



DEPARTMENT: LAND AFFAIRS
REPUBLIC OF SOUTH AFRICA

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REGISTRARS' CONFERENCE RESOLUTIONS OF 2006

A. WITHDRAWAL OF PREVIOUS REGISTRARS' CONFERENCE RESOLUTIONS

1/2006 The following Registrars' Conference Resolutions are hereby withdrawn:

- RCR 36/1959
- RCR 53/1987
- RCR 9/1989
- RCR 39/1996
- RCR 29/1990

B. AMENDMENT OF PREVIOUS REGISTRARS' CONFERENCE RESOLUTIONS

2/2006 The following Registrar's Conference Resolutions are amended to read as follows:

- **(RCR 35/2005): Interpretation of the concept "alienate"**

What is the correct interpretation of the concept "alienate" as including mortgage?

Resolution:

Mortgage is the 'first step' to alienation. It must be regarded as *sui generis* and be treated as if it is alienation. Thus, where a title deed contains a restraint on alienation, the person in whose favour such restraint is registered must consent to the hypothecation of the relevant property.

See Foley's Trustees v Natal Bank (1882) 3 NLR 26 and E P De Jager (1926) 27 NLR 413.

- **(RCR 49/2005): Cession of Exclusive Use Areas**

Transfer of a unit in a sectional title scheme from the developer to A is registered in 1997. Simultaneously with said transfer an exclusive use area is ceded from the

developer to A – forming part of the transaction. In 2000 transfer of the same unit from A to B is registered. No cession of the exclusive use area is registered, although it formed part of the transaction. Subsequently various transfers of the unit are registered (ie. from B to C, from C to D, from D to E, etc), emanating from the sale of the unit and the exclusive use area. Presently, yet another transfer of the unit is to be registered. Only now, in 2005, the omission to cede the exclusive use area with each of the previous transfers is discovered. From the records it appears that A is still the registered holder of the exclusive use area. How must the said omission be dealt with? Who must now cede the exclusive use area?

Resolution: Section 27(4)(b) and 27(4)(c) of Act No. 95 of 1986 provide the procedure to be followed unless the holder of the real right is still a member of the body corporate in which case the provisions of section 14 read in conjunction with section 33 of Act 47 of 1937 must be adhered to.

C. PREVIOUS REGISTRARS' CONFERENCE RESOLUTIONS

3/2006 (RCR36/1959) - Sale in insolvency and personal servitudes

RCR36/1959 needs to be revisited with regard to the disposal, by a trustee, of property subject to a personal right.

Resolution:

Where immovable property which is subject to a personal servitude is sold in insolvency, such immovable property must be transferred subject to a personal servitude. However, should the holder of the personal servitude dispose of his/her rights together with the trustee, the provisions of section 69(1) may be invoked. Where a waiver of preference by the holder of the personal servitude provides that the immovable property may be sold free from the personal servitude, the provisions of section 68(1) must be complied with. See *Van Vuren v Registrar of Deeds* 1907 TS 289 as well as *United Building Society Ltd and Another v Du Plessis* 1990 (3) SA 75 (W)."

(RCR36/1959 has been withdrawn).

4/2006 (RCR 53/87) - Nature of Marriage

A conveyancer may certify with regard to the nature of a marriage, if the identity document / marriage certificate is silent regarding the nature of the marriage. May the conveyancer certify in the first instance as to the nature of the marriage, or may he/she only certify that the identity document/ marriage certificate is silent about the nature?

Resolution:

The marriage certificate will suffice unless it is silent regarding the nature of the marriage. In this instance an affidavit by the party/parties must be lodged.

(RCR 53/1987 has been withdrawn).

5/2006 (RCR3/2005) - Parties married in community of property enter into partnership

This resolution is in conflict with section 17 of Act No. 47 of 1937. Parties married in community of property to each other are each entitled to one half share in the assets of the joint estate. The partnership agreement might read that each partner has a different share in the partnership.

Resolution:

The common law position regarding the share of each party to a marriage in community of property cannot be changed with a partnership agreement.

