

How to avoid Deeds Office pitfalls

By Meyer de Waal

An onerous title deed condition that isn't discovered in time could delay or prevent the progress of a property development – with serious cost implications. Alternatively, such an omission could be costly when buying or selling property.

Given this truism, the purpose of this article is to sensitise the reader to some pitfalls when dealing with title deeds.

The deeds registration offices had a system whereby deeds were lodged in duplicate and the Deeds Office would endorse changes of ownership, caveats, interdicts, mortgage bonds, and servitudes against the title deeds. They would keep one copy for records purposes and the other copy would be given back to the client.

It was not practice, nor prescribed in any Act, that conditions be carried forward from deed to deed. In the Deeds Registries in the former Cape Province the so-called **pivot deed** system had existed **prior to 1937**. The pivot deed system is unique to the Cape Town deeds registry. In terms of this system, no conditions were carried forward in a title deed. The title deed conditions would simply state:

"Subject to the conditions as contained in Deed of Transfer No ... [with reference to the prior title deed]".

When searching the above pivot deed, one would find that these deeds in turn make reference to earlier title deeds.

It is only since 1937 that title deed conditions have been carried forward in each new title deed. Thus, to determine all the possible conditions against and in favour of a property, proper research must be done and all previous title deeds must be checked, from the day when the first Government Grant or Crown Grant was issued up to 1937.

The practical way would be to employ a conveyancing attorney, skilled in these matters, to conduct the research and prepare a Conveyancer's Certificate to certify that

- * the Conveyancer did a search behind the pivot deed and
- * found no onerous conditions relevant to the proposed nature of the transaction or development, etc.

Developments since the 1980s

The Deeds Registration offices introduced a micro filming system, and since then all title deeds lodged are microfilmed. In addition, a scanning system was introduced in 2007/ 2008. Thus, Deeds Office records are now kept on both microfilm and in digital format, while the original title deeds are sent back to the attorneys for delivery to the new owner or bank(s).

Title deeds are endorsed with changes in ownership, mortgage bonds and all other property-related transactions. This of course depends on the instruction the

deeds office had received on lodgement from the conveyancing firm.

The Deeds Offices continually update their records and one can obtain a "Deeds Office print-out" to view the most current information listed against the property, viz.:

- Interdicts and caveats (examples are court orders, insolvency and rehabilitation notices, sequestration orders, liquidation orders, notices from the Surveyor General's office, and expropriation notices).
- Sectional title information, such as
 - Exclusive use areas
 - Rights of further extension reserved by the developer (section 25)
 - Servitudes on common property
- Notarial servitudes
- Mortgage bonds

It is, however, also important to note that updated information pertaining to property transactions can take, from date of registration, as long as 5-8 working days to appear on the system of the Deeds Offices. Sectional-title transactions can take up to 10 days and other transactions that involve cross-writing in title deeds filed in counter cover can take up to three weeks.

(**Cross-writing** is the updating of all relevant and related information in documents filed at Deeds Registration offices. The **counter-cover** system applies where 20 or more properties are held under one title deed, and where the client requests the Deeds Office to keep the original title deed in its records.)

Some advice

In sum, to protect one's interests, it is a good idea to appoint a conveyancing attorney to conduct a search at the Deeds Office and peruse or verify the following information that might be applicable to the subject property:

- Conditions in the current title deed
- Conditions behind the pivot deed
- Information on the Deeds Office printouts, such as:
 - Caveats
 - Servitudes
 - Interdicts.

And, lastly, if you are a developer, remember to appoint a town planner to assist with the restrictions imposed by the local authority and, if applicable, zoning requirements. ■

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