



TO: THE ACTING REGISTRAR OF DEEDS (CAPE TOWN)

AND TO: THE CHIEF REGISTRAR OF DEEDS

FROM: CAPE TOWN ATTORNEYS ASSOCIATION (CTAA)

DATE: 8 June 2020

RE: DEEDS OFFICE OPERATIONS

ATT: Mr Dreyer and Ms Knoesen

1. Background

- 1.1 We refer to our letter addressed to Ms Knoesen dated 19 May and copied to the Registrar of Deeds Cape Town, Mr K Pillay. We attach the letter hereto for ease of reference.
- 1.2 It is noted with concern that operations in the Cape Town Deeds Office have not resumed at an acceptable level of service delivery and in this regard we have noted that:
 - 1.2.1 As at 4 June 2020, only 12 junior and 4 senior examiners reported for duty despite the request for a 1/3 of the staff compliment to return to their posts;
 - 1.2.2 It was expected that 50% of examiners would be returning to work during the week of 8 June 2020;

- 1.2.3 matters lodged on 18 May 2020 are only now being sorted for distribution;
- 1.2.4 a total of 11 977 matters were lodged from 12 May 2020 to 3 June 2020, but a mere 17% of those matters were registered to date;
- 1.2.5 Pivot search functions are unreasonably restricted;
- 1.2.6 public access to the Deeds Office is unreasonably restricted;
- 1.2.7 lodgement time slots were unreasonably reduced instead of extended;

2. Level 3 Regulations - Operational Requirements

- 2.1 On 28 May 2020, the Minister of Co-operative Governance and Traditional Affairs published the Level 3 Lockdown Regulations (the “Regulations”) in terms of the Disaster Management Act.
- 2.2 Section 46 (1) of the Regulations provide that all business and other institutions in the public sector may operate, except those specifically listed in table 2 of said Regulations.
- 2.3 The Deeds Office is not an excluded institution listed in table 2 of the Regulations.
- 2.4 We understand that the Cape Town Deeds Office fall within the category of institutions with between 100 to 500 employees and it is therefore subject to the following provisions:

- 2.4.1 the number of employees at the workplace must be minimised by way of rotation, staggered working hours, shift systems, remote working arrangements or similar measures in order to achieve social distancing and to limit congestion in public transport and at the workplace;
- 2.4.2 relevant health- and social distancing protocols must be observed and adhered to at all times;
- 2.4.3 measures for employees who are over 60 and those employees with co-morbidities must be implemented to facilitate their safe return to work, which may include measures at the work-place to limit exposure to Covid-19 and where possible, employees must work from home.
- 2.5 The Cape Town deeds office confirmed that the required health and safety protocols are in place and that sufficient Personal Protection Equipment has been procured.
- 2.6 Thus, at this stage, there is no reason why the majority of deeds office staff should not resume their duties.

3. DPSA Circular 7 of 2020

- 3.1 On 16 March 2020, the Directorate of the Department of Public Service and Administration issued guidelines (the “Guidelines”) to all Heads of Departments and Provincial Administrations, of which the Deeds Office is one.

- 3.2 Paragraph 6 of the Guidelines describes the responses to various levels of Covid-19 exposure as follows:
- 3.2.1 if an employee tested positive for Covid-19 the employee should be granted sick leave and those employees who closely work with the affected employee, should be placed in self-quarantine, followed by the cleaning/disinfection of affected workspaces;
 - 3.2.2 if an employee was exposed to a confirmed case of Covid-19 the employee/s who were in contact with the infected person, should self-quarantine for 14 days;
 - 3.2.3 if an employee was in contact with an unconfirmed case of Covid-19, then special control measures should be put in place until such time the test results of the suspected infected are known;
 - 3.2.4 if an employee appears to be ill, the employee should be isolated in a sick bay and only once the medical diagnosis is confirmed by a medical professional, further action is required;
 - 3.2.5 only in the event of an employee testing positive for Covid-19, should the closure of a unit/component/office or department be considered, after advice was taken from public health officials.
- 3.3 In sum, the circumstances for considering the closure of a unit/component/office or department are spelled out in the Guidelines issued by the DPSA. The immediate closure of the entire Deeds Office, including the office of the Surveyor General, was an inappropriate and disproportionate response to the two reports of possible exposure.

