

Deeds Registries Regulations, 2018

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IT is hereby notified that the Minister of Justice, Legal and Parliamentary Affairs has, in terms of section 87 of the Deeds Registries Act [Chapter 20:05] (“the Act”), made the following regulations:—

*Title and date of commencement*

1. (1) These regulations may be cited as the Deeds Registries Regulations, 2018.

(2) These regulations shall come into effect on a date to be fixed by the Minister by statutory instrument.

*Interpretation of terms*

2. In these regulations—

“bond” means a mortgage bond or notarial bond;

“deed” means any deed of grant, deed of transfer or other deed conferring title to land or a real right in land, and including—

- (a) mortgage bond; or
- (b) any notarial deed creating, varying, amending or substituting rights in respect of immovable property;

“document” means any deed other than as defined, power of attorney or other document tendered for, registration or recording at a deeds registry;

“duly authorised” means authorised by a power of attorney attested in accordance with the provisions of section 78 of the Act;

“form” means the appropriate form set out in the First Schedule;

“page” means one side of a sheet of paper size A4 (297 mm x 210 mm);

“registration number” means the registration number of the transaction recorded by the Registrar of Deeds on the first and last pages of a deed or document;

“serial number” means the number embedded on the top right corner of the front page of each deed;

“sheet” means a piece of paper comprising two sides, being the obverse or front page and the reverse or back page;

“written” means written in ink, typewritten or electronically printed.

PART I

PROVISIONS RELATING TO DOCUMENTS

*Size of and other particulars relating to documents*

3. (1) Subject to the provisions of this Part, all documents shall be written in the English language and shall comply with the following requirements—

- (a) all deeds shall be written upon international standard paper size A4 (297 mm x 210 mm), containing various security devices, purchased from or through a supplier designated from time to time:

Provided that the Registrar may dispense with the requirements of this paragraph if in his or her opinion the nature of the document makes it impractical to comply with such requirements; and

- (b) all documents other than deeds shall be written upon durable white paper of not less than 80 grams which is of paper size A4 (297 mm x 210 mm):

Provided that the Registrar may dispense with the requirements of this paragraph if in his or her opinion the nature of the document makes it impractical to comply with such requirements; and

- (c) all documents shall be written in legible characters in permanent black ink, which is not copying ink, using a font of not less than 11 points in size; and
- (d) all documents shall be written on both sides of a sheet; and
- (e) all documents including deeds shall be written with a clear margin of at least 35 mm measured from the left hand side of each page.

(2) In the case of any deed, the upper half of the first page shall be left blank for the purposes of office endorsements. If the said upper half is insufficient for this purpose the Registrar may attach to a deed an additional blank sheet.

(3) The Registrar—

- (a) may, if he or she thinks fit, may accept a photographic copy of any document which is to be filed for record purposes only;
- (b) shall not accept a carbon copy of any document which requires registering and filing in his or her office.

(4) In any document any space which has not been used shall be ruled through.

(5) In any document which consists of more than one page the necessary catchword shall be written at the foot of each page.

*Alterations and interlineations*

4. (1) any alteration or interlineations in a document shall be initialled by the person executing the document and by the attesting witnesses, if any.

(2) Any alteration or interlineations in a document which is attested by a person who was not the original attester of the document shall be signed by the persons attesting the alteration or interlineations.

*Documents to be clear and not folded*

5. The Registrar may decline to register or accept any document if in his or her opinion the writing thereon, because of its faintness or the folding or condition of the document, is illegible or not calculated to secure durability.

*Documents in foreign language*

6. The Registrar shall accept for registration or record purposes any document expressed in a foreign language if a translation thereof, duly certified by a person accepted by the Registrar as a competent translator, is lodged therewith.

*Documents to disclose place and date of execution*

7. A document tendered for registration or record purposes shall disclose the place and date of execution thereof:

Provided that the Registrar may dispense with the requirements of this section if in his or her opinion the nature of the document makes it unnecessary to comply with such requirements.

*Documents to disclose identity of persons*

8. (1) Unless the Registrar in any particular case otherwise permits, a document shall specify the identity of any person mentioned therein established in accordance with the provisions of section 51 of these regulations.

(2) No assumed name or *alias* shall be added to any name in a document.

*Cross-references to be quoted*

9. If in any document a reference is made to a document filed in the Deeds Registry the number and date of registration of the latter document must be cited in such reference.

*Deeds required to be prepared by a conveyancer to be endorsed*

10. (1) Any document which is required by section 13 of the Act to be prepared by a conveyance shall bear a preparation certificate recording the name and address of the firm or partnership to which the conveyancer or notary public is attached and the conveyancer's signature to signify that the deed has been prepared by him or her.

