



rural development & land reform

Department:
Rural Development and Land Reform
REPUBLIC OF SOUTH AFRICA

CADASTRAL CONFERENCE RESOLUTIONS

Cadastral Conference Resolutions 2009

1. Registration copies of diagram

The Deeds Registries Act, 1937 (Act No. 47 of 1937) requires a second copy of a diagram to be lodged but it is not required in practice. Should copies of diagrams that are to be registered, be lodged in duplicate?

Resolution:

Regulation 32 of Act No. 47 of 1937 makes reference to 'a diagram'. Therefore, only one diagram must be lodged. Regulation 79bis must still be complied with. RCR 6.21/1999 is hereby withdrawn.

2. Diagrams to effect a boundary adjustment

Is a condition of title preventing subdivision applicable where diagrams are framed to effect a boundary adjustment? No additional Land parcels are created because the subdivisional diagram(s) are consolidated simultaneously at registration

Resolution:

Registrars of deeds will not permit the subdivision as it is not legally provided for. The title condition preventing subdivision, without the option of consent, must first be removed prior to subdivision.

Cadastral Conference Resolutions 2010

1. Resolution of overlapping title in R293 Townships

Overlapping Deeds of Grant are causing a major headache for some owners. A specific case in KwaMashu P exists (but there are multiple others) where there are four overlapping registered properties:

- The bottom layer was state land.
- Over the state land, Erven were created on the general plan of KwaMashu – P.
- A developer was allocated an undeveloped portion of the original general plan. Development rights were issued and a bond raised. A general plan was created over this allocated portion. Neither the bond nor the right was cancelled.
- The developer then sold Erven off his development, but these properties were granted over the base state land layer.

Resolutions:

- The land parcels affected by conflicting titles must be identified by the SGO's and Registrars and ring fenced. Caveats must be noted against the affected properties and the balance of the relevant general plans be permitted to be upgraded.
- The relevant municipalities / provincial department should be approached to be part of the investigation and the Premier's Office should be informed of the position.
- The relevant municipalities / provincial department should be approached to provide alternative land to people who are affected by double registrations of land parcels.
- A Memorandum must be drafted on a case by case basis for urgent submission to the Minister. Each memorandum must contain a background to the problem with solutions thereto. An amendment to the Land Titles Adjustment Act may be necessary to provide for the appointment of a Commissioner to investigate the problem areas.

2. Demarcation of Deeds Office areas of jurisdiction

How are the different areas of jurisdiction of the various Deeds Registries reflected on documentation and electronic compilations?

Resolution:

The areas of jurisdiction are published in the Government Gazette. The demarcation board also assists with the determination of boundaries.

3. Approved documents containing errors

Evidence suggests that some Surveyors-General have approved cadastral documents and release the same into circulation before they are fully examined. Substitution after subsequent amendment will not catch all copies that were released – even if “out copies” are retrieved. Correct and incorrect both show the approval signature and the same SG number. Both are therefore assumed correct by unsuspecting recipients. Examples of sources of the incorrect versions being in circulation are:

- (a) A Land Surveyor received an approved document (prior to errors being detected) and makes copies for the client;

- (b) Scanned images are downloaded via auto-emailer or internet;
- (c) Local Authorities have direct access to SG databases.

Resolution:

According to the Land Survey Act, 1997 a Surveyor-General may not approve a cadastral document unless the Surveyor-General has satisfied himself/herself that it is correct and complies with legislation.

4. Creation of servitudes on or over public land

The creation of a servitude, being the transfer of rights over a public street, could well be a deprivation of the public's rights in any street. Notwithstanding the fact that it may not affect the enjoyment of its rights, it is still a transfer of rights to a party other than the general public.

- (a) Does the Local Authority have the power to act on behalf of the general public?
- (b) What public participation is necessary when their rights are impinged?

