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Application of Section 45bis, Act 47 of 1937

Land Registration in Rwanda

Electronic Land Registration: Options from a Legal Perspective

Overview of Conference Resolutions

DEPARTMENT OF LAND AFFAIRS
CHIEF REGISTRAR OF DEEDS

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Editorial

The editorial committee wishes all readers a belated prosperous and blessed 2006 and it is trusted that you and yours will enjoy health and Godspeed.

In terms of Chief Registrars Circular 16 of 2005, the year got off to a jump start with 54 new resolutions taken at the 2005 Conference of Registrars. These resolutions have a vast impact on the day-to-day practice of conveyancing and notarial practice and should be thoroughly perused. Should readers not agree with any of the resolutions taken, it would be appreciated if their views could be received for publication and for placement on the agenda for the 2006 Conference of Registrars. See also the discussion by George Tsotetsi on some of the Conference Resolutions on Page 39.

Mr Lenthiss du Pont has been appointed the new registrar of deeds for Mpumalanga, which office will be situated at Nelspruit. Congratulations Lenthiss and it is trusted that you will meet the challenge awaiting you.

Readers will note that our journal is also read internationally (see letters to the editor). Thank you Mr Simms for the accolades! Your appeal to readers is echoed.

The winner of the best contribution for the October 2005 issue goes to Ms Alexandré Lombaard for her excellent series of articles on the Subdivision of Common Property. A special accolade also to Ms Kilbourn for her splendid exposition on the statistics. The editorial committee also wishes to extend their sincere thanks to Mr Vosloo for his superb photos and Article on the Cape Town Deeds Registry. Thank you for your great article.

ALLEN WEST - EDITOR

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Who ultimately carries the responsibility for the correctness of facts in deeds and documents?

By: Allen West – Deeds Training, PRETORIA

Since the inception of section 15A of the Deeds Registries Act 47 of 1937 ("the Act") read in conjunction with regulation 44A of the Act, confusion or misconceptions have reigned as to who carries what responsibility, and to what extent does such responsibility extend for ensuring the correctness of facts contained in deeds and documents.

In terms of section 3(1)(b) of the Act, the Registrar of Deeds has a duty to examine all deeds and other documents lodged for execution or registration and to reject them if they don't conform with the laws, practices and procedures. However, in 1984 (see section 6 of the Deeds Registries Amendment Act 27 of 1982) section 15A was enacted, which placed certain responsibilities on the preparer of deeds and documents. The responsibilities assumed by the preparer are set out in regulation 44A of the Act. Unfortunately, this regulation is couched in such a manner that it is open to different interpretations, on which the Conference of Registrars has on numerous occasions had to make a ruling.

This article is not intended to provide guidance on the interpretation of the regulation, but rather to scrutinize the different interpretations given to the regulation and to urge the legislator, when reviewing this regulation, to clarify it so as to demystify the uncertainty.

The concern which immediately comes to mind is that of *"who will ultimately be held responsible, given the provisions of section 3(1)(b) and 15A, should a deed be registered and such act of registration leads to a court action from which a claim for damages emanates?"* It is submitted that the only responsibility which the preparer of a deed or document assumes is that which is clear and unambiguous in the provisions of regulation 44A of the Act.

Let us endeavour to analyze the provisions of regulation 44A of the Act and provide the different interpretations which might be in conflict with existing rulings or circulars issued by Deeds Registries or the office of the Chief Registrar of Deeds.

The introductory words of regulation 44A provide that the person signing the preparation certificate accepts, to *"the extent provided for in this regulation"*, responsibility for the correctness of the facts stated in the deeds and documents or which are relevant in connection with the registration or filing thereof, namely:

- **Identical copies**

  In those Deeds Registries where deeds and documents are still lodged in duplicate due to the office not being mechanized, i.e. on the micro-filming system, the preparer assumes responsibility that all copies of deeds or documents are identical at date of lodgement (regulation 44A(a)).

  This sub-regulation is clear and unambiguous, and should any fault be found in the contents of the duplicate original, the preparer will accept full responsibility. However, examiners still compare the copies and raise queries should the copies not be identical.

- **Correctness of Conditions**

  The preparer of a deed of transfer or certificate of title to land assumes responsibility that all the applicable conditions of title have been correctly carried forward from the title into the new deed of transfer. Similarly, such preparer also assumes responsibility that the applicable conditions endorsed against the title deed have been carried forward into the new deed of transfer. Lastly the preparer assumes responsibility that any proclaimed township conditions, for first time transfers from a township title, have been correctly incorporated in the new deed of transfer (see regulation 44A(b)).

  Holistically seen, the preparer takes full responsibility for the conditional clause of a deed of transfer, but alas this is not so in practice. The Registrar of Deeds, in terms of section 3(1)(b) of the Act, still checks the conditional clause of a deed of transfer for the following:

  - that any restrictive conditions have been complied with;

- that conditions which may have lapsed or complied with be removed from the conditional clause (see clause 3 of CRC 8 of 1983);
- that all the relevant township conditions, as contained in the proclamation of the township, have been carried forward;

- that conditions are correctly "plotted" and the necessary qualification of the conditions are correctly effected (see RCR 26 of 1987).

It is clear from the above that the responsibility of the preparer and the Registrar of Deeds overlap, and one wonders in whom the responsibility really vests.

It must be stressed that this duplication of responsibilities does, however, contribute to the secure registration system that South Africa has, but the question that must be asked is: *"When the paw-paw hits the fan who will ultimately be held liable for any damages which may emanate from a title which has a lacuna in its conditional clause."*

- **Correctness of facts**

The preparer of a deed of transfer, certificate of title conferring title to immovable property or mortgage bond assumes responsibility that the particulars for which the preparer of the power of attorney assumes responsibility, have been correctly carried forward from the special power of attorney into the deed of transfer, certificate of title or mortgage bond (regulation 44A(e)).

Again, seen holistically, a Registrar of Deeds need not **inter alia** examine the preamble and vesting clause of the deed of transfer, certificate of title or mortgage bond, as the preparer of the deed of transfer, certificate of title or bond has already assumed responsibility that it is identical to that contained in the power of attorney. The Registrar of Deeds should thus only examine the particulars contained in the power of attorney to determine if they conform with the practice and procedures.

Once again, this is not the case. Registrars of Deeds still check the aforesaid clauses in the deed of transfer and query any discrepancies that might **prima facie** be incorrect. As mentioned above, this does contribute to security of title, but who will ultimately assume the responsibility *"should the paw-paw hit the fan?"*

- **Correctness of names, identity numbers and status**

The preparer of a power of attorney, consent or application assumes responsibility for the correctness of the full names, identity number/date of birth and marital status of a natural person, and in the case of any other person or trust, that its name and registered number, if any, are correctly reflected in that deed or document (regulation 44A(d)(i)(aa)).

This responsibility goes without saying for parties in deeds and documents where such parties are not already recorded in the registers of the Deeds Registry. However, should the transferor, cedent, mortgagor, etc. be acting, the Registrar of Deeds will check whether the names, identity numbers and status correspond with the Deeds Registry records. Should they differ, proof will be required, and the registered deeds will either have to be amended in terms of section 4(1)(b) of the Act, or proof provided as to the change. Alternatively, the new deeds and document will need to be amended.

It is also abundantly clear from this sub-regulation that the preparer does not assume responsibility for the ***locus standi*** of the natural person. However, does the Registrar of Deeds assume such responsibility? If it is not evident from the deeds office records that the person acting does not have ***locus standi***, no query in this regard will be raised. Surely this responsibility should be placed solely on the shoulders of the preparer and regulation 44A suitably adapted. The Registrar of Deeds has no way of policing this other than by raising a question on each act of registration as to whether the acting party has ***locus standi***.

Similarly, the Registrar of Deeds at present assumes responsibility for the contractual capacity of parties, but should this not also be the responsibility of the conveyancer?

- Proof of appointment and powers to act

The preparer of a power of attorney, consent or application assumes responsibility in terms of regulation 44A(c) of the Act for the following:

- that the person acting as a principal or representative, excluding a principal in terms of a power of attorney, has been appointed in such

capacity (see CRC 8 of 1983 read with RCR 19 of 1994).

- that the person acting as representative is acting in accordance with the powers granted to him/her;

- that any security required has been furnished.

There are two schools of thought on the interpretation of this sub-regulation. Firstly, the regulation is interpreted such that the Registrar of Deeds does not assume liability for the appointment of any person acting in a representative capacity and further that such person has the full powers to deal with the property concerned. This has been confirmed in certain of the rulings taken by the Conference of Registrars, but it is not consistently applied.

The second school of thought interprets the sub-regulation such that the preparer merely assumes responsibility that the person is appointed in that capacity and is acting within the powers set out in the document evidencing such appointment. Should this be the correct interpretation of the sub-regulation, then it is evident that most, if not all, the conference resolutions taken on this matter were incorrectly decided and that the Registrar of Deeds will once again have to request all documentation to prove the powers of:

- trustees of insolvent estates;

- liquidators of companies and Close Corporations;

- representatives acting in terms of section 18(3) of the Administration of Estates Act 66 of 1965;

to mention but a few.

However, should the wider interpretation be given to this sub-regulation, as held by the first school of thought, then the provisions of section 42(1) and 42(2) of the Administration of Estates Act 66 of 1965 seem superfluous, as the conveyancer has already assumed such responsibility.

Should the more narrow interpretation be afforded this sub-regulation, then one wonders who will bear the brunt *"should the paw-paw hit the fan".*

- **Proof of signing documents in a representative capacity**

The preparer of a power of attorney, consent or application assumes responsibility that, except for persons appointed in terms of a power of attorney, the necessary authority has been obtained for the signing thereof in a representative capacity on behalf of a company, close corporation, church, association, society, trust or other body of persons or an institution whether created by statute or otherwise (see regulation 44A(d)(ii)(aa)).

The effect of this sub-regulation is that the Registrar of Deeds no longer has to determine whether the necessary resolution has been obtained for a person acting on behalf of the institutions as aforementioned. However, reference thereto must be provided in the preamble of the power of attorney, consent or application (see CRC 8 of 1983).

In terms of RCR 7 of 2005 it is still the responsibility of a Registrar of Deeds to check general powers of attorney. The preamble of a power of attorney, consent or application, where a company or Close Corporation is involved, must disclose whether the authorization is in terms of a resolution or power of attorney, without providing full particulars of the resolution.

Widely interpreted, one would immediately think that this sub-regulation accepts that the person acting in such representative capacity has **locus standi**, but Registrars of Deeds are of the opinion that it is still the responsibility of the Registrar to ascertain whether the representative is acting on behalf of the correct institution (see RCR 23 of 2005). How, unless informed thereof, this can be monitored and governed, is a question begging an answer. The question which can again be asked, **ad nauseum**, is that of *"who carries the responsibility?"*

- **Authorization of transaction**

The preparer of a power of attorney, consent and application, in terms of regulation 44A(d)(ii)(bb), assumes responsibility that the transaction, as disclosed in such power of attorney, consent or application, is authorized by and in accordance with the constitution, regulations, or founding statement or trust instrument of a trust, as the case may be, of any church, association, close corporation, society, trust or other body of persons, other than a

company, excluding a share block company, being a party to such document.

From this sub-regulation it is clear that the conveyancer must determine that the transaction is authorized. Should this not also include the responsibility to ascertain the ***locus standi*** of such organisation?

SUMMARY

From what has been said above, and the quoted Conference Resolutions, it is quite evident that the whole of regulation 44A must once again be reviewed to eradicate any uncertainty.

Your thoughts and comments will be appreciated.

New Registrar appointed in Botswana

Mr CN Nchunga, a former attorney and magistrate, has been appointed Registrar of Deeds for Botswana and is stationed in Gaborone.

His academic record and career history are as follows:

ACADEMIC TRAINING

- 1970-1976 Primary School Kavimba, *Obtained First Class*
- 1977-1979 Three-year Junior Certificate, Maun Secondary School, *Obtained Second Class*
- 1980 -1981 Cambridge School Leaving Certificate, Obtained First Class
- 1982 Tirelo Setshaba [National Service] Etsha 13 Village
- 1983 - 1985 LLB Part One University of Botswana
- 1985 - 1987 LLB Part Two Edinburgh University, Scotland
- 1987/88 LLB Part Three University of Botswana
- 2003/2004 LLM University of Cape Town
- May 2005 Short course Balanced Score Card JBG South Africa

CAREER HISTORY

- 1983 Senior Customs Assistant, Ministry of Finance, Customs Department
- 1988 - 1989 Magistrate Grade Two
- 1989 - 1993 Magistrate Grade One
- 1993 - 1996 Senior Magistrate
- 1996 - 1999 Principal State Counsel Two, Attorney General's Chambers Civil Division
- 1999 - 2001 Principal State Counsel ONE Attorney General's Chambers Civil Division
- 2005 Appointed Registrar of Deeds

The Department of Land Affairs congratulates Mr Nchunga on his appointment and we look forward to working closely with him and his staff.

Course on Sectional Titles in Botswana

By: Allen West – Deeds Training, Pretoria

The Sub-Directorate: Deeds Training presented a course on Sectional Title Law to 15 staff members of the deeds registries in Gaborone and Francistown during November and December 2005, in the Deeds Registry in Gaborone.

Botswana adopted its Sectional Titles Act in 1999 (see Act 7 of 1999). This Act is based on the South African Sectional Titles Act 95 of 1986, which facilitates the presentation of courses on the Act.

Although no sectional title registers have as yet been opened, the staff of the deeds registries are ready to handle them when required. Over and above the theoretical knowledge provided during the course, many of the staff members have also attended practical courses in the deeds registries of Pretoria and Johannesburg.

