VERŻJONI ELETTRONIKA

L.N. 157 of 2018

NOTARIAL PROFESSION AND NOTARIAL ARCHIVES ACT (CAP. 55)

Examination of Title (Amendment) Regulations, 2018

IN exercise of the powers conferred by article 84C of the Notarial Profession and Notarial Archives Act, the Minister for Justice, Culture and Local Councils has made the following regulations:-

Citation.

1. The title of these regulations is the Examination of Title (Amendment) Regulations, 2018 and they shall be read and construed as one with the Examination of Title Regulations, hereinafter referred to as "the principal regulations".

S.L. 55.06.

Amends regulation 2 of the principal regulations.

2. In regulation 2 of the principal regulations, the definition "report" shall be deleted.

Amends regulation 3of the principal regulations.

3. Sub-regulation (3) of regulation 3 of the principal regulations shall be amended as follows:

(a) in sub paragraph (b) thereof, the words "enter into such contract," shall be substituted by the words "enter into such contract; or";

(b) immediately after paragraph (b) thereof, there shall be added the following new paragraph:

"(c) by an agreement in writing entered into between the Notary and the transferee or by a written declaration signed by the transferee, which written agreement or declaration may be recorded in the relative notarial act;

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When the agreement to modify these regulations reached between the notary and the client in the manner stipulated in this sub-regulation is not recorded in the relative notarial act, the contract of engagement, the written agreement referred to in this sub-regulation, or the transferee's written declaration shall be retained by the Notary for five years from the date of signing or, if consequent to the examination of title a notarial act is published in terms of article 84C(5) or (6) of the Act, from the date of its publication.".

Cap. 55.

Amends regulation 4 of the principal regulations.

4. In paragraph (d) of regulation 4 of the principal regulations immediately after the words "Government of Malta" there shall be added the words "or the Church".

Amends regulation 7 of the principal regulations.

5. Regulation 7 of the principal regulations shall be amended as follows:

(a) in paragraph (b) of sub-regulation (1) thereof the words "in his report" shall be deleted and immediately after the words "such search" there shall be added the words "and the provisions of sub-regulation (3) of regulation 3 shall be observed.";

(b) (i) in sub-regulation (2) thereof the words "official." shall be substituted by the words "official:"; and

(ii) the words "The notary shall in his report inform the transferee of the limitations of such update:" shall be deleted;

(c) in sub-regulation (3) thereof the words "twenty one" shall be substituted by the words "thirty"; and

(d) in sub-regulation (5) thereof, immediately after paragraph (b) thereof the words "the notary shall mention this in his report and shall advise the transferee on the course of action he could take," shall be substituted by the words "the notary shall inform the transferee and shall advise him on the course of action he could take,"

Amends regulation 8 of the principal regulation.

6. Regulation 8 of the principal regulations shall be amended as follows:

(a) in sub-regulation (2) thereof the words "two months" shall be substituted by the words "four months";

(b) in sub-regulation (4) thereof "the notary shall

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mention this in his report and shall advise the transferee on the course of action he could take," shall be substituted by the words "the notary shall inform the transferee and shall advise him on the course of action he could take,"; and

(c) in sub-regulation (5) thereof, the words "in his report" shall be deleted.

7. Regulation 9 of the principal regulation shall be amended as follows: Amends regulation 9 of the principal regulations.

(a) in sub-regulation (3) thereof there shall be added the word "all" before the word "documents"; and

(b) in sub-regulation (6) thereof the words "in his report" shall be substituted by the words "to the transferee".

8. Sub-regulation (2) of regulation 12 of the principal regulations shall be substituted by the following: Substitutes regulation 12 of the principal regulations.

"(2) Where an exact reference to the emphyteutical concession does not result from the Public Registry official search within the prescriptive period or from the Land Registry official search, the notary shall not be bound to carry out a Public Registry official search beyond the prescriptive period in order to trace the emphyteutical concession and peruse its terms and conditions, but the notary shall be bound to inform the transferee that it is advisable to obtain a copy of the act of emphyteutical concession.".

