

AUTHENTICITY OF CERTIFICATES ISSUED IN TERMS OF SECTION 15B(3) OF THE SECTIONAL TITLES ACT 95 OF 1986

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INTRODUCTION

Practice has showed that the contents of the section 15B(3)-certificates provided by conveyancers do not always depict the correct state of affairs. It will be endeavoured to cover all the different variations which the conveyancers certificate must follow under different circumstances, and the possible loop holes that cognizance must be taken of.

SECTION 15B(3)(a)(i)(aa)

The conveyancer must provide the registrar of deeds with a certificate confirming that **as at date of registration** of the unit or undivided share therein that, in the case where a body corporate has been established, such body corporate has certified that all moneys due to the body corporate by the transferor in respect of the unit have been paid or provision has been made to the satisfaction of the body corporate for the payment thereof.

Cognizance must be taken that the certificate must be valid **as at date of registration** and not on the date of signing of the certificate, or the date on which the certificate was given by the body corporate. Should a deed be rejected or there is a delay in the registration, conveyancers are advised to obtain new certificates from the body corporate. It would be sound practice that the certificate from the body corporate contain an expiry date in order for a conveyancer to determine the duration of validity.

SECTION 15B(3)(a)(ii)(bb)

Where a body corporate is not deemed to be established, the conveyancer must certify that no moneys are payable. The moneys alluded to here are the moneys owing by the developer. The conveyancer attending to the transfer must ensure that the developer concerned provides proof in this regard. Similarly to the section 15B(3)(a)(i)(aa)-certificate, this certificate must be valid as at date of registration. An expiry date will also be advisable in this instance.

Kindly note that the body corporate is only established after the registration of the first section and not with the transfer of the first section. Should transfers of sections be effected simultaneously with the opening of the sectional title register, the body corporate is only established **on** registration of the last deed in the batch. Should ten sections be transferred simultaneously with the opening of the sectional title scheme, the certificate for all ten transfers will be in terms of section 15B(3)(a)(i)(bb), and not in respect of the transfer of the first section only.

SECTION 15B(3)(a)(iii)

This certificate relates to the existence of a real right of extension of a scheme, as contemplated in section 25 of the Act, in favour of the developer or body corporate.

Should no real right of extension exist, the conveyancer concerned must certify that no real right of extension has been reserved in favour of the developer or body corporate.

However, where a real right of extension has been reserved, the existence thereof must be disclosed in the deed of alienation. In this regard the conveyancer will certify that there is a right of extension as contemplated in section 25 reserved in favour of the body corporate/developer and such right was disclosed in the deed of alienation. This certificate is obviously not required where there is no deed of alienation forming the basis for the transfer. For example, in the case of an inheritance, testate or intestate, or a transfer emanating from a divorce agreement no such certificate will be required (see in this regard RCR 59 of 2008).

Before a conveyancer can provide the certificate as to the existence of the right of extension, he/she must ensure as to whether such right has not lapsed, either

because it has been exhausted or because the right has lapsed by effluxion of time. A word of caution, however, as regard to the reserved period in which the right of extension has to be exercised. Should a real right of extension be reserved for a period of for example two years, and the two years has lapsed, the developer may still proceed with the registration in the deeds registry of such extension, provided proof can be submitted to the registrar of deeds that the buildings were erected prior to the date of lapsing of the right of extension (see RCR 4 of 2008).

Where there is a right of extension reserved, but such right has already lapsed by effluxion of time or because the right has been fully exercised, the conveyancers certificate must provide that **there is a right of extension, but such right has lapsed by virtue of effluxion of time or because it has been fully exercised**. No application need be made for the cancellation of the right that has lapsed (see RCR 8 of 2009).

Where a right of extension has been reserved but not disclosed to the transferee in the deed of alienation, the conveyancer must disclose in the certificate that the right was not disclosed in the deed of alienation and that the transferee, after conclusion of the deed of alienation, has in writing exercised his or her options, in terms of section 25(15), and that he or she has elected not to annul the alienation on that ground. Once again, before providing the certificate in this regard, the conveyancer must first ascertain whether the right of extension has not lapsed for some or other reason. Should it have lapsed, prior to the date of alienation, then the authenticity of the certificate will be frowned upon.

SECTION 15B(3)(b)

A clearance certificate from the local authority must be lodged to the effect that all rates and moneys due to such local authority in terms of any law in respect of the land and buildings of the scheme have been paid where the transfer will result in the establishment of a body corporate in terms of section 36 of the Act. This will take place upon registering the first transfer of a unit in a scheme, irrespective of whether the batch of deeds comprises more than one transfer or not.

The section 15B(3)(a)-certificate by the conveyancer should not specifically refer to the fact that whether the unit is rated or not rated.

The provisions of section 15B(3)(b) should not be confused with, or interpreted as alternative to, the provisions of the Local Government: Municipal Property Rates Act 6 of 2004. In terms of the latter the transfer of a unit must be accompanied by a rates clearance certificate for the unit, issued by the local authority. In instances where the valuation roll of the municipalities is incomplete, an explanatory certificate by a conveyancer may not be accepted. The municipality has to issue the necessary certificate (consult RCR 70 of 2008 and RCR 47 of 2009).

In terms of section 15B(3)(b), a clearance certificate must be produced for the land and the buildings. The provision should not be interpreted that two clearance certificates must be lodged on transfer of a unit. However, upon the first transfer of a unit that will result in the establishment of a body corporate, a clearance certificate for the land as well as the unit being transferred is required. Thereafter only one clearance certificate need be lodged (see RCR 58 of 2009).

CONCLUSION

A registrar of deeds relies on the authenticity of the certificate provided by a conveyancer. It is for this reason the contents of the certificate must be true and just, as at the time of registration into the name of the new transferee. A registrar of deeds will not be hesitant to reject a deed which contains a certificate containing facts which are not true.