

# Real Estate Law

ALERT | 14 January 2025



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### SOUTH AFRICA

I have misplaced my title deed, the Deeds Office does not have a duplicate copy: What do I do now?



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**REAL ESTATE LAW  
ALERT**

## I have misplaced my title deed, the Deeds Office does not have a duplicate copy: What do I do now?

What happens when you are in the process of selling your property or applying for mortgage finance and cannot find your original registered title deed? You contact a firm of conveyancing attorneys for advice and guidance as to what can be done, and they advise you that an application for a replacement of the title deed in terms of Regulation 68(1) of the Deeds Registries Act 47 of 1937 (Act) will need to be submitted (see previous alert on [Title Deeds are meant to be kept safe, not for inspiring young pilots](#)). However if the deeds registries' copy is not available then an application for a certificate of registered title taking the place of a lost, destroyed, incomplete or unserviceable deed in terms of section 38 of the Act will need to be made.

Section 38(1) of the Act deals with **certificates of registered title taking the place of lost, destroyed, incomplete or unserviceable deeds** and reads as follows:

*"If the title deed of any land has been lost, destroyed, incomplete or unserviceable, and the registry duplicate of such title deed has also been lost, destroyed, incomplete or unserviceable, the registrar shall, on written application by the owner of the land, accompanied by a diagram of the land, if no diagram thereof is filed in the registry or in the office of the surveyor-general concerned, execute a certificate of registered title in respect of such land in accordance with the diagram of the land."*

What is a certificate of registered title? It is a substitutive deed that is registered at the relevant Deeds Office in the place of the lost, destroyed, incomplete or unserviceable deed, and will confirm the ownership of the property and any encumbrances or restrictions that may exist over the property. This will then serve as your title deed should you wish to sell your property or register mortgage finance over it.

The requirements for the issuing of a certificate of registered title (certificate) in terms of section 38 are similar to the requirements in terms of Regulation 68(1), in that the owner must apply in writing for the issuing of the certificate of registered title and if the property is under mortgage finance, then the consent/affidavit of the mortgage financier/bond holder must be submitted together with the application to the Registrar of Deeds (Registrar) at the relevant Deeds Office.

The process to be followed when applying for a certificate to replace a lost, destroyed, incomplete or unserviceable deed is as follows:

1. The registered owner of the property will need to make a written application to the Registrar of the relevant Deeds Office for the issuing of the certificate. The application must be accompanied by an affidavit made by the registered owner and if the property is under mortgage finance, then an affidavit by the mortgage financier (bank, etc.) needs to accompany the application, together with the registered owner's affidavit.

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2. The conveyancing attorneys will need to prepare the certificate in accordance with the township flyleaf of the property, the diagram and/or general plan (if any) of the property, as well as with taking into account whether there have been any further servitudes, caveats, etc. registered or noted against the property on the Windeed search obtained from the relevant Deeds Office in respect of the property.
3. Upon receipt of the application and relevant affidavits from the conveyancing attorney on behalf of the registered owner, the Registrar, at the expense of the registered owner or applicant, if the application is being brought by an interested third party (i.e the mortgage financier (bank), the Sheriff of the Court, etc.), publish a notice that they intend to issue the certificate (section 38(2)). This notice is to be published in two consecutive ordinary issues of the *Government Gazette* as well as in two consecutive issues of a newspaper in the district where the property is situated.
4. A draft of the proposed certificate together with the property diagram and/or general plan (if there is one) referred to in 2 above, need to lie open for inspection at the relevant Deeds Office (at no cost) for a period of six weeks after the date of the first publication of the notice in the *Government Gazette* (section 38(3)). During this period, any interested party may view the draft of the proposed certificate and may object to the issuing of the requested certificate.
5. After the expiry of the six-week examination period, and if no objections to the issuing of the certificate have been received by the Registrar, the certificate must be lodged for examination. Should the Registrar not require any re-advertisements in the case of incorrect conditions that could affect the rights of third parties, the Registrar will issue the certificate subject to all conditions, servitudes, leases, bonds and other encumbrances (section 38(5)).

The costs for this process are borne by the registered owner.

**Ceciley Oates**

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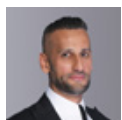
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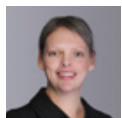


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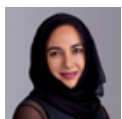
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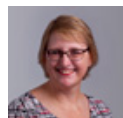
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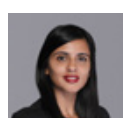
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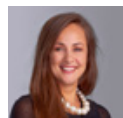
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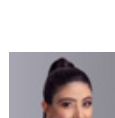
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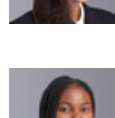
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**BBBEE STATUS:** LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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