

CHIEF REGISTRAR'S CIRCULAR NO. 1 OF 2013

THE SOUTH AFRICAN NATIONAL ROADS AGENCY LIMITED AND NATIONAL ROADS ACT, 1998 (ACT NO. 7 OF 1998)

1. PURPOSE OF THIS CIRCULAR

Certain registration issues relating to the endorsement of deeds and the payment of office fees in terms of the provisions of The South African National Roads Agency Limited and National Roads Act, 1998 (Act No. 7 of 1998) (herein after referred to as the Act) have not been addressed in Circular No. 1 of 2002 which Circular replaced Circular No. 1 of 1999. The said issues are explained in this Circular which replaces Circular No.1 of 2002.

2. COMMENCEMENT OF THE ACT

The Act came into operation on 1 April 1998 (section 63(1) of the Act).

3. PURPOSE OF THE ACT

The purpose of the Act is, inter alia, to establish a juristic person to be known as the South African National Roads Agency Limited, herein after referred to as the Agency (section 2(1) of the Act). The said juristic person will be established upon incorporation as a company in accordance with the provisions of section 3 (section 2(2) of the Act).

4. IMPACT OF ACT ON THE REGISTRATION PROCEDURES

4.1 Description of Agency in deeds and documents:

The Agency shall, in deeds and documents, be described as "The South African National Roads Agency Limited Registration Number 1998/009584/06".

4.2 Passing to and vesting, in the Agency of assets:

4.2.1 On the date of the incorporation of the Agency, in terms of section 7(2) of the Act, the following immovable property passed to and vested in the Agency:

- (a) The immovable property of the South African Roads Board consisting of land and any servitudes on or over the land on which national roads are situated;

- (b) land and any servitudes on or real rights with regard to land (including any right to use land temporarily), acquired by the South African Roads Board or the State in terms of the National Roads Act, 1971 (Act No. 54 of 1971) (herein after referred to as the previous Act) for the purposes of or in connection with the national roads;
- (c) any other immovable property of the South African Roads Board acquired in terms of the previous Act;
- (d) any State land on which a national road is situated, or any servitude or other real right with regard to land held by the State for the purposes of or in connection with a national road situated on the latter land. For the purposes of the Act "land" includes a real right in or over any land (section 1(x) of the Act). Registration of land which vests in the Agency in terms of section 7(2) shall, in terms of section 7(5) of the Act, be by means of a deed of transfer in terms of section 31 of the Deeds Registries Act, 1937 (Act No. 47 of 1937), whilst servitudes so vested will be registered by means of a deed of cession in terms of section 32 of Act 47 of 1937.

4.2.2. The Minister of Transport may, by Notice in the Gazette, declare that immovable property belonging to the State, except any immovable property mentioned in sub-paragraphs 4.2.1 (b) and (d), which is specified in the notice, will pass and vest in the Agency on a date specified in the notice (section 7(4)(a) of the Act). The Registrar of Deeds shall, upon being furnished with the notice, make the necessary entries in his or her registries and effect the necessary endorsements on the relevant title deeds (section 7(6) of the Act).

4.2.3. Notwithstanding the provisions of section 7(6), the notice must be accompanied by the relevant title deeds, since endorsing office copies would be more onerous, and an application which must be endorsed with a T-code. An endorsement along the following lines must be effected on the relevant title deeds:

"ENDORSEMENT IN TERMS OF SECTION 7(6) OF ACT NO. 7 OF 1998

The within mentioned property vests, in terms of section 7(4) (a) of Act No. 7 of 1998, in the South African National Roads Agency Limited Registration Number 1998/009584/06 as from

Notice filed with T

DATE:

REGISTRAR OF DEEDS"

4.2.4. Where, however, not all the land held under the title vests in the Agency, in order to prevent the holding of different properties by different persons under one title deed, the above procedure cannot be applied. In such an instance the vesting must be registered in terms of section 31 or 32 of Act 47 of 1937.

4.3 DECLARATION OF NATIONAL ROADS

- 4.3.1. The Minister of Transport may, by notice in the Government Gazette, declare any road to be a national road and amend or withdraw any declaration so made (section 40(1) of the Act).
- 4.3.2. The Registrar of Deeds shall, upon being requested by the Agency, endorse the fact of such declaration, amendment or withdrawal on the title deed/s of the land effected (section 40(4) of the Act).

The said application must be filed under a BC-code and the relevant title deed/s must be endorsed along the following lines:

"ENDORSEMENT IN TERMS OF SECTION 40(4) OF ACT NO. 7 OF 1998

The Minister of Transport has, *in terms of section 40(1) (a) declared the road to be a national road / in terms of section 40(1)(b) amended / withdrawn the declaration of the road as a national road.