From a lecturing perspective, it is always inspiring to lecture to the officials of the deeds registries in Botswana, in view of their eagerness to learn, their discipline and diligence.

Deeds registration course: Level VII

By: Allen West – Deeds Training; PRETORIA

A functional course for senior officials of the various deeds registries was hosted by the Sub-Directorate: Deeds Training at Justice College from 17 October 2005 to 21 October 2005.

All the course attendants agreed that the course was of great importance and that the knowledge obtained during the seminar will be useful in practice. A warning to conveyancers – a breath of fresh air is sure to hit the offices!

Front row, left to right:
Allen West (Deputy Registrar: Deeds Training); Sydney Mekwe (Lecturer); Zandré Lombaard (Lecturer)
Second row, left to right:
OV Wade; PV Stephen; MM Malekele; J Olivier; HJ Dirkse van Schalkwyk
Third row, left to right:
G Kanavathy; JP Dreyer; G Ramkillawan; PEJ Freeman; D Govender; MD Baiphele
Fourth row, left to right:
LT du Pont; LJ Vosloo; MM Deetlefs; RW Petherbridge; CH Thiem; SB Mbatha

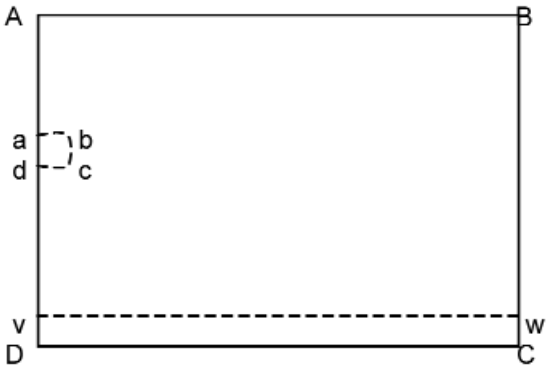
Qualification of servitudes

By Marie Grovè – Deeds Training, Pretoria

The qualification of servitudes and conditions on consolidation of properties must be done correctly from the outset because future subdivisions and subsequent consolidations of the already consolidated property become a nightmare if it is not initially simplified. Herewith an example to illustrate the above:

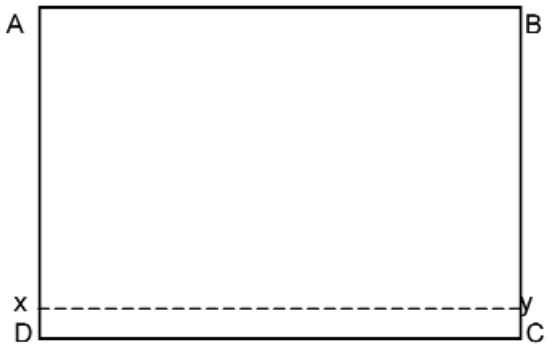
Erf 1 and 2 are subject to certain servitudes, which are described as follows on the separate diagrams of the erven:

The figure ABCD represents Erf 1, ……



Servitude notes:
1. The figure abcd represents a power station servitude 3 sq metres in extent, registered by K243/2000S
2. The line vw represents the northern boundary of a 2 metre servitude for municipal services, registered by K169/2004S

The figure ABCD represents Erf 2, ……..



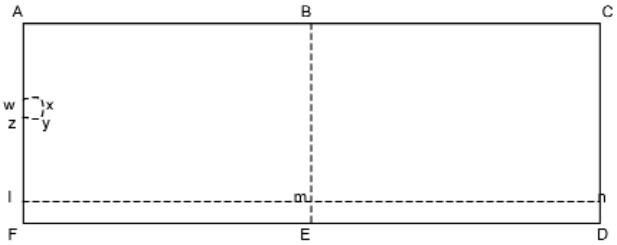
Servitude notes:
1. The line xy represents the northern boundary of a 2 metre servitude for municipal services, registered by K169/2004S

CONSOLIDATION:

The diagram of the consolidated Erf 1 and Erf 2 reads as follows:

1. The figure ABEF represents Erf 1, …
2. The figure BCDE represents Erf 2, …

The figure ACDF represents Erf 100, 742 sq m in extent



Servitude notes:
1. The figure wxyz represents a power station servitude 3 sq metres in extent, registered by K243/2000S
2. The line lmn represents the northern boundary of a 2 metre wide servitude for municipal services registered by K169/2004S

The conditions in the Certificate of Consolidated Title will, apart from other conditions, read as follows:

Erf 100, situated …….
In extent 742 (seven hundred and forty two) square metres
As indicated on consolidated diagram no. SG ….

A. Subject to the following conditions: (no qualification)
   1. Subject to a servitude for municipal purposes, 2 metres wide, of which the northern boundary of the servitude is indicated by the line lmn on diagram SG …. attached hereto, as will more fully appear from K169/2004S

B The former Erf 1 indicated by the figure ABEF on the consolidated diagram no SG…. is subject to the following condition:

Subject to a power station servitude, 3 sq metres in extent as indicated by figure wxyz on diagram SG .. (consolidation diagram).. in favour of ESKOM as will more fully appear from K243/2000S

IT MUST NOT BE COUCHED AS FOLLOWS AS THE SERVITUDE FOR MUNICIPAL PURPOSES IS REPEATED:

A The former Erf 1 indicated by the figure ABEF on the consolidated diagram no SG…. is subject to the following condition:

1. Subject to a power station servitude, 3 sq metres in extent as indicated by figure wxyz on diagram SG ..(consolidation diagram).. in favour of ESKOM as will more fully appear from K243/2000S.

2. Subject to a servitude for municipal purposes, 2 metres wide, of which the northern boundary of the servitude is indicated by the line lm on diagram SG …. attached hereto, as will more fully appear from K169/2004S

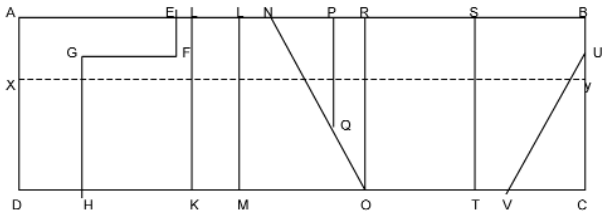
B The former Erf 2 indicated by the figure BCDE on the consolidated diagram no SG…. is subject to the following condition:

1. Subject to a servitude for municipal purposes, 2 metres wide, of which the northern boundary of the servitude is indicated by the line mn on diagram SG …. attached hereto, as will more fully appear from K169/2004S

The power station servitude is registered only in respect of the previous Erf 1. It will therefore be necessary to qualify only that condition in the Certificate of Consolidated Title.

From the diagrams of the individual erven it is clear that the servitude for municipal purposes is exactly the same servitude registered in respect of both erven, because it is registered by means of the same servitude deed, namely K169/2004S. As the entire consolidated property is subject the same servitude, qualification is not necessary and the servitude should not be qualified as it could only complicate qualification of conditions in future, as stated above. The less qualification used, the fewer problems could arise, and especially when more erven or portions of a farm, for example, are consolidated. In such a case the whole property is subject to the same condition and no further qualification is necessary.

The example below is similar to that of a Certificate of Consolidated Title that was lodged at the deeds registry some time ago in respect of which various portions of a farm were consolidated, as illustrated in the example below. Each portion was qualified separately, subject to the condition, which was exactly the same condition. The qualification of all those portions extended over 2 pages, which was unnecessary, as, at the end, the entire property was subject to exactly the same condition (see figure).



The servitude xy must be described in respect of the whole property, e.g. if the figure ABCD represented portion 20 of the consolidated farm, the condition must be set out as follows:

The property is subject to a 2 metre wide servitude for ….. purposes in favour of ….., of which the centre line is indicated by the line xy on consolidated diagram no SG … attached hereto.

The above practice is related to the office of the Pretoria Deeds Registry, but inputs from the other offices will be appreciated. - Editor

The application of Section 45(bis) Act 47 of 1937 in the Deeds Registries

By: Dudley Lee – Deeds Registry, CAPE TOWN

The application of section 45(***bis***)(1A) of Act 47 of 1937 in practice appears to be problematic and requires further consideration. The current practice in deeds registries in respect of the section is to insist on endorsing the title deed of property which accrues to both spouses who were formerly married in community of property and who either divorced (section 45bis(1A)(a)) or who were given an order or an order and authorization in terms of section 20 or section 21(1) of the Matrimonial Property Act of 1984 (section 45bis(1A)(b)). This "award" as stated in the section is normally on the basis that each spouse/former spouse will retain his or her half share in the property.

It is the view of deeds registries, on the basis of the decision in ***Ex parte Menzies et Uxor*** 1993 (3) SA 799 (C), that the endorsing of a deed in terms of section 45***bis***(1A) of the Deeds Registries Act 47 of 1937 is not a transfer but merely a factual endorsement indicating that the "tied" joint ownership of the two persons has terminated and that they may deal with their separate shares independently. Also, that section 3(1)(v) of the Deeds Registries Act 47 of 1937 could just as well have been applied. This is on all fours with the judge's arguments in the **Menzies** case. The judge states on page 822 "…(a) because section 45***bis***(1A) is an enabling provision intended to allow spouses to obtain an endorsement without an order of court … (c) because the provision is essentially a procedural one …".

It is interesting to note that the reason for the very interesting and, in my view, significant judgement from a conveyancing/deeds registration perspective, was the refusal of the acting Registrar to endorse titles registered in the name of the husband alone, in terms of section 3(1)(v) of the Deeds Registries Act 47 of 1937. The acting Registrar was of the opinion that a formal transfer would be required in the circumstances, which were as follows: namely that the two spouses applied for an order and authority to register an antenuptial contract, in terms of section 21(1) of Act 88 of 1984. They also asked the court for an order directing the Registrar to endorse the title deeds of their properties in terms of section 3(1)(v) of the Deeds Registries Act 47 of 1937, as in their opinion (no doubt their legal counsel's advice) no transfer of property would be required, as they intended to retain their one half shares each. The Registrar's report stated: "From a registration point of view, I am unable to give effect to paragraph (h) of the notice of motion as far as erf ….. (referring to properties registered in the name of the husband alone) are concerned. The second applicant, (i.e. the wife) is not a registered owner of the said properties and her share in the properties will have to be transferred to her by means of a formal deed of transfer. In this regard, please refer to sections 16 and 45**bis** of the Deeds Registries Act 47 of 1937".

It is also of interest to note that in the Cape Town Deeds Registry it is practice that where a title is registered in the name of the husband alone (as per section 17(1) of the Deeds Registries Act 47 of 1937 at that time), such title is endorsed with what is still known as the so-called "bastard section 45". This occurs when only the share in land belonging to a deceased husband, the registered owner, is transferred to his heirs. The alternative is to qualify the transfer endorsement on the title (and this is done in terms of section 3(1)(v)) that the remaining half share belongs to the surviving spouse and that she may freely deal with such half share. The Registrar's report would seem to be in direct conflict with this practice, which quite clearly took cognizance of the fact that the wife of the "registered owner", despite her name not being mentioned in the title deed, was vested with the ***dominium*** in one half share in the property.

The Deeds Registration Law Manual states in Chapter 4 at 2.8.2(iv) on page 29 that ***inter alia*** a rates clearance and transfer duty receipt must be lodged with an application to endorse a title in terms of section 45**bis**(1A) of the Deeds Registries Act 47 of 1937. This would appear to be incorrect if the view is correct that an endorsement, in terms of section 45**bis**(1A) of the Deeds Registries Act 47 of 1937, is not a transfer of land or a real right. The conference resolution on which the requirements for the lodging of a rates clearance and a transfer duty receipt are based, refers specifically to section 45(1) and 45**bis** of the Deeds Registries Act 47 of 1937 and not to section 45**bis**(1A) of the Deeds Registries Act 47 of 1937. However, that section being part of section 45**bis** of the Deeds Registries Act 47 of 1937, one must assume that it was the intention to include section 45**bis**(1A) of the Deeds Registries Act 47 of 1937 in the decision. The Cape

Town Deeds Office is in agreement with the opinion that an endorsement of a title in terms of section 45**bis**(1A) of the Deeds Registries Act 47 of 1937 is not a transfer, and the office calls for neither a rates clearance certificate nor for a transfer duty receipt in such cases. It is suggested that the deeds manual be amended in this regard.

In cases where the spouses each retain their half share in property owned by them upon dissolution of the community of property between them, there is no problem of endorsing the title deed of such property in terms of section 45**bis**(1A) of the Deeds Registries Act 47 of 1937 and everything fits neatly into the box created in the ***Menzies*** case.

One factor which can affect the situation severely is, however, not factored into this neat little sum. It must be clearly understood that nothing prevents spouses from agreeing, either upon divorce, or when requesting the court for an order under section 20 of Act 88 of 1984, or an order and authorization under section 21(1) of Act 88 of 1984, that one spouse will receive a three quarter share in a property and that the other spouse will receive one quarter, or any other computation of shares they may agree upon. Note that the facts still fall completely within the ambit of section 45**bis**(1A) of Act 47 of 1937.

In the case of divorce the judge also refers to the Divorce Act 70 of 1979 on page 815 at G and states: "It is open to the divorcing spouses … to arrive at a settlement in terms of which they could, for example, continue as co-owners of particular assets …" The Deeds Registration Law Manual also, quite correctly, states in Chapter 4 at 2.8.2(ii) on page ……."In the case of (a) ***supra*** (being reference to section 45**bis**(1A)(a)) the court order and settlement agreement must be lodged".

