PROPERTY OWNERS, BUYERS AND AGENTS: LOST TITLE DEEDS AND BONDS – DON'T DELAY!

“He who hesitates is lost” (Wise old proverb)

In January 2019 new amendments to Regulations for the replacement of lost title deeds (and similar documents like mortgage bonds and notarial bonds – see below) were published. They were very onerous and slated to come into effect at short notice, but after criticism they were suspended – until now.

Revised amendments have been published, to come into effect on 1 January 2020.

Firstly, what is a “Title Deed”?

A title deed (deed of transfer) is legal proof of ownership of a property. It also contains a lot of other important information relating to the property, such as a full description, its size, names of previous owners, bonds registered over it, conditions and legal restrictions relating to it and so on.

Why should you care if yours is lost?

Without the original title deed you cannot pass transfer to a buyer. So if you sell your property, your conveyancing attorney will need the title deed from you (if your property is mortgaged and the bond not yet paid off and cancelled, the bank should be holding the title deed as security).

All good if the title deed is readily to hand, but if it has been lost your attorney must apply for a certified copy. Until now – and this changes on 1 January 2020 – this was a relatively quick and cost-effective matter of attesting to an affidavit in which you confirm that a “diligent search” has failed to locate the title deed and that it isn’t pledged or held as security by anyone. All being well, a few weeks and a reasonable legal fee later, the Deeds Office issues a certified copy of the title deed and the transfer proceeds.

Act now!

All property owners (not just active sellers): The new procedures to come into effect on 1 January are not quite as onerous as the January amendments were, but what is new is that your attorney will have to publish “a notification of intention to apply for such certified copy in an issue of a newspaper circulating in the area in which the land is situated and in the case of a notarial bond in an issue of one or more newspapers circulating in the area of every deeds registry in which such notarial bond is registered.” Any “interested person” then has two weeks to object to the issue of a copy.

That’s extra expense and complication, but perhaps more important is the extra - and potentially very costly - delay. The good news is that all of that is avoidable if you act before the new requirements take effect.

So – whether or not you intend to sell your property in the near future - check immediately that you know where your title deed is, and if you can’t find it ask your attorney to apply urgently for a certified copy.

Buyers: You and the seller are no doubt in the same boat here in that the last thing either of you wants is unnecessary delay in the transfer process. So if you are buying property, forward this to the seller or estate agent with a request that they confirm possession of the title deed or act to replace it immediately.

Agents: Again, unnecessary delay in transfer will prejudice both you and your client. So forward this to everyone with a property on your books (you’re doing them a favour as well as yourself).

Bondholders: As mentioned above, the new amendments apply equally to lost mortgage bonds, notarial bonds, registered leases, holders of real rights etc, so what is said above applies equally to you.

With Deeds Offices always closing earlier than normal in December, don’t hesitate - act now!