The property must be vested in the name of both spouses married in community of property to each other i.e. “.... carrying on business in partnership as”.

RCR 3/2005 is hereby confirmed.

6/2006 (RCR12/2005 and RCR6.7/1999) - Identity numbers

This resolution should be revisited. The conveyancer has already assumed the responsibility for the correctness of the identity number when signing the preparation clause on the power of attorney, thus to request a further certificate appears superfluous.

Resolution:

The database needs to be accurate and a certificate is required for confirmation purposes.

RCR12/2005 and RCR6.7/1999 are hereby confirmed.

7/2006 (RCR19/2005 and RCR7/1994) - Section 57 of Act No. 47 of 1937

It is submitted that the provisions of section 57 can only be invoked where “the whole of the land mortgaged is being substituted.

Resolution:

RCR 19/2005 and RCR7/1994 are hereby confirmed.

8/2006 (RCR31/2005) - Proof of Customary Marriages

RCR 31/2005 needs to be revisited. Section 4 (9) of the Recognition of Customary Marriages Act (Act 120 of 1998) provides that failure to register a customary marriage does not affect the validity of that marriage. Reading this section with the resolution above what is the relevance of the proof from the Department of Home Affairs? Can an affidavit by both parties not be accepted as proof for a valid customary marriage?

Resolution

RCR31/2005 is hereby confirmed.

9/2006 (RCR37/2005) – Creation of servitude section 26 of Act No. 47 of 1937

The correctness of RCR 37/2005 should be reconsidered: Section 26(2)(d) of Act No. 47 of 1937 does not explicitly provide for such registration procedure.

Resolution:

RCR37/2005 is hereby confirmed.

D. DEEDS REGISTRIES ACT NO. 47 OF 1937

10/2006 Section 4(1)(b) – Antenuptial Contract

The details of one of the parties are wrong in an antenuptial contract and a new transaction is lodged in which the details differ from the office records (antenuptial contract is wrong). The conveyancer does not want to lodge a section 4(1)(b) application because the said person is divorced and the antenuptial contract is no longer applicable. Must the deeds office insist upon a section 4(1)(b) application to amend the deeds office records? If not, the office records will remain incorrect *ad infinitum*.

Resolution:

No, if the conveyancer proves that the antenuptial contract is no longer valid, it is unnecessary to rectify same. However, the data section must be requested to update the deeds office records.

11/2006 Section 4(1)(b) - Amendment of cancelled bonds

Should a section 4(1)(b) amendment be insisted upon to rectify an error in a bond for example incorrect erf number, spelling error in name of mortgagor other than the amendment to the particulars of the bondholder when such mortgage bond is being cancelled?

Resolution:

No, only incorrect particulars pertaining to the mortgagee need to be rectified.

12/2006 Section 14(1)(b)(iii) – usufructuary party to redistribution account

Where property is bequeathed to A and B subject to a usufruct in favour of C, must the usufructuary also be a party to the redistribution agreement between A and B?

Resolution:

No, unless the usufructuary also redistributes the usufruct.

13/2006 RCR9/2002 - Section 38(3) of Act No 47 of 1937

In terms of section 38(3), a draft of the proposed certificate should lie open for inspection. What if the certificate is lodged and rejected because of incorrect conditions, etc? Should it be made available for inspection again? If not, what is the use of making a draft available for inspection in the first place?

Resolution:

The certificate must be lodged for examination only after it was made available for inspection and after the expiry of the six week period. Re-advertisement in the case of incorrect conditions which could affect the rights of third parties is within the discretion of the registrar of deeds

14/2006 Section 45 – Conditions of Will

Should the application in terms of section 45 be made subject to the conditions of the will, if any, in *extenso* or is a mere reference to the condition sufficient?

Resolution:

No. A brief reference to the conditions of the will is acceptable.