Application filed with BC

DATE:

REGISTRAR OF DEEDS

*Omit whichever is not applicable"

- 4.3.3. In instances where an application, in the above-mentioned regard, is not accompanied by the relevant title deed/s of the land, the office copy of the title deed must be endorsed and a caveat must be noted against the land involved to the effect that the client's copy must be so endorsed whenever it is lodged for whatever reason.

4.4 PROHIBITION OF CONSTRUCTION OF STRUCTURES ON NATIONAL ROADS

- 4.4.1. No person may, without the Agency's written permission or contrary to that permission, construct or establish any structure on, over or below the surface of a national road, or construct any structure on land in a building restriction area, or make structural alterations to a structure referred to above, or give permission for the performance of the acts referred to above (section 48(1) of the Act).
- 4.4.2. When given the permission referred to above, the Agency may prescribe obligations to be fulfilled by the owner of the land in question (section 48(3) (a) (iii) of the Act).
- 4.4.3. Where the Agency imposes conditions prescribing the removal of a structure or other thing from the land in question, the Registrar of Deeds shall, upon being requested by the Agency, note the obligation, as a condition, on the title deed/s of the land effected (section 48(4)(a)).

The application referred to above must be filed under a BC-code and the relevant title deed must be endorsed along the following lines:

"ENDORSEMENT IN TERMS OF SECTION 48(4) (a) OF ACT NO.7 OF 1998

The South African National Roads Agency Limited Registration Number 1998/009584/06 has in terms of section 48(3) (a) (iii) imposed the condition that the registered owner of the within mentioned property must

Application filed with BC

DATE:

REGISTRAR OF DEEDS"

- 4.4.4. The above mentioned noting shall be cancelled in accordance with the procedure outlined in paragraph 4.5 below.

4.5 SUBDIVISION AND CONSOLIDATION OF CERTAIN LAND

- 4.5.1. Land in a building restriction area may, in terms of section 49(1) of the Act, only be subdivided with the approval of the Agency. A document evidencing such approval must be lodged with the Surveyor-General.
- 4.5.2. Approval by the Agency may be granted subject to conditions (section 49(3) (a)). Although the Act is silent in this regard, the document evidencing such approval must be lodged in the deeds registry. This will enable the examiner to determine whether conditions need to be inserted into the relevant title deeds, as contemplated in section 49(5) (a) (ii) of the Act.
- 4.5.3. Where land, on which conditions imposed in terms of section 49(3) apply, is transferred, then such conditions must be inserted in such deed of transfer (section 49(5) (a) (i)).
- 4.5.4. Where conditions referred to in sections 49(3) apply to the remainder on subdivision, the Registrar of Deeds must endorse such conditions on the title deed of the remainder (section 49(5) (a) (ii)).
- 4.5.5. Where land, to which conditions in terms of section 49(3) apply, is consolidated with other land, the Agency may stipulate that such conditions shall apply to the land so consolidated and a certificate of such consolidation must contain such conditions (section 49(3)(b) read with section 49(5)(a)(iii)).
- 4.5.6. The Registrar of Deeds may, upon the written application by the owner, accompanied by the Agency's consent, cancel conditions imposed in terms of section 48(3) or 49(3) (section 49(6) (a) and (b)). Proof that mortgagees have been notified about a proposed application for the cancellation must be lodged (section 49(6) (b)). The application referred to above must be filed under a BC-code.
- 4.5.7. It must be noted that section 49(5) does not make provision for the insertion of conditions in certificates of registered title and therefore such conditions shall be created by means of notarial deeds in those instances.

5. TRANSFER DUTY, STAMP DUTY AND OFFICE FEES

No transfer duty, stamp duty, or office fees shall be payable in respect of acquisition by the Agency of land, or real rights in land or immovable property (section 55).

Examiners must note that an endorsement in terms of section 40(4) of the Act (see paragraph 4.3 above) is merely a factual endorsement. No transfer of ownership of immovable property or real rights in immovable property is effected in terms section 40(4) and therefore office fees are not payable in this respect.

The cancellation of conditions imposed in terms of section 49(3) is exempt from office fees (section 49(6) (c)), but the cancellation of conditions imposed in terms of section 48(3) is not (section 48(4) (a)).


CHIEF REGISTRAR OF DEEDS

DATE: 04 MARCH 2013

REFERENCE: A.1/3/1/126 AND A.6/2/P
RINGBINDER 68

CHIEF REGISTRAR OF DEEDS

REGISTRARS OF DEEDS

THE CHIEF: JUSTICE TRAINING

DIRECTOR: LAW SOCIETY OF SOUTH AFRICA : PRETORIA

MANAGER: BUTTERWORTHS PUBLICATIONS : DURBAN

CHAIRPERSON: PROPERTY LAW COMMITTEE : PRETORIA