

Short notes on:

LOST OR DESTROYED TITLE DEEDS – AMENDMENT TO REGULATION 68(1) OF THE DEEDS REGISTRIES ACT 47 OF 1937

Introduction

The question of whether an individual can dispose of their Immoveable Property if they are no longer in possession of the original Title Deed was briefly discussed in my article published on the 14th of January 2019.

If a Title Deed has been lost or destroyed due to circumstances beyond control, Regulation 68(1) of the Deeds Registries Act 47 of 1937, allows the Registrar of Deeds to issue a certified copy of the original Title Deed, provided that an Application is received from the holder thereof or from his or her duly authorised agent.

An amendment to Regulation 68(1) of the Deeds Registries Act 47 of 1937 has since been passed by the Minister of Rural Development and Land Reform, Ms. Maite Nkoane-Matshabane. The amendment will come into effect on 25th February 2019. The important changes brought by the amendment will be briefly be discussed herein.

1) Regulation 68(1) of the Deeds Registries Act 47 of 1937 as it currently stands

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.

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

Currently, 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 Title 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.

Provided that the Registrar is satisfied that any Title Deed has been inadvertently lost, destroyed, defaced or damaged by him, it shall be competent for him to issue a copy thereof *gratis* (freely).

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

The following changes shall come into effect on 25th February 2019:

a) Sub-regulation (1) will be substituted as follows:

"(1) 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, 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, which application shall be accompanied by an affidavit, which affidavit must be attested by a notary public, describing the 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 though diligent search has been made therefor, 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, notwithstanding the

provisions of sub regulation (2), be competent for him to issue a copy thereof free of charge upon submission of an application and an affidavit, which affidavit must be attested by a 'notary public.';¹

b) Insertion of Sub-regulation (1E)

There will be insertion after sub regulation (1D) of the following sub regulation:

"(1E)

- (a) *Before the issuing of a certified copy of any 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 under this regulation, the applicant shall publish, substantially in the prescribed form, a notification of intention to apply for such certified copy in an ordinary issue of the Government Gazette.*
- (b) *Copies of deeds referred to in paragraph (a) shall be 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 a copy.*
- (c) *All persons having objection to the issue of such copy must lodge such objection in writing with the relevant Registrar of Deeds within two weeks after the date of the publication of the notice"²*

In terms of the above Amendment, there will be an additional requirement as follows:

Prior to lodgement of the Regulation 68(1) Application and Affidavit, the following will be required:

- 1) Notification of intention to apply for certified copy must be published in an ordinary issue of the Government Gazette beforehand.
- 2) Copy of all Deeds shall lay for inspection for two weeks from date of publication

¹ Government Gazette, 25 January 2019, No.42186

² Government Gazette, 25 January 2019, No.42186

notice affording all persons having objection to the *issue of a copy to come forth*.

- 3) The Application and Affidavit to be submitted to the Registrar of Deeds must be attested by a Notary Public.

Conclusion

As seen above, property owners who are not in position of the original Title Deed, still need not to fear, as Regulation 68(1) of the Deeds Registries Act 47 of 1937 provides recourse in respect thereof. However, the process shall become much lengthier and costlier.

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 requirements of Regulation 68(1) to be addressed. This can also avoid unnecessary delays, such as lapsing of Rates Clearance Certificates.

Property owners are urged to keep their title deed in safe and secure place at all times.

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