

# Lost Title Deeds

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## INTRODUCTION

When registering a property into the name of a new owner or cancelling an existing mortgage bond over a property, the Deeds Registry requires the original (or duplicate original) title deed or mortgage bond to be lodged in the Deeds Registry. To the extent that the original documents have been lost or destroyed, Regulation 68 of the Deeds Registries Act, 1937 (Act No. 47 of 1937) prescribes the process of requesting a duplicate original thereof (VA copy).

## BONDS

To determine if a property is mortgaged, a conveyancing attorney will do a deeds office search to check if there are any bonds endorsed against the title deed to the property. It often happens that a mortgagor pays the mortgage bond in full but does not cancel it. The mortgage bond will still need to be cancelled prior to transfer of the property to a new owner. In these cases, the original title deed and mortgage bond are still held by the bank. Where there is no mortgage bond registered, the property owner will have the original title deed.

## COPIES

There are two types of copies that can be requested from the Deeds Registry. The first type is a copy of the deed requested for "information purposes". These copies are to be used for information purposes only and cannot be used to pass transfer or cancel the existing mortgage bond.

The second copy that can be requested from the Deeds Registry is a certified copy used for legal purposes and can be requested in terms of Regulation 68. These are called VA copies.

## VA COPIES

Once the Deeds Registry replaces a lost original of a title deed or mortgage bond, this is called a VA copy. The replacement title deed or mortgage bond within the Deeds Registry will then be endorsed as a VA and

the original (if the original is subsequently found) of such document may no longer be used once a VA is obtained. It is then referred to as a "Dead Deed".

The procedure prescribed in Regulation 68 to obtain a VA copy of a title deed (and any other deeds) requires the registered holder of the deed or their legal representative to lodge a written application for the issue of a certified copy along with an affidavit to the Registrar of Deeds. The affidavit needs to contain the description of the deed, a statement that it has not been pledged or detained as security for a debt, a statement that it has actually been lost or destroyed and cannot be found after a diligent search, where possible the circumstances under which it was lost or destroyed. If the property is mortgaged, the consent of the mortgagee is also required.

## CHANGES TO REGULATION 68 PROCEDURE

As from the 1st of January 2020, Regulation 68 of the Deeds Registries Act, 1937 has been amended. In terms of the newly amended Regulation 68, the process of applying for the replacement of a lost deed now requires that the applicant publish a notice in a newspaper circulating in the area in which the property is situated advising of the intention to apply for a certified copy at the Registrar of Deeds.

After the applicant has published the above notice, a copy of the deed to be replaced, must lie open for inspection at the office of the Registrar of Deeds for a period of two weeks.

Any interested party may inspect the copy of the deed during the two week period at the Registrar of Deeds. Furthermore, any interested party who has objection to the application for the lost deed may submit such objection in writing to the Registrar of Deeds within the two week period. Should there be no objection to the application the Registrar of Deeds will issue the certified copy if satisfied that the copy is truly lost or destroyed.

## CONCLUSION

It is important to establish early on in the process whether a title deed or mortgage bond (or other original deed) has been lost or destroyed so as not to cause unnecessary delays in the transfer of the property or cancellation of a mortgage bond.



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