If spouses then agree not to retain equal shares, transfer duty implications must be taken into account, as one spouse is now acquiring a share of the other spouse's share. The property therefore still accrues to both spouses in undivided shares as envisaged in section 45**bis**(1A)(a), but it can no longer be argued that this is now a mere factual endorsement. Is the endorsement of the title in terms of section 45**bis**(1A) now suddenly a transfer by endorsement?

Another school of thought is that it was the intention of the legislator that the section only refer to, and be applicable to, the half share that each spouse owned as a result of the marriage in community of property, and that the "respective shares" referred to at the end of the section refers only to such half shares. With respect, this does not seem correct. This argument presumes a lack of knowledge on the part of the legislator and it must be accepted that the legislator was quite aware of all the possibilities when drafting the section. It may also amount to reading things into the section. The "respective shares" can only be the share that accrues to each spouse as envisaged in section 45**bis**(1A)(a) and must include shares other than half shares as well.

There can be no doubt that, should spouses agree to retaining shares other than a half share each, section 16 of the Deeds Registries Act 47 of 1937 must apply. In other words a transfer of property must take place. It is a fact that half of the dominium vests in each spouse who is party to a marriage in community of property.

A "tied" joint ownership exists where the property belongs to two spouses married in community of property, such as also exists in the case of partnerships and associations, for example, and this is dissolved when the community of property is dissolved. This happens upon the death of one or both of the spouses, divorce, an order of division or a change in matrimonial property system in terms of section 21 of Act 88 of 1984. The judge in the ***Menzies*** case says on page 815 at H: "It is my view that what dissolves is not the joint ownership or co-ownership of the spouses, but rather the "tie" restricting that ownership. There is simply a direct change from "tied" co-ownership to free co-ownership by the spouses in all the assets in the selfsame equal shares. These shares remain undivided but now become divisible at the instance of either spouse …" The question as regards spouses retaining shares other than half shares was not dealt with specifically in the ***Menzies*** case. In my opinion the statement above ("… there is simply a direct change … to free co-ownership in the selfsame equal shares …) must be seen in the light of what Hahlo says in The South African Law of Husband and Wife, 5th edition, and which is also quoted by the judge in the ***Menzies*** case on page 815: "… each spouse retains, subject to an order of forfeiture of benefits, his or her half share until division is effected". However, the wording of section 45**bis**(1A) of the Deeds Registries Act 47 of 1937 as it stands does not exclude the case where spouses agree to retain shares other than half shares.

Section 45**bis**(1A) of the Deeds Registries Act 47 of 1937 gives the Registrar the discretion to refuse such an application ("…may, on written application …" endorse the title). The Court stated clearly in the ***Menzies*** case that section 45**bis**(1A) of the Deeds

Registries Act 47 of 1937 is an enabling provision and of a procedural nature only. Also, the need in such a case is different. Where each spouse retains a half share in the property, an endorsement in terms of section 45**bis**(1A) of the Deeds Registries Act 47 of 1937 serves to give notice to the world that the "tied" co-ownership of the two spouses as set out in the title deed has been dissolved and therefore serves only to get the title to the land to reflect the correct legal position of the two owners vis-à-vis each other in that regard. Where spouses, however, agree to retain different shares in land, endorsement of the title in terms of section 45**bis**(1A) of the Deeds Registries Act 47 of 1937 will not amount to the mere noting on the title deed of the correct legal position as regards ownership in the property vis-à-vis the two spouses or former spouses, who are reflected in the deed as being "tied" co-owners, but will involve the transfer of a fraction of the share of one spouse to the other.

Should the Registrar refuse to allow endorsement of the title in terms of section 45**bis**(1A) of the Deeds Registries Act 47 of 1937 in a case where spouses agree to retain shares other than half shares upon divorce or upon obtaining an order under section 20 of Act 88 of 1984 or an order and authorization under section 21(1) of Act 88 of 1984? Will a member of the public be able to insist on the endorsement of his/her title deed in terms of section 45**bis**(1A) of the Deeds Registries Act 47 of 1937? The wording of the section as it stands does not exclude an endorsement in terms of section 45**bis**(1A) of the Deeds Registries Act 47 of 1937 in the case where spouses agree to retain shares other than half shares as set out above, but in my opinion the Registrar cannot entertain such an application and must insist on a formal transfer of the share in the land.

Readers' comments on the above will be appreciated - Editor

Lengthy or complicated conditions

By: Allen West – Deeds Training, PRETORIA

Deeds controllers spend valuable time and energy endorsing deeds where the description of the servitude is lengthy or complicated. Few deeds controllers and practitioners are aware that regulation 62 of the Act provides that the Registrar of Deeds is permitted to request the conveyancer executing the deed of transfer to lodge an extract of the servitude, certified by the conveyancer, for annexure by the Registrar to the deeds requiring endorsement.

The above practice will obviously save deeds controllers time and energy and will also contribute to the neatness of the deed. Also, where a condition is lengthy or complicated, the transcription thereof does not always tell the whole story or gives a skewed impression of the condition. However, a word of warning to deeds controllers: Don't exploit this regulation by requesting annexures of servitudes or conditions which are capable of being endorsed without much effort.

Where annexures are lodged, the following procedure should be followed:

- Deeds controller endorses the deed as follows:

  "The within mentioned property is subject to a servitude in favour of …… (describe the dominant tenement) which terms of the servitude are set out in Annexure A attached to this deed.

  As will more fully appear from K……."

- The annexure will be attached to the deed of transfer as a separate page certified by the conveyancer and signed and dated by the Registrar on execution.

The above practice should contribute to neater deeds and a lighter work load.

Course for third-year students in the National Diploma in Deeds Registration Law

By: A S West – Deeds Training, PRETORIA

The Sub-Directorate: Deeds Training hosted a course for third-year students enrolled for the National Diploma in Deeds Registration Law at Justice College from 22 August 2005 to 31 August 2005.

The course was attended by 12 students from the deeds registries of Cape Town, Bloemfontein, Vryburg, Pretoria and Botswana.

Lectures were presented by lecturers of Unisa and Deeds Training.

During the course closure, the class representative, Motudu Malatsi, thanked the lecturers for their hard work and dedication and wished his fellow students Godspeed with their studies.

Given Gabara was presented with the prize for the student who excelled in the test series.

Noting a caveat applicable to an unregistered land parcel in a deeds registry's records

By: Gert Hattingh – Office of th Chief Registrar of Deeds

Problem Statement:
The Registrar of Deeds has been served with a caveat by the Surveyor-General stating that:

> *"on registration of the transfer of Portion 27 (of 24) of Erf 371, a sewer and drain servitude 2.50 metres and drain servitude 1.50 metres must be created."*

The Surveyor-General has approved diagrams for Portion 24 of Erf 371 and Portion 27 (of 24) of Erf 371, but neither of these land parcels has yet been registered in the Deeds Registry.

Background facts:
The remaining extent of Erf 371 no longer exists. It has been consolidated with Portion 21 of Erf 337 to form Erf 3381.

The remainder of Erf 3381 was, in turn, consolidated with Portion 6 of Erf 3381 to form Portion 7 of Erf 3381.

Question:
How and where should the caveat be noted on the Deeds Registration System database?

Answer:
The very nature of the caveat, i.e. that a servitude must be registered upon subdivision of a piece of land, implies that the object of the caveat, Portion 27 (of 24) of Erf 371, is not yet registered in the Deeds Registry. Upon investigation in the Deeds Registry's records, this was indeed found to be the case.

The next logical step would then have been to note the caveat against the immediate "parent" property, i.e. Portion 24 of Erf 371. However, this was not possible as it was found that this property was also not registered.

Again, the logical step would be to note the caveat against the parent of Portion 24, i.e. Erf 371. However, (and this is where the problem starts) Erf 371 no longer exists, Deeds Registry records show it had previously been consolidated.

At this point, one may ask the question: If Erf 371 no longer exists, how can it be that an (apparent) direct subdivision of that Erf (i.e. Portion 24 of Erf 371) can still come into being? This would be tantamount to saying that a "grand-parent" (Erf 371) gave birth to a "child" (Portion 24) and even produced a "grand-child" (Portion 27), after death. This scenario is as impossible in registration terms as it is in real life.

What is an indisputable fact, however, is that both Portions 24 and 27 owe their existence to Erf 371. Somewhere along the line, they "descended" from Erf 371, if not directly, then by virtue of some other intermediate registrations.

We therefore have to look elsewhere for the solution. There are basically three options remaining. These are:

Portion 24 of 371 may be a consolidation of two or more other Portions of Erf 371

Example:
Portion 22 of Erf 371 and Portion 23 of Erf 371 (deducted from Erf 371 while it was still "alive"), may still have to be consolidated to form Portion 24 of Erf 371. While a consolidated diagram for Portion 24 may already be approved, the CCT is not yet registered; or

Portion 24 may be a subdivision of an existing subdivision of Erf 371.

Example:
Portion 24 may be an unregistered Portion of an existing Portion (let's say Portion 23) of Erf 371, i.e. "Portion 24 (of Portion 23) of Erf 371". That means that the description of Portion 27 (a subdivision of Portion 24) would, in accordance with the Surveyor-General's convention for property descriptions, only include one previous level, i.e. Portion 24.

Portion 27 would therefore be described as "Portion 27 (of 24) of Erf 371", without any reference to the "intermediate parent", i.e. Portion 23; or

Portion 24 **should** have been deducted from the remainder of Erf 371 before it (remainder of Erf 371) was consolidated, but this was overlooked by the Registrar of Deeds. This is a fundamental error in registration which may require an Order of Court to rectify.

Conclusion:
As far as the noting of the caveat is concerned, we have established the following beyond doubt:

The caveat **cannot** be recorded against the remainder of Portion 27 (of 24) of Erf 371, or against Portion 24 of Erf 371, or against the remainder of Erf 371. None of these properties exists and we cannot note a caveat against a non-existent land parcel.

The only solution is to interrogate the Surveyor-General's records in order to positively establish the "parentage" of Portion 27. This information cannot be assumed or obtained from the Deeds Registry's records.

Once the "family tree" of Portion 27 (of 24) of Erf 371 has been established, the lineage must be traced **upwards** (back) and the caveat must be noted against the first registered property or properties in that line. If, as suggested above, a consolidation of properties has yet to take place, the caveat must be noted against all components of such consolidation.

The noting of the caveat, even against the correctly **registered** property(ies) at this point, will serve no purpose if it is not correctly brought forward during subsequent dealings with those properties. Deeds Registry examiners must interrogate and note the purpose of each and every caveat they come across, understand the reason for it and anticipate the consequences if it is not dealt with or taken forward correctly.

The deliberations and conclusions above are based on one of the fundamental principles of a Deeds Registry's land register, namely that it should reflect only "registered" properties. Deeds Registry staff often succumb to the temptation to "create" a "dummy property" for the purposes of noting a caveat against a land parcel which does not yet exist. This practice should be condemned in the strongest possible terms. By harbouring fictitious properties we are not only diminishing the integrity of our registers, we are also misleading our clients.

Change of name of trusts

By: A S West – Deeds Training, PRETORIA

Unlike the Companies Act, 61 of 1973, the Trust Property Control Act, 57 of 1988, does not provide for the change of name of a trust. Section 93 of the Deeds Registries Act, 47 of 1937, however, does provide the mechanism to record the change of name of a person or partnership. In terms of section 2 of the Deeds Registries Amendment Act, 9 of 2003, a definition of "person" was included in the Deeds Registries Act, defining a trust as a person. In view of this definition, the Conference of Registrars in 2004 ruled that the provisions of section 93 of the Deeds Registries Act can be invoked to record the change of name of a trust (see RCR 13 of 2004). However, the change of name will only be allowed where proof from the Master of the High Court is provided as to the new name of the trust as well as the trust's previous name. The mere lodgement of the new letters of authorization, issued in terms of section 6 of the Trust Property Control Act, will not suffice for recording the change of name.

Except for the Conference resolution, it is still maintained that there is no enabling legislation sanctioning the change of name of a trust. It is submitted that the Trust Property Control Act should be amended to cater for this occurrence.

Readers' opinions on the above will be appreciated.

New Registrar for Mpuamalanga

By: A S West – Deeds Training, PRETORIA

Mr Lenthiss du Pont has been appointed as Registrar of Deeds for the Nelspruit office. The office is not yet functioning, and Mr du Pont will thus be stationed in Pretoria to handle logistical matters until it is opened.

This article does not do justice to the appointment of Mr du Pont or the new office, but will be followed up by a comprehensive article in the next issue.

Letter to the Editor

By: A S Simms – Birmingham, UNITED KINGDOM

I am a British citizen and recently had the pleasure of travelling to South Africa on a well deserved break from my professional duties. An acquaintance gave me a copy of the previous edition of the SADJ, since conveyancing forms part of my professional duties and interests. Once I read the one edition, I simply had to peruse all previous issues.

Congratulations on a brilliant concept. The journal is well planned and has the potential to grow into a pillar for its readers. Only a few issues old and already the SADJ has grown strong and popular among its readers from what I could tell during my stay.

I do have a concern however, if you will permit me. There seems to be a lack in the variety of contributors. What exactly the nature of the internal arrangements for the publication is, I am obviously unfamiliar with. Pardon me if I am stepping on toes, but I found it odd that the editorial committee consists of quite a number of people, yet only a few members seem to contribute articles. I suppose these silent members are involved with duties behind the stage curtains?

It would be lovely to see contributions from the private sector! Like the UK, South Africa is a rather small country. For this reason it would be marvellous if all and sundry from both the public and private sector involved with conveyancing and registration matters would combine and share their expertise. The SADJ potentially enables us to exponentially develop and support the shared intellectual cauldron in which we fuse ingredients for a scrumptious soup of intellectual and practical excellence.