9. In regulation 13 of the principal regulations, the words "from the report" shall be substituted by the words "in accordance with the provisions of sub-regulation (3) of regulation 3.". Amends regulation 13 of the principal regulations.

10. In regulation 14 of the principal regulations, the words "two months" shall be substituted by the words "four months". Amends regulation 14 of the principal regulation.

11. Regulation 15 of the principal regulations shall be amended as follows: Amends regulation 15 of the principal regulations.

(a) in sub-regulation (1) thereof there shall be added the following new paragraph (a):

"(a) whether a ground rent burdening immovable property was redeemed against the correct dominus;";

(b) paragraphs (a) to (g) thereof shall be renumbered as paragraphs (b) to (h) thereof; and

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(c) sub-regulation (2) thereof shall be substituted by the following:

"(2) Where the immovable is situated in a building or complex, the provisions of this regulation shall apply *mutatis mutandis* to the building or complex as a whole and the notary shall not be bound to peruse the terms and conditions applicable to the other units within the same building or complex even if such terms and conditions result from the searches compiled in accordance with these regulations.".

Substitutes regulation 16 of the principal regulations.

12. Regulation 16 of the principal regulations shall be substituted by the following:

"Copy of acts and wills.

16. Where the official Public Registry or Land Registry searches refer to an *inter vivos* act regarding the immovable or to a will affecting the title to such immovable, an authenticated copy of such act and will, including all relevant documents annexed thereto, shall form part of the searches:

Provided that an unofficial copy of an act or will obtained from the Office of the Notary to Government shall be deemed to be an authenticated copy for the purpose of these regulations and a notary who relies on an unofficial copy of an act including the documents annexed thereto, or will, obtained from the Office of the Notary to Government, shall be considered to have acted with due diligence for the purposes of the Act and these regulations:

Provided further that after the death of one of the testators, the notary may obtain an authenticated extract of an *unica charta* will containing all the testamentary dispositions of the deceased testator instead of a complete copy thereof, but the notary shall not be bound to obtain a copy of an *unica charta* will published before 1 March 2005 unless the succession of both testators has opened. He may at his discretion obtain a declaration made in terms of the proviso to article 68(2) of the Act.".

Amends regulation 18 of the principal regulations.

13. Regulation 18 of the principal regulations shall be amended as follows:

(a) in the proviso of sub-regulation (3) thereof the words "the notary shall point this matter out in his report" shall be substituted by the words "the notary shall point out this

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matter to the transferee"; and

(b) in sub-regulation (4) thereof the words "these regulations and the contract of engagement" shall be substituted by the words "these regulations, the contract of engagement" and immediately after there shall be added the following new words ", and the written agreement or declaration referred to in sub-regulation (3) of regulation 3.".

Substitutes regulation 19 of the principal regulations.

14. Regulation 19 of the principal regulations shall be substituted by the following:

"Contract of engagement.

19. (1) The contract of engagement shall be in writing and shall contain a description of the services a notary binds himself to provide, the standard of diligence he is to exercise, if it is different from that required by these regulations, any disclaimers and limitations, the professional fees payable and any other matter the parties to the agreement may agree upon.

(2) A notary shall not be precluded from entering into a contract of engagement with the transferee even where he is deemed, in terms of article 84C(5) of the Act, to have been instructed to examine title, and in such case the provisions of sub-regulation (1) shall *mutatis mutandis* apply.

(3) Where a notary is instructed to provide one of the services mentioned in article 84C(11) of the Act, he shall enter into a contract of engagement with the person so engaging him, and such contract shall contain all the terms and conditions of the engagement and, as far as possible, it shall be modelled on the provisions of sub-regulation (1).".

Substitutes regulation 20 of the principal regulations.

15. Regulation 20 of the principal regulations shall be substituted by the following:

"Searches.

