The Affidavit must contain the following information:

A description of the Title Deed;
A statement that the Title Deed has not been pledged and is not being detained by anyone as security of debt or otherwise;
A statement that the Title Deed has been lost and/or destroyed and cannot be found after a diligent search;
A description of the circumstances under which the Title Deed was lost and/or destroyed; and
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.

What's new

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.

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 publication date. 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.

The estimated costs to attend to the above application following the new regulations is approximately R 3 500.00. The costs will differ from property to property and will also depend on the amount of Deeds and/or bonds that have to be applied for.

Thus in conclusion , it will soon become very important to ascertain whether the seller is in possession of the relevant Deeds to prevent any delays.

It is extremely important that property owners inform their Conveyancers 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.

Property Update Lost Deeds

Schaëfer
INCORPORATED

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Current process

As stipulated by the regulations our deeds office requires 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 by Conveyancers where such original deed or mortgage bond has become either lost or destroyed.

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.

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.