South Africans have fought a bitter battle to attain democracy. It seems a waste that a pioneering mouthpiece like the SADJ exists, yet so few people seem to actively participate in it.

As an outsider I urgently appeal to everyone reading this journal to ask yourself: how can you pro-actively contribute to the further development and support of this unique publication? The SADJ is a vibrant testament of the long way the public service, especially the deeds registry, has come in transforming from an alleged inaccessible maze of bureaucracy into a professional service provider, affording all stakeholders a medium to air their views, ideas and concerns without the risk of being reprimanded for daring to have an own opinion! Brilliant! Do not force this bright, talented new kid on the block to become yet another stray child, left and forgotten in a cold indifferent world!

May the editor and his team continue their effort and may their diligence, loyalty and dedication ensure a long and prosperous life for the SADJ. I am convinced that the conveyancing sphere in South Africa will sorely miss the journal, if it ever had to disappear.

Authentication of documents:

Rule 63 vs the Hague “Apostille” Convention

By: Alexandré Lombaard – Deeds Training, Pretoria

Modern technology brought the world to the individual – spacious enough to accommodate numerous countries each with its own legislation governing millions of souls dwelling on earth, yet concise enough to fit into 17 inches on a monitor.

With modern means of transportation, boundaries have been shrunk; yesterday's world has become today's shopping mall; concepts such as travel, time and distance have been transformed. The charm of adventure has been redesigned, materialising in the reality of an early breakfast in Cape Town (South Africa) followed by shopping in London (England) and a late business dinner in Paris (France), celebrating, and signing the documents for the sale of a multimillion rand property in Sandton (South Africa).

The dramatic increase in documentation signed in countries other than South Africa silently testifies to the trend of globalisation and people unafraid of leaving their homeland for greener pastures. From a conveyancing and registration perspective, documents signed abroad to be used for acts of registration in South Africa quite often cause confusion and frustration for conveyancers and deeds examiners alike.

The traditional common law maxim acta probant sese ipsa (documents prove themselves) applies to the South African legal system. Furthermore, legislation prescribes the formalities for the legally valid execution (signing) and attestation (witnessing) of documentation when signed in South Africa. However, it stands to reason that the said maxim cannot be applied in respect of a document which has been executed abroad for use in South Africa, without grossly and perhaps even unfairly burdening the person bearing the responsibility for judging the authenticity of the document merely on sight value. In order to circumvent this problem the High Court Act 59 of 1959 prescribes in Rule 63 of the High Court Rules of Court (hereafter referred to as r63) the formalities to be complied with regarding documents which have been signed outside of South Africa.

Like South Africa, other countries also have legal systems prescribing formalities which must be complied with regarding such documents. It is to be anticipated that the inherent diversity of different legal systems has resulted in a complicated chain of authentication procedures, constituting it its entirety the legalisation of foreign documents (foreign documents to be interpreted as documents signed outside the borders of a country for use within such country). By means of The Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents (also known as “The *Apostille* Convention”, but hereafter referred to as the Convention), a basic simplification of the rigorous series of formalities was brought about.

The Convention reduced the formalities of legalisation to the simple delivery of a certificate in a prescribed form, called "*Apostille*" (French), by the authorities of the state where the document originates. Article 2 of the Convention provides that, for the purposes of the Convention, legalisation means only the formality by which the diplomatic or consular agents of the country in which the document has to be produced, certify:

- the authenticity of the signature, and
- the capacity in which the person signing the document has acted, and
- where appropriate, the identity of the seal or stamp which it bears.

The only formality that may be required in order to certify the authenticity of the signature, the capacity in which the person signing the document has acted and, where appropriate, the identity of the seal or stamp which it bears, is the addition of the *apostille* (certificate) described in article 4, issued by the competent authority of the state from which the document emanates. Accordingly, the *apostille* does not relate to the content of the underlying document itself.

The Convention was concluded on 5 October 1961 and came into force on 24 January 1965. The date of the official accession of South Africa as a member state of the Convention, however, is 3 August 1994 and its membership came into force on 30 April 1995 as publicly notified by Department of Justice Notice 773/1995 published in Government Gazette 16609/18-8-1995.

With both the procedures / formalities as prescribed respectively by the r63 and the Convention, the practical question of which route is to be followed for authenticating foreign documents has all the potential of a headache evolving into a migraine – for those in the private sector involved with conveyancing as well as the officials involved with the registration of deeds. To ensure a lasting migraine, practical experience shown that strict compliance with either of the procedures is rather the exception than the rule.

Nine deeds registries and no uniform practice in this regard surely can only contribute to the uncertainty. Attempting to curb the ever present predicament in which conveyancers and deeds examiners find themselves, registrars of deeds have been pondering the matter from as long ago as 1954. In 1954 registrars of deeds deemed the issue of acceptable ways of authenticating documents problematic enough to be debated at the Registrars' Conference.

In 1979 the matter was again presented for discussion and a resolution. And just to prove how contentious the issue is, it was yet again discussed at the Registrars' Conference of 2005, resulting in the latest Registrars' Conference Resolution on this matter, RCR 6/2005.

The Conference was approached with a scenario in which a power of attorney executed in a foreign country by the grantor and attested by two witnesses in the presence of a notary practising in that foreign country, did not bear the certificate specified in r63(2)(d). The notary merely attested his/her signature and seal of office to the power of attorney. The question was raised whether this power of attorney should be accepted by the registrar of deeds for registration purposes. The Conference resolved that the registrar of deeds has in terms of r63(4) the discretion to accept the authentication.

It is submitted that the resolution could hardly have been phrased differently. Rule 63(4) is clear in affording the registrar of deeds such discretionary powers. The problem is that the resolution does not exactly contribute to eradicating the practical problems that conveyancers are faced with when documents lodged are rejected based upon non-compliance with the formalities of authentication.
In the period May to July 2004, the Office of the Chief Registrar of Deeds was approached with a similar scenario. According to the written documentation on the matter, a registrar of deeds allegedly declined acceptance of a power of attorney that did not strictly meet the requirements prescribed in r63(2)(a) to (f). The conveyancer concerned consequently resorted to the Chief Registrar of Deeds for a decision as to the applicability of r63(4). The power of attorney was signed in Germany and the signatories were identified by a notary public. It was therefore claimed that the notary public had duly authenticated the document – and if not, then still surely the registrar could exercise the discretion afforded in r63(4) in such a way as to accept the power of attorney. The Office of the Chief Registrar of Deeds responded that:

> … It must be pointed out that refusing to accept documents is part of exercising the said discretion and cannot be equated to refusal to exercise the discretion …

Furthermore the conveyancer argued that:

> … certificates issued by notaries will be accepted without query by our courts and should therefore also be accepted by officers in charge of public offices.

The response by the Office of the Chief Registrar of Deeds referred to the provision of r63(2)(e) with the viewpoint that the said provision "… limits the authentication to notaries of the countries mentioned therein."

From the above scenarios the following ought to be eminent:

- A registrar of deeds undeniably has the discretionary power to accept or decline a document that had to be authenticated, but in fact does not meet the formalities as prescribed.
- The said discretionary power is to be exercised autonomously by each individual registrar of deeds.
- Refusal to accept documents is part of exercising the said discretion and cannot be equated to refusal to exercise the discretion.
- Although the office of notary public is recognised as of special nature and held in the highest esteem, authentication of documents by notaries practising outside of South Africa may only be accepted as provided for in r63(2)(e), i.e. it applies only to notaries in the countries as specified in r63(2)(e).

Therefore, conveyancers (and deeds examiners) are urged to acquaint themselves with the exact procedure and formalities to be followed with regard to the authentication of foreign documents.

In order to strictly comply with the prescribed formalities, it is advised that the following be borne in mind:

- **Without any further authentication, a notary public may authenticate documents executed in the following countries only:**
  - Botswana

- The United Kingdom of Great Britain and Northern Ireland
- Lesotho
- Swaziland
- Zimbabwe

In this instance the signatories should execute the document; no attestation by witnesses is required (RCR 16/2003); and a notary public may authenticate the document by identifying the signatories, and affixing his/her signature and seal of office to the document. No further authentication is needed for such documents. The last paragraph of Chief Registrar's Circular CRC 8/1978, dated 13 December 1978, unequivocally confirms this:
The certificate referred to in paragraph (d) of rule 63(2) does not, therefore, apply to a document authenticated by a notary public in the countries named in paragraph 63(2)(e).

- If a document has been executed in **any other country than the above-listed, either** the procedure prescribed in **r63** may be followed, or the formalities prescribed by the **Convention**.

- The **applicability** of the **Convention route**, however, is **limited** in two ways, namely:
  - **Both countries must be members of the Convention.** Therefore, the country in which the document has been signed must also be a Convention member state. Since states may still be afforded membership, and membership may be terminated, the inclusion of a list of member states is deemed inappropriate (it could be misleading) and rather impracticable. However, an updated list of member states may be obtained from the official website of The Hague Convention: http://www.hcch.net. It is advised that, whenever confronted with a foreign document, the list available on the website is accessed for purposes of determining whether the country concerned is (still) a member state, rather than trying to memorise the list of member states or keeping such list filed as hard copy.

  - The second paragraph of article 3 of the Convention provides that the formalities prescribed by the Convention **cannot be required when either the laws, regulations, or practice in force in the state where the document is produced or an agreement between two or more Contracting States have abolished or simplified it, or exempt the document itself from legalisation (authentication).** In such instance the procedure of r63 must be followed.

As practical elucidation of the said restrictions, the following examples are used:

1. A power of attorney was executed in Gaborone, Botswana, by the signatories and attested by a notary public who affixed his/her signature and seal of office to the document, duly identifying the signatories. If the Convention route had to be followed, further authentication in respect of the notary public's signature and capacity would still be required. However, in terms of r63(2)(e), no such further authentication is required. Therefore, the Convention route may not be followed and the power of attorney must be deemed as duly authenticated.

2. A power of attorney was executed in New York, USA, by the signatories and attested by a notary public who affixed his/her signature and seal of office to the document, duly identifying the signatories. R63(2)(e) does not apply, since the United States of America is not one of the countries/states listed in said paragraph. Therefore, further authentication is still required in order to render the power of attorney as duly authenticated for use in South Africa. In order to determine whether the r63-route must be followed, or whether the Convention route may be followed, it must be determined whether the United States of America is a member state of the Convention. If not, the Convention route may not be followed and r63 must be applied.

- **Authentication in terms of r63** (other than specified in r63(2)(e)) entails the following:
  - The document must be signed by the signatories;

  - No attestation by witnesses is required (RCR 16/2003);

  - Authentication of the document by means of a certificate attached to the document, which certificate must be issued and signed by, and bear the seal of office of, any of the following:

    – The head of the South African diplomatic or consular mission; or

    – a person in the administrative or professional division of the public service serving in a South African diplomatic, consular or trade office abroad; or

    – any Government authority of such country charged with the authentication of documents under the law of such country; or

– the consul-general, consul, vice-consul or consular agent of the United Kingdom.

- **Authentication in terms of the Convention** entails the following:
  - The document (including notarial deeds / documents attested by a notary public – as per article 1 of the Convention) must be signed by the signatories;

  - No attestation by witnesses is required (RCR 16/2003);

  - Authentication of the document by means of an *apostille* appearing on, or attached to, the document, which *apostille*:
    – must comply with the model annexed to the Convention (as prescribed by articles 4 and 5 of the Convention), but

    – may be drawn up in the official language of the authority which issues it;

    – bear the title "*Apostille* (convention de Le Haye du 5 Octobre 1961)" in the French language;

CERTIFICATE OF AUTHENTICATION

I, the undersigned, _____

of the Department of Foreign Affairs of the Republic of South Africa, do hereby certify that the signature affixed to the annexed document marked " V" is that of

who at the time of signing the annexed document was

of the Republic of South Africa, and that to all Acts, Instruments, Documents and Writings subscribed by him/her in this capacity, full faith and credence are given in the Republic of South Africa, in Court and thereout.

Given under my Hand and the Seal of the Department of Foreign Affairs at on this day of

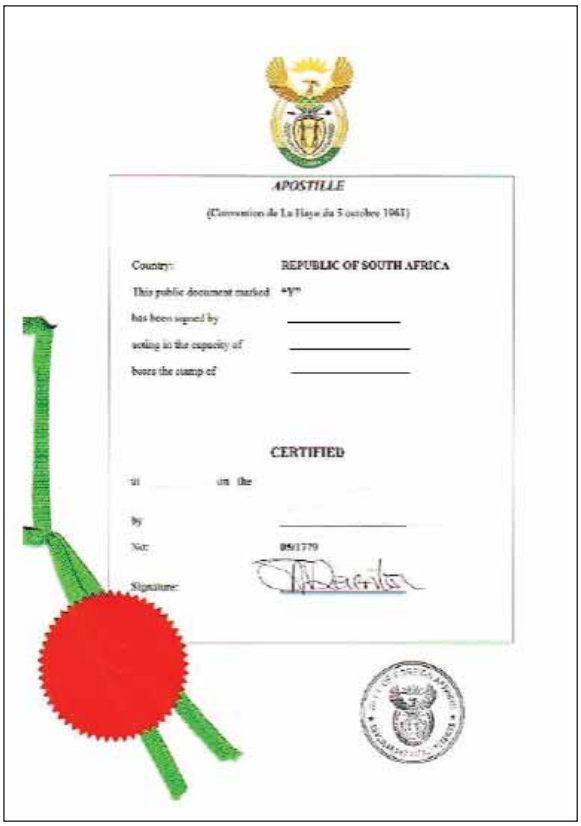
ASSISTANT DIRECTOR
Department of Foreign Affairs

Example of the certificate of authentication in terms of r63

– be in the form of a square with sides at least 9cm long;

– be issued and signed by, and bearing the seal of office of, any of the following:
  – any magistrate or additional magistrate; or
  – any registrar or assistant registrar of the High Court of South Africa; or
  – any person designated by the Director-General: Justice.

