealt with? May it be dealt with in the same way as when an insolvent's property is sold and there is an attachment notes against that property, i.e. the examiner withdraws the attachment?

Resolution The attachment must be purged based on section 31(4)(a)²⁸ of Act 47 of 1937 – (**RCR19/2015**).

Section 7 of Act 47 of 1937: Office Fees

Question Section 7 of Act 47 of 1937 deals with obtaining copies of records and providing information upon payment of the prescribed fees. In terms of section 7(2) of Act 47 of 1937, no person (including the State) shall, notwithstanding anything to the contrary in any other law contained, be exempt from payment of the prescribed fee. Under what valid authority are exemptions of the payment of fees currently granted to inter alia certain Department?

Resolution No exemption for the provision of information or copies of deeds may be granted. Section 7(2) of Act 47 of 1937 does not grant any exemption contained in any other Act – (**RCR10/2015**).

Regulation 84 Item 1(a) of Act 47 of 1937

Question Regulation 84 Item 1(a) seems to be in contrast with Item 1(d) of the last proviso (where no purchase price is involved).

Is it correct that office fees are charged as per the value of the property whereas item 1(d) indicates otherwise? Should the last proviso of Item 1 (d) not be deleted (where no purchase price is involved) to only make provision for any other registrations or annotations in register or records, certificate of titles, any other registrations which are not exempted by Law?

Resolution This is not a contradiction. Item 1(a) refers to “transfer” and item 1(d) refers to “other registration or annotation and certificates of title”- (**RCR17/2015**).

²⁷ In other words, the properties must most probably be untied, then the sheriff must transfer the attached property and then the two properties must be retied again.

²⁸ This section provides that the registrar shall not execute the deed of transfer unless a certificate has been furnished to him by the transferee to the effect that the provisions of any law in connection with the change of ownership in the land in consequence of expropriation of vesting, have been complied with.

Section 18(3) of Act 47 of 1937 – State Land

Question Section 18(3) of Act 47 of 1937 still requires that when unalienated state land is registered in a deeds registry, that a diagram for the land must be lodged in duplicate. Regulation 32 of Act 47 of 1937 only refers to “a diagram” and on that basis conference correctly ruled in RCR3/2009 that only one copy of a diagram needs to be lodged for registration purposes. In light of the above, is it still necessary that the diagram for unalienated State land be lodged in duplicate?

Resolution Pending the amendment of the Act, only one copy of a diagram relating to unalienated State land as referred to in Section 18(3) of Act 47 of 1937 will suffice- (**RCR12/2015**).

Part 2

Sectional Titles and Deeds Office Procedure

Chapter 1 - Sectional titles

Paragraaf 3.3 A scheme on one or more pieces of land

Paragraph 4.2 Documents to be lodged for
 a) opening of sectional title register and
 b) registration of sectional plan

RCR52/2013:²⁹ Lost or destroyed rules of scheme

Question What procedure must be followed where the rules of a Sectional Title Scheme have been lost or destroyed?

Resolution A certified copy of the resolution together with a certified copy of the rules must be obtained from the body corporate and be submitted for filing in the deeds registry. The lodgment of form "V" is not required. Lost or destroyed rules may be substituted by lodging the substituted rules, supported by a unanimous resolution for management rules and a special resolution for conduct rules. RCR52/2013 is hereby withdrawn – (**RCR5/2015**).

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

Question

- a) May an error in a section 11(3)(b) Schedule of Conditions be amended in terms of section 4(1)(b) if it will not have the effect of transferring a real right? If so, who must consent to such amendment?
- b) How does one fix an error in the schedule of conditions (Section 11(3)(b) certificate) if the error for example relates to a condition carried forward in the certificate or perhaps the property description. Further, who should bring the application, the developer or the body corporate?

Resolution An application in terms of section 4(1)(b) of Act 47 of 1937, by either the developer, if the body corporate is not established, or the body corporate if so established – (**RCR27/2016**).

Section 11(2) Conditions

Question Section 11(2) of Act 95 of 1986 allows the developer, when making application for the opening of a sectional title register and the registration of a sectional plan, to impose registrable conditions in the schedule referred to in subsection (3)(b) of section 11.

²⁹ **Lost or destroyed rules of scheme**

Question What procedure must be followed where the amended rules of a sectional title scheme have been lost or destroyed?

Resolution Lost or destroyed rules may be substituted by lodging the substituted rules, supported by a unanimous resolution – (**RCR52/2013**).

Section 65(1) of Act 47 of 1937 allows the transferor in a Deed of Transfer to impose restrictive conditions. In view of section 65(1) of Act 47 of 1937:

- a) Should the conditions imposed by the developer in terms of section 11(2) of Act 95 of 1986 not be registered notarially where such restrictive condition is imposed for the benefit of a third party?
- b) Should a transfer duty receipt be insisted upon if the condition is imposed in favour of a third party?

Resolution

- a) No, the condition may be imposed by the developer in terms of section 11(2) and contained in the section 11(3)(b) certificate, provided that the third party accepts the benefit in writing. Alternatively, the condition may be created notarially.
- b) A transfer duty receipt or exemption certificate must be insisted upon if it is imposed in favour of a third party – (**RCR37/2015**).

RCR60/2008 and RCR7/2014 – Endorsement of lapsing of rights of extensions

Question A real right of extension is subdivided into numerous portions. What procedure must be followed for purposes of the endorsement of the lapsing of the right on the section 11(3)(b) schedule of conditions?

Resolution When one of the portions of a real right of extension has lapsed/been exhausted, the title deed of such portion must be endorsed by noting thereon that such right has lapsed/been exhausted. The section 11(3)(b) schedule must only be endorsed in terms of section 15B(1)(d) of Act 95 of 1986, when the whole of the right has lapsed. The provisions of section 68(1) of Act 47 of 1937 must be applied with the necessary changes. RCR60/2008³⁰ and RCR7/2014³¹ are withdrawn – (**RCR7/2016**).³²

RCR 45 of 2004³³: Usufruct over exclusive use areas

Question According to section 27(6) of Act 95 of 1986 personal servitudes may be registered over Exclusive use areas. Does this mean that the Certificates of

³⁰ **Question:** A real right of extension is subdivided into numerous portions. How and when must the provisions of section 68(1) of Act 47 of 1937 be applied, for purposes of the endorsement of the lapsing of the right on the section 11(3)(b)-schedule of conditions?