- 15/2006 Section 45, 45bis, 45bis(1A)**
Can the provisions of section 45, 45**bis** and 45**bis**(1A) be invoked for certificates of real rights of extension or real rights of exclusive use area?
- Resolution:**
No. A real right of extension or a real right of exclusive use area is not immovable property but a right to immovable property which must be ceded by virtue of a notarial deed of cession in terms of sections 25(4) and 27(4) of Act No. 95 of 1986.
- RCR 39/1996 is withdrawn.
- 16/2006 Section 46(4) and Section 43 Certificate of Township Title**
Is the taking out of a certificate of township title in terms of section 46(4) compulsory or is a certificate of registered title in terms of Section 43 of Act No. 47 of 1937 also permissible if the land on which the township is to be laid out comprises a portion of an existing unit of land?
- Resolution:**
Both are acceptable.
- 17/2006 Section 53 – Condition re happening of certain event**
When immovable property that is subject to a right referred to in section 53(2) of Act 47 /1937 is to be mortgaged, may the deeds registry accept a waiver of such right as provided for in regulation 41(7) or should a consent by the holder thereof be insisted upon?
- Resolution:**
The holder of the reversionary right has the choice to either waive preference as provided for in regulation 41(7) or to provide the necessary consent in terms of section 53(2).
- (Also see RCR14/1955).
- 18/2006 Section 58 – Application of section 58 Act 47 of 1937 to insolvent usufructuary**
Must the provisions of Section 58 of Act No. 47 of 1937 also be applied to a usufructuary in case of insolvency?
- Resolution:**
Yes, section 58 is applicable.
- 19/2006 Section 68(1) – Waiver of Personal Servitudes**
The application of section 68(1) when the holder of a personal servitude waives or renounces his/her right is questioned. The mere fact that the title deed of the real right need not be lodged, leaves much to be desired as same can be used for a pledge, etc and even in the case of a lease agreement.
- Resolution:**
Section 68(1) provides that the title deed of the servitude be lodged only if it is available. The deeds registry copy should be endorsed and the necessary caveat noted.

RCR 29/1990 is withdrawn.

E. REGULATIONS TO ACT NO.47 OF 1937

20/2006 Regulation 44 – Consents prepared by Conveyancers

Uncertainty prevails as to which consents required for the performance of an act of registration as envisaged by regulation 44 of the Deeds Registries Act must be prepared by a conveyancer.

Resolution:

Only consents required for purposes of an act of registration and prepared by a practicing attorney, notary or conveyancer must contain a preparation clause.

21/2006 Regulation 68(1)

Regulation 68(1) provides that the circumstances must be mentioned in the application. What if the circumstances are not known? Can it be omitted from the application or must it be stated that the circumstances are unknown?

Resolution:

Reference to the fact that the circumstances are not known, need not be disclosed in the application.

22/2006 Regulation 84 – Fees of Office

Should the Police Force, National Intelligence Agency and Scorpions be exempted from office fees?

Resolution:

No, unless Act 47/1937 is amended to make provision.

F. GENERAL (ACT NO. 47 OF 1937)

23/2006 Further Lease Agreement

May a further lease agreement be registered whereby it is agreed that the said lease will only become operative once the initially registered lease has lapsed by effluxion of time or for any other reason?

Resolution:

Yes. No objection exists to the postponement of the date of coming into operation of a lease agreement. A lease may run from one fixed date to another; or from a fixed date for a definite period (see *Bowhay v Ward* 1903 TS 772 and *Dick v Hiddingh* (1830) Menzies 499).

24/2006 Estate Transfers - Joint Estates and Parties Divorced

Where land formed an asset in a joint estate and the parties divorced and subsequent to the divorce the spouses amended the agreement without prejudice to third parties and together sell the land, must the **causa** of the transfer not

disclose the full facts and not merely reflect that the appearers principals sold the land?

Resolution:

The **causa** of the deed of transfer needs only to reflect the sale.

25/2006

Sales in Insolvency and Liquidation - Causa of Transfer

Must the **causa** of the transfer reflect with whose authority the land was sold, or will it suffice merely to indicate that the appearer's principle had sold the land?

Resolution:

The authority sanctioning the transfer need not be disclosed in the **causa** of the deed of transfer.

