

13 FEBRUARY 2019

# REAL ESTATE ALERT

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ISSUE

## BEWARE OF LOST TITLE DEEDS

The Department of Rural Development and Land Reform has recently amended Regulation 68 of the Regulations to the Deeds Registries Act, No 47 of 1937. 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"). Regulation 68 also sets out the process to be followed for the cancellation of a lost bond. The amendments are set to become effective on 25 February 2019.

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# BEWARE OF LOST TITLE DEEDS

Since our deeds offices require that the original deed or mortgage bond must 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.

*A Chief Registrar's Circular is expected to be issued to clarify the process which the deeds offices will require VA applicants to follow once the Regulations Board has convened in this regard.*

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Since our deeds offices require that the original deed or mortgage bond must 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.

Regulation 68(11) provides that if the registered holder of a mortgage or notarial bond which has become lost, destroyed or unserviceable wishes to cancel such bond, a written application to cancel such bond may be made, which application must also be accompanied by an affidavit.

The new amendments now require that in respect of both Regulation 68(1) and Regulation 68(11):

- (a) the affidavit accompanying the application must be attested by a *notary public*;

- (b) notice of intention to apply for such certified copy or the cancellation of a lost bond must be *published in an ordinary issue of the Government Gazette* in the prescribed form; and

- (c) 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 after the date of publication of the notice*, during which period any person interested may object to the issue of such certified copy.

A Chief Registrar's Circular is expected to be issued to clarify the process which the deeds offices will require VA applicants to follow once the Regulations Board has convened in this regard, and it is widely predicted that the commencement of these regulations may very well be postponed.

The Government Gazette publication process requires that a notice must be submitted for publication, together with a completed "general legal notice" application form and proof of payment at least *one week before its intended*

# BEWARE OF LOST TITLE DEEDS

CONTINUED

*It would 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.*

*publication date.* The cost of publication is estimated to be R151.32 per ¼ page. Copies of the relevant deed(s) must then lie open for inspection at the deeds office for two weeks after the publication date. Should it transpire that the VA application is only capable of lodgement once this process has first been concluded, it might mean that the process of obtaining a certified copy of a lost deed could take a month, or even longer.

While the purpose behind the new regulations and the details and sequence of the new procedural requirements still need to be clarified, one can be assured that the regulations will bring about a longer administrative process potentially resulting in significant delays to property transactions as well as additional costs.

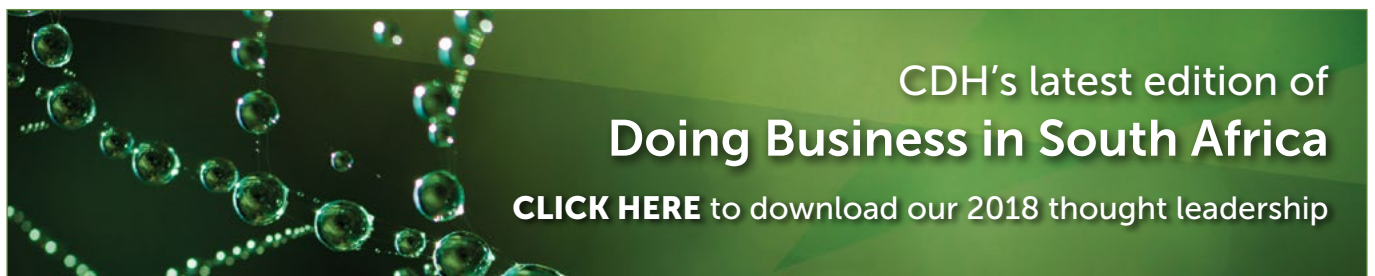
In addition to the notarisation and advertising costs of the new VA application process, the new process could cause delays that result in other financial implications for parties to related property transactions. For example, such delays could trigger penalties or purchase price escalations. There could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

In conclusion, clients intending to register any upcoming transfers or cancellations would be well advised to confirm the whereabouts of the necessary original deeds. It would therefore 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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Gerhard Badenhorst ranked by CHAMBERS GLOBAL 2014 - 2018 in Band 1: Tax: Indirect Tax.

Lucia Erasmus ranked by CHAMBERS GLOBAL 2017 - 2018 in Band 3: Real Estate.

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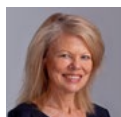


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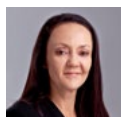


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