Resolution:

- (a) No, it is not necessary for the general public to be a party to the agreement. The Premier of the Province must consent on behalf of the general public, and not the municipality. Alternatively a court order may be obtained. See section 65(1) of Act 47 of 1937.
- (b) None. However the publication notice in the Government Gazette for public comment, provide the necessary interaction.

5. Encroachment agreements for Sectional Title surveys

What proof is required when an approved sectional plan shows an encroachment over an existing servitude?

Resolution:

The consent of the holder of the servitude must be obtained and lodged with the Registrar.

6. Registration Divisions

In the former Cape Province, Natal and Orange Free State, administrative districts were based on the old fiscal divisions. Regulations 4, 6 and 7 of the Deeds Registries Act 47/1937 supersede administrative districts with registration divisions. Registration divisions are defined by the full latitude and longitude degree square. Regulation 7 (read with regulation 4(a)(b)) of Act 47 of 1937 makes allowance for the retention of administrative districts. The SG Cape Town did not change to registration divisions (defined by degrees square) as it was seen as being a waste of time and manpower, when there was a comfortable system in place that worked extremely well. Should there be a dual system – registration divisions in some provinces and administrative districts in other Provinces?

Resolution:

The status quo must remain.

7. Sectional Title Schemes on non-contiguous propertiesCase 1:

A developer created a sectional scheme over a property and then entered into an agreement with an adjoining property to alienate a portion of the common property that contained the road access to the sections so that the adjoining property could utilize the same access. This resulted in a split remainder with sections on both portions.

Resolution:

Regulation 32bis of the Deeds Registries Act, No. 47 of 1937 confirms that a split remainder remains one piece of land in terms of process of law. It therefore cannot be deemed to be two pieces of non-contiguous land in terms of Section 4(2) of the Sectional Titles Act.

Case 2:

A developer owns two pieces of land – Erf A and Erf B that are separated by a national road. Erf A has road frontage, but the access to Erf B is by means of a bridge over the national road that links Erfen A and B. The properties are therefore tied notarially.

Resolution:

Section 4(2) of Act 95 of 1986 applies.

8. Re-instating withdrawn documents

Is it possible to re-instate a Sectional Title Plan, diagram or general plan that was withdrawn (e.g., a developer changed his mind)? Should the documents have to be reframed and re-lodged, we would not need to examine it, other than a comparison check, but would be forced to charge full examination fees. There is no formal procedure to re-instate the plan and it may raise an audit query.

Resolution:

No re-instatement of withdrawn documents may be done without an approved procedure having been established.

9. Servitudes – lapsing by Merger

The issue of servitudes that lapse by merger should be revisited, where all servitudes whether they lapse by merger or not must be brought forward onto any new diagram, and once SGO's are informed by the Deeds Office, only then will they be deleted, thereby defacing the diagram.

Resolution:

All servitudes, whether they lapse by merger or not, must be brought forward onto any new diagram. The lapsing by merger is only effected by registration.

10. Calculation of Remaining Extent

According to the Deeds Office, all so-called "long searches" have been withdrawn as directed by all Registrars of Deeds at a Registrars' Management meeting held in May or June of this year. This created a serious dilemma in calculating the remaining extents of properties because we now are forced to use the Deeds Web (which is very slow and not always current) instead. The printouts that were received from Deeds: Cape Town appeared to be more current and the information thus more correct, hence the reason not to use the Deeds Web.

Deeds Offices suggested that the Deeds View system be used instead. However, in using the Deeds View at PC's provided at the Deed Office's Client Service Centre: Cape Town, it was discovered that only one query option is available, i.e. that of querying via the Title Deed number. In order to compile Certificates of Remaining Extents (CRE's) SG staff must first establish whether newly created subdivisions are registered or not. The erf number of the new subdivision is used to search whether a title deed for that particular property exists or not. Should a registered title deed exist for the particular property, the extent of the subdivision is deducted from the remainder. The present configuration of querying the database using the Title Deed number is of little use to our staff because they do not know the Title Deed number at the outset of their research.