26/2006

Falsification of Initials

Where it is evident from a deed or document that the signatures and or initials of the signatories have been forged, is it the duty of the examiner to question the signatures or initials? It frequently occurs that the initials of the examiners are forged and this places the integrity of our system in jeopardy.

Resolution:

This matter must be referred to the Registrar of Deeds personally who must discuss the matter with the conveyancer for possible submission to the Law Society of South Africa.

27/2006

Redistribution Agreements and Testamentary Conditions

Where immovable property is bequeathed to heirs subject to a certain testamentary condition for example the exclusion of the community of property, and the heirs enter into a redistribution agreement in terms of which one of the heirs is entitled to the property, must such property as a whole be made subject to the aforesaid testamentary condition or is the share(s) of the property obtained in terms of the agreement not subject to such testamentary condition?

Resolution:

The whole of the property must be made subject to the conditions of the will.

28/2006

Proof of Intestacy

Given the fact that a death notice cannot be accepted as proof of children born out of wedlock same should also not be accepted as proof that a person died leaving no valid will. Does conference concur and if so, what proof should be required?

Resolution:

A death notice cannot serve as evidence of intestacy. Proof, in the form of an affidavit from the executor, must be insisted upon.

29/2006

Retyping of first page

Where the first page of a special power of attorney is retyped, or where the first page of an affidavit is retyped, must the power of attorney be re-executed or the affidavit redone, or will mere full initialing suffice?

Resolution:

The power of attorney must be re-executed and a new affidavit must be provided.

30/2006 New Marriage, new Contract

Where parties have entered into an antenuptial contract and subsequently divorce and remarry each other, does the contract revive or must a new contract be entered into.

Resolution:

A new contract must be entered into.

31//2006 Identity number / abbreviation

The deeds Registration Law Manual states that the identity number in deeds and documents must be preceded by the words "Identity number" and that the abbreviation "ID number" must not be used as it is the recognized abbreviation for idem (the same). Can the abbreviation "ID" (capital letters) not be allowed?

Resolution:

No abbreviations are allowed in deeds and documents.

32/2006 Cancellation of usufruct, usufructory over 100 years old – death Certificate

Is it really necessary to obtain an Order by Court where no death certificate or death notice is available to prove the death of the usufructuary who is over a hundred years old. A sworn affidavit by her surviving children re her death is available.

Resolution:

No.

33/2006 Conveyancer execute deeds on behalf of another firm

It often happens that a conveyancer from another firm executes deeds on behalf of the firm who has lodged the deeds. Must the Registrar be informed in such cases or is it not his/her responsibility?

Resolution:

No. The conveyancing firm must accept responsibility for the execution of their own deeds.

34/2006 Antenuptial Contracts – un-rehabilitation

The following clause is inserted in an Antenuptial contract:

The accrual system is to apply without modification to their intended marriage, provided that should either party be an un-rehabilitated insolvent at the time of the dissolution of the intended marriage then the said accrual system shall not apply". Is the proviso legal and enforceable?

Resolution:

Such a proviso is not legal and to the disadvantage of future creditors. The Matrimonial Property Act only allows that certain assets can be excluded from the accrual system. See *Vorster v Steyn* 1981(2) SA 831 (O).

35/2006 Transfer Duty / Right of way in favour of general public

Is transfer duty payable and by whom when a right of way is created in favour of the general public?

Resolution:

No transfer duty is payable, however an exemption certificate must be lodged.

36/2006

Rates Clearance Certificate for remainder of land

Where a portion of land is already registered as an entity, the rates clearance certificate for the remainder of the land is lodged. When the rates clearance certificate for that specific portion is requested, the conveyancers avers that the municipality's records are not updated and that such portion does not appear on their records, and they then issue a clearance certificate in respect of the remainder. The conveyancers furthermore avers that the municipalities are not willing to provide a certificate to the effect that such registered portion does not appear on their records. Can the rates clearance certificate of the remainder be accepted in such cases, with a certificate from the conveyancer to the effect that such portion does not appear on the records of the municipality and that the rates clearance certificate lodged, covers such portion?

