



agriculture, land reform & rural development

Department:
Agriculture, Land Reform and Rural Development
REPUBLIC OF SOUTH AFRICA

OFFICE OF THE CHIEF REGISTRAR OF DEEDS
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CHIEF REGISTRAR'S CIRCULAR NO. 3 OF 2021

REGISTRATION OF LEASES LAWFULLY ISSUED BY THE STATE AS CONTEMPLATED BY SECTION 3(1)(C) OF THE DEEDS REGISTRIES ACT 47 OF 1937

1. PURPOSE

The purpose of this Circular is to inform Deeds Office officials and officials of the Department Agriculture, Land Reform and Rural Development about matters pertaining to the registration of leases, amendments, renewals and cancellations of such leases, and releases of any part of the property leased contemplated by *section 3(1)(c)* of the Deeds Registries Act 47 of 1937, over State Land.

2. INTRODUCTION

Section 3(1)(c) of the Deeds Registries Act 47 of 1937 (hereinafter referred to as the DRA), authorises the Registrar of Deeds, inter alia, to register, subject to the provisions of the Act, leases lawfully issued by the Government. These leases, which can only be over State Land, are not attested by a notary public and must, therefore, be distinguished from leases referred to in section 3(1)(p) which refers to notarial leases. All the provisions in the DRA relating to leases, except for section 77(1), and all other relevant provisions of the said Act, finds application.

The said section 3(1)(c) read as follows, namely:

“3. Duties of registrar

(1) The registrar shall, subject to the provisions of this Act-

(c) register grants or leases of land lawfully issued by the Government or grants issued by any other competent authority, and register amendments, renewals and cancellations of such leases, and releases of any part of the property leased;”

Both “long-term leases”, (leases with a lease period of 10 years or longer), and “short-term leases”, (leases for a lease period of less than 10 years), are registerable.

Registered long- term leases are “immovable property” in terms of the definition of “immovable property” in section 102 of the DRA. Unregistered long-term leases and registered or unregistered short-term leases are movable property.

3. Lease Agreement

Although there is no form prescribed by the DRA or any other law, certain legislative and procedural requirements must be complied with.

3.1 First Page

The upper half of the first page must be left blank for use by the Registrar. That space will, inter alia, be used for the registration endorsement to be signed by him/her (see regulation 20(1)). Lease agreements not complying with this provision must be accepted if signed before the date of this Circular. A small registration endorsement must be placed at the top of the lease agreement.

3.2 Heading

The lease document must be provided with a heading that discloses the nature of the transaction, which in this case is a “Lease”, and must appear in the middle of the first page. The following serves as an example:

***AGRICULTURAL AGREEMENT OF LEASE
(With an option to purchase)***

The Deeds Office cannot be prescriptive regarding the wording of the heading and will accept headings as disclosed if the word “lease” appears therein.

3.3 Description of lessor

The State is the lessor and must be described as follows:

“THE NATIONAL GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA THROUGH ITS DEPARTMENT OF AGRICULTURE, LAND REFORM AND RURAL DEVELOPMENT,
herein represented by (Disclose name of authorized official) in his/her capacity as Chief Director in the DEPARTMENT OF AGRICULTURE, LAND REFORM AND RURAL DEVELOPMENT, he/she is being duly authorised thereto by (Disclose details i.e. delegation dated.....).”

According to section 3(1)(c) of the DRA, registrars must register leases over Sate Land lawfully issued by Government. In terms of the DRA the preparer, as authorized by the DRA, of a deed or document must sign a prescribed

preparation certificate and takes responsibility that, inter alia, the person that signs the deed or document is duly authorized and act within his/her powers. The same applies to Notarial Deeds regarding the Notary, but in this instance the responsibility that Notaries take is based on Case Law. There is no provision that specifically deals with the question of “responsibility” in the case of leases over State Land and prepared by an official of the Department. It will therefore be the responsibility of Registrars to ensure that the official that signed the lease on behalf of the State is duly authorized by virtue of delegation of powers or under a Power of Attorney.

Proof of delegation or power of attorney will therefore have to be submitted to the Deeds Office.

3.4 The lessee of the land

3.4.1 Identity of lessee

The description of the lessee must be in accordance with the provisions of section 17 (regarding marital status) and regulation 18 (regarding ID Number) and regulation 24 (regarding ID Number and Registration number in respect of juristic persons).

Seeing that there is no legal basis whereby the preparer of the lease or the official acting on behalf of the State takes responsibility for the correctness of that particulars in the lease agreement, a certified copy of the ID document containing the lessee’s name and ID Number must, in the case of a natural person, be submitted to the Registrar and proof of the marital status must also be submitted. In the case of a juristic person or other person, such as a trust, the necessary documents of registration reflecting its name and registration number must be lodged.

3.4.2 Contractual capacity

Seeing that there is no legal basis whereby the preparer of the lease or the official acting on behalf of the State takes responsibility for the correctness of that particulars in the lease agreement, a certified copy of the ID document containing the lessee’s name and ID Number must, in the case of a natural person be submitted to the Registrar, and proof of the marital status must be submitted. In the case of a juristic person or other person, such as a trust, the necessary documents of registration reflecting its name and registration number must be lodged, as well as proof that the transaction is within the powers of the juristic person and the resolution whereby the person was appointed to sign the lease on behalf of the juristic person.