Resolution:

The provision of printouts (from Deeds Offices) must resume at no cost to the SG since the calculations of the remaining extents are being done by the SG's office on behalf of the Deeds Registry anyway.

11. Section 27 of Ordinance 15/1985:

Section 27 stipulates that consents can only be granted for a period not exceeding 5 years. May the period be extended more than once?

Resolution:

It appears that the period may be extended more than once.

Cadastral Conference Resolutions 2011

(See publication in Consolidated Chief Registrar's Circulars and Conference Resolutions)

Cadastral Conference Resolutions 2012

1. Sections 24 and 27 of Act No. 95 of 1986

When a section is extended, in terms of section 24 of Act No. 95 of 1986, into the adjoining exclusive use area, e.g. garden or yard, it is necessary to cancel the existing exclusive use area and register a new exclusive use area (in terms of section 27). Provided the section and the exclusive use area are in the same ownership the two amendments have historically been shown on the same amending sectional plan and apparently registered without any problem. If amendments as outlined above are to be dealt with as one registration batch does the Registrar require separate amending sectional plans prepared in terms of sections 24 and 27 respectively or is it acceptable to show both amendments on one plan?

Resolution:

Where an exclusive use area is directly affected by an amendment to the section and the exclusive use area is registered in the same ownership as the section, the two amendments may be shown on the same plan.

Cadastral Conference Resolutions 2013

(See publication in Consolidated Chief Registrar's Circulars and Conference Resolutions)

Cadastral Conference Resolutions 2014

(See publication in Consolidated Chief Registrar's Circulars and Conference Resolutions)

Cadastral Conference Resolutions 2016

1. Expropriation/ Vesting transfers and Spatial Planning Land Use Management Act 16 of 2013

Do the provisions of section 53 of Act 16 of 2013 find application with the registration of expropriation and vesting transfers as contemplated in terms of Section 31 of Act 47 of 1937?

Resolution:

No. Section 53 does not apply in cases of expropriation and vesting transfers. However, it is applicable in cases of subdivisions and other land use changes.

2. Land Claims and Land Restitution Transactions and Spatial Planning and Land Use Management Act 16 of 2013

Does the provision of section 53 of Act 16 of 2013 find application with the registration of subdivisational transfers, Certificates of Registered Title in terms of section 43 of Act 47 of 1937 and Certificates of Consolidated Title required for the purpose of land claims and land restitution?

Resolution:

Yes, the certificate from the relevant Municipality in terms of section 53 of Act 16 of 2013 will be required. Alternatively, an exemption by the Municipality must be lodged (see section 30(3) of Act 16 of 2013).

3. General (Act 70 of 1970) SG: Western Cape

Deleted – refer to CCR 2 of 2018 below.

4. Land Survey Act 8 of 1997, Section 38, regulation 19: Consolidation Diagrams

It often happens that one or more of the components of a compiled consolidation diagram are remainders of properties. Sometimes however, not all the subdivisions leading up to the remainder have been registered. This can result in an error in registration.

Resolution:

Where there are unregistered subdivisions of a component, the SG shall issue a prior registration caveat to the deeds registry.

5. Sectional Titles Act 95 of 1986 as amended, Section 5(5), 7(2)(a), Regulations 5(l), 6(b): Section boundaries

It often happens that there is incorrect interpretation of what constitutes boundaries of sections in draft sectional plans in terms of Section 5(5). Draft sectional plans are submitted for examination and approval at Surveyor-General Offices showing at least two sections, but all their corners are beacons and the boundaries between beacons not physically defined. Data (distances and directions) is shown, for example, between the said beacons or edge of roof structure is projected to ground/ -floor level. The acceptance of multiple parts of sections distributed around a sectional scheme where the main dwelling and a carport are included as parts of one section has contributed to sectional title practitioners assuming that sections do not always have to be physically defined, in the manner described above.