Resolution: The 11(3)(b) schedule must only be endorsed, in terms of section 68(1) of Act 47 of 1937, when the whole of the right has lapsed.

³¹ **RCR 60 of 2008 – Section 25 of Act 95 of 1986: subdivision of real right of extension**

Question In terms of RCR60/2008 the lapsing of the right may be cancelled when the whole right has lapsed. However, when a section 25 right is subdivided, each portion will exist with its own title deed. Each portion will exist separately from the others and will be a “whole” section 25 right on its own. Therefore this resolution must be revisited. Each subdivided portion may be cancelled once that specific portion right has lapsed.

Resolution When one of the portions of a real right of extension has lapsed/has been exercised, the title deed of such portion must be endorsed by noting thereon that such right has lapsed/has been exercised. The section 11(3)(b) schedule of conditions must only be endorsed when the whole right has lapsed – (**RCR7/2014**).

³² This resolution is not really relevant for conveyancers but indeed for the examiners in the deeds office.

³³ **Question:** If the property is subject to a usufruct and the owner wants to open a sectional title register, must the usufructuary consent to the opening of the sectional title register or must be owner and the usufructuary jointly apply for the opening of the sectional title register?

Resolution: The usufructuary may join the bare dominium owner in applying for the opening of a sectional title register. However, all certificates of title must be made subject to the usufruct.

Real Rights issued for exclusive use areas when the scheme is opened, must also be made subject to a usufruct that existed over the land prior to the opening of the scheme?

Resolution Yes, the exclusive use areas must be made subject to the usufruct – **(RCR6/2014)**.

Paragraph 5.2 The deed of transfer

Paragraph 5.2.2 – The causa clause

Paragraph 5.2.4 The property clause

Paragraph 5.2.6 - The conditional clause

Paragraph 5.4 Section 15B(3)(a) conveyancer's certificate

Section 15B(3)(a)(i)(aa) – certificate must be certified by a conveyancer

Question According to section 15B(3)(a)(i)(aa) a conveyancer must certify as to whether monies due have been paid or arrangements made for payment. The question is whether the conveyancer must choose between the two possibilities, or may the practice be continued to refer to both?

Resolution No, the conveyancer does not have to choose. The content of the certificate is the conveyancer's responsibility and the certificate must not be questioned in this regard – **(RCR38/2015)**.³⁴

Paragraph 5.5 Affidavit by developer - Section 15B(3)(c)

Section 10

Question Where co-developers enter into a partition agreement, must the provisions of section 10 of Act 95 of 1986 be complied with? Alternatively, must a *caveat* be noted against the relevant sections to indicate that on the sale of the sections, the provisions of section 10 must be complied with?

Resolution A body corporate is established on the registration of the partition transfer, however section 10 does not find application. A *caveat* must be noted for the provisions of section 10 to be complied with on subsequent transfer of the sections by the respective owners. RCR31/1987 is hereby withdrawn – **(RCR44/2013)**. **RCR1/2014** also withdrew RCR2/2011, due to the decision in RCR44/2013.

Paragraph 5.6 Documents to be lodged on transfer of unit and cession of exclusive use area

³⁴ In other words, the conveyancer certificate may say that "all the levies have been paid or that provision has been made to the satisfaction of the body corporate for the payment thereof." This may not be queried by the deeds office.

Paragraph 7 Joint ownership of a unit in undivided shares – S 15B(4), (5) & (5A)

Section 15B(5)

Question ~~The Act does not contain a mechanism on how the provisions of section 15B(5) must be applied.~~

- a) ~~To address bonds, may section 37 of Act 47 of 1937 be applied in respect of the unit which is deemed to be land, and not in respect of the exclusive use area or section 25-right?~~
- b) ~~Form I of Act 95 of 1986 has been amended to include exclusive use areas and section 25 in respect of the application. Form J is for the certificate of registered sectional title in respect of the unit but there is no prescribed form for the certificates of real right (there is a form for a separate title deed for an exclusive use area as prescribed by section 27(7)(a) – regulation 28(5)(a), form AI).~~
- c) ~~Real rights registered over the exclusive use area must also be addressed, i.e. consent of holder of real right (not necessary), the title deed, if available must be lodged for endorsement.~~

Resolution

- a) ~~Section 37 must be applied for units and section 27 and 25 rights, until the Act is amended.³⁵~~
- b) ~~Form AI must be used with the necessary changes until the Act is amended~~
- c) ~~Title deeds of real rights must be lodged for endorsement, if available. No consents are necessary – (RCR46/2013) Repealed by RCR1/2015 (see section 15B(8) to (11) of Act 95 of 1986~~

Paragraph 9 Dealings with common property - section 17

Issuing of a certificate of registered title for a portion of the common property

Question A developer is the sole owner of a sectional title scheme and no body corporate exists. The developer wants to subdivide the common property and register a certificate of registered title for that portion. Section 17 of Act 95 of 1986 allows for the subdivision of common property in a sectional title scheme, but only allows the subdivision to be registered as a transfer and there is no provision made for a certificate of registered title to be issued

How can the developer obtain a title for the portion of the common property where he/she wants to retain the subdivided portion?

Resolution Section 3(1) of Act 95 of 1986 can be invoked to allow for the issuing of a certificate of registered title in terms of section 43 of Act 47 of 1937, provided a certificate by a conveyancer as provided for in regulation 29 of Act 95 of 1986 is submitted. The provisions of section 17 and section 18 of Act 95 of 1986 applies *mutatis mutandis* – (RCR39/2015).

³⁵ In other words, the mortgage bonds must be lodged although the consent of the mortgagee is not required.

RCR 45 of 2003 and RCR 63 of 2011³⁶: transfer of whole of common property

Question RCR 45 of 2003 is affected by RCR 63 of 2011 (see resolution in footnote) in respect of the transfer of the whole of the common property. RCR 45 of 2003 should be amended to indicate that section 57 of Act No. 47 of 1937 cannot be applied for the transfer of the whole of the common property.

Resolution The bonds must be cancelled. Where the whole of the common property is transferred (or a part thereof including more than one section subject to different bonds, are transferred) section 57 of Act No. 47 of 1937 cannot be applied. (RCR 45 of 2003 is withdrawn) - **(RCR3/2012)**. **(RCR1/2014** also withdrew RCR63/2011 due to the resolution taken in RCR3/2012.)