3.5 Description of leased land

The property must be described as per the official registration description on the Deeds Office records. Also see regulation 28 of the DRA. The extent of the property must be expressed in words and figures. See regulation 29 of the DRA. The title number must be disclosed below the extent of the property.

If the lease only covers a portion of the property which is registered in the deeds registry and such portion has not already been registered in the deeds registry as a separate entity, a diagram for that portion must be framed, a copy of which must be annexed to the lease (regulation 73(2) of the Act). The property (lease area) must be described as per the lease diagram.

In the event of Leases submitted for registration under the provisions of the State Land Disposal and Lease Act 48 of 1961, or any amendments thereof, it is sufficient if there is annexed to the deeds so lodged, compilation plans of the land dealt with, certified by the Surveyor-General (regulation 74 of the DRA).

Although the registration of a lease over a portion of a property is permissible under section 3(1)(c), the Department currently only allocate and enter into lease agreements over the whole piece of land registered as a separate entity.

3.6 Conditions of the lease

Registrars have no obligation regarding the conditions of a lease agreement apart from the fact that there must be a lease period and a rental amount. Registrars, therefore, have no responsibility to ensure that the conditions in the lease agreement aligns with the Departmental Policy on leases.

In the event of sub-leases and cessions of leases (which are dealt with at a later stage), Registrars will have to ensure the State has consented to such sub-lease or cession.

3.7 Signing of leases

Lease agreements lodged for registration must be signed by all the parties thereto and must disclose the date and place of signing.

3.8 Deeds Office Registration Fee

Registration fee is payable unless exemption is claimed under, and with reference to, specific legislation that exempt the lease from payment of such fee. This will require a separate official document signed by an authorized official of the Department.

3.9 Registration and numbering of Lease

During the examination process the examiner must affix a “registration endorsement” on page 1 of the lease. The lease will be registered when the Registrar signs the registration endorsement (section 13 of the DRA).

After registration the deed will be allocated with a registration number and the code “K SLL”

3.10 Other legislation

3.10.1 Subdivision of Agricultural Land (Act 70/70)

State Land is not agricultural land – see paragraph (c) of the definition of “agricultural land” in section 1 of the said Act. It will thus not be required to obtain and to lodge a Minister’s consent in the event of registration of a lease in favour of more than one lessee or over a portion of State land.

3.10.2 Local Government Municipal Property Rates Act, 2004

No rates clearance certificate is required with the registration of a lease, seeing that a lease only becomes “property”, as defined in the above Act upon registration thereof.

3.11 Hypothecation of leases and subleases

Leases or subleases may be hypothecated by means of a mortgage bond if the lease or sublease is immovable property (section 50 of the Act).

If a lease or sub-lease is movable property, it may be mortgaged by means of a notarial bond (section 81 of the Act).

Section 82(1) of the Act provides that where a specific notarial bond is to be registered over a registered lease or sublease, such contract must be lodged and must be endorsed with the bond in terms of s 82(2) of the Act.

It should be noted that where a lease or sublease is not registered in a deeds registry such lease or sublease may still serve as security under the notarial bond, but the provisions of s 81(2) and other relevant sections of the Act or regulations will not be applicable to such lease or sublease

3.12 Lodgement of leases at the Deeds Registry

All the existing legal provisions, and all practice and procedures relating to the

lodgement of deeds, applies. Officials of the Department may, in terms of the proviso to regulation 45(1) of the Act, lodge the relevant documents.

The lease, together with all supporting documents, such as the Title Deed and proof of exemption from registration fee (where applicable), must be lodged in the prescribed cover at the relevant Deeds Registry.

4. SUB-LEASES AND CESSION OF LEASES

Section 3(1)(c) does not authorise Registrars to register sub-lease or cessions of leases, seeing that the State as lessor/owner of the land is not a party thereto. Sub-leases and Cession of leases can thus only be prepared by a Notary Public.

Seeing that the registered lease agreement will contain a condition that prohibits sub-letting and cession of the lease without the consent of the State, Registrars may not register any sub-lease or cession without the necessary consent by the State.

Certain leases may even place a total prohibition against the cession of a lease, in which event a cession will not be registerable even if the State consent to the cession thereof.

5. AMENDMENTS, RENEWALS AND CANCELLATIONS OF LEASES

Amendments, renewals and cancellation of leases are registerable under section 3(1)(c) and the provisions under item 3 above applies with the necessary changes.

6. RELEASES OF PORTION OF PROPERTY LEASED

Releases of portions of property leased are registerable under section 3(1)(c) and the provisions of item 3 above applies with the necessary changes.



CHIEF REGISTRAR OF DEEDS

DATE:

21/7/2021

REFERENCE: A. 14/P

RINGBINDER : 58

CHIEF REGISTRAR OF DEEDS
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DEEDS TRAINING
LAND REDISTRIBUTION AND TENURE REFORM
LAW SOCIETY OF SOUTH AFRICA: PRETORIA
LEGAL PRACTICE COUNCIL OF SOUTH AFRICA