(2) The conveyancer referred to in subsection (1) shall initial any alteration, addition or interlineations in any document prepared by him or her:

Provided that, if in the opinion of the Registrar an alteration or interlineations is not of a material nature it may be initialled by the conveyancer executing the document.

(3) If any document referred to in subsection (1) is written on more than one sheet the conveyancer preparing the document shall sign each sheet.

*Description of areas of land*

11. (1) The extent of any area of land described in a document shall be expressed in figures.

(2) A document which describes or mentions an area of land shall express the area, if the land—

- (a) is one hectare or more in extent, in hectares to four decimal places;
- (b) is less than one hectare in extent, in square metres.

(3) For the purpose of confirming the area referred to in subsection (2) in metric measure there shall be lodged with the document concerned—

- (a) the relevant diagram endorsed by the Surveyor-General; or
- (b) a certificate issued by the Surveyor-General:

Provided that, in the case of diagrams where the original area was expressed in Cape measure or English measure, the diagrams shall be endorsed by the Surveyor-General.

(4) In any document in which a servitude is described or defined the information shall be expressed in metric measure and, if so required by the Registrar, shall be supported by a certificate issued by the Surveyor-General.

*Documents referring to body corporate*

12. (1) Where —

- (a) a document by or in favour of—
  - (i) any company, association, society, institution or other corporate body; or
  - (ii) any trustees or other officers of a body referred to in subparagraph (i); or
- (b) a consent to the performance of any act on behalf of anybody or person referred to in paragraph (a);

is lodged in the Deeds Registry, a certified copy of or, with the consent of the Registrar, a relevant extract or resolution from the constitution

of the body concerned, shall be filed of record together with any other proof necessary to show that the transaction concerned is within the powers which may lawfully be exercised by the body concerned.

(2) In subsection (1)—

“constitution”, in relation to a body or person referred to in subsection (1)(a), includes any memorandum or articles of association, regulations or other such document establishing or setting out the powers or functions of that body or person.

*Documents conjoined with other documents*

13. If any document is to be dealt with in conjunction with a document which has been or is to be lodged by some other person—

- (a) a note to that effect shall be made on the lodging covers by the persons responsible for the lodging of the documents concerned;
- (b) if a note is not made in terms of paragraph (a) the document may, if it is in order, be dealt with independently of such other document.

PART II

PRESCRIBED FORMS

*Certificate of State title*

14. A certificate of state title referred to in section 17(2) of the Act shall be in form D.R.1.

*Deed of transfer*

15. A deed of transfer shall be in form D.R.2.

*Deed of partition transfer*

16. A deed of partition transfer referred to in subsection (1) of section 29 of the Act shall be in form D.R.3.

*Substituted title deeds*

17. (1) A certificate of registered title issued in terms of section 34, 35, 36, 38, 39 or 41 of the Act shall be in form D.R.4.

(2) A certificate of consolidated title issued in terms of section 40 of the Act shall be in form D.R.5.

(3) The notice to be published by the Registrar in terms of section 38(2) of the Act shall be in form D.R.6.

*Substitution of debtor*

18. The consent of the holder of a bond and the transferee referred to in section 51 of the Act shall be in form D.R.7.

*Use of old forms*

19. Notwithstanding the provisions of this Part, until directions are made in writing by the Registrar; the Registrar may accept or use any document referred to in this Part which is set out in the form prescribed in the repealed regulations.

PART III

COPIES OF DOCUMENTS

*Application for copy or replacement of document*

20. (1) Any person who requires—

- (a) a copy of any document filed in the Deeds Registry; or
- (b) the replacement of any document filed in the Deeds Registry because his or her copy of the document has been lost, destroyed, defaced or damaged;

shall make an application to the Registrar in writing, subject to provisions of subsections (2), (3) and (4) below.

(2) An application in terms of subsection (1) for a copy of any document—

- (a) shall indicate the reason why the copy is required; and
- (b) if the copy is required for judicial purposes, shall be signed by a legal practitioner or any other officer of the court.

(3) In the case of an application in terms of subsection (1) for the replacement of a document which has been defaced or damaged the document to be replaced shall be lodged with the application.