RCR 52 of 2012³⁷ – Section 18 and bonds registered over real rights

Question Section 18 makes sections 56 and 57 of Act 47 of 1937 applicable in respect of section 17 transfers and cessions of exclusive use areas and section 25 rights of extension. However, section 18 does not apply to bonds registered over exclusive use areas and section 25 rights when such rights are cancelled due to the transfer of the common property in terms of section 17. How must bonds be dealt with in respect of exclusive use areas and section 25 rights that are cancelled in terms of section 17(4B)(a) and section 14(4C)?

Resolution Pending the amendment of the Act the bonds must be disposed of. RCR52/2012 is hereby withdrawn. – **(RCR10/2014)**.

Paragraph 10 Subdivision and consolidation of sections

RCR54/2012: Section 22 and bonds

Question It is clear from RCR54/2012, especially par. (b), that certificates of registered sectional title may be issued to separate co-owners on partitioning where there is a partition agreement on subdivision of a section(s) in terms of section 22 of Act 95 of 1986.

In the aforementioned scenario, can we consider the following burning issues?

- Is the section 22 application a transfer?
- Form P³⁸ makes no provision for the vesting of subdivided sections in the names of different owners?
- As no consideration clause is provided in form P how would you know if consideration was paid and whether TDR or TDE must be lodged or not?
- Must rates certificates be lodged?

³⁶ **Question:** Section 18 of Act No. 95 of 1986 makes sections 56 and 57 of Act No. 47 of 1937 applicable to transfers in terms of section 17 of Act No. 95 of 1986. Is it possible to apply section 57 when a transfer takes place in terms of section 17(5), i.e. where the whole of the land is transferred by the body corporate? There will most likely be different owners with different bonds. It is submitted that section 57 (substitution of bonds) cannot be applied with section 17(5) transfers.

Resolution: Pending the amendment of the Act, the bonds will have to be cancelled – (RCR63/2011).

³⁷ **Question:** Section 18 makes sections 56 and 57 of Act No. 47 of 1937 applicable in respect of section 17 transfers. However, section 18 does not apply to exclusive use areas and section 25 rights. How must bonds be dealt with in respect of exclusive use areas and section 25 rights?

Resolution: Until the Act is amended, section 18 must be applied in respect of exclusive use areas and section 25 rights. Cancellation of the bonds or release of the rights must be effected – (RCR52/2012).

³⁸ RCR13/2014 amended this resolution by replacing reference in the question and resolution to Form O with Form P.

- e) If no body corporate is established and the developers are subdividing as above would a body corporate not have been established?
- f) If owners/developers are subdividing, would a section 15B(3) not be required?

Resolution Section 22 is deemed to be a transfer in respect of partition agreements. Form P must be suitably adapted to provide for a consideration clause. The necessary rates clearance certificates, transfer duty receipt and form W, if applicable, as well as a section 15B(3) certificate must be lodged. However, in order to eliminate potential problems arising from the adaptation of the prescribed forms it is recommended that conveyancers firstly subdivide and thereafter partition.

Pending the amendment of the Act, RCR54/2012 is hereby confirmed – (RCR19/2013, as amended by **RCR13/2014**).

RCR 35 of 2002 and RCR21/2013³⁹: Power of developer to subdivide, consolidate and extend

Question Does the developer, prior to a body corporate being established, have all the powers entrusted upon a body corporate in terms of sections 17, 22, 23, 24, 26 and 29 of the Sectional Titles Act 95 of 1986?

Resolution Yes, the developer has all such powers, provided that 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. RCR35/2002 and RCR21/2013 are hereby withdrawn. – **RCR2/2014**.

Paragraph 11 Extension of sections - Section 24

Section 24 of the Sectional Titles Act 95 of 1986

Question No uniformity exists in respect of the sectional plan numbers to be used after an extension of a section has been registered in terms of section 24 of the Sectional Titles Act 95 of 1986.

Resolution The new sectional plan number as provided for in regulation 23(1)(b) must be referred to – (**RCR26/2016**).

Power of developer to extend a section, to register a servitude burdening the common property in terms of section 29, application in terms of section 25(6A) or section 27(1A)

Question Must the consent of co-developers or prospective co-developers be obtained when a developer extends a section, registers a servitude burdening the common property in terms of section 29, makes an application in terms of section 25(6A) or section 27(1A) in instances where the body corporate has not

³⁹ **Question** RCR64/2012 must be amended by the deletion of “or in the absence thereof the written consent of the acquirer to such acts of registration is obtained” as this will have the result that the deeds registry will not be aware who must consent.

Resolution Yes, the developer has the right to enter into such acts of registration. However, a registrar shall not register such act of registration unless an affidavit by the developer is lodged to the effect that no unit in the scheme has been sold, donated or exchanged, or if such unit was so alienated, the developer had disclosed in such affidavit that the acquirer thereof had been informed in writing of such acts of registration. RCR64/2012 is withdrawn – (RCR21/2013).

been established?

Resolution The co-developer/prospective co-developers (if a sale agreement was entered into) must be notified of the intention of entering into such acts of registration and an affidavit to that effect must be obtained from the co-developer(s) and lodged – **(RCR11/2014)**.⁴⁰

Homeowners' consents and certificate by architects or land surveyors as contemplated in RCR61/2008

Question Conference must consider providing guidelines for the form of the certificate from a land surveyor or architect required in terms of RCR61/2008 and section 24(6)(d) of Act 95 of 1986 and the form of consent from Home Owners' Associations. Whether it must contain letterheads, practice numbers and attestation of the land surveyor's signature by witnesses.

Resolution A homeowners' association consent must be contained on its letterhead or be prepared by a conveyancer in terms of regulation 44 and certificates from architects and land surveyors must contain their names and practice numbers – **(RCR39/2014)**.

Paragraph 12 Extension of schemes

Leases on undivided shares in section 25 extension rights or portions thereof

Question Is a lease of the whole or a fraction of an undivided share in a section 25 extension right registrable?

Resolution No, the amendment to the provisions of section 15B(5)(b) of Act 95 of 1986 was not intended to allow for the lease of the whole or a fraction of an undivided share in a section 25 right of extension – **(RCR29/2016)**.

Lapse of the right of extension - section 25(6A)

RCR45/2007⁴¹ and RCR10/2012 – Section 25(6A) of the Sectional Titles Act 95 of 1986 – Reservation of Right

Question Where a right of extension has lapsed, must the lapsing of such right be noted prior to reserving a new right of extension?