4. Notices of closure dated 21 May 2020 and 7 June 2020

- 4.1 On 21 May 2020 the Cape Town Deeds Office circulated a notice informing stakeholders of the closure of the Deeds Office with immediate effect.
- 4.2 An averment by a staff member that s/he has been exposed to a relative who tested positive with Covid-19 led to the closure of the entire department, including the office of the Surveyor General.
- 4.3 On 7 June 2020 another notice was circulated informing stakeholders of the closure of the Deeds Office with immediate effect. Again, the reason proffered for the closure of the entire department was a staff member's alleged exposure to a relative who tested positive for Covid-19.
- 4.4 The Covid status of the two employees are unknown. The Guidelines indicate that the two employees, and those with whom they were in direct contact, were required to self-quarantine.
- 4.5 The closure of the Deeds Office during 21 May and now is clearly not merited or sanctioned by the Guidelines. The reaction to the reports made by the two employees were not proportionate to the perceived threat of infecting colleagues and/or spreading the virus.
- 4.6 Conveyancers and members of the public are severely prejudiced by the current disproportionate and irrational response to reports of possible exposure.

5. Regulation 45 of the Deeds Registries Act

5.1 It is well-known that deeds must be examined by Deeds Office examiners within a particular time period in order to comply with the peremptory prescripts for the registration, execution or rejection of lodged deeds. The Registrar is obliged to either allow execution or registration of lodged deeds within 5 or 6 working days after lodgement or to reject deeds no later than 5 working days after lodgement. In this regard Regulation 45 reads:

“ (3) on the expiration of either five or six working days, as the Registrar may determine, after such lodgement and between such hours as the Registrar may in his discretion fix, all deeds proper for execution before the Registrar or registration by the Registrar, and to the execution or registration of which no objection exists, shall be executed before the Registrar or registered by the Registrar, but the Registrar shall have discretion to permit deeds to be executed or registered before the time or expiration of the period determined by him and also to reject deeds not executed or registered within such time or period” and

(5) Deeds lodged for execution or registration and to the execution or registration of which any objection exists shall, if circumstances permit, be rejected not later than five working days after lodgement”

5.2 The Cape Town Deeds Office is not adhering to its own Regulations. Many transactions are stuck in administrative limbo with no urgent intervention plans on the cards. Numerous complaints by individual conveyancers and other stakeholders are falling on deaf ears.

5.4 The current irrational responses to Covid-19 reports and the delays in examination of deeds are untenable and have caused the public, conveyancers and various stakeholders in the property industry severe and undue hardship.

6. Demand

6.1 In the premises the CTAA demand that:

6.1.1 the Cape Town Deeds Office reopen with immediate effect;

6.1.2 the Cape Town Deeds Office adhere to the provisions of DPSSA Circular 7 of 2020 in a rational manner;

6.1.3 the Cape Town Deeds Office urgently implement appropriate strategies to respond to Covid-19 reports, bearing in mind the effects that office closures have on the public and other stakeholders.

6.1.4 the Cape Town Deeds Office adhere to the provisions of the Regulations and immediately deploy a suitable and appropriate workforce to attend to the examination of deeds and related services;

6.1.5 the Cape Town Deeds Office comply with Regulation 45 of the Deeds Registries Act;

6.1.6 the Cape Town Deeds Office allow conveyancers or their clerks access to strong rooms to do pivot searches and access to look up interdicts.

6.2 Please note that we will be approaching the High Court for urgent relief should your office fail to adhere to the above demands with 24 hours.



