



agriculture, land reform & rural development

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

OFFICE OF THE CHIEF REGISTRAR OF DEEDS
Private Bag X250, Agriculture Place, Arcadia, Pretoria, 0002 // 20 Steve Biko Road, Agriculture Place, Arcadia, Pretoria,
0002 TEL: (012) 338 7350, WEB: www.dalrrd.gov.za

CHIEF REGISTRAR'S CIRCULAR NO. 6 OF 2024

SUSPENSION OF RCR 9 OF 2024: TRANSACTION DATE ON TRANSFER DUTY RECEIPT / EXEMPTION CERTIFICATE

1. **RCR 9/2024** deals with a specific scenario where parties got divorced and entered into a Settlement Agreement. The Settlement Agreement was made an order of court and provided for property to be sold. Afterwards, the parties entered into an *Addendum* to the Settlement Agreement wherein one of the former spouses was awarded the entire property. The question posed was '*What is the correct transaction date...?*'. The Registrars' Conference ruled that '*The date of divorce is the correct transaction date*'.
2. **RCR 9/2024** may be in direct conflict with the view held by SARS, as stated in par.4.3.2 of the Transfer Duty Guide (*the Guide*), as published on the SARS website. The said paragraph reads as follows:

'4.3.2 Divorce

*The date of acquisition of property as a result of a divorce is the date of the order of the court and not the date of the agreement between the parties in regard to the division of the joint estate or separate estates as incorporated in the order of court. It is also possible to amend the divorce order or settlement agreement by executing an addendum to such agreement. The courts have previously ruled that the consent of the court is not a prerequisite to amend the stipulations of the divorce order with regard to the redistribution of assets between spouses. In a case where settlement in relation to a property is only reached after the formal court proceedings are finalised, the date of acquisition will be the date that the **subsequent** settlement is reached. The exemption under section 9(1)(i) will still apply in this case even though the agreement is made after the court order.'* (my underlining)

3. From reading above, it may be argued that the transaction date of the scenario in RCR 9/2024 is the date '*the subsequent settlement is reached*', and not the date of divorce. In RCR9/2024 the settlement agreement was amended to provide for the property to be awarded to one of the former spouses, and not for same to be sold. The latter part of par. 4.3.2 of the Guide states that '*In a case where settlement in relation to a property is only reached after the formal court proceedings are finalised, the date of acquisition will be the date that the subsequent settlement is reached*.'

4. Paragraph (a) of the definition of 'date of acquisition', in section 1 of the Transfer Duty Act, 1940 (Act 40 of 1949), reads as follows:

'date of acquisition' means-

- (a) in the case of the acquisition of property (other than the acquisition of property contemplated in paragraph (b)) by way of a transaction, the date on which the transaction was entered into, irrespective of whether the transaction was conditional or not or was entered into on behalf of a company already registered or still to be registered and, in the case of the acquisition of property otherwise than by way of a transaction, the date upon which the person who so acquired the property became entitled thereto: Provided that where property has been acquired by the exercise of an option to purchase or a right of pre-emption, the date of acquisition shall be the date upon which the option or right of pre-emption was exercised; (my underlining).

The former spouse in RCR 9/2024 became entitled to the entire property on date of entering the Addendum to alter the Settlement Agreement. It may therefore be argued that this date, and not the date of divorce, is the transaction date.

5. In view of above, RCR 9/2024 is suspended with immediate effect and will be submitted to the next Registrars' Conference for further discussion and possible withdrawal.



ACTING CHIEF REGISTRAR OF DEEDS

DATE: 18/12/2024

REFERENCE: 14/P
RINGBINDER: 42

CHIEF REGISTRAR OF DEEDS
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LAW SOCIETY OF SOUTH AFRICA
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