

TOWNSHIP ESTABLISHMENT: CONDITIONS OF ESTABLISHMENT

CHIEF REGISTRAR'S CIRCULAR 3 OF 2015

For those planners involved with township establishment, the challenges associated with having a township register opened in the office of the Registrar of Deeds are likely to conjure up cold sweaty nightmares and the desperate pleas of township developers hoping to bring the often lengthy and arduous township establishment process to a successful conclusion.

The latest circular, presented by the Registrar of Deeds, aims to provide a pro forma structure for a typical set of conditions of establishment which, if adhered to strictly, may result in the successful running of the proverbial gauntlet towards having a township register opened and, in turn, permitting the proclamation thereof.

Whereas previous circulars and previous pro forma frameworks for conditions of establishment incorporated some flexibility and latitude with regard to the manner in which the disposal of existing conditions of title, servitudes and associated legal encumbrances could be dispensed with, the latest circular sadly retreats into what can only be described as a somewhat archaic "check list" scenario, leaving little if any discretion on the part of the conveyancer or the official within the Deeds Registry responsible for these matters.

Although the overall structure of the pro forma framework of conditions of establishment remains generally unchanged in the latest circular, the thrust of the new circular lies in the fact that a verbatim quoting of conditions of title from the affected title deed has become mandatory.

Gone are the days of merely referring to a particular servitude or condition of title which may (or may not) affect the erven in the township and which may be carried forward to such erven or dispensed with. The result is an often voluminous version of a set of conditions of establishment containing many pages of quoted conditions of title (some in High Dutch, some in Afrikaans, and others in difficult to digest English legal jargon).

The practical effect hereof is that, in quoting the conditions of title, the author of the conditions of establishment is more likely to commit errors, given the often substandard quality of printing of title deeds (as originally scanned or placed on microfiche or similar methods). The increased risk in possibly committing errors in misquoting the conditions of title and servitudes is anticipated to result in associated delays when Deeds Office officials will return conditions of establishment to be amplified/amended/corrected by the relevant authority (typically the responsible planner in collaboration with the municipality).

The planning practitioner will be required to revisit the municipality in each instance and to have the amendments effected before the appointed conveyancer will again attend at the office of the Registrar of Deeds for a further filing of the documents in the quest to open the Township Register.

A copy of the Registrar's Circular 3 of 2015 has been posted on the website of the SAACPP for ease of reference (www.saacpp.org.za).

SAACPP: 27 March 2015