20. (1) After the notary has examined the title:

(a) where the regulations specifically require the notary to mention any facts which result from the searches; or

(b) where the notary is of the opinion that the searches cannot be exhaustive in terms of these regulations and/or the contract of engagement and/or the written agreement or declaration referred to in sub-regulation (3) of regulation 3; or

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(c) where he has reservations about the searches, he shall inform the transferee of his findings and his reservations and, where so required by these regulations, he shall advise the transferee on the available courses of action including the possibility of referring the transferee to take further independent legal advice.

(2) For the purposes of sub-regulation (1), the notary may draw up a report in writing, which report shall be in two originals both signed and dated by him, one of which shall be given to the transferee and the other, which shall be countersigned by the transferee, shall be retained by the notary for five years from the date when it is so countersigned or, if consequent to the examination of title a notarial act is published in terms of article 84C(5) or (6) of the Act, from the date of its publication. The report shall be drawn up for the sole use of the transferee and his legal advisor and persons other than the transferee who rely on the report or use it shall have no right of action against the notary for any act or omission in the examination of title and the relative report, provided that the notary may give his consent in writing to any person other than the transferee to rely on the report or use it under such conditions as appear appropriate to the notary in his discretion.

(3) (a) Payment of the notary's fee for the examination of title and for disbursements made in connection therewith shall be due and payable to him in terms of the Act, its Schedule, these regulations and, where applicable and subject to the foregoing provisions of this paragraph, in terms of the contract of engagement, notwithstanding that the final notarial act is not published for any reason.

(b) Until such time as the notary is paid the fee and disbursements referred to in paragraph (a), he shall not be obliged to submit his findings and/or reservations in terms of sub-regulation (1) of this regulation or the report mentioned in sub-regulation two of this regulation, as the case may be, to the transferee.".

Substitutes regulation 21 of the principal regulations.

16. Regulation 21 of the principal regulations shall be

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substituted by the following:

"Limitations to statements.

21. (1) Nothing in any statement made by the notary in whatever form, whether verbal or otherwise, or in any document signed by the notary, or in the report referred to in sub-regulation (2) of regulation 21, including but not limited to the examination and, or review of any additional documents and/or generally any other act that goes beyond the obligations of the notary arising from the Act and these regulations, shall be interpreted in such a manner as to widen the notary's responsibility beyond that established in the Act and these regulations and/or to widen the scope of the notary's findings and/or the report referred to in sub-regulation (2) of regulation 20 beyond that established in the Act and these regulations, and as subject to the disclaimers and limitations in the contract of engagement and/or in the written agreement or declaration referred to in sub-regulation (3) of regulation 3 and/or in the report.

(2) Notwithstanding any law to the contrary, the notary's responsibility in connection with the examination of title and/or the report and/or the immovable shall, in any case, be limited to the provisions of the Act and regulation 13.".

Substitutes regulation 22 of the principal regulations.

17. Regulation 22 of the principal regulations shall be substituted by the following:

"Statements.

22. (1) The transferee who makes the declaration required in terms of the first proviso to article 84C(5) of the Act shall do so after the notary explains to him the importance and consequence of such declaration, and the transferee shall confirm that the notary has given him such explanation. The notary shall record in the notarial act the transferee's declaration and confirmation.

(2) Where a notary is exempt from examining title in terms of the second proviso to article 84C(5) of the Act he shall, with reference to the applicable paragraph of regulation 4, explain to the transferee the importance and consequence of such exemption, and the notary shall mention in the notarial act that he has given him such explanation: provided that if the notary explains to the transferee the importance and consequence of such exemption but fails to record such fact in the notarial act, the notary shall not be presumed to have been engaged to examine title.

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(3) The transferee shall make the declaration required by regulation 17(2) after the notary explains to him the importance and consequence of such declaration and after the transferee confirms that the notary has given him such explanation. The notary shall record in the notarial act the transferee's declaration and confirmation.".

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