



OFFICE OF THE CHIEF REGISTRAR OF DEEDS
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CHIEF REGISTRAR'S CIRCULAR NO. 1 OF 2020

SUSPENSION OF REGISTRARS' CONFERENCE RESOLUTIONS REGARDING THE INTERPRETATION OF THE WORD '*ALIENATE*' AS FAR AS IT RELATES TO MORTGAGING OF IMMOVABLE PROPERTY

1. The Office of the Chief State Law Adviser ('OCSLA'), in an opinion dated 3 April 2020, deals with the following questions:
 - What is the correct interpretation of the word '*alienate*' as far as it relates to mortgaging of immovable property?
 - Does a title deed condition that relates to the *restriction on alienation of a property*, also include *restriction to mortgage such property*?

2. In its opinion the OCSLA discusses the words '*alienate*' and '*land*' as defined in the Alienation of Land Act, 1981 (Act 68 of 1981). It states that: '*if a restriction in a title deed is placed upon the alienation of land described therein, it follows that the restriction refers to the alienation of land in terms of the Alienation of Land Act*'. The OCSLA further states that if a strict approach is followed in the interpretation of the definition of '*alienate*' it will be seen that the word '*means*' is contained therein and it can be defined to indicate that what follows after the word '*means*' are the only things to fall within the ambit of that definition.

3. The OCSLA is of the opinion that the meaning of '*alienate*' is dependent on the meaning of the words '*sell*', '*exchange*' or '*donate*', which words are not defined in Act 68 of 1981. However, the said words are defined in case law which makes it clear that the definition of '*alienate*' in Act 68 of 1981 does not include the concept of '*mortgage*'. See *Loggenberg NO & others v Maree (286/20170 [2018] ZASCA 24 (23 March 2018) / The 3 Tanners Properties CC v The Trustees for the Time Being of the Atlantic Seaboard Trust (9478/2008) [2011] ZAWCHC 51 / Hoeksma and Another v Hoeksma 1990 (2) SA 893 (AD)*.

4. It is the opinion of the OCSLA that the legislator, in the Matrimonial Property Act, 1984 (Act 88 of 1984), intended the terms '*alienate*' and '*mortgage*' to have different meanings and not to be considered as one and the same thing.

The OCSLA states that the definition of 'alienate' in Act 68 of 1981 also makes no reference to 'mortgage' and that it can therefore be concluded that it was not the intention of the Legislator to include 'mortgage' under the definition of 'alienate'.

5. In view of the above, the OCSLA is of the view that 'alienation' of land does not include 'mortgage' of land and a title deed condition that relates to the restriction on alienation of land does not include a restriction to mortgage such land.
6. RCR's 35/2005, 2/2006; 12/2008; 6/2009; and 4/2011 are hereby suspended with immediate effect and will be referred to the next Registrars' Conference for formal withdrawal.
7. The effect of the withdrawal of the above Registrar's Conference Resolutions is that as from date hereof, no consent will be required for the registration of a bond if a title condition only prohibits the alienation of the property without the consent of the holder of such negative personal servitude.



CHIEF REGISTRAR OF DEEDS

DATE: 6/5/2020

REFERENCE: 14/P

RINGBINDER 54

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