Resolution Yes, lapsing of the right of extension must be noted. A section 15B(1)(d) of Act

⁴⁰ This implies that with all these acts of registration an affidavit must be lodged by developer, either to confirm that there are no co-developers or prospective co-developers or confirming that the co-developers/prospective co-developers have been notified.

⁴¹ **RCR45/2007: Section 25(6A): Reservation of right**

Question RCR45/2007 must be amended to be in line with RCR60/2008, as amended by RCR5/2012.

Resolution RCR45/2007 is amended to read as follows:

“RCR45/2007 – Section 25(6A) – Reservation of Right

Where a developer has reserved a right of extension, but such right of extension has lapsed due to effluxion of time, may such developer, prior to the establishment of the body corporate reserve a further right of extension, given the wording of section 25(6A) of Act 95 of 1986, viz: “Where no right of extension was reserved.”

Resolution Yes, provided application is made in terms of section 15B(1)(d) of Act 95 of 1986 for the lapsing of the expired right - **(RCR8/2013)**.

95 of 1986 application must be lodged to note the lapsing prior to the reservation of the new right. The provisions of section 68(1) of Act 47 of 1937 apply with the necessary changes – (RCR3/2016).

(RCR45/2007 and RCR10/2012 are withdrawn)

Order of registration of sectional title phases

Question Must the order of registration of sectional title phase developments be strictly in accordance with that shown on the endorsement sheet?

Resolution No. The developer has the right to exercise his right of extension in any sequence he so wishes, however, the plans for the respective phases must contain the correct information – (RCR52/2014).

Diagram of a real right of extension

Question May the approved existing real right development plan/diagram of a real right of extension in terms of Section 25(4)(b) for which the real right has lapsed or has been cancelled be utilized for subsequent cessions of portion of real rights?

Where a portion of real right of extension which has been indicated on a real right plan has lapsed or has been cancelled in terms of section 15B(1)(d) can that same real plan in respect of the portion being cancelled/lapsed be used again for the cession of such portion by the body corporate to cessionary? When a real right is cancelled under section 27(5) for example double registration of exclusive use areas, the existing plan/diagram be used?

Resolution No. The existing plan/diagram cannot be utilized as it has been cancelled by the surveyor general – (RCR41/2014).

Homeowners' consents and certificate by architects or land surveyors as contemplated in RCR61/2008

Question Conference must consider providing guidelines for the form of the certificate from a land surveyor or architect required in terms of RCR61/2008 and section 24(6)(d) of Act 95 of 1986 and the form of consent from Home Owners' Associations. Whether it must contain letterheads, practice numbers and attestation of the land surveyor's signature by witnesses.

Resolution A homeowners' association consent must be contained on its letterhead or be prepared by a conveyancer in terms of regulation 44 and certificates from architects and land surveyors must contain their names and practice numbers – (RCR39/2014).

Paragraph 13 Exclusive use of common property

Section 27 of Act 95 of 1986 – cession by endorsement of exclusive use areas

Question May exclusive use areas be ceded by means of an endorsement in terms of section 45 and 45bis of Act 47 of 1937?

Resolution Yes. However, cession may still be effected by means of the registration of a

notarial deed of cession – (RCR24/2016).

RCR 47 of 2013⁴² – Section 27(1A) of the Sectional Titles Act: (Lodgement of Affidavit)

Question Section 27(1A) provides as follows: “Notwithstanding section 27(1)(a), if no reservation was made by a developer in terms of subsection (1) and the body corporate has not yet been established, the registrar may issue a certificate of real right in respect of a right of exclusive use as contemplated in section 12(1)(f) on application of the developer accompanied by the sectional mortgage bond and the written consent of any bondholder.”

The section allow for the developer to apply for a Certificate of Real Right of exclusive use area if he/she had not reserved EUS’s in terms of section 27(1), i.e. with the opening of the scheme. May the developer apply section 27(1A) if EUAs had been reserved with the opening of the scheme? **Scenario:** Developer extends a section, affecting a EUA. THE EUA is cancelled. Can the Developer create another EUA in terms of section 27(1A) taking into account that EUAs have been reserved with the opening of the scheme?⁴³

Resolution Subject to regulation 29 the developer has the right to apply for the certificate of real right in terms of section 27(1A). RCR47/2013 is hereby withdrawn – (RCR15/2014).

RCR13/2013:⁴⁴ Erroneously registered exclusive use areas (RCR36/2002 and RCR2/2012)

⁴² **Question:** Section 27(1A) provides as follows: “notwithstanding section 27(1)(a), if no reservation was made by a developer in terms of sub-section (1) and the body corporate has not yet been established, the registrar may issue a certificate of real right in respect of a right of exclusive use as contemplated in section 12(1)(f) on application by the developer accompanied by the sectional mortgage bond and the written consent of any bondholder.”

The sections allow for the developer to apply for a certificate of real right for exclusive use area if he/she had not reserved exclusive use areas in terms of section 27(1), i.e. with the opening of the scheme. May a developer apply section 27(1A) if exclusive use areas had been reserved with the opening of the scheme? **Scenario:** Developer extends a section, affecting an exclusive use area. The exclusive use area is cancelled,. Can the developer create another exclusive use area in terms of section 27(1A) taking into account that exclusive use areas have been reserved with the opening of the scheme?

Resolution: Yes, the developer has the right to apply for a certificate of real right in terms of section 27(1A). However, a registrar shall not issue such certificate of real right unless an affidavit by the developer is lodged to the effect that no unit in the scheme has been sold, donated or exchanged, or if a unit was so alienated, the developer had disclosed in such affidavit that the acquirer of the unit had been informed in writing of such issuing of the certificate of real right – (RCR47/2013).

⁴³ Note that it is only in this particular instance that it will be allowed.

⁴⁴ **Erroneously registered Exclusive Use Areas (RCR36/2002 and RCR2/2012)**

Question There is no basis in law for ruling that there is no authority for the “cancellation of an erroneously registered right of exclusive use area” but which then permits both the “erroneously registered right of exclusive use area as well as the correctly registered exclusive use area” to be cancelled. This does not make sense. Section 27(5) of the Sectional Titles Act authorizes a cancellation of any registered exclusive use area by the holder thereof and the Body Corporate, and it is not clear where the prohibition against the cancellation of any “erroneously registered” right of exclusive use area comes from – while a “correctly” registered EUA can be freely cancelled

45)

Question There is no basis in law for ruling that there is no authority for the “cancellation of an erroneously registered right of exclusive use area” but which then permits both the “erroneously registered right of exclusive use area as well as the correctly registered exclusive use area” to be cancelled. This does not make sense. Section 27(5) of the Sectional Titles Act clearly authorizes a cancellation of a right to the exclusive use area of a part of the common property in favour of an owner by the holder thereof and the Body Corporate, and it is not clear where the prohibition against the cancellation of only an “erroneously registered” right of exclusive use area comes from, whilst a “correctly” registered exclusive use area can be freely cancelled.