CAPE TOWN ATTORNEYS ASSOCIATION

A handwritten signature in black ink, consisting of a long horizontal line that ends in a loop.

Hendricks CS

Chairperson

info@ctaa.capetown

Dear Ms Knoesen

RE: OPERATIONS: DEEDS OFFICE CAPE TOWN

1. As you may be aware, I am the incumbent Chairperson of the Cape Town Attorneys Association (CTAA). The CTAA is a voluntary association of legal practitioners who are enrolled, and who practice, as attorneys. Its members, who are approximately 1266 in number, practise within the territorial area of jurisdiction of the Cape Town Deeds Office. The CTAA has amongst its objects the promotion of the common interests of its members and the responsibility of dealing with legislation and various stakeholders with whom our members interact.

Background:

2. On 25 April 2020, the South African Government published a schedule of services on the online Resource and News Portal, categorising the various retail and service operations in accordance with the risk level associated with each sector.
3. Included under the level four ("**Level 4**") permissible service operations, the Deeds Office was listed as an essential government and administrative service allowed to commence operations under Level 4.
4. On 29 April 2020, the Minister of Co-operative Governance and Traditional Affairs issued further regulations in terms of Section 27(2) of the Disaster Management Act (the "**Regulations**") regulating the protocols applicable to Level 4, the Deeds Office being one of the permissible Public Administration Services listed in Part O of the Regulations.
5. Section 16(6) of the Regulations provides that all industries, businesses, entities, both in the private and public sector which are permitted to operate under Level 4 must:

- 5.1 designate a COVID 19 compliance officer;
 - 5.2 develop a plan for the phased return of their employees to the workplace, prior to the re-opening of the workplace for business in compliance with Annexure E of the Regulations and which details the plans for a phased-in return of their employees, subject to health protocols being in place; and
 - 5.3 phase in the return of their employees to work and to manage the return of employees from other provinces, metropolitan and district areas.
6. In accordance with the aforementioned Regulations and Directions in relation thereto, the Deeds Office Cape Town commenced the process to facilitate the phased return of their employees and the implementation of the prescribed health protocols.
 7. On 8 May 2020 the Acting Director-general: Agriculture, Land Reform and Rural Development issued Circular 6 of 2020 regulating the implementation of the Covid-19 Risk-adjusted approach and indicating that, on application of a risk matrix, only 18 employees, were to resume duties at the Cape Town Deeds Office in contrast to the permissible 1/3 staff allocation allowance.
 8. On 11 May 2020 the Cape Town Deeds Office issued a communique to all conveyancing firms advising that the receipt of their personal protective equipment (“PPE”) is still awaited and that concerns were raised with you in as far as it pertained to the 18 staff member allocation allowance.
 9. On 12 May 2020, upon your instruction, a further communique was issued advising that the Deeds Office was to open on 13 May 2020 and that all Deeds Office practices and related services would be available and specifically that lodgements will be accepted.

Current status:

10. It is our understanding that all protocols pertaining to the provision of PPE, sanitising of the premises, health protocols and the plan facilitating the phased-in return of employees were in place before the opening of the Deeds Office on 13 May 2020.
11. On 19 May 2020, however, the Cape Town Deeds Office addressed an email to all conveyancers that lodgements are suspended with immediate effect and until further notice. Insufficient staff support is quoted as the reason for the decision to suspend lodgements. Are we to understand that employees are refusing to return to their posts despite an instruction from their employer to do so? When will the Deeds Office remedy the current untenable impasse with its employees, alternatively, be making arrangements to ensure that lodgements resume?
12. The CTAA request that you urgently intervene to ensure that appropriate action is taken to deploy a suitable workforce within 24 hours, failing which we shall have no alternative but to approach the Cape Town High Court for urgent relief.
13. All our rights remain expressly reserved.

Kind regards,

CLIVE HENDRICKS
CHAIRPERSON
072 417 4192