Resolution:

The Surveyor-General Offices should not accept sections on draft sectional plans where all section boundaries, namely the walls or other structures separating such sections at ground level, are completely absent. Data cannot be used to describe not physically defined section boundaries that are not tangibly discerned on the ground or floor level. This will be applicable only to complete sections and

not to parts of sections evident in different locales on the land/building, e.g., Main dwelling and carport forming parts of one section.

6. Depicting Servitudes in favour of 3rd parties on General Plans

The Deeds Office Pretoria approached the SG Office requesting that servitudes in favour of other erven in the same township/ the Local Authority as well as 3rd parties, must both be depicted on the General Plan since utilizing a separate diagram for the servitude in favour of the 3rd party will mean that the consent from the owners of the other erven in the same township/ the Local Authority must be obtained for the registration of the new servitude.

Resolution:

If a servitude is to be registered in favour of other erven in the same township/ the Local Authority as well as 3rd parties, then two notes will be depicted on the General Plan, instead of having the one note on the General Plan and the other servitude represented on a diagram. The Deed of creation will be added to the note of the servitude in favour of the third party.

7. Section 45(6) of SPLUMA

Section 45(6) of SPLUMA empowers municipalities to grant consent in respect of conditions of title where such consent would have been granted by “the administrator, a Premier, the townships board or controlling authority”. Where the municipality grants consent in respect of a controlling authority, this could be inconsistent with the intentions of the Act as it is not the intention of the Act that the functions of all controlling authorities devolve to the municipality. Giving the municipality the power to consent to conditions of establishment imposed by every controlling authority will discourage consultation with authorities as envisaged in Section 29, Section 30, Regulation 17 and ultimately the provisions of Section 33(2) of the Act.

Resolution:

Section 45(6) should be narrowly interpreted and limited to conditions that are imposed in favour of the premier, administrator and private townships board only. Only where the powers of the Controlling Authority have been assigned to the municipality, shall the municipality issue consent in terms of Section 45(6). In circumstances where the Controlling Authority has not been assigned to the municipality, the provisions of Section 29, Section 30, section 33(2), and Regulation 17 of the Act must be applied to the consent granted in terms of Section 45(6).

8. Section 2 of SPLUMA

Considering the provisions of Section 2, does the power of SPLUMA override other legislation administered at National level, e.g. Act 70/1970?

Resolution:

No. Section 2 must be read in conjunction with Section 29(1), Section 30(1), Section 33(2) and Regulation 17.

9. Application for subdivision or land development on state land

Must application be made for subdivision or land development on state land in terms of SPLUMA, noting the requirements of Sections 26(1) and 45(1)(a)?

Resolution:

Yes. However, any affected municipality / province may apply for an exemption in terms of section 55(1); in which case proof of exemption will be furnished to support approval and registration of the diagram/general plan.

10. National, Provincial and Municipal legislation (Bylaws)

In terms of Section 29(1) and Section 30(1), if there is any conflict between National, Provincial and Municipal legislation (Bylaws), is there a hierarchy of legislation that will prevail?

Resolution:

Section 146 of the Constitution, read with Sections 156(3) and 151(4) of the Constitution will apply.

11. Legal Opinions

What is the legal standing of legal opinions obtained by, circulars issued by and/or decisions made by the DRDLA and SALGA regarding transitional measures and decisions?

Resolution:

Neither the DRDLR nor SALGA have the power to legislate by circular. An opinion is simply that: an opinion. The Registrars of Deeds and the Surveyors-General are compelled to apply the law as it stands. Therefore, no diagram or general plan will be approved or registered without the applicable consent unless:

- Either that law requiring the consent has been repealed, or
- An order of court has been issued stipulating that the diagram must be approved and/or registered without the applicable consent.

Cadastral Conference Resolutions 2018

1. Land Survey Act 8 of 1997 / Deeds Act/ consents (SG: Western Cape)

A diagram representing a portion of a farm has been lodged for examination and approval for the purposes of a short-term lease (less than 10 years)

No consents have been submitted although it is agricultural land as defined in Act 70/1970 and is also within the jurisdiction of a local authority where planning laws apply

- A. Can the SG approve such a diagram?
- B. If yes, what consents are required?
- C. Can a mortgage be registered against this lease?