With modern technology evolving without simulta-neous transformation of legislation and legal systems, law practitioners are being left out in the cold. With legislation and legal systems left unchanged and apparently unable to accommodate the behaviour of the people they should govern, the only remedy apt for clarifying the confusion and frustration is merely ensuring that documents to be used in the legal system comply with the ruling prescriptions. Registrars' Conference Resolutions and/or registrars exercising discretion should not solely be depended on.



APOSTILLE

(Convention de La Haye du 5 octobre 1961)

Country: REPUBLIC OF SOUTH AFRICA

This public document marked "V"

has been signed by _____

acting in the capacity of _____

bears the stamp of _____

CERTIFIED

at on the

by _____

No: 091779

Signature:

Example of the *Apostille* in terms of the Convention

Application of Section 4(1)(b)

By: A S West – Deeds Training, PRETORIA

It is submitted that the provisions of section 4(1)(b) of the Deeds Registries Act, 47 of 1937 are being misused and abused. Nobody can claim that he/she does not err, but the number of errors presently occurring in deeds and documents is ridiculous. If one keeps in mind that conveyancers are paid a fee to perform their task, the deeds office is paid a registration fee, and government levies a tax for the acquisition of immovable property, errors in deeds and documents should be minimal.

That the registered owner of immovable property held under a title deed in which a registration error occurs, must on rectification of the error again pay the conveyancer a fee, and the registrar of deeds a further registration fee, boggles the mind. It is submitted that the conveyancing fraternity is the only business in which the more mistakes are made, the more income is generated. Shouldn't these registration errors be corrected free of charge, given the fact that the first time round, fees were paid for a correct deed? Don't clients obtain any guarantee from the profession or the deeds office, similar to that received when buying a car? What is your opinion in this regard?

Furthermore, the affidavits for the rectification of errors would appear not to be the appropriate document to rectify an error. It has previously occurred that in one deed, the status of the parties was changed three times, on three different occasions, each time by making an oath as to the true and correct state of affairs.

Section 4(1)(a) of the Deeds Registries Act, 47 of 1937, allows a registrar of deeds to require proof of any fact. Given this provision, conveyancers should be urged to lodge the identity document, marriage certificates, etc to prove the correct state of affairs.

Whether the rectification in terms of section 4(1)(b) has the effect of transferring a real right, is something that will be addressed at a later stage in this journal.

A brief overview in respect of recent registrats' conference resolutions

By: George Tsotetsi – Office of the Chief Registrar of Deeds

Some of the resolutions of the Registrars' Conference of 2005 are discussed in this article, and the attention of readers is drawn to a Chief Registrar's Circular that deals with the coming-into-effect of Registrars' Conference resolutions. Each resolution will be quoted in full and then followed by a discussion. The views expressed herein are personal and should not, whatsoever, be ascribed to the Office of the Chief Registrar of Deeds.

2/2005 (RCR 8/1951) – Section 57 of Act No. 37 of 1947 – Substitution of surviving spouse

Does section 57 of Act No. 47 of 1937 apply where spouses were married in community of property?

Resolution:

A surviving spouse may be substituted under section 57 of Act No. 47 of 1937 as debtor when he/she acquires property from the estate of his/her deceased spouse, whether he/she was married out of community, or in respect of marriages in community of property where the share of the deceased spouse is transferred by a formal deed of transfer. (RCR 8/1951 has been withdrawn).

This resolution came about as a result of a practice of combining a section 45 of the Deeds Registries Act (DRA) application with a section 57 (DRA) application. Its effect is, therefore, to put an end to such practice. That a section 57 (DRA) application cannot, and should not, be made in conjunction with a section 45 (DRA) application can be gleaned from subsection 2(a) of

section 57 (DRA). The said subsection reads as follows:

> *"In registering the transfer in terms of subsection (1) the registrar shall—*
> *(a) endorse upon the deed of transfer that the land has been transferred subject to the bond;"*

15/2005 (RCR22/1987 and RCR21/2004) – Divorce Orders

Where the status of parties married out of community of property or whose marriage is governed by the laws of a foreign country have changed due to divorce, the divorce court order must be lodged to determine whether the rights of third parties are being affected. However, if the spouse has died, must the death notice/certificate be lodged to prove that the spouse has died and that divorce did not occur?

Resolution:
No. A certificate from the conveyancer will suffice.

This resolution is an amplification of RCR 21/2004, and thus the two resolutions must be read in conjunction with one another. Thus if a party who was married out of community of property or whose marriage was governed by the laws of a foreign country is later described as unmarried, an examiner would not know whether the relevant marriage was dissolved by divorce or by the death of the former spouse. A note along the lines of the note below would thus be appropriate in this instance.

> "If the relevant marriage was dissolved by death, then certify accordingly; if, however, it was dissolved by divorce, then lodge the relevant Court Order and consider the matter as having been rejected. In this regard see RCR 21/ 2004 read with RCR 15/2005"

16/2005 Sections 3(1)(v) and 93

Where an owner of immovable property undergoes a sex change and changes his/her names subsequent thereto and a new identity number is afforded such owner, how must the new identity number be recorded against the title deeds of the immovable property concerned?

Resolution:
Section 93(1) of Act No. 47 of 1937 cannot be invoked. The provisions of section 3(1)(v) of Act No. 47 of 1937 must be invoked and documentary evidence as to the new identity must be lodged together with the application.
This resolution has been included solely for the purposes of commending Conference for being proactive and being receptive to the new practices that have taken root in the country.

19/2005 Section 57

Is the consent of the co-mortgagor necessary with substitution in terms of section 57 of Act No. 47 of 1937?

Resolution:
Yes, the consent is necessary and all the relevant legal exceptions must be renounced.

Section 57 (DRA) has consistently been applied by the deeds registries in circumstances where a bond has been passed by more than one mortgagor. In this regard see RCR 7/1994. RCR19/2005 moves from the premise that the said application is correct. The correctness of this application is, however, questionable. If the legislature intended that the section should so apply, it would have expressly dealt with the position of co-mortgagors. There is nothing in the section that indicates that it is also applicable in circumstances where a bond has been passed by more than one mortgagor. It is submitted that where a co-mortgagor transfers her/his share in the relevant property, the appropriate procedure is to release the said co-mortgagor as contemplated in section 55 (DRA) and not to invoke the provisions of section 57 (DRA) as postulated in RCR 7/1994.

The argument here is: what is the value of substituting a person who is already a mortgagor as a mortgagor? Furthermore, in terms of RCR 7/1994, section 57 can be applied in instances where a person has transferred a share to another. The question then is: can this really be referred to as substitution of a debtor or an addition of a co-debtor? My understanding of the word 'substitute' is that in substitution one takes the place of the other and the other disappears from the picture altogether.

It must also be noted that section 3(1)(g) (DRA) does make a distinction between a joint debtor and a debtor. In so far as a joint debtor is concerned it deals with the aspect of release and in so far as a debtor is concerned, it deals with the aspect of substitution. It is important to note that this section makes no mention of the substitution of a joint debtor. It is submitted that if the legislature intended that a joint debtor should be substituted, then it would have expressly stated so in section 3(1)(g).
Those who, however, take the view that the legislature intended section 57 (DRA) to find application in the instances referred to above are requested to prove the same.

29/2005 Divesting in deceased estates

Must the deceased estate or the executor of such estate be divested in the divesting clause of estate transfers?

Resolution:
The deceased estate must be divested in terms of regulation 50(2)(c) of Act No. 47 of 1937.

The correctness of the use of regulation 50(2)(c) of Act No. 47 of 1937 as a justification for the resolution is questionable. The said regulation deals with joint estates in particular and not estates in general. Form E (DRA), however, provides a basis that covers all estates. In terms of this form, the transferor must be divested. The question that arises is that of who the transferor is in an estate? In view of the fact that an executor is, in terms of the decision in Grobbelaar vs Grobbelaar 1959 (4) SA 719 (A) at 724, only "a representative", it is clear that an executor can never be the transferor. It is therefore clear that the estate will always be the transferor and it is the one that must be divested in its capacity as transferor as postulated in Form E.

33/2005 Long leases

A long lease was duly executed by a lessor and lessee and attested by a notary. Before registration of the lease took place, ownership of the property changed. Can the lease still be registered against the title deed of the new owner?

Resolution:
Yes it can be registered. Section 77 of Act No. 47 of 1937 stipulates that any lease intended or required to be registered in a deeds registry shall be executed by the lessor and the lessee and shall be attested by a Notary Public.

The section refers to "lessor" not "owner". The maxim "Huur gaat voor koop" applies. It will, however, be necessary to lodge the new owner's consent that he/she knew of the lease should the lease be for a period of longer than 10 years (see Section 1 (2) of the Formalities in Respect of Leases of Land Act No. 18 of 1969)).

It is clear from the resolution that the co-operation of the registered owner of the immovable property concerned is unnecessary for the registration of a short-term lease. It must, however, be borne in mind that, in terms of regulation 63(2) (DRA), the title deed of the immovable property concerned must accompany the relevant notarial deed. In most cases the said title deed would be in the possession of the registered owner. What would then happen if the said registered owner refused to hand it over for the purposes of the registration of the lease concerned? It is suggested that in such cases it would suffice if the notary concerned certified that she/he had been unable to obtain the title deed concerned, and the normal procedures that are applicable where no title deed has been lodged should be followed.

44/2005 Cession of section 25 real right and substitution

The developer reserved the real right to extension of the sectional title scheme as provided for in section 25(1) of Act No. 95 of 1986. Subsequent to registration of the reservation and issuing of the certificate of real right of extension of the scheme, the developer passed a sectional mortgage bond over the right. If the developer now intends to cede the whole of the said right, may a substitution of debtor be registered simultaneously with the intended cession in respect of the said sectional mortgage bond?

Resolution:
The substitution is not registerable because section 57 of Act No. 47 of 1937 is only applicable to the substitution of a bond over land.

Substitution of a debtor in terms of section 57 (DRA) is, indeed, a cost effective procedure. Conference has on two occasions resolved on the applicability of the said procedure in respect of circumstances relating to the substitution of a joint debtor as well. In this regard see RCR 7/1994 and RCR 19/2005. (See also the discussion of RCR 19/2005 above.) It is indeed true that section 57 of Act No. 47 of 1937 refers only to the substitution in respect of a bond over land and that a right of extension is not land, but a right in immovable property (see section 25(4) Act 95 of 1986).

The resolution is technically correct, but it is diametrically not in line with what happens in practice. In practice, substitutions in respect of bonds over leaseholds, which are not land but immovable property, are registered. Again, substitutions in respect of sectional bonds over units together with exclusive

use areas are also registered, yet exclusive use areas are rights to immovable property and not land.

47/2005 Section 25 (10) (dA) (iii) – lapsing of right of extension

This section stipulates, if applicable, that the bondholder's consent must inter alia state that the bond is attached to the certificate of real right in respect of the remainder of the right reserved in terms of section 25 (1) of Act No. 95 of 1986.
Is it the responsibility of the deeds registries to check whether the right of extension has lapsed as all the phases envisaged have been completed, and to ask for the cancellation of the Right of Extension?

Resolution:
Yes, it is the responsibility of the registrar of deeds to check the Certificate of Real Right of Extension and to compare it with the section 25(2)(a) plans to determine whether a right of extension has been exhausted or not. The registrar of deeds must insist on the cancellation of the right of extension where such right has been exhausted.

The principle, i.e. the determination of the lapsing, or otherwise, of a right of extension as postulated in the resolution, is a sound one. Indeed, why should a bondholder's consent relate to a right of extension that has lapsed? It must be noted that a right of extension can lapse only in two instances, namely by the effluxion of time or the registration of all the sections to which it relates.

However, comparing the Certificate of Real Right of Extension with the section 25(2)(a) plans, as suggested in the resolution, is not the appropriate manner of determining the relevant fact. The certificate and the plans do not contain the same information, and comparing the two is not necessary. For example, the certificate invariably relates to the time within which the relevant extension must be completed and not to the number of the sections when phased development is completed. On the other hand, the plans would normally indicate the number of sections when phased development is completed, and would not indicate the time period within which phased development must be completed. Thus the purpose of checking these documents cannot be for the sake of comparison. Each document would thus be checked for what it is worth and not for comparison purposes. In short, the manner in which the resolution is couched does not reflect what the conference really intended. It must also be noted that it is not always possible to determine the number of all the sections from a section 25(2)(a) plan. A schedule referred to in section 25(2)(c) would be helpful in determining whether or not a right of extension has lapsed. Experience has taught me, however, that the said section is not strictly enforced in a certain deeds registry.

Whether or not my interpretation of the resolution, in general, and the word 'compare', in particular, is too narrow, is for the reader to decide.

Lastly the attention of readers is drawn to Chief Registrar's Circular 16/2005, which states that Conference Resolutions will be effective from 2 January of the year following the year of Conference. This circular is intended to create certainty on when Conference Resolutions become operative, and will afford all parties concerned ample time to acquaint themselves with the resolutions before they become operative.

