

DEPARTMENT OF RURAL DEVELOPMENT AND LAND REFORM
NOTICE 92 OF 2016

The Minister for Rural Development and Land Reform hereby publishes The Deeds Registries Amendment Bill, 2016 and Explanatory Memorandum, for public comment.

Members of the public are invited to submit written comments within 30 calendar days of the publication of this notice to the following address:

By post to: The Chief Registrar of Deeds

Attention: Ms Antoinette Reynolds

Private Bag X918

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By e-mail to: e-deedsbill@drdlr.gov.za ; and

louis.louw@drdlr.gov.za or antoinette.reynolds@drdlr.gov.za

Hand delivered to: 5th Floor, Rentmeester Building, Bosman Street, Pretoria.

Comments received after the closing date will not be considered.

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MEMORANDUM ON THE OBJECTS OF THE DEEDS REGISTRIES AMENDMENT BILL, 2016**1 BACKGROUND**

- 1.1 Security of title in South Africa is not explicitly guaranteed by statute, but flows from the unique deeds registration system which is based on specific responsibilities (assigned by the Deeds Registries Act, 1937 (Act No. 47 of