Resolution:

- A. Yes
- B. Act 70 of 70 is not applicable, due to Section 3(d). However, SPLUMA may have application.
- C. No, but a notarial bond only.

2. Review of Cadastral Conference Resolution 2.3 of Cadastral Conference 2016 (21 January 2016)

It appears that Conference Resolution 2.3 of the 2016 Cadastral Conference was made in error, where it was resolved that a subdivision of agricultural land for the purpose of a mine requires consent in terms of Act 70 of 1970. The Department of Agriculture, Forestry and Fisheries has recently confirmed that consent is not required.

Resolution:

Conference Resolution 2.3 of Cadastral Conference 2016 is withdrawn and a new resolution is made as follows:

The question arises as to whether or not consent is required in terms of Act 70 of 1970 for the subdivision of agricultural land for the purposes of a mine and if no consent is required what documentation should be produced to satisfy the Surveyor-General when approving such a subdivisional diagram? The Department of Agriculture, Forestry and Fisheries has recently confirmed that consent is not required

Resolution

Where the subdivision is to be registered in the Deeds Registry, consent in terms of Act 70 of 1970 is required, where the mining right diagram is to be registered in the Mineral and Petroleum Titles Registrar's Office, consent in terms of Act 70 of 1970 is not required.

3. Extension of the scheme caveat.

On Sheet 1 of the initial sectional plan there is a caveat to extend the scheme if there will be other phase to come. With the extension of the scheme some offices bring the caveat forward to the amending sectional plans and other not. In my view it is good to bring the caveat forward until the last scheme. This will draw our attention to the fact that the scheme is completed.

Deeds Training request our office to remove the caveat on the amending sectional plans. Their argument is that everything on the amending sectional plan

gets registered and this is not a new caveat. Do the other offices also experience this problem, because some offices also bring the caveat forward to the amending sectional plan?

Resolution:

The caveat to extend the scheme is to be recorded on the initial sectional plan only and not repeated on subsequent sectional plans.

4. RCR 41/2014: diagram of a real right of extension: (SG: Eastern Cape)

Resolution 41/2014 refers to a diagram, whereas Section 25(4) refers to a plan. Therefore, confusion exists with the application of Section 25(4) of the STA and Regulation 73(2) of the DRA. RCR 41/2014 should be reworded to remove the confusion:

- a) A real right of extension, shown on a plan framed in accordance with the requirements of the Surveyor-General in terms of Section 25(4)(b), has lapsed or been cancelled. May this plan be utilised for subsequent cessions of portion of real rights?
- b) Where a portion of a 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 right plan in respect of the portion being cancelled/lapse be used again for the session of such portion by the body corporate to cessionary?
- c) When a real right is cancelled under section 27(5) (for example double registration of exclusive use areas), can the same plan be reused for the further issuing of a certificate of the same real right?

Resolution:

- a) No. The existing plan cannot be utilized as it has been cancelled by the Surveyor General on notification by the Registrar that the real right had lapsed or been cancelled.
- b) No. Once the real right has been cancelled, the same depiction of a cancelled real right cannot be re-registered, but a new real right plan must be created for registration purposes.
- c) Cancellation of a real right must be in accordance with the RCR no 13 of 2013
 - *Paragraphs a) and b) must be referred to Registrars Conference for the review of RCR 41 of 2014.*

Cadastral Conference Resolutions 2019

1. Property Description in Title Deed

The whole of Erf 86 Jagtershof has been subdivided into erven 87 and 88 Jagtershof with duly approved diagrams for the aforesaid erven. Instead of transferring “*Erf 88 Jagtershof*” representing the Remainder of Erf 86 Jagtershof, the description cited in the title was cited as “*Remainder Erf 86 Jagtershof*” and

registered as such. How should the property description be cited in the subsequent transfer? Is a section 4(1)(b) application required or will a factual endorsement suffice?