Electronic land registration: Options from a legal perspective

By: F G T Radloff – Conveyancer, Pretoria

INTRODUCTION

The present paper system is successful to the extent that it provides security of title and is accurate. It does afford protection for registered rights, gives notice to the public of such protection and provides an easily accessible record should disputes arise. The success of the present system can be ascribed to sound legislation such as the Land Survey Act, No 8 of 1997, the Deeds Registries Act No. 47 of 1937 and the Sectional Titles Act No. 95 of 1986. It is one thing to be blessed with sound legislation, but another matter to apply it properly. The healthy interaction between the private sector (the conveyancers) and public sector (the Deeds Office examiners) ensures the proper application of the complex legislation relating to land registration and land related matters. The challenge now lies in effecting speedier and more cost-effective land delivery through technology without detracting from the accuracy and security of title enjoyed by the South African public at present.

OPTIONS

From a legal perspective we recommend that the responsibility for the legal validity of titles should be the basis for an options analysis. The present system provides for a division of these responsibilities between the Registrar of Deeds and the conveyancing profession. In recent years, and especially since the introduction of Section 15A of the Deeds Registries Act, 1937 and the Sectional Titles Act, 1986, the responsibilities of the conveyancer have steadily increased. The examination function of the Deeds Office, although substantial and important, is no longer as comprehensive as in the past.

In regard to the future and electronic land registration, it is submitted that the following options warrant consideration:

- The Deeds Office assumes full responsibility for the legal validity of Deeds; or
- The legal profession (e.g. the conveyancers) assumes full responsibility for the legal validity of Deeds; or
- The Deeds Office merely records and registers as the examination function is delegated to the Private Sector; or
- The *status quo* remains unaltered save for certain consequential adaptations necessitated by an electronic as opposed to a paper process; or
- The *status quo* remains unaltered in essence but with a number of cardinal adjustments to facilitate the process, alleviate the burden of the Deeds Office and render a better service to the public.

A number of permutations between these options could also be considered in the sense that an element or elements of one option could conceivably be built into another option.

THE DEEDS OFFICE ASSUMES FULL RESPONSIBILITY

This would inevitably result in a substantial expansion of the examination function of the Deeds Office to ensure the legal validity of each and every registration. It would lead to a massive increase in supporting documents to be checked by the Deeds Office in order to establish the legal validity of a particular transaction.

This could lead to an untenable position as the list of problems resulting from this option would be substantial. The following scenarios will result:

To undertake such a comprehensive examination function, the Deeds Office will have to re-establish the so-called Certificate Book Register which was abolished with the introduction of Section 15 A of the Deeds Registries Act, 1937, read together with regulations 44 and 44A. Extracts of company, close corporation and trust documents as well as extracts from the constitutions of voluntary associations such as churches, social and sports clubs will have to be filed, albeit in electronic format, in order to enable the

Deeds Office to check the powers of these juristic persons.

To give but one example: In the event where a juristic person such as a company acts (i.e. transfers or mortgages a property) the Deeds Office will have to check its Certificate of Incorporation, Certificate to Commence Business, Memorandum and Articles of Association as well as the resolution authorising a natural person to act on its behalf. Although it may be possible to access some of this information electronically from the Companies Office (resolutions other than special resolutions will certainly be excluded), such an option would not be available for voluntary associations such as churches or sports clubs. The same problem would exist in regard to trusts.

Natural persons would also pose problems as the existing records of the Deeds Office cannot be relied upon in so far as it relates to a person's marital status. Affidavits confirming a person's marital status will therefore have to be checked and verified by the Deeds Office.

The problem could be further compounded if persons other than qualified conveyancers insist on lodging and registering deeds electronically. The argument could be raised that anybody who can read or write and consequently operate a computer should be allowed to register deeds owing to the fact that the Deeds Office in the last analysis assumes full responsibility for the validity of the registration. This could result in a prolonged interaction between the Deeds Office and laymen and would probably, more often than not, result in the layman being unable to understand the issue or interpret the law, the contract or the empowering or authorising document.

A questionnaire, however comprehensive, cannot resolve the issue as the layman may not realize that the supporting document on which he relies when completing or responding to the questionnaire, is either irrelevant, incorrect or even illegal. This cannot be checked or verified unless the document itself is transmitted to the Deeds Office for scrutiny. It is simply unrealistic to expect a layman to interpret a will, a trust deed, conditions imposed by a local authority in the case of a sub-division or consolidation, or the memorandum and articles of association of a company.

Even the simplest transaction can pose a problem in the absence of the intervention of an independent and qualified legal practitioner. This relates to every instance where a natural person intends to transfer his or her property. His or her marital status would determine whether he or she could only act with the consent of his or her spouse in order to comply with the provisions of the Matrimonial Property Act, 1984 (Act 88/1984). The existing records of the Deeds Office cannot be relied upon as the transferor's marital status could have changed since registration. An unscrupulous person married in community could therefore by giving misleading or false information to the Deeds Office, alienate the property of the joint estate without the consent of the other spouse.

Such extensive examination will burden the Deeds Office with too much additional work and will consequently frustrate the objective of handling greater volumes with its existing staff complement. Furthermore, the objective of effecting registrations electronically will be frustrated as supporting documents will have to be submitted in paper format.

This option may also result in too many persons gaining access to the electronic land registration system for registration purposes. The records are not accessed for information purposes but in fact to record new registrations. Hackers could create havoc and jeopardize the integrity of the system. If (in order to safeguard the integrity of the system) access is limited only to qualified conveyancers and statutory rights officers with accreditation to access the system, the question again arises as to why the Deeds Office should carry the sole responsibility for the legal validity of deeds in the first place. In the South African land registration context, this option is clearly not a viable one.

THE LEGAL PROFESSION ASSUMES FULL RESPONSIBILITY FOR THE LEGAL VALIDITY OF DEEDS

This would result in the abdication of its examination function by the Deeds Office. To achieve this, section 3(1)(b) will have to be repealed. All the other important functions of the Deeds Office will remain intact, i.e. the duty to register and record, to maintain registers, to provide information and to preserve records. This would also mean that it would become the sole responsibility of the conveyancer to ensure that transactions intended for registration are in proper form and that their nature is such that they are capable of registration.

Notwithstanding the repeal of Section 3(1)(b), it would appear that the Deeds Office will still have to perform a "checking" as opposed to an "examination" function,

and in this regard the proviso to Section 15A(3) will remain a Deeds Office responsibility. As Court Orders and Notices affecting persons (insolvency and divorce orders) and land (attachments and expropriations) are filed with the various Deeds Offices, it follows that the Deeds Office will have to check as to whether or not any of these orders or notices affect a person or property involved with a transaction which the Registrar may be called upon to register.

Should the Deeds Office dispense with the examination function, virtually the full responsibility for the validity of deeds will rest with conveyancers. This could lead to problems that may well be insurmountable.

Although the State does not explicitly guarantee security of title, the system and its application virtually has this effect. To understand this, various sections of the Deeds Registries Act must be read in conjunction with each other. We refer for example to sections 3(1) (b), 3(1) (y), 6, 13 and 99. It is our view that the judicial function of the Deeds Office (i.e. the final decision either to pass or reject a deed tendered for registration or execution) is an inherent function of the State. It is in the public interest that this function should not be outsourced. In the absence of the judicial function of the Deeds Office, conveyancers would simply be unable to ensure security of title as comprehensively as is presently the case.

It will also be difficult to maintain a uniform standard of conveyancing as the Deeds Office will no longer be the sole arbiter in this regard. The expertise, experience and integrity of a particular conveyancer will, to a larger extent than previously, determine the integrity of a registration.

Errors will be more likely to occur as the interaction between the Deeds Office and conveyancers will, in the absence of the examination function, no longer be as comprehensive as at present, resulting in double-checking, to the extent that it still exists, disappearing altogether.

As the property law environment becomes ever more complex, it would be imperative to maintain the standard of conveyancing. If the examination function were to fall away, "examiners" as a group of well-trained and experienced persons, well versed in property law, will disappear, leaving the conveyancing environment without competent officers capable of performing a judicial function (i.e. giving rulings on questions of law when a conveyancer intends to proceed with a registration fraught with legal difficulties). Deeds Office personnel cannot be expected to acquire the necessary skills required for the performance of a judicial function in the absence of the on-going training that the examination of deeds affords. This may eventually compel conveyancers to approach the courts for rulings on matters of doubt – a function admirably performed by the Registrars of Deeds over many decades up to the present day. Our courts are already over-extended and simply cannot be expected to resolve issues relating to land registration.

Errors in registration may occur for the reasons given above. The marketplace may then dictate that title insurance be introduced (especially in the case of big mortgages). This could lead to an escalation in costs for the consumer public. To protect them from possible liability due to errors, conveyancers may likewise be compelled to take out sufficient professional liability insurance, a development that will also inevitably lead to an increase in costs.

It would clearly not be in the public interest if the Deeds Office were to abrogate its responsibilities to ensure that land registration is effected in accordance with the laws of the land. It is in the public interest that the Deeds Office performs this vital function in conjunction with the conveyancing profession. The system of checks and balances afforded by the interaction between the Deeds Office examiners and conveyancers is the cornerstone of our land registration system, whether applied in paper or electronic format.

THE DEEDS OFFICE MERELY RECORDS AND REGISTERS AS THE EXAMINATION FUNCTION IS DELEGATED TO THE PRIVATE SECTOR

The Deeds Office outsources the examination function to the private sector. Section 3(1)(b) will have to be amended to provide for the delegation of the examination function to the private sector. The Deeds Office as the representative of the State remains the authority to perform the registration function, to keep records and maintain registers. The private sector performs the examination function on behalf of the Deeds Office. This will ensure that examiners will have to be trained and employed by the private sector. They will continue to perform, as in the past, in addition to the examination function, the important judicial function, i.e. give rulings similar to the present Registrar's Circulars and Registrar's Conference Resolutions as well as ad hoc decisions in regard to problems of law and practice, as these manifest themselves countrywide on a daily basis.

The role of the conveyancers remains unaltered subject to the qualifications as set out below.

It is doubtful whether the interaction between the public and private sector as we know it today can be improved upon if such interaction (with its system of checks and balances) is replaced by a system where the private sector interacts with itself, i.e. the conveyancers on the one hand and the examination entity on the other hand.

The question arises whether this option would serve any purpose. It is doubtful whether a shift of this nature would afford real benefits to either the public or the employees of the various Deeds Offices. The disruption that will be caused by such a move will probably not add value to the public or any of the role players in the property industry, especially insofar as it relates to land registration. The conversion of a paper-based system to an electronic system should not result in changes that are unlikely to improve the status quo.

For the reasons given above under, the State, through the Deeds Office, should retain the all-important function to ensure that the laws of the country relating to land and land registration are duly complied with. We strongly believe that it is in the public interest not to commercialise the judicial function of the Deeds Office.

This is the first part of the article. The second part will be published in the June issue of this journal - Editor

Restriction on sale in execution of property in deceased estates: Section 30 of the Administration of Estates Act, Act 66 of 1965

By: P J Weideman – Deeds Registry, BLOEMFONTEIN

Section 30 of the Administration of Estates Act, Act 66 of 1965 ("the Act") reads as follows:

"Restriction on sale in execution of property in deceased estates

No person charged with the execution of any writ or other process shall –

(a) before the expiry of the period specified in the notice referred to in section twenty nine, or

(b) thereafter, unless in the case of property of a value not exceeding R5 000,00 the Master or, in the case of any other property, the Court otherwise, directs,

sell any property in the estate of any deceased person which has been attached whether before or after his death under such writ or process: Provided that the foregoing provisions of this section shall not apply if such first-mentioned person could not have known of the death of the deceased person."

Deeds controllers and conveyancers must note that the word "Court" is defined in Section 1 of the Act as "the High Court having jurisdiction, or any Judge thereof". A Magistrates' Court has no power to give directions as contemplated in Section 30 of the Act. In the recent case of ***De Faria v Sheriff, High Court, Witbank*** 2005 (3) SA 372 Judge De Vos J. held that a sale in contravention of Section 30 is a nullity and according to Section 102(1)(h) of the Act any person who contravenes the provisions thereof is guilty of a criminal offence.

The question that may now arise is that of whether it is the duty of the Registrar of Deeds to determine that no such transfers are registered unless accompanied by a direction of the High Court? In most cases, sale in execution transfers lodged at the Deeds Registry will not indicate whether the owner is deceased.

Readers' comments will be appreciated – Editor.

Land registration and administration developments in Rwanda

By: E Rurangwa – RWANDA

INTRODUCTION

The National Land Policy adopted by the Government of Rwanda in February 2004 placed great importance on an appropriate land administration system as a key to land tenure security by providing the possibility of registering and transferring land.

The nature of Rwanda's land resources, land occupation and land tenure systems are well known. They are characterized by high population growth, severe land pressure and an increasing number of small, fragmented land plots. The majority of rural Rwandans hold these plots under customary arrangements, and it is upon these that they depend for their basic subsistence and food security.

Fifteen percent of poor rural households in Rwanda do not own any land, approximately 60% of households have less than 0.5 ha and 25% have more or less 1 ha. Twenty percent of rural people living below the poverty line have no land at all; the remaining 80% subsist on less than 0.5 ha. In 2000 there were in the order of 1 941 000 rural households in the country, of which nearly 90% lived at subsistence level, cultivating over two million land parcels. At any one time approximately 80% of all the land in these parcels is under cultivation and half of the remainder is under pasture or fallow.

Clarification of land rights is required through the development of appropriate land administration systems which can guarantee the security of land tenure and promote investments in land. Improved security of rights to land will reduce opportunities for conflicts of interest. The process of land registration is one of many public services that, when implemented with trust and confidence, contributes to sustainable land use and management. It is an important part of land administration, but it is only a means to an end and not an end in itself. It must be used in the context of integrated development.