Resolution:

A rates clearance certificate for the remaining extent accompanied by an explanatory letter from the local authority to the effect that such rates clearance certificate covers the land about to be transferred, may be accepted.

37/2006

Servitude on Diagram with subdivision

Subdivision of a property whereby a servitude has been indicated on the SG subdivisional diagram:- During the consolidation of property a servitude is not indicated on the SG consolidated diagram nor as a condition contained in the Certificate of Consolidation. "Section 40(3) Act 47 of 1937 reads as follows -Every such certificate shall be in accordance with the new diagram and shall be issued on written application by the owner or owners of the pieces of land in question ... Must this consolidation diagram be sent back to the SGO to be amended?

Resolution:

The consolidation diagram must be referred to the SG for amendment.

38/2006

Notarial Bonds by Close Corporations

Conveyancers frequently request (as this is also a request from their clients) that the Notarial Bond that was passed by a Close Corporation or Company to registered in more than one Deeds Registry, which is a contravention of Section 62(4) Act 47 of 1937.

Resolution:

It is not in contravention to section 62(4) and such notarial bond may be registered in more than one deeds registry.

39/2006

Attachments by Magistrate Court and High Court

The practice in the Deeds Registry Kimberley when a property is sold in execution and the deed of transfer is lodged, is the following:

MAGISTRATES COURT

Junior and Senior examiners must check the interdict. According to the rules of the magistrates court an attachment is valid for 12 months after which it lapses. If the property was sold in execution after the 12 months has lapsed, the note must be raised to that effect and an extension of the attachment must be lodged.

Is this practise being followed in all the deeds registries or should we ignore the date of sale whether it is before or after the 12 months has lapsed? Is it the responsibility of the Sheriff or the Deeds Registry?

Resolution:

It is the responsibility of the registrar or deeds to ensure that the property was not sold subsequent to the lapsing of the attachment.

40/2006 Attachments by High Court – (Kimberley)

HIGH COURT ATTACHMENTS

It has been practice in the Kimberley office for a long time to also check the dates of sale when the property was attached in terms of the High Court rules as we were trained that such an attachment was valid for 5 years. Recently we could not find such a provision in the High Court Act and according to High Court Rule 66(2) "Writs of execution of a judgment once issued remain in force, and may, subject to the provisions sub-paragraph (ii) of paragraph (e) of sub-section (2) of section three of the Prescription Act, 1943 (Act No. 18 of 1943), at any time be executed without being renewed until judgment has been satisfied in full".

What is the practice in other Deeds Registries because it could be that the same procedures are being followed which is then incorrect?

Resolution:

There is no authority to request an extension of time. See Rule 66(2) of the High Court Rules.

41/2006 Provisional Liquidation Orders

Provisional liquidation is granted against five companies. The final liquidation is only granted against two of the five. Should we assume that the provisional liquidation against the remaining three automatically lapses because "nothing" is said about them in the final order of liquidation? How do you "uplift" the liquidation interdict noted against the remaining three?

Resolution:

It is not the duty of the registrar of deeds to assume or to uplift the provisional orders. When such companies wish to deal the registrar must request the upliftment of such order.

42/2006 Deeds Official to execute deeds

Is it permissible for a deeds official to execute deeds prepared by his/her spouse or where the spouse appears before the Registrar of Deeds?

Resolution:

Yes, it is permissible as it does not constitute a conflict of interest and duty.

43/2006 Exemption certificate from SARS

CRC 14/2000: This circular clearly states in paragraph 4 that a Registrar is in no position to determine whether VAT is payable or not. It also stipulates what

transactions can be lodged without any receipt or certificate from SARS. Is it necessary to always lodge an exemption certificate from the Receiver of Revenue in instances such as the recent amendments to the Transfer Duty Act exempting duty to be paid on transfers due to divorce?

Resolution:

An exemption certificate from the Receiver of Revenue must be lodged.

44/2006

Proof of V.A.T on Land Reform Transactions

Must proof be lodged from the Receiver of Revenue regarding VAT on land reform transactions?

Resolution:

No proof is required.