Resolution Where the same exclusive use area is erroneously registered in the name of two or more owners, the erroneously registered deed may be cancelled in terms of section 27(5). RCR13/2013 is hereby withdrawn – (**RCR4/2015**).

A title deed for exclusive use areas

Question A title deed for exclusive use areas has more than one paragraph. One or more of the exclusive use areas listed are incorrect double registrations. May partial cancellation of erroneous registration be done?

Resolution RCR4/5015 may be applied – (**RCR28/2016**).

Paragraph 14 Creation of servitudes

~~RCR57/2012⁴⁶: Creation of servitudes under section 29(3)~~

~~**Question** May a developer, prior to the establishment of the body corporate, enter into a notarial deed as envisaged under section 29, restricting the common property of a sectional title scheme?~~

~~**Resolution** Yes, the developer has the right to enter into a notarial deed restricting the~~

Resolution Where the same exclusive use area is erroneously registered in the names of two or more owners by virtue of separate title deeds, such exclusive use area may be cancelled in terms of section 27(5), re-delineated on a plan in terms of section 27(2) and ceded to the rightful owner, alternatively section 6 of Act 47 of 1937 must be applied. RCR36/2002 and RCR2/2012 are hereby withdrawn – (**RCR13/2013**).

⁴⁵ **Question** Where the same exclusive use area was erroneously transferred to two owners of sections in a scheme, why does RCR 36 of 2002 state that both exclusive use areas must be cancelled and the body corporate re-reserve the right *de novo*? Shouldn't only the faulty owned exclusive use area be cancelled?

Resolution No. Act No. 95 of 1986 does not provide for the cancellation of an erroneously registered right of exclusive use area. (RCR 36 of 2002 is confirmed – (RCR2/2012).

⁴⁶ **Creation of servitudes under section 29(3)**

Question May a developer, prior to the establishment of the body corporate, enter into a notarial deed as envisaged under section 29, restricting the common property of a sectional title scheme?

Resolution Yes, the developer has the right to enter into a notarial deed restricting the common property. However, a Registrar shall not register such servitude unless an affidavit by the developer is lodged to the effect 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 the servitude is to be registered or in the absence thereof if the acquirer consented thereto in writing – (RCR57/2012).

common property. However, a registrar shall not register such servitude unless an affidavit by the developer is lodged to the effect that no unit in the scheme has been sold, donated, or exchanged, or if a unit was so alienated the developer discloses in such affidavit that the acquirer thereof has been informed in writing of the servitude. RCR57/2012 is withdrawn – **(RCR20/2013)**.

Repealed by RCR1/2015 (see RCR2/2014):

RCR 35 of 2002 and RCR21/2013⁴⁷: Power of developer to subdivide, consolidate and extend

Question Does the developer, prior to a body corporate being established, have all the powers entrusted upon a body corporate in terms of sections 17, 22, 23, 24, 26 and 29 of the Sectional Titles Act 95 of 1986?

Resolution Yes, the developer has all such powers, provided that 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. RCR35/2002 and RCR21/2013 are hereby withdrawn. – **RCR2/2014**.

Paragraph 15 Participation quotas

Section 32(2) – Allocation of participation quotas

Question Section 32(2) of Act 95 of 1986 provides *inter alia* that, in the case of a scheme other than a scheme referred to in subsection (1), the participation quota of a section shall be a percentage expressed to four decimal places, as determined by the developer, i.e. in respect of a commercial building. Is it permitted for the developer to allocate a participation quota of 0,0000 for some of the sections in the scheme?

Resolution No. A PQ of 0,0000 or a negative PQ is not acceptable – **(RCR34/2014)**

Paragraph 20 Sectional mortgage bonds

Form Z to Annexure 1 of the regulations to the Sectional Titles Act 95 of 1986: Anneure to the sectional bond

Question

- a) Uncertainty exists when sectional bonds without annexures are lodged for cancellation. The annexure to the bond may be lost. Is the annexure necessary when cancelling the sectional bond?
- b) A sectional bond with the annexures is lodged and registered in the office. However, at a later stage, it is lodged without the annexure to perform further acts of registrations, i.e. releases, cessions. The mortgagor says the mortgagee has lost the annexure. When registering the sectional bond, it is a requirement for the annexure to be attached, taking Form Z to Annexure 1 of the Regulations into account. Is it necessary that the

⁴⁷ **Question** RCR64/2012 must be amended by the deletion of “or in the absence thereof the written consent of the acquirer to such acts of registration is obtained” as this will have the result that the deeds registry will not be aware who must consent.

Resolution Yes, the developer has the right to enter into such acts of registration. However, a registrar shall not register such act of registration unless an affidavit by the developer is lodged to the effect that no unit in the scheme has been sold, donated or exchanged, or if such unit was so alienated, the developer had disclosed in such affidavit that the acquirer thereof had been informed in writing of such acts of registration. RCR64/2012 is withdrawn – (RCR21/2013).

annexure be called for in respect of other further acts of registration relating to the sectional bond?

- Resolution** a) No. It is not necessary to lodge the annexure when a sectional mortgage bond is cancelled.
- b) Yes. An annexure must be called for in respect of other further acts of registration – (**RCR25/2016**).

Paragraph 22 Miscellaneous

Regulation 28(2) – cession of exclusive use areas in terms of section 60(3)

Question — ~~In terms of regulation 28(2) the Registrar of Deeds must endorse the section-11(3)(b) schedule when an exclusive use area created in terms of section 60(3) is transferred. However, such schemes were opened in terms of the 1971-Sectional Titles Act and section 11(3)(b) schedules do not exist in those schemes. Form H was recently amended to refer to conditions “*endorsed on the sectional plan and the servitudes referred to in section 19 of the Sectional Titles Act, 1971 (Act No. 66 of 1971).*” What must be endorsed with the cession of an exclusive use area in terms of section 60(3)?~~

Resolution — ~~Cession of exclusive use areas created in terms of section 60(3) must be endorsed on Annexure A to sheet 1 of the sectional plan — (**RCR36/2014**).~~
 Repealed by RCR1/2015 (see amendment to regulation 28(2) of Act 95 of 1986).