The majority of farmers may not seek formal land title. However, they do require security of rights to land that are adequate for them to invest in long term and sustained improvements, whether for subsistence or commercial purposes. Those living in urban areas and others managing large commercial farms also require an improved land registration system.

EXISTING SITUATION

Existing situation at national level

At national level, the Ministry of Lands, Environment, Forestry, Water and Mines has the mandate and authority for land administration and the management of systems for urban and rural land registration. The Ministry is responsible for the whole country with the exception of the Kigali City Council, which has the authority for its own land administration and maintains its own land register. In practice, formal land registration has been undertaken in respect of only a small proportion of the country, with the focus on urban areas and those in rural areas under commercial agriculture or owned by churches.

At present, Rwanda carries out limited land registration on a centralized manual system on a demand-led basis in rural and urban areas. The primary purpose is to provide land users with documentation of land holding for legal purposes and as evidence of property rights as collateral for purposes of credit or mortgage.

Currently, approximately 20 000 land applications are in process, mainly in urban areas, outside Kigali. Land registration also needs to be considered in the rural and peri-urban contexts.

Existing situation at provincial, district and municipal levels

At present, the provinces and districts do not have any structures of land administration. Such structures exist only in the municipalities where decentralization of land survey and registration responsibilities have commenced, with the overall follow-up by the Ministry in charge of land. Municipalities are required to send copies of land records to the Ministry in charge of the land, where the Chief Registrar of Title Deeds is based. For rural land, no formal land registration is carried out at lower levels. Each district in the country is only authorized to charge variable fees according to their location and use for the annual rent of land parcels, and to retain the fees. Lease contracts are delivered by the Minister in charge of Land. Districts only hold the relevant copies of contract papers relating to concessions and land titles in their respective areas.

Kigali City Council has been totally autonomous in terms of land administration since 1998. The City follows legal policies, laws and by-laws edicted by the Ministry in charge of lands in respect of land use planning, land registration and land taxation; otherwise, its land administration system is totally independent of that operated by the Ministry in charge of lands.

An outsourced contract from the Office of the Mayor of Kigali City commenced in 2002 to establish a modern cadastre and registry for land and revenue management. The contract provides for geo-referenced locations of registered parcels, which have been surveyed using aerial photography and GPS equipment, to be stored in a GIS system together with other relevant information about the parcels and their owners.

This project moves the whole process of land surveying and registration forward from conventional paper-based methods and techniques to an automated and financially driven service that responds to customer demands. Prior to this initiative, all land management for Kigali City was done manually with paper copies of all documents. This was effective when the city population was around 300 000, but now at one million and growing, the old system is inadequate and tax revenue is being lost.

A similar self-financing automated land administration system could function in some other municipalities such as Butare, Cyangugu, Gitarama, Gisenyi, Ruhengeri and Kibuye, because they have sufficient population paying taxes to finance the system. Elsewhere, Government would have to support the development of any system.

NEW AND INNOVATIVE APPROACHES

Policy approach

As stated by the National Land Policy of Rwanda, an appropriate land administration system would make a distinction between urban land and rural land and would make a clear separation of State public lands, State private lands and other private lands owned by physical persons.

The separation of land into two categories 'urban and rural land' should be based on the function, allocation and location of land. The definition of urban land is done by a specific law and by the existence of a general plan for the development and allocation of land.

Urban land can be:

- Urban districts defined as such by the law
- Outskirts of urban districts whose surface area and extent are properly defined
- Development poles identified in the framework of territorial development and of general and regional plans of land allocation
- Grouped settlements created in the framework of the grouped settlement policy

Rural land constitutes the remaining land, outside of urban districts, which for the most part is used for agriculture, forestry and livestock rearing, and includes land that supports lakes and rivers as well as protected natural reserves.

The following are classified as the State's public lands:

- Land that supports lakes and rivers
- The national roads and feeder roads
- Land that hosts public monuments, genocide memorial sites and cemeteries
- Natural reserves and national parks
- Marshlands classified among natural reserves
- Green spaces
- Tourist sites
- Public districts' lands

The following are classified as the State's private land:

- Exploitable marshlands
- Private districts' lands
- Vacant land
- Land used by State institutions (schools, hospitals, research institutions, military domains, Ministry domains, Parastatals' domains etc.)

Strategic approach

Land administration at national level

Land administration at national level will be operated through the creation of the *"Land Centre"*.

The purpose of the establishment of a Land Centre is to serve as the engine of land administration and land use management in Rwanda.

The Land Centre will provide technical and administrative support to the National Land Commission. This will include the important role of archiving information on land conflicts and adjudication.

It will maintain the National Land Register as a spatial database of land registration information for both the national and local land registration systems. The Land

Centre will not register land itself, as that activity will be progressively decentralized. Districts and municipalities will transfer or provide access to key registration information to the National Land Register. This information will provide the basis for a national overview of land allocation. A national land register is necessary to monitor land registration activities throughout the country, provide information on trends and safeguard against undesirable appropriations. The National Land Commission will receive regular updates on the status of the National Land Register and determine appropriate actions as necessary. During the transition period, National Land Register staff will support and provide training for decentralized land registration.

The Land Centre will ensure the national co-ordination of spatial planning information. The centre will be responsible for the identification and collection of spatial information from all sectors. These will concern programmes and projects for land and natural resource development and management, and in particular those that involve irreversible changes in land use. Procedures will be developed to make this information available to key factors in order to perform a process of co-ordinated spatial development planning. Although not itself a planning agency, the Land Centre will have a key role of enabling master planning, which is co-ordinated spatial development planning at national and provincial levels. It will also facilitate land use planning at district level and below.

The Land Centre will re-establish and maintain the national geodetic control system:

The Land Centre will provide an essential basis for the accurate mapping of land parcels, and will play the role of *Archiving the national map and aerial photography collection.* The Land Centre will maintain a national reference collection and catalogue of land information. This will include copies or electronic access to maps, digital data and air photograph flight diagrams, negatives and digital copies, as appropriate. These will include information currently held by National University of Rwanda, the Ministry of Infrastructure, the Ministry of Agriculture and Animal Resources, the Ministry of Lands as well as Districts and Municipalities.

Photomaps will be a basic input to participatory planning and local land registration. The Land Centre will be responsible for specifying and commissioning aerial photography, its rectification and the production of photomap products.

The Land Centre will actively market products and services to the private and public sectors. Charges will be made on a cost recovery basis. Arrangements concerning copyright and intellectual property rights will need to be agreed upon.

The Land Centre will promote information sharing and the use of compatible data exchange formats wherever possible. This is particularly relevant as different sectors increasingly invest in spatial management. The Land Centre may host events, and develop a website and newsletter to promote co-operation between the various sectors. The Centre will establish linkages to land and related policy research undertaken at the University of Rwanda and other institutions.

Over the transition period the Land Centre will be responsible for training and providing support to decentralized activities such as district level land registration. It will also be responsible for the training and support of the decentralized participatory planning teams.

The Land Centre will be responsible for designing systems for the timely and secure collection, transfer, storage and management of spatial data. Land registration information generated at district level will form a large part of the data.

Support will be provided by the Land Centre in demarcating, maintaining and protecting international border control survey beacons around the country.

The proposed structure of the Land Centre reflects the roles and responsibilities that can be clustered into four technical units and one support unit as follows:

- National Land Registry Unit
- Spatial Services Unit
- Spatial Co-ordination Unit
- Training and Decentralisation Unit
- Support unit

The National Land Registry Unit will be responsible for maintaining the national land register. *The Spatial Services Unit* will be responsible for geodesy, mapping and spatial data management. The name Spatial Services emphasizes the provision of services to a range of users on a cost recovery basis. *The Spatial Co-ordination Unit* will be responsible for the collection and co-ordination of spatial development information. *The Training and Decentralisation Unit* will be responsible for training the participatory planning teams and supporting the decentralization of services. *The Support Unit* will provide support to the Centre's administration, the management of human resources,

finances, procurement, logistics and security, and the maintenance of equipment.

The proposed organizational structure to accommodate these roles of the Land Centre is illustrated as follows:

Land Centre Structural Organisation

Land administration at local level

Local land registration will strengthen the rights of rural and peri-urban land users by a registration system sufficiently flexible to accommodate the immediate and longer-term demands being placed on it. At the same time it will provide the foundation for national land registration to be carried out and title deeds to be issued on known parcels of land where the demand exists. The approach meets the needs of government, which envisages a system that will facilitate the granting and registration of ownership of specific parcels of land, and which focuses on poverty alleviation.

Considering land registration as a tool for providing security of tenure to individual occupiers of a land parcel and as an economic investment, a land office will be established in each district. This land office will be responsible for land use planning, land surveying, land registration and land titles delivery. It will also have the role of keeping and disseminating data.

In practice, the process will follow these steps:

1. All individual parcels of land should be available for registration, without consideration of the minimum size.
2. Registration should proceed in two phases, starting in the first phase with a collective registration of cells, based on photomapping methods.
3. The cost of taking air photos will be supported by the government, with financial assistance from the international community. The collective registration of cells using photomaps has the added advantage of providing a wealth of basic administrative information. In the next phase individual parcels will be identified and individually registered.
4. Two technical staff will be provided to each district to build its capacity for land registration and land use planning.
5. It is essential that the local community participates closely through all the stages of land registration, supported by NGOs and civil society working closely with the communities. The Ubudehe approach will serve as a model of participation.

Appropriate strategies will be used for the registration of squatter developments in peri-urban areas, in which the main inhabitants are poor people, and lessons will be learned from the experience of Kigali City. The objective is to establish socially inclusive local level land use planning and secure land rights for the poor in an integrated way.

In order to achieve this, the proposal aims to develop decentralized capacity for:

(a) participatory spatial planning capability which promotes sustainable resource management, and
(b) local land rights documentation as a basis for land title registration.

In practice, participatory planning and local land registration are operationally integrated and supported by the necessary technical capacity and planning, mapping and land information tools.

Community mapping will be used at sector and cell levels, using established techniques based on high resolution / large scale photomaps. These will incorporate the overall boundaries and main topographical, infrastructure, settlement, land use and land classification features of the cell. These will be mapped at scales between 1:5,000 and 1:2,500.

At the same time an inventory of landholding households will be compiled, with land holdings broadly described and authenticated by group discussion. This is the first stage in documenting and registering land rights and will serve as a development planning tool for a wide range of other purposes. These records and photomaps will be held at cell, sector and district level.

Institutional arrangements

Effective institutional arrangements will underpin the delivery of the expected outputs. However, a balance must be found between the need for institutional investment and concerns over recurrent costs. Where possible, new roles and responsibilities should be incorporated into existing structures. Where this is not possible, new structures should be designed as efficiently as possible.

The key central institutional innovation will be the National Land Commission, as provided in the land policy. This will broaden the responsibility for guiding the implementation of the land policy, across not only government, but also, by incorporating their perspective and experience, across the private sector,

civil society and the academic community. The establishment of provincial and district land commissions should build on previous and existing structures, under the guiding principles of representation, accountability and transparency.

The creation of the Land Centre will support the technical and administrative delivery of land policy objectives. Agency status combined with an emphasis on service delivery will ensure that the Land Centre will respond flexibly and effectively.

MINITERE will retain responsibility for land policy formulation and for the operational management of the Land Centre. Under planned central government restructuring of its capacity for monitoring and guiding implementation of the land policy, the land law will be strengthened.

At district level, the district land commission will supervise and guide the implementation of the land policy by the district authorities. The districts will need to appoint new technical staff responsible for support and co-ordination of the land registration and land use planning processes at cell and sector level.

SUMMARY

The new Rwandan land policy regards appropriate land administration as the platform for land management and an ideal channel to provide a secure livelihood to the people by means of a secure land tenure system.

At present Rwanda carries out limited land registration on a centralized manual system, on a demand-led basis in rural and urban areas. Currently approximately 20 000 land applications are in process, mainly in urban areas.

In rural areas, initial documentation, including a sketch plan and a description of the property, is issued to the user and held in a cadastral database at the Ministry in charge of land.

In urban areas, municipal authorities are responsible for registering land and the demarcation of plots for urban development.

The land policy commits Rwanda to a comprehensive programme of land registration, in order to provide land users as a whole with more certain rights and thereby promote the investment of labour and capital in increased productivity, and the sustainable development and management of land resources. In addition, land registration could extend the tax base in rural areas, and in any further development of further planned settlements or imidugudu.

The land policy stipulates the creation of land registries in each of the 104 rural districts and 8 urban municipalities. A dual system of land registration will be adopted. The formal system would apply to high value land, urban areas and commercial enterprises or to other land users who require detailed documentation for legal and financial purposes. A system of local land registration for the majority of rural areas will be developed and managed by the districts. This process will be greatly aided by use of high resolution photomaps derived from aerial photography, which are also proposed as a tool for local level land use planning to facilitate the reconciliation of individual and family rights with land parcels.

In urban areas and all others where there are commercial incentives, formal titles to individual land parcels with demarcated boundaries will be registered following enacted legislation. The cadastral project now operational in Kigali City Council may be taken as a model of a demand-driven self-financing land register that utilizes automated methods to capture and provide land information.