Resolution:

A Section 4(1)(b) application may be lodged for amendment of the incorrect erf number and the extending clause.

- *The Deeds Practice Manual must be updated stipulating the necessary procedures to be followed.*

2. Form H: Annexure 1 to Act No. 95 of 1986

Footnotes to the Sectional Title regulation Form provide for reference to be made to the “*name of the township or suburb and local authority / description of the farm’ in the property situation*”. There is a view that if the unit is situated in a township or suburb it is simply necessary to state either the township or the suburb and the local authority. If the foregoing does not apply and the unit is situated on *agricultural land then the description of the farm* must be set out. However, the mere fact that the underlying land includes the word “*Farm*” does not make the underlying land farm property. The PBM office is of the view that CRC 6/2002 still finds application, if one deals with the common property the farm description will still be relevant and Act 70 of 1970 will still find application.

RCR 64/2008 Form H: Annexure 1 to Act No. 95 of 1986

The footnote to Form H provides that in the description clause of the transfer of a section the description of the farm must be disclosed. Does this description include the registration division and the province, or will the farm name and number suffice?

Resolution: *The full description, inclusive of registration division and province is required.*

Resolution:

Conference is in agreement with RCR 64/2008 and CRC6/2002.

3. The description of the servitude on the servitude diagram

Bloemfontein Deeds Registry received a Notarial Deeds of Servitude of a pipeline, one square metre over the scheme Herewarde Meent SS 14/1990, which scheme is situated on Erf 15595 Sasolburg, district Parys, Province Free State as will appear from Notarial Deed K327/2017S. The servitude is depicted on diagram SG 345/2012. Certificates of Registered Sectional Title were issued and the Body Corporate is already in existence. According to section 13 of the Sectional Titles Act 95 of 1986, the effect of the registration of a sectional plan is that the building or buildings and the land shown thereon shall, subject to the provisions of Act 95 of 1986 be deemed to be divided into sections and common property as shown on the sectional plan.

- (a) For the description of the servitude on the servitude diagram, is it correct to refer to the description of the conventional land on which the scheme is situated?
- (b) Must a caveat be noted against the conventional land for possible termination of the scheme in future?

Resolution:

- (a) Yes. The scheme name and SS number must be inserted before the property description of the conventional land. See RCR 24/2013.
- (b) It is not necessary. On termination of the scheme, all interested parties will be informed accordingly.

4. RCR 41/2014: diagram of a real right of extension: (SG: Eastern Cape)

RCR 41/2014 refers to a diagram, whereas section 25 (4) refers to a plan. Therefore, confusion exists with the application of section 25 (4) of the Sectional Titles Act and regulation 73 (2) of the Deeds Registries Act. RCR 41/2014 should be reworded to remove the confusion:

RCR 41/2014. Diagram of a real right of extension

May the approved existing real right development plan / diagram of a real right of extension in terms of Section 25(4)(b), which right had lapsed or been cancelled, be utilized for subsequent cessions of portion of real rights? Where a portion of a real right of extension which have been indicated on a real right plan, lapsed or has been cancelled in terms of section 15B(1)(d), can that same real right plan in respect of the portion being cancelled/lapse be used again for the session 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 is used.

Resolution: No. The existing plan/diagram cannot be utilized as it has been cancelled by the Surveyor General.

Resolution:

RCR41/2014 must be referred to the Registrars Conference in order to amend same to make reference to a sectional plan of real right of extension.

5. TCR 3/2018: Amending Farm Names without Owners' Request

Section 93 of the Deeds Registries Act, 1937, requires the owners to take the initiative to remove offensive names, and replace the offensive name with another name. However, very few did so. Some years ago the Surveyors-General took the initiative and offensive Farm names were deleted from the designation in most diagrams and the Registrar was duly notified in terms of Section 36 of the Land Survey Act, 1997. Was this initiative within the powers of the Surveyors-General?

Resolution:

- The Surveyor General has the authority to introduce a new system of designation in line with section 9 of the Constitution of RSA.

