Shorts notes on:

CAN YOU DISPOSE OF YOUR IMMOVEABLE PROPERTY IF YOU ARE NO LONGER IN POSSESSION OF THE ORIGINAL TITLE DEED?

Introduction

In South Africa, Immoveable property may not be transferred to another party unless the original Title Deed is lodged with the Registrar of Deeds.

Now what happens if the Title Deed has been lost or destroyed due to circumstances beyond control?

In terms of Regulation 68(1) of the Deeds Registries Act 47 of 1937, the Registrar of Deeds may issue a certified copy of the original Title Deed, provided that an application is received from the holder thereof or his or her duly authorised agent.

This article will briefly discuss what is required by way of application.

Regulation 68(1) of the Deeds Registries Act 47 of 1937

In terms of Regulation 68(1) of the Deeds Registries Act 47 of 1937, if any Title Deed conferring title to land or any interest therein or any real right, or any registered lease or sub-lease or registered cession thereof or any mortgage or notarial bond, is lost or destroyed and a copy is required for any purpose other than one of those mentioned in either of the last two preceding regulations, the registered holder thereof or his duly authorized agent may make written application for such copy.

Furthermore, the Application should be accompanied by an affidavit describing the Title Deed and stating that it has not been pledged and it is not being detained by any one as security for debt or otherwise, but that it has been actually lost or destroyed and cannot be found through diligent search has been made therefore, and further setting forth where possible the circumstances under which it was lost or destroyed.

Provided that where a Registrar is satisfied that any deed mentioned in this paragraph has been inadvertently lost, destroyed, defaced or damaged by him, it shall be competent for him to issue a copy thereof *gratis* (freely).

Application to the Registrar of Deeds in terms of Regulation 68(1)

If the original Title Deed is lost or destroyed, a practicing Conveyancer, on behalf of the registered holder, may lodge an application to the Registrar of Deeds to obtain a certified copy of the Title Deed.

The application must be accompanied by an affidavit deposed to by the registered holder or any other person in whose position the Title Deed may have been prior to the loss or destruction.

The Affidavit must contain the following information:

a) A description of the Title Deed;
b) A statement that the Title Deed has not been pledged and is not being detained by anyone as security of debt or otherwise;
c) A statement that the Title Deed has been lost and/or destroyed and cannot be found after a diligent search;
d) A description of the circumstances under which the deed was lost and/or destroyed; and
e) A statement that should the original title deed be found, that the Registrar of Deeds will be provided with the Title Deed.

What is the position when there is Mortgage Bond registered over the Immoveable Property?

If there is a Mortgage Bond registered over the Immoveable Property and the Mortgagee, who is usually a bank or financial institution, is not in possession of the Title Deed, the consent of the Mortgagee will be required in addition to the affidavit that is to be lodged with the Registrar of Deeds.

In the event of the bond having been ceded or rights to the property were conferred to another person, the consent of such other person will also be required.

Conclusion

As seen above, property owners who are not in position of the original title deed, need not to fear, as Regulation 68(1) of the Deeds Registries Act 47 of 1937 provides recourse in respect thereof.

It is extremely important that property owners inform his/her Conveyancer immediately when they are not in possession of the original Title Deed, in order for the necessary application and affidavit to be prepared.

Here at SchoemanLaw, we can assist with property transfers and Conveyancing related matters.