G. OTHER LEGISLATION THAT HAS AN IMPACT ON ACT 47 OF 1937

45/2006

Alienation of Land Act No. 68 of 1981

When a contract is recorded against an erf still held under the township title, a subdivision of an erf or a unit still registered in the name of the developer, what proof must be submitted to the Registrar of Deeds so as to conform with the definition of "registerable" in section 1 of the Alienation of Land Act 68 of 1981?

Resolution:

The following proof must be submitted:

Erf under township title - Township must be proclaimed and all township establishment conditions must have been complied with.

Subdivision - Diagram and proof that subdivisional conditions have been complied with.

Unit of Developer - Sectional title register must have been opened and proof that section 10 of act 95 of 86 has not been contravened.

46/2006

Proof of Muslim Marriages

In terms of the *Daniels*-case, a spouse in a monogamous Muslim marriage is entitled to inherit intestate from her late husband and *vice versa*. What proof must a Registrar of Deeds insist upon to determine whether a valid Muslim marriage did subsist prior to death?

Resolution:

A Court order must be lodged.

47/2006

Eskom Servitudes- ancillary rights

In respect of the transfer of erven from a township title, it often occurs that, due to the situation of the erf, such erf cannot by virtue of its situation be subject to the

ancillary rights of the Eskom-servitudes. Is it still necessary to bring such conditions forward into the new deed?

Resolution:

Yes, unless the holder of the servitude provides documentary evidence that the ancillary rights are abandoned on the land concerned.

48/2006

Conversion of Eskom to Eskom Holdings Limited

In terms of the Eskom Conversion Act, 13 of 2001 Eskom has been converted into a public company, but uncertainty prevails whether it retains its status as a statutory body for purposes of applying the provisions of certain statutes such as the Subdivision of Agricultural Land Act 70 of 1970. Conference is requested to provide guidance in this regard.

Resolution:

It must be deemed to be a statutory body.

49/2006

Section 53 of the Mineral and Petroleum Resources Development Act 28 of 2002

Section 53 of the Mineral and Petroleum Resources Development Act 2002 provides as follows:

(1) Subject to subsection (2), any person who intends to use the surface of any land in any way which may be contrary to any object of this Act or which is likely to impede any such object must apply to the Minister for approval in the prescribed manner. (2)

Given the above read in conjunction with section 65(3) of Act No. 47 of 1937 it seems it will now be necessary to request this approval whenever a servitude (eg right of way of pipeline) is registered over land. Does conference agree?

Resolution:

No, Section 53 places no duty upon the Registrar of Deeds.

50/2006

Section 12 of Electronic Communication and Transaction Act No. 25 of 2002

May electronically generated signatures be accepted for any act of registration to be registered in a deeds registry? The Act specifically excludes an agreement for the alienation of land and long-term lease agreements, but does not refer to powers of attorney's consents, antenuptial contracts, etc.

Resolution:

Only originally signed documentation is permissible.

51/2006

Section 80 of Act No. 66 of 1965 – Waiver of preference of Usufruct

Must the provisions of section 80 of the Administration of Estates Act 66 of 1965 be complied with where a minor waives his/her preference of a usufruct in favour of the bond?

Resolution:

Yes, this is tantamount to alienation of immovable property and the provisions of section 80 must be complied with.

52/2006 Section 80 of Act No. 66 of 1965 – Waiver of Personal Right

Do the provisions of section 80 of the Administration of Estates Act 66 of 1965 find application for the waiver of preference of a bond where the guardian of the minor waives preference in favour of a further bond to be registered in order that the ranking of the bond belonging to the minor will be after the new bond?

Resolution:

No the provisions of section 80 are not applicable, however a court order must be obtained.

53/2006 Section 18 (3) of Act No. 66 of 1965 – Sales by Representatives

Examiners, no longer call for a certificate of approval by the Master when a section 18 (3) representative has sold a property. The reason being that the amended Regulation 44 A of Act 47 of 1937 placed the responsibility for the fact that the representative was acting in accordance with the powers granted to him/her by the Master on the Conveyancer. None of the letters of authority issued in the Free State grants authority to the representative to sell the property. It usually reads "You are hereby directed in terms of Section 18 (3) of Act 66 of 1965 to take control of the assets of the abovementioned estate as reflected in the Section 9 Inventory filed with me, to pay the estate debts and to transfer the residue of the estate to yourself/the heirs entitled thereto by Law".