General

RCR 45 of 2004: Usufruct over exclusive use areas

Question According to section 27(6) of Act 95 of 1986 personal servitudes may be registered over Exclusive use areas. Does this mean that the Certificates of Real Rights issued for exclusive use areas when the scheme is opened, must also be made subject to a usufruct that existed over the land prior to the opening of the scheme?

Resolution Yes, the exclusive use areas must be made subject to the usufruct – (**RCR6/2014**).

RCR41/1967, RCR20/2011, RCR89/2010⁴⁸ and RCR8/2012⁴⁹ – Cancellation of servitudes over common property

Question Section 29(3) of Act 95 of 1986 does not make provision for the lodgement of bonds and consents of mortgagees where servitudes, which benefit the common

⁴⁸ Before the amendment the resolution only required the lodgement of the bondholders’ consents and not the bonds as well.

⁴⁹ **Question:** How must section 75(2)*bis* of the Deeds Registries Act 47 of 1937 be interpreted when cancelling a servitude to which the common property of a sectional title scheme is entitled? The requirement that all bonds must be lodged is difficult to comply with especially in large schemes?

Resolution: Section 75(2)*bis* of the Deeds Registries Act is clear. The bonds together with the consent of all bondholders, existing on the date of the execution of the notarial deed of cancellation of the servitude, must be lodged – (RCR89/2010, as amended by RCR 20/2011 and confirmed by RCR8/2012 and repealed by RCR1/2014).

property, are cancelled. How should this matter be dealt with?

Resolution The provisions of section 75(2)bis of Act 47 of 1937 read with section 3(1) of Act 95 of 1986 must be applied. Consents by bondholders as well as the bonds must be lodged. The bonds need not to be endorsed.

RCR4/2014⁵⁰ and RCR7/2015⁵¹ are withdrawn – (**RCR10/2016**).

Regulation 31 – Destruction of or damage to building and transfer of interest

Question Regulation 31(2)⁵² has been amended to read that the notification to the Registrar pursuant to regulation 31(1)⁵³ shall be accompanied by a sectional plan. However, regulation 31(4)⁵⁴ has not been amended accordingly and still requires a copy of the schedule to be submitted to the local authority and the Surveyor-General.

Resolution Until the Act has been amended, the sectional plan must be lodged for purposes of regulation 31(4) – (**RCR41/2015**).

Section 49: Real rights over exclusive use areas

Question Section 49 does not deal with real rights registered over exclusive use areas or the land. There is no authority in the Act to deal with real rights over exclusive use areas or the land

Resolution Until the Act is amended the real rights over the exclusive use areas must be cancelled and the real rights over the land must be endorsed regarding the reversion to the land register – (**RCR35/2014**).

⁵⁰ **RCR 41 of 1967, RCR 20 of 2011, RCR 89 of 2010 and RCR 8 of 2012 – Cancellation of servitudes over common property**

Question Section 29(3) of Act 95 of 1986 does not make provision for the lodgement of bonds and consents of mortgagees where servitudes which benefit the common property are cancelled. How should this matter be dealt with?

Resolution The provisions of section 75(2)bis of Act 47 of 1937 read with section 3(1) of Act 95 of 1986 must be applied. Consents by bondholders as well as the bonds must be lodged and endorsed regarding the cancellation of the servitudes. RCR41/1967, RCR20/2011, RCR89/2010 and RCR8/2012 are hereby withdrawn – **RCR4/2014**.

⁵¹ **RCR4/2014: RCR 41 of 1967, RCR 20 of 2011, RCR 89 of 2010 and RCR 8 of 2012 – Cancellation of servitudes over common property**

Question Section 29(3) of Act 95 of 1986 does not make provision for the lodgement of bonds and consents of mortgagees where servitudes, which benefit the common property, are cancelled. How should this matter be dealt with?

Resolution The provisions of section 75(2)bis of Act 47 of 1937 read with section 3(1) of Act 95 of 1986 must be applied. Consents by bondholders as well as the bonds must be lodged and endorsed regarding the cancellation of the servitudes. RCR4/2014 is hereby withdrawn – (**RCR7/2015**).

⁵² Regulation 31(2) The notification to the registrar pursuant to regulation 31(1) shall be accompanied by
 a) a sectional plan which shall include reference to any section or part of a section which has been destroyed; and
 b) the affected title of the owner of the unit or holder of any real rights together with the consent of the holder of any mortgage bond or holder of any real rights for disposal thereof.

⁵³ Regulation 31(1): Whenever a building or buildings are damaged or deemed to be destroyed as contemplated in section 48 and a scheme has been authorized as provided for in section 48(3)(a) of the Act, the body corporate shall notify the registrar. The notification shall be in the form of Form X of Annexure 1.

⁵⁴ Regulation 31(4): The registrar shall advise the Surveyor-General and the local authority of any registration pursuant to section 48 of the Act, which advice shall be accompanied by a copy of the schedule referred to in regulation 31(2), in the case of the local authority and by the original, in the case of the Surveyor-General.

Section 49 – Closure of a scheme

Question The body corporate is the registered owner of a unit. The scheme is closed in terms of section 49 of Act 95 of 1986. Certificates of Registered Title are to be issued in the names of the owners of the units according to their participation quota. In whose name must the certificate of registered title be issued in respect of the unit registered in the body corporate's name, i.e. in the name of the body corporate or in the name of the members, i.e. the owners in equal shares?

Resolution The procedure provided for in section 49 must be applied and the certificate of title must be issued in the name of the body corporate – (RCR40/2015).⁵⁵

RCR 49 of 2012⁵⁶ – Section 14(8) and cancellation of plans by order of court

Question The Sectional Titles Act 95 of 1986 is silent with regard to the procedure to follow when a body corporate is established. Is it correct that in this case the developer's title cannot revive and that certificates of registered title must be issued to the owners in accordance with their participation quota? The units and sections 25 and 27 rights may also be mortgaged and the bonds be dealt with, i.e. cancelled or substituted.

Resolution Until the Act is amended the certificates of registered title must be issued and the bonds must automatically be substituted or disposed of. RCR49 of 2012 is hereby withdrawn – (RCR9/2014).