- Section 93(2) of Act 47 of 1937 and regulation 23(1) of Act 8 of 1997 must be amended to provide for the Registrar of Deeds and Surveyor General to change the deeds records accordingly. The heading to section 93 must also be amended accordingly.

6. TCR 4/2018: Incorrect Areas in Deeds Records – Redline Diagrams

Prior to the Land Survey Act there was no way (other than a Court Order or Amended Title) for the Surveyors-General to correct an erroneous diagram or area as recorded in a Title Deed. Red Line diagrams became the order of the day from 1879 to 1927. These diagrams all have two areas given: the area as per the black lines or registered area, and the correct area as per beacons. The black line area was used in the Title Deeds as there was no legal mechanism to correct it. This problem still persists today and areas in Title Deeds are creating confusion amongst land owners. Can the Surveyors-General cause the black line area to be replaced by the red line area as the correct area as per beacons in the Title Deeds?

Resolution:

Yes, section 36 of Act 8 of 1997 can be applied and a Registrar can be duly notified to amend the area. Where applicable, section 22 of Act 8 of 1997 should also be invoked. All Red line diagrams should be identified by Surveyors-General and the Registrar duly notified to amend the areas and, where necessary, the title deed caveated until such time as a diagram of substitution has been approved. The Registrars should be advised prior to undertaking this project.

7. TCR 6/2018: Servitude diagram of Habitatio

If the proposed *habitatio* right spans the whole of the property situate on an erf in an urban area, is it still necessary to frame a separate Habitatio diagram.

Resolution:

No. A separate *habitatio* diagram need not to be framed. Also see the provisions in the second proviso to regulation 73(2) of Act 47 of 1937.

- *TCR 6/2018 must be amended to reflect this decision.*

8. TCR 7/2018: Description of Servitudes

A Deeds Registry approached a Surveyor-General with a request to add the nature of the servitude to servitude notes and servitude diagrams to assist in identification. It was also requested that each servitude on a General Plan be dealt with in a separate servitude note.

Resolution:

It is implicit from sections 65 to 69bis, 75 and 76 of Act 47 of 1937, regulation 35 (3) of Act 47 of 1937, section 6(1)(c) of the Land Survey Act, 1997 and regulations 12 and 21 of the Land Survey Act, 1997 that the purpose of every

servitude must be given in the servitude note, and further that each servitude type be must be described in a separate note.

9. TCR 10/2018: Proclamation diagrams of partially affected land parcels

A Deeds Registry is required to endorse title deeds where the relevant properties are subject to a proclamation (for example, of protected areas for the purpose of the National Environment Management: Protected Areas Act, 2003). It would not be possible for a Deeds Registry to meaningfully endorse the title deed in instances where only a part of a property is included in a proclamation area. The relevant authority requires a diagram to be able to gazette the relevant area. Is such a proclamation diagram necessary in a case where the whole of the property is covered by the protected area?

Resolution:

Surveyors-General may approve a proclamation diagram wherever the proclaimed area includes at least one property that is only partially affected by the proclamation area. It is not necessary to approve a proclamation diagram where the proclamation area extends over the whole of all properties affected by the proclamation area, i.e., reference can be made in the gazette to the existing diagrams of the properties.

10. TCR 12/2018: Amendment to sectional scheme by the addition of Common Property buildings

Insurance companies are refusing to insure Common Property buildings that are not shown on approved Sectional Plans. Practitioners have therefore requested to be permitted to frame and lodge Amending Sectional Plans for the addition of only Common Property Buildings to existing schemes.

- (a) Is this acceptable to Surveyors-General?
- (b) If yes, under what section of the Sectional Titles Act would the Amending Sectional Plans be approved?

Resolution:

- (a) No. The purpose of the sectional title plan is not to address insurance issues.
- (b) N/A.
 - *The matter must be referred to the Registrars' Conference as well as the Sectional Titles Regulations Board for a possible amendment of Act 95 of 1986.*

11. TCR 13/2018: Extension to sectional scheme by the addition of Exclusive Use Areas only

Is it correct that EUAs created after the opening of the Sectional Titles Register can be framed on a sheet or sheets that only show the EUAs and that no Sheet 1 is required?