Can a Registrar of Deeds accept such a transfer without any further consent or authority when he/she knows that no such authority is mentioned in the letter of authority? In many such cases the letters of authority are lodged by mistake with the deeds or with deeds that has no preparation clause for example Proclamation 293 deeds.

Resolution:

Yes. No further consent is required.

54/2006 Section 18 (3) Act No. 66 of 1965 Estates – Redistribution acceptance by Master

Is it necessary that the Master accept the redistribution agreement when the estate is administered in terms of Section 18 (3) Act 66 of 1965?

Resolution:

No, there is no legislation to enforce it.

H. SECTIONAL TITLES ACT NO.95 OF 1986**55/2006 Encroachments – Section 25 Act No. 95 of 1986**

Where a plan of extension to be registered in terms of section 25 of Act 95 of 1986 refers to a servitude of encroachment on neighbouring land, how must such servitude be registered, i.e. by whom and who must consent thereto?

Resolution:

The right of encroachment should be registered between the body corporate, if established, if not, the developer and neighbouring owner, together with the

consent of bondholders of neighbouring land with the registration of the plan of extension. Section 75(3) of Act 47 of 1937 applies.

56/2006 More than one Certificate of Real Right in respect of reservation in terms of section 25(1)

Can a developer apply for a separate certificate of real rights in terms of section 12 (1) (e) of the sectional titles act, each certificate describing only a certain portion (reserved area) as indicated on the plan approved by the surveyor general instead of only one certificate of real right.

Resolution:

Section 12 (1) (e) provides for one certificate for the reserved section 25 right. If the subdivision of the right has been identified as prescribed by section 25(4), one certificate in terms of section 12(1)(e) for the right, reflecting the portions under separate paragraphs, may be issued. Subsequently separate certificates for such portions may be issued in terms of section 64 of Act 47 of 1937, pending the amendment of Act 95 of 1986.

57/2006 Section 27A Rights

A sectional plan, reflecting exclusive use areas, is to be registered. No certificate of real right of exclusive use areas is included in the batch. The application for the registration of the sectional plan and opening of the sectional title register is silent with regard to the exclusive use areas. However, section 27A-rights are created and assigned in the rules. In compliance with section 27A(b), with regard to the layout plan, reference is made to the sectional plan. Is this plan registerable?

Resolution:

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

58/2006 Section 27(5)

The mortgagee of a bond registered against the relevant section must consent to the cancellation of the exclusive use area. What if the exclusive use area is mortgaged? The act is silent in this regard.

Resolution:

The mortgagee of the bond over the exclusive use must consent to the release of the exclusive use area from the operation of the bond, before such exclusive area can be cancelled.

I. GENERAL (ACT NO. 95 OF 1986)

59/2006 Right of Extension about to lapse

Where a right of extension is about to lapse due to effluxion of time, may all interested parties, in terms of section 3(1)(r) of Act 47 of 1937, enter into a notarial modification of the initial right, to extend the period?

Resolution:

The duration of the right of extension can only be extended by an order of court.

60/2006**Numbering of Sectional Plans**

What practical interpretation must be given to “distinctive number”? (Afrikaans: “onderskeidende nommer”) when used in regulation 19(1)(b); regulation 21(1)(b); regulation 23(1)(b) and regulation 25(1)(b) of the Act 95 of 1986?

Resolution:

A new number is allocated to each new plan.

61/2006**Section 68 of Act No. 47 of 1937 – Right of Extension exhausted**

When a right of extension has exhausted itself or has lapsed by effluxion of time, and application is made for the lapsing thereof in terms of section 68(1) of Act 47 of 1937, must the open bonds registered over the right be lodged for disposal?

Resolution:

No, the bonds need not be lodged for disposal.