RCR 70 of 2012 and RCR 23 of 2013: Section 14(6) of Act 95 of 1986

Question When application is made for the closure of a sectional title register in terms of section 14(6), a certificate by the conveyancer must be lodged to the effect that no unit and no right referred to in section 25 or 27 is encumbered by sectional mortgage bond or lease, or in any other way (section 14(6)(c)). According to RCR70/2012 such certificate should only be in respect of servitudes registered subsequent to the opening of the scheme. CRC 6 of 1988, paragraph 6, also states that the title to any real right must be produced for cancellation. This creates the impression that it is also a real right registered over the common property that must be cancelled. It is submitted that the real right over the unit and section 27 must be cancelled and not real rights over the common property.

Resolution RCR70 of 2012 and RCR 23 of 2013 are confirmed. The real right over the unit and section 27 right must be cancelled and not real rights over the common property – (RCR12/2014).

Section 14(5) and Regulation 15(4) – Amendment of Sectional Plan

Question Section 14(5) and Regulation 15(4) is inconsistent with each other. Section 14(5) clearly states that *on receipt of notification by the surveyor general* "the registrar shall make the necessary endorsements reflecting any change of description or extent upon the deeds registry copy of the sectional title deed and upon any other registered document affected by such change and shall likewise endorse the owner's or holder's copy of that sectional title deed or any such

⁵⁵ The correctness of this decision is doubtful. As soon as the scheme is closed the body corporate does not exist anymore. It is submitted that the unit should be registered in the name of the members of the former body corporate.

⁵⁶ **Question:** Act No. 95 of 1986 is silent with regard to the procedure to follow when a body corporate is established. It is correct that in this case the developer's title cannot revive and that certificates of registered titles must be issued to the owners in accordance with their participation quota? The units, and sections 25 and 27 rights may also be mortgaged and the bonds must be dealt with, i.e. cancelled or substituted.

Resolution: The certificates of registered titles must be issued and the bonds must be dealt with as provided for in section 18 of Act No. 95 of 1986 – (RCR49/2012).

other registered document whenever subsequently lodged at the deeds registry for any purpose”

Regulation 15(4) states that a “the registrar must, *on the lodgement of an application* by the body corporate or developer, amend the relative sectional title deed as required by section 14(5) of the Act, and endorse thereon that the amendment has been effected in accordance with an alteration, amendment or substitution of the registered sectional plan”

- a) What if the Registrar received notification by the surveyor general prior to the 14 April 2013 which is the date when the Regulations were amended? Can the Registrar insist on an application by the body corporate or developer?
- b) Where only a section of an individual owner is affected by the section 14(5) amendment why can only the body corporate or developer apply? Can the owner in such instance not apply?

- Resolution**
- a) Yes, an application must be lodged irrespective of the date of the notification
 - b) The body corporate/developer must make the application for the amendment of the sectional plan – (**RCR33/2014**).

Servitude on an approved sectional plan

Question A new servitude is noted on an approved sectional plan which is submitted for registration simultaneously with the opening of a scheme at the deeds office. The conveyancer linked the notarial deed for registration of the servitude with the opening of the scheme. Must a servitude diagram be lodged with the notarial deed or would it be acceptable to delineate the servitude on the sectional plan?

Resolution An approved diagram, as provided for in regulation 73(2) of Act 47 of 1937 must be lodged with the notarial deed, unless one of the exceptions to regulation 73(2) is applicable – (**RCR38/2014**).

Creation of a servitude over a section

Question Is an amending sectional plan for the creation of a servitude framed in terms of section 15(B)(1)(d) of Act 95 of 1986 registerable in the deeds registry?

Resolution Yes. An amending sectional plan may be registered – (**RCR50/2014**).

Fees for certificate of replacement of Form W

Question Is a fee payable for the issuing of the replacement certificate in terms of regulation 16(1)(d) of the Sectional Title Regulations and if so, what fee?

Resolution Yes. A fee is payable in terms of Item 2 of the Schedule of Fees of Office – (**RCR40/2014**).

Part 3

Deeds Practice and other acts

Chapter 2 – Transfer duty

RCR 34 of 2013 – Cancellation of pre-emptive right and transfer duty

Question Where a condition, not binding successors in title, is cancelled or renounced, is such cancellation or renunciation deemed a transaction within the ambit of section 2 of the Transfer Duty Act 40 of 1949? Must a transfer duty receipt or exemption certificate be lodged, as provided for in RCR5 of 2005?

Resolution No, it is not “property” as defined in the definition of property in the Transfer Duty Act 40 of 1949. No transfer duty receipt or exemption certificate is required. RCR34/2013 is hereby withdrawn – (RCR14/2014).

Chapter 3 – Companies Act

Chapter 4 – Alienation of Land Act

Chapter 5 – Intestate Succession

Proof of spouses and descendants under Sections 1 and 2(2)(b) as well as section 3(1)(a) of the Reform of Customary Law of Succession and Regulation of Related Matters Act 11 of 2009

Question Owing to the dual capacity of spouses and descendants referred to in section 1 and 2(2)(b) and (c) as well as section 3(1)(a) of the Reform of Customary Law of Succession and Regulation of Related Matters Act no. 11 of 2009, it is possible for some descendants to be regarded as spouses. Therefore it will be practically impossible for the Registrar of Deeds to apply the provisions of section 1(1)(a) and section 1(1)(b) of the Intestate Succession Act 81 of 1987 without some form of proof as to the said capacity. What kind of proof must be lodged to determine if a certain beneficiary is a spouse or a descendant in terms of the foregoing provisions?

Resolution The next-of-kin affidavit must be suitably amplified and adjusted to clearly indicate the capacity of a beneficiary in line with sections 3(1)(a) and Section 2(2)(b) and (c) of Act 11 of 2009, alternatively an executor’s/Master’s Representative affidavit must be lodged – (RCR25/2014).

Chapter 6 – Subdivision of Agricultural Land Act

Consent in terms of Act 70 of 1970

Question Act 70 of 1970 consent to subdivision contains a clause that states that the consent is valid for a period of 5 years from the date of the consent. Does this mean that the developer must transfer all the portions before the end of the 5 year period, or does the approval of the Surveyor General diagrams suffice?

Resolution Registration of all the portions must take place within the five years. If not, approval for an extension must be obtained – (**RCR23/2016**).

Transfer of an undivided share in agricultural land

Question An owner owns a whole farm (being agricultural land) in shares held under different titles. Will the deeds office allow the owner to transfer for example one half ½ share to person A and the remaining half share to person B by different deeds of transfer?