(4) In the case of an application in terms of subsection (1) for the replacement of a deed which has been lost or destroyed—

- (a) the application shall be signed by the person in whose name the land or interest concerned is registered, by his or her agent or by his or her legal representative under an acceptable form of authority acceptable to the Registrar bearing clear imprints of the grantor's thumb and index finger imposed adjacent to the grantor's signature; and
- (b) a solemn declaration by the applicant shall be lodged with the application, describing the deed and stating—
  - (i) that the deed has been lost or destroyed; and
  - (ii) that at the time of the loss or destruction the land or interest concerned was registered in the applicant's name or in the name of the person the applicant represents, as the case may be; and
  - (iii) that to the best of the applicant's knowledge at the time of its loss or destruction the deed was not pledged or ceded to any person or otherwise detained as security for a debt or otherwise; and
  - (iv) if it is alleged that the deed is lost, that a diligent search for the deed has been made; and
  - (v) that the applicant undertakes that if the deed is found he or she will transmit it forthwith to the Registrar; and
  - (vi) if possible the circumstances in which the deed was lost or destroyed; and
- (c) proof that the notice required by section 22 has been published by the lodging conveyancer supported by identification of applicant in terms of section 51;
- (d) the application shall be—
  - (i) signed before a notary public by the person in whose name the land or interest concerned is registered, provided, where the grantor suffers from physical disability that prohibits him or her from affixing his or her signature, the Registrar may exercise his or her discretion to waive such requirements; or

- (ii) signed by a legal practitioner appointed to represent such person under a power of attorney attested by a notary public, subject to the provisions of section 28; and
- (iii) accompanied by proof of identity of the person in whose name the land or interest concerned is registered, certified as a true copy of the original by the notary public; and
- (iv) accompanied by proof of the identity of such person's representative, certified as a true copy of the original by a commissioner of oaths.

*Registrar may call for evidence of loss or destruction of document*

21. If in the case of an application for the replacement of a document which is alleged to have been lost or destroyed the Registrar is of the opinion that further evidence is necessary to establish the loss or destruction, he or she may call for such evidence from the applicant or from any other person in whose custody the document may have been before the loss or destruction thereof.

*Publication of applications relating to deeds*

22. A person who wishes to apply in terms of section 20 for the replacement of a deed which has been lost or destroyed shall cause notice of his or her proposed application to be published in form D.R.8 in—

- (a) the *Gazette*; and
- (b) a newspaper circulating in the area in which the land concerned is situated;

inviting persons having any objection to, or wishing to make representations in connection with, the issue of the replacement deed to lodge their objections or representations in writing at the Deeds Registry within fourteen days of the date of publication of the notice.

*Issue of copies or replacements*

23. (1) Subject to the provisions of subsection (3), the Registrar shall issue a copy or replacement applied for in terms of section 20

if he or she is satisfied that there is no good reason to refuse to issue the copy or replacement, as the case may be.

(2) The Registrar shall ensure that every copy of a document which is required—

- (a) for information only, has the words “issued for information purposes only”; or
- (b) for judicial purposes, has the words “issued for judicial purposes only.”

(3) The Registrar shall not issue a replacement of any deed unless he or she is satisfied that—

- (a) notice of the application has been published in accordance with the requirements of section 22; and
- (b) a period of not less than thirty days has elapsed since the publication of the notices referred to in paragraph (a); and
- (c) due regard has been had to any representation lodged; and
- (d) no valid objection to the issue of the replacement has been lodged.

(4) The Registrar shall ensure that every copy of a deed which confers rights in land and is issued *in lieu* of the original shall be copied on securitised paper specified in section 3(1)(a), which copy shall be sealed and certified by the Registrar.

*Registrar may require replacement of deeds which are unserviceable*

24. If any deed is lodged for any purpose without an application being made in terms of section 20 for a replacement thereof and the Registrar is of the opinion that the deed is unserviceable for the purposes intended, he or she may refuse to accept the deed until such time as the owner or holder thereof has obtained a replacement in accordance with the provisions of this Part.

*Endorsement or destruction of document which has been replaced*

25. If any document for which a replacement has been issued under this Part or the corresponding provisions of the repealed regulations is delivered or transmitted to the Registrar in terms of section 82 of the Act the Registrar shall—

- (a) endorse thereon that it has become void; or
- (b) destroy it.

*Lost or destroyed certificate of registered title of undivided share*

26. (1) A person who wishes to obtain in terms of section 34(2) or (3) of the Act a certificate of registered title of an undivided share in a piece of land shall comply with the requirements of sections 20, 21 and 22.

(2) Where a person has obtained a certificate of registered title in accordance with the provisions of section 34(2) or (3) of the Act—

- (a) the Registrar shall endorse his or her records to the effect that a certificate has been issued in terms of section 34 of the Act in respect of the share of the applicant; and
- (b) if the deed has been lost and is subsequently found and produced to the Registrar, a similar endorsement shall be made on the deed so produced.

