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REAL ESTATE ALERT

IN THIS ISSUE

No lost deed goes unpunished

The Department of Rural Development and Land Reform has published further amendments to Regulation 68 of the Regulations to the Deeds Registries Act 47 of 1937, subsequent to the [previous amendments published](#) on 25 January 2019.

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The Department of Rural Development and Land Reform has published further amendments to Regulation 68 of the Regulations to the Deeds Registries Act 47 of 1937, subsequent to the [previous amendments published on 25 January 2019](#).

Regulation 68 sets out the procedure to be followed when an original deed has been lost or destroyed and a certified copy thereof needs to be obtained (also referred to as a "VA application"). These amendments were initially scheduled to become effective on 25 February 2019, however due to various impracticalities arising from the amendments, the Deeds Registries Regulations Board resolved to suspend the implementation thereof until further notice. The further amendments to Regulation 68 published on 1 November 2019 are set to bring about some important changes, with effect from 1 January 2020.

Since our deeds offices require that the original deed or mortgage bond be lodged for purposes of the registration of various property transactions, Regulation 68 is repeatedly relied on where such original deed or mortgage bond has become lost or destroyed.

Regulation 68(1) provides that if any deed conferring title to land or any interest therein or any real right, or any registered lease or sublease or registered cession thereof, or any mortgage or notarial bond has become lost or destroyed, a written application for the issue of a certified copy thereof may be made and must be accompanied by an affidavit.

The new amendments now require that in respect of a Regulation 68(1) application:

(a) notice of intention to apply for such certified copy must be published in the prescribed form in an issue of a newspaper circulating in the area in which the land is situated, and in the case of a notarial bond, in an issue of one or more newspapers circulating in the area of every deeds registry in which such notarial bond is registered; and

(b) copies of the deeds in respect of which the certified copies are applied for must be left open for inspection in the deeds registry free of charge by any interested person for a period of two weeks from the date of publication of the notice, during which period any interested person may object to the issue of such certified copy.

The amendments also provide that if the registrar of deeds is satisfied that the relevant deed has been inadvertently lost, destroyed, defaced or damaged by him, it shall be competent for him to issue a copy thereof free of charge and without the need to comply with (a) and (b) above upon submission of an application and affidavit by the relevant conveyancer or person prescribed by regulation or otherwise authorised by law to prepare a deed or other document for registration or filing in a deeds registry.

The previous amendments published on 25 January 2019 provided that the affidavit referred to in the regulation could only be attested by a notary public. This stringent provision was considered impractical and likely to impose undue hardship on the public and was notably removed from the revised amendments.

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...continued

We anticipate that a Chief Registrar's Circular may be issued in due course to clarify the required procedures and practical implications of the amendments to Regulation 68.

The previous amendments also required that the notice of intention to apply for the certified copy or cancellation of lost bond be published in a Government Gazette. However, due to the fact that Government Gazettes are not widely read by the general public, the Deeds Registries Regulations Board decided to amend the regulations to instead require publication in a newspaper circulating in the area in which the property is situated. This is far more practical considering that the purpose of the requirement of publication is to reduce the occurrence of fraudulent transactions by means of VA applications.

A further welcome amendment to the initial amendments published on 25 January 2019 is the apparent retraction of the publication and inspection requirements which were previously also imposed in respect of a Regulation 68(11) application for the cancellation of a lost bond.

We anticipate that a Chief Registrar's Circular may be issued in due course to clarify the required procedures and practical implications of the amendments to Regulation 68.

While the amendments to the regulations have certainly been refined in view of certain practical considerations, the need for publication and a mandatory period of inspection will still involve a longer administrative process for obtaining certified copies of lost deeds, potentially resulting in significant delays to property transactions as well as additional costs.

The concern also remains that in addition to the advertising costs of the new VA application process, the new process could cause delays that result in other financial implications for parties to related property transactions. For example, such delays could trigger penalties or purchase price escalations. There could also be interest implications due to delays in cancelling the seller's exiting bond finance.

In conclusion, we reiterate that clients intending to register any upcoming transfers or cancellations would be well advised to confirm the whereabouts of the necessary original deeds. It would also be prudent to always ensure receipt of original deeds and the proper safekeeping thereof pursuant to a property transaction, especially when considering the potential damages that could be suffered as a result of the delays caused by the new process.

Melissa Peneda and Simone Immelman

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