Resolution Yes, it is allowed in terms of section 3(b) of Act 70 of 1970 (see CRC 4 of 1970) – (**RCR29/2014**).

Consents in terms of Act 70 of 1970

Question Must the provisions of CRC 6 of 2002 still be applied for the further subdivision of agricultural land as defined in Act 70 of 1970, which land was previously subdivided in terms of the Development Facilitation Act 67 of 1995?

Resolution Yes. The provisions of CRC 6 of 2002 must be applied – (**RCR32/2014**).

Rezoning of agricultural land

Question If the Department of Agriculture, Forestry and Fisheries (DAFF) grants consent for the re-zoning of farm land, does this land become exempt from the provisions of the Subdivision of Agricultural Land Act 70 of 1970, for future transactions?

Resolution No. Only in the instance where agricultural land is being rezoned into a subdivisional area for township establishment purposes will Act 70 of 1970 not be applicable. CRC 3 of 2002 prevails – (**RCR47/2014**).

RCR18/2004: Servitude over agricultural Land

Question Where a servitude over agricultural land is not depicted on a diagram but is described in general terms, must the consent of the Minister as contemplated in terms of section 6A of the Subdivision of Agricultural Land Act 70 of 1970 be insisted upon?

Resolution The consent must be insisted upon unless it is clear from the notarial deed that the provisions of section 6A of the Subdivision of Agricultural Land Act 70 of 1970 are not contravened. (RCR 18/2004 is hereby withdrawn) – (**RCR2/2015**).

Tie condition

Question Two or more properties are tied subject thereto that it shall not be separately dealt with without the written consent of the Minister of Agriculture. The Minister subsequently granted consent to the subdivision of one of these farms and further asked that it be consolidated with other farm properties and thereafter endorsed by the deeds registry that it shall not be separately dealt with. Where the consolidated property is transferred, is the Minister's approval necessary as far as the first tie condition is concerned or is the consent for subdivision sufficient?

Answer The consent of subdivision will also serve as consent to a separate dealing with the subdivision – (**RCR26/2015**).

Act No 70 of 1970 – Lodgement of the original consent to subdivision or a certified copy

thereof

Question May a deeds registry accept a certified copy of a consent to subdivision (certified by a conveyancer)? If the Surveyor-General office has the original on their file, may a certified copy from the Surveyor-General be accepted in the deeds registry?

Resolution Yes, in terms of regulation 20(7) of Act 47 of 1937 a deeds registry may accept an originally certified copy by the conveyancer or notary public, or by the head of a government department if such document is filed in that government office – **(RCR36/2015)**.

Chapter 11 – Trust Property Control

RCR21/2003 – Section 6 of the Trust Property Control Act 57 of 1988

Question Two conflicting decisions on property bought by a trust, prior to the authorization of the trustees presently exist. See *Kriel v Terblanche NO en Andere* 2002 (6) SA 132 and *NC van der Merwe v Van der Merwe en Andere* 2002 (2) SA 516. Which decision should be followed?

Resolution All unauthorized actions of a trustee are invalid and an unauthorized trustee has no capacity to litigate. Section 6 of the Trust Property Control Act 57 of 1988 finds application. See *Gabrielle Lupacchini NO and Rochelle v Minister of Safety and Security* Case No 16/2010 – **(RCR4/2016)**.

(RCR21/2003 is withdrawn)

Chapter 19 – Share block schemes

Causa of a share block transfer of property to members

Question What will the causa be if a share block company transfers immovable property?

Resolution When the intention is not to do a conversion but merely to alienate property belonging to the share block company to its members, an appropriate causa must be furnished e.g. sale, donation, dividend in specie etc. Transfer duty will be payable – **(RCR42/2015)**.

Chapter 25 Children’s Act

Consent by Guardians in terms of section 18(3) of the Children’s Act 38 of 2005

Question Section 18(3) of the Children’s Act 38 of 2005 refers to the following:

Subject to subsections (4) and (5), a parent or other person **who acts as guardian** of a child must -

- a) administer and safeguard the child’s property and property interests;
- b) **consent to the alienation or encumbrance of any immovable property of the child.**

Section 80 of the Administration of Estates Act 66 of 1965 also requires besides assistance by the child’s guardians the authorization of the Master of the High

Court where the value does not exceed R250 000,00 and the High Court's consent if the value exceeds R250 000,00. The question from the above is the following:

- a) If the Master has consented in terms of section 80, is a separate consent by the guardians as stipulated in section 18(3)(c)(v) of the Children's Act 38 of 2005 needed where a minor's immovable property is alienated?
- b) If the minor is duly assisted by the guardian in the power of attorney, do we still need additional consent?

- Resolution**
- a) Yes, the guardian will still have to consent in terms of section 18(3) of the Children's Act 38 of 2015
 - b) No. – (**RCR33/2015**)

Chapter 28 – Land Survey Act

Cancellation of General Plan

Question What is the procedure when a general plan registered against a property is cancelled by the surveyor-general?

Resolution By virtue of the provisions of section 37(4) of the Land Survey Act 8 of 1997, the registrar of deeds must endorse the title deed – (**RCR21/2015**).

A beacon certificate when application is made for the issuing of a Certificate of Registered Title for an erf on a provisionally approved general plan

Question It is generally understood that an erf indicated on a provisionally approved general plan cannot be transferred without the beacon being placed. Is a beacon certificate required when application is made for the issuing of a Certificate of Registered Title for an erf on a general plan?

Resolution In terms of section 14 of the Land Survey Act 8 of 1997, a beacon certificate is required in respect of a provisionally approved general plan for the issuing of certificates of title – (**RCR25/2015**).

Compiled by

Erinda Frantzen

BCom(Law)(UP) LLB (UNISA)

Attorney, Conveyancer and Notary of the High Court of South Africa

and

Gawie le Roux

BA(Law)(UP) LLB (UP) BA Honours (UNISA)

Attorney and Conveyancer of the High Court of South Africa

and published by

Self-Study Deeds Course CC

Registration number 1994/016876/23

PO Box 74047

Lynnwood Ridge

0040

Flinders Lane 451

Lynnwood, Pretoria

Tel: **(012) 361-1715**

Fax: **(012) 361-1108**

Web site: **www.aktepraktyk.co.za**

SOURCES

Registrars' Conference Resolutions

The Consolidated Practice Manuals of the Deeds Office of South Africa

Relevant acts, regulations and prescribed forms