The Vryburg Deeds Registry

By: Justin Visser – Conveyancer, VRYBURG
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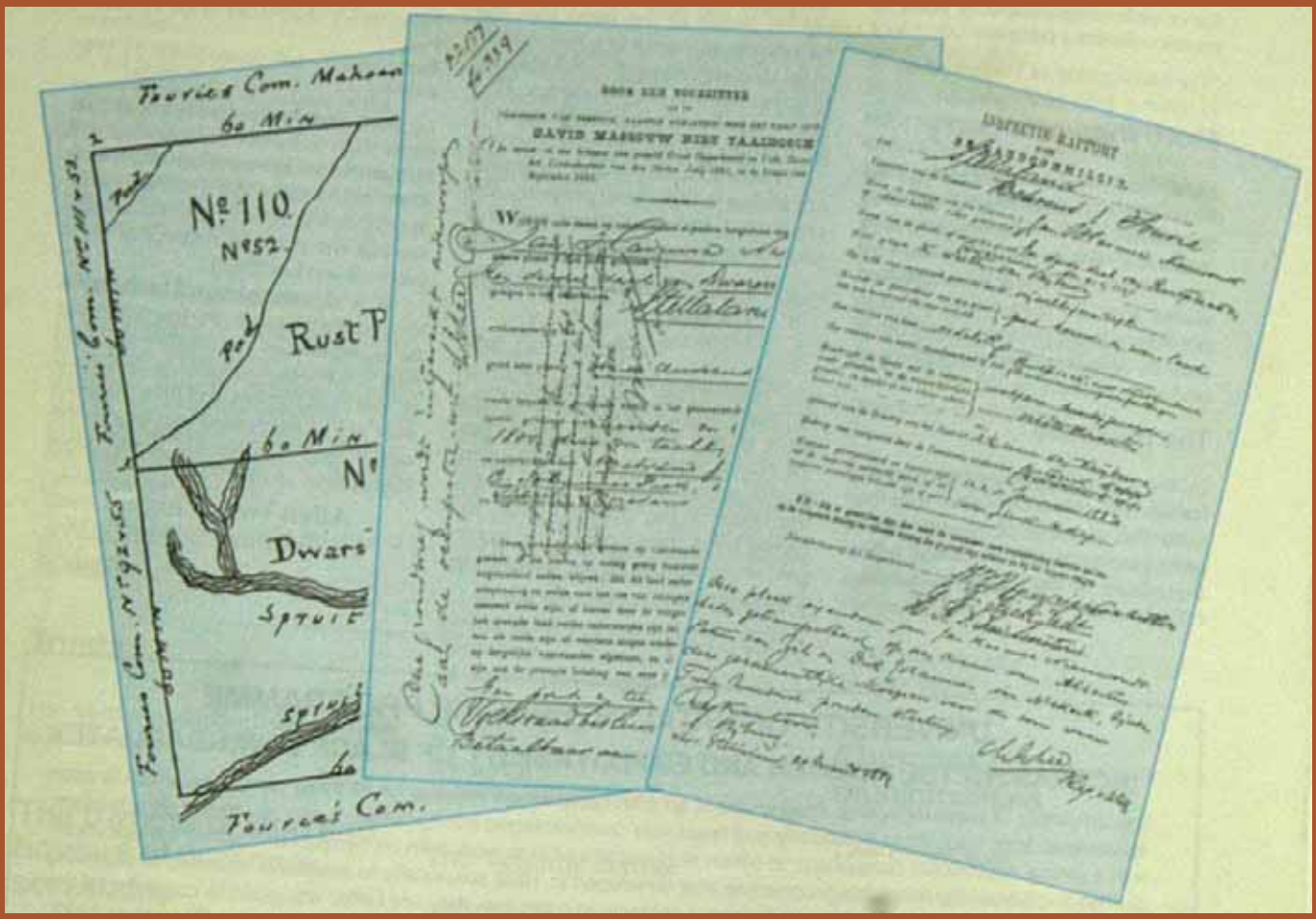

An original deed of grant, signed in 1883. The annotation "60 min" along the boundaries of the sketch, and the description "2_ uur van Vryburg" on the "Inspectie Rapport" are of special interest.

The historical background and development of the Vryburg Deeds Registry make interesting reading. In 1881 a local chief, Mankoroan, who lived in the Schweizer Reneke district, recruited a few Boers and attacked his rival chief in the Vryburg district, Dawid Massouw Riet Taaibosch. The latter also recruited white Boer fighters, and at the last battle on a farm today called Massouwkop, about 15 km north-west of Vryburg, he defeated Mankoroan. Prior to joining up, the Boers were promised land should they fight for these chiefs.

On 26 July 1882 a peace agreement was signed and a large piece of tribal ground, part of the then Bechuanaland, was allocated to the white farmers on both sides. These volunteers, acting by virtue of powers delegated to them by Massouw, established the Republic of Stellaland with Gert Johannes van Niekerk as the first president. The town of Vryburg was laid out and the rest of the ground divided into 461 farms, each about 3 000 morgen. Deeds of Grant were issued by "Groot Opperhoofd" Massouw Riet Taaibosch, delegating power of transfer to the "Voorzitter van de Kommissie van Bestuur". These Deeds of Grant, one of the originals of which I still have in my office (see copy above) were issued on a basis similar to that at present in operation in South Africa. It is interesting to note from the small diagram annexed to the Deed of Grant that the farms were surveyed on horseback, sixty minutes along each boundary.

The Vryburg deeds office

The Government of the Republic of Stellaland issued title to land from a Deeds Registry, very similar to the practice in the then South African Republic. An Executive Civil Government was established and Lionel George Lee was appointed as the first Registrar of Deeds. He was also the resident magistrate.

When Britain annexed Stellaland in 1885, provision was made for the laws in operation at the Cape with respect to deeds registration to be extended to the annexed territory (Proc 2BB s 40 of 1885 Cape). In 1889 a separate post of Registrar of Deeds was created, and the Cape practice operated until 1893. Rules and regulations governing procedure were laid down and confirmed by Proc 182/1893.

Following annexation, a commission was approved to determine land claims in the territory. All but three of the grants made by the Government of the Stellaland Republic were upheld and certificates of title were issued, in lieu of the original grants by the British authorities. A certain MC Genis was then Registrar of Deeds. In 1895 it became necessary to replace all certificates of ownership by deeds of grant with survey diagrams attached. Later that year, when the territory was included in the Cape Colony, provision was made for the deeds registry to continue in undisturbed operation.
In 1899 it was made subject to the Cape Deeds Registries Act which was in operation at the time of Union. Acts 21 of 1885; 43 of 1895; 1 of 1891; and 39 of 1905 were in operation prior to Union.

These laws remained in force until they were replaced by the Deeds Registries Act 13 of 1918. This Act was replaced by the Deeds Registries Act 47 of 1937, which still today contains a special provision relating to the Vryburg Deeds Registry; s 101 reads as follows:

"SPECIAL PROVISIONS RELATING TO THE VRYBURG DEEDS REGISTRY:

(1) The practice prevailing prior to the commencement of the Deeds Registries Act, 1918, in the Deeds Registry at Vryburg of transferring or mortgaging land held under a certificate of ownership issued by the administrator of the territory known as British Bechuanaland prior to its annexation to the Colony of the Cape of Good Hope, and which was declared by that Act to be legal and of effect, shall continue to be legal and of effect. Provided that

(a) the provisions of this Act shall apply in respect of any transfer, certificate of title, mortgage or other deed sought to be registered in respect of any land so held;

(b) no transfer of or other form of title to or mortgage of any defined portion of a piece of land so held shall be registered unless the surveyor-general concerned has certified that the boundaries of such piece of land are correctly represented on the diagram thereof;

*(c) if the surveyor-general is unable to certify as aforesaid the provisions of ss 40, 41 and 44 shall **mutatis mutandis** apply, notwithstanding anything to the contrary in any other law contained.*

(2) The provisional registration in the Deeds Registry at Vryburg of any cession or assignment of rights to unascertained or unsurveyed land, prescribed by Government Notice (British Bechuanaland) of 13th day of November 1886, shall continue to be of force in respect of land to which a right of ownership was acquired prior to the annexation of British Bechuanaland to the Colony of the Cape of Good Hope, until such time as a grant of such land has been registered."

Some of the registrars who acted here were Lood Vosloo (Senior), Bob Murdoch, Dick du Toit, Theo Brincker and HC du P Victor, and among the older conveyancers who did duty over the years were Herman Rosenblatt, PH de Kock, Jack Visser, John de Kock, Boet du Plessis, Willis Viljoen and Edwin Frylinck.

The present Registrar of Deeds is Mr M Sechele. - Editor

Conveyancing through the cases

By: A S West – Deeds Training, Pretoria

This column provides a brief exposition of case law relevant to conveyancing and notarial practice. However, the case law must be read in toto and the summaries not solely relied upon.

Rhode v Stubbs 2005 (5) SA 104 (SCA)

WILLS

This case concerned a rare decision regarding the legal principles underlying the massing of estates. The bulk of South African decisions dealing with this area of our law of succession were decided more than a half century ago. The facts of **Rhode** were as follows: Attie and Lettie Williams were married in community of property. They had executed a mutual will in which they bequeathed one half of an immovable property to their son Charles, and the other half to Evelyn, Attie's daughter from a previous marriage. These bequests were made subject to a usufruct in favour of the survivor of the two testators. When Attie died, his share of the immovable property devolved on the two legatees (Charles and Evelyn), while Lettie enjoyed the usufruct. In his lifetime Charles had been the spouse of the respondent in the present case (Stubbs). Prior to her death in 1969, Lettie executed a will in which she bequeathed her share of the immovable property (which had in the meantime been subdivided) to the appellant (Rhode). Rhode was Lettie's child from a previous marriage. The rights of occupation of the whole property, and later the two subdivided parts of the property, were registered by the local Town Council in the name of Evelyn. A dispute arose as to who exactly was entitled to what portion of the property. Suffice it to say for present purposes that it was common cause that the rights of the persons involved, and also the question as to the correctness of the transitional council's decision to register it in Evelyn's name, depended entirely on whether Attie and Lettie's will massed their estates.

Conradie JA (Mpati AP, Cameron, Mthiyane and Brand JJA concurring) held that for massing it was necessary that the one testator disposed of both his own estate (or a part of it), and the estate (or a part of it) of the other testator. The mere acceptance of the benefits from a mutual will (here Lettie's acceptance of the usufruct created in the will) could not in itself bring about massing. If, in the first place, there was no massing, any act of the survivor (Lettie) which would otherwise point to adiation (acceptance of the terms of the will) was meaningless. There is a general presumption against the massing of estates and the provisions of Attie and Lettie's will did not rebut this presumption.

The original will therefore had to be interpreted as two wills and the appeal was upheld with costs.

Sayers v Kahn (2002) 1 A11 SA 57 C

SALE OF IMMOVABLE PROPERTY

In this case the Plaintiff and Defendant had entered into a written agreement of sale whereby Plaintiff purchased a vacant piece of ground from the Defendant for the sum of R80 000. The Plaintiff instituted action against the Defendant who raised a special plea that the agreement was null and void in that it failed to comply with section 2(2A) of the Alienation of Land Act 68 of 1981 ("the Act").

Section 2(2A) of the Act provides that "the deed of alienation shall contain the right of a purchaser or prospective purchaser to revoke the offer or terminate the deed of alienation in terms of section 29A". Section 29A of the Act, confers on certain purchasers of land the right to revoke an offer to purchase the relevant land or to terminate a deed of alienation entered into in respect of such land, by written notice delivered to the seller or his or her agent within a period of five days after signature of the offer to purchase or of the deed of alienation.

Held – The Court considered the consequences of a failure to comply with the provisions of section 2(2) of the Act. The Act does not expressly stipulate the consequences of non-compliance. The general rule of statutory interpretation is that non-compliance with a statutory prescription results in nullity. However, the crucial issue is always the intention of the legislature in enacting the relevant statutory prescription. The intention of the legislature must be determined according to the established principles of statutory interpretation.

The Court considered the various principles of statutory interpretation which were relevant in this matter. The Court also considered the object of and policy underlying the introduction of section 2(2A) into the Act.

The Court found that the semantic guidelines for the determination of the intention of the legislature in enacting section 2(2A) pointed in different directions. While the wording of section 2(2A) has an imperative character, the provision is expressed in positive language. The Act contains no criminal sanction for non-compliance with the provisions of section 2(2A). On the other hand, section 29(7)(b) expressly provides that a waiver by a purchaser or prospective purchaser of the rights conferred upon him or her in terms of this section is null and void.

The Court agreed with the Defendant's view that the meaning of the words "shall contain" is that the "cooling-off right" provided for in section 29A must be written into the deed of alienation itself. The policy underlying the enactment of section 2(1) of the Act was to prevent uncertainty and disputes concerning the content of contracts for the sale of land, and of possible malpractices in regard to such contracts. If a deed of alienation were to be regarded as valid despite non-compliance with the provisions of section 2(2A), the object of the legislature in inserting section 2(2A) into the Act would be frustrated or seriously inhibited.

The Court concluded that the effect of non-compliance with section 2(2) of the Act was to render the agreement of sale null and void. The special plea was upheld with costs. The agreement of sale was declared to be null and void.

Recently published articles

Mere references to the articles are provided.

Obiter 100 (2005) (26.1) - Unisa

Withholding tax where non-residents dispose of immovable property – H Delport

De Rebus November 2005 p45

Latest amendments to the Sectional Titles Act – T Maree

De Rebus - September and October 2005 p44

Administrative structures for complex owners' associations – T Maree

Property Law Digest - September 2005 9.3 PLD 6

Exclusive use areas: the secrets of the sectional title garden – L Kilbourn

TSAR 2005.3 p609

General notarial bonds and surety – J C Sonnekus

Property Law Digest - September 2005 PLD 12

Amending the Sectional Titles Act – disturbing sleeping dogs or solving problems – R Warner

BOOKS ON CONVEYANCING

Name of Book: The Law of Sale and Lease

Author: A J Kerr

Publisher: Durban: Lexis Nexus Butterworths

Edition: 2004 Third

Pages: 565

Price: R444,85