Resolution:

Using Section 25(5): *Sheet 1 is required* if the creation of the EUAs is as a result of the (recently amended) Section 25 reservation by the Developer, i.e., the scheme is being extended by the addition of EUAs, which is now allowed as a result of the amendment. In this instance the Deeds Office will register the plan under a new SS number.

Using Section 27(2): Plans submitted/ prepared in terms of Section 27 *do not require a sheet 1* and will be 'added' by the Deeds Office to the initial opening phase of the scheme.

12. TCR 15/2018 Description of Buildings on Sheet 1 of subsequent phases of a Sectional Titles Scheme

Where the scheme or sections are amended or extended in terms of Sections 21, 24, 25 or 26, Sheet 1 on the prescribed amending sectional plan also contains the heading "*Description of Buildings*". The total number of buildings in the previous phases plus any additional buildings which appear in the amending sectional plan is given. Below the number of buildings, Item "a" then refers to the total number of buildings prior to this amending draft sectional plan with reference to the original "*SG No D and SS No...*" If there are more than two previous phases, what should this reference be amplified to read?

Resolution:

The Registrars of Deeds only require the SS No... of the first phase. Therefore use of "*SG No. D...and SS...and subsequent phases*" is to be adopted by all Surveyors-General. The SG No. D... of all subsequent phases must be listed on an endorsement sheet, attached to the first phase and maintained by the Surveyor-General in whose area of jurisdiction the scheme falls.

13. TCR 16/2018 Amending Sectional Plans of Extension of Scheme: Deviation from the Right Reserved in terms of Section 25(13)

Can the Surveyors-General approve plans for the extension of a scheme by the developer in terms of Section 25 (13) of Act 95 of 1986 where the developer has encroached on areas of common property not specifically reserved?

Resolution:

Yes. The Surveyors-General can approve plans for the extension of a scheme by a developer where a developer has encroached insignificantly on areas of common property not specifically reserved. However, where the encroachment is a significant deviation of the approved layout of the scheme, RCR 67 of 2011, as amended by RCR 11 of 2012, has reference. Further, the Surveyor-General does have powers of verification on documents submitted to him/her in terms of Section 25 (4)(b) of Act 95 of 1986. The SG's should also call for the consent of the Body Corporate based on the written consent of all its members.

14. TCR 22/2018 Consent for Leases and Servitudes in terms of applicable municipal by-laws

How must a lease or servitude right, to be registered by the Registrar of Deeds, be dealt with in terms of SPLUMA / the applicable municipal by-law?

Resolution:

The provisions of the relevant By-Law must be followed.

- *OCSG must refer the matter to SPLUM for a resolution in this regard.*

15. Property description with a call name

The property description, according Diagram S.G.No.151/1933, is Portion 3 (Blydskap) of the farm Elsrust 490. Is it necessary to name, Blydskap, of Portion 3 in any new registrations? Nor the Surveyor-General Office or the Deeds Office captures call names into their data basis. In the Surveyor General Office with the subdivision of Portion 3 (Blydskap), the subdivision will not refer to the call name. It will be Portion 4 (of 3) of the farm Elsrust 490. In the Northern Cape it will be referred to as Portion 4 (portion of Portion 3) of the farm Elsrust 490. The call name will not be carried forward.

Resolution:

The call name, Blydskap, should not be taken up in any new registrations.

16. Servitude on a subdivided portion of an existing subdivision

A servitude is created over Portion 13 (of 2) of the farm Helpmekaar 500. This new servitude is created by means of a servitude diagram. The designation of the servitude will be e.g. a 5 meter wide right of way servitude over Portion 13 of the farm Helpmekaar 500. Please note that it is not described as Portion 13 (of 2) of the farm.

Resolution:

Noted