PART IV

ACTS DONE UNDER POWER OF ATTORNEY

*Filing of power of attorney*

27. Any person who wishes to perform in connection with the lodging or filing of a document and act on behalf of any other person shall file with the Registrar the original of the power of attorney under which he or she claims to act:

Provided that—

- (i) the Registrar may accept for filing a notarial copy of the original and shall return such original to the person concerned;

- (ii) if the Registrar has filed a notarial copy in terms of proviso (i) or the corresponding provisions of the repealed regulations he or she may at all times treat such notarial copy as unrevoked until he or she receives notice to the contrary.

*Dealings in immovable property*

28. (1) A general power of attorney shall not be accepted for the purpose of alienating or encumbering immovable property.

(2) Any power of attorney authorising the transfer or encumbrance or other dealing in immovable property shall—

- (a) clearly and sufficiently describe the property concerned; and
- (b) fully describe the grantor of the power of attorney by his or her name and identity number; and
- (c) be signed in ink by or bear the mark of the grantor;

Provided, where the grantor suffers from physical disability that prohibits him or her from affixing his or her imprints, the Registrar may exercise his or her discretion to waive such requirements; and

- (d) include an attestation clause signed by a notary public; and
- (e) have attached to it proof of the grantor's identification, as defined in section 51, certified as a true copy of the original by the notary public.

*Power of attorney on bond or deed*

29. If a power of attorney—

- (a) is written on a form of mortgage bond or deed of transfer; or
- (b) authorises the passing of a mortgage bond or transfer on a form annexed thereto; and
- (c) complies with the requirements contained in section 28(2);

such form shall be accepted for registration of a mortgage bond or deed of transfer.



*Marriages in community of property*

30. If a person married in community of property wishes to deal with any land or interest therein or any notarial bond registered in the name of his or her spouse—

- (a) such spouse shall sign and date the power of attorney authorising such dealing before a notary public; and
- (b) shall produce other satisfactory proof that the marriage still subsists.

PART V

DEEDS OF TRANSFER

*Partnerships*

31. (1) Any document by or in favour of a partnership shall show the full names, dates of birth and identification details of the partners in the partnership.

(2) If any property is registered in favour of a partnership the property may be transferred, mortgaged or otherwise dealt with in accordance with a power of attorney bearing the signatures of all the partners or the signature of a person appointed by the partners under resolution certified by a notary public as being a true extract from the minutes of the relevant meeting of the partnership.

(3) If in the case of property registered in favour of a partnership any partner wishes to transfer or cede his or her share in that property such transfer or cession shall not be registered unless the entire property and not merely the share of the partner is transferred or ceded.

(4) If during the continuance of a partnership any partner wishes to register any transaction affecting his or her share in any property registered in the name of the partnership the transactions shall not be registered until the share to which he or she is entitled has been transferred or ceded to him or her.

*Property of minors*

32. (1) Where it is sought to transfer or cede property to a person who is a minor the transfer or cession shall, subject to the provisions of section 28 of the Act, be registered in the name of the minor and

not in the name of any parent, guardian, tutor or curator, as the case may be.

(2) Immovable property or any interest in immovable property registered in the name of a minor shall not be alienated or encumbered unless the High Court or any judge thereof has authorised such alienation or encumbrance, as in section 91 of the Administration of Estates Act [*Chapter 6:01*]:

Provided any bond registered in favour of a minor who owns immovable property shall not be cancelled unless the consent of the Master of the High Court is first obtained in form E.D. 16, as in section 25 of the Estate Duty Act [*Chapter 23:03*].

*Land sold in execution*

33. Any transfer of land in pursuance of the execution of the judgment of a court may be passed on a certified copy of the last title deed of the land even though that copy has been issued “for judicial purposes only” if the officer carrying out the judgment certifies that he or she has not been able to recover the title deed held by the person against whom the judgment was given.

*Conveyance of two or more pieces of land in same deed*

34. If two or more pieces of land are conveyed by the same title deed—

- (a) each piece of land shall be described in accordance with the provisions of section 20 of the Act in a separate paragraph; and
- (b) each such paragraph shall be numbered.

*Transfer of undivided shares and sections in land*

35. (1) In any deed relating to an undivided share in a piece of land the share shall be expressed in one fraction in its lowest terms and, if it is a complicated case, the method of arriving at the result shall be described.

(2) Where two or more persons are registered as the holders of a deed of sectional title conferring right of occupation conferred in terms of section 27 of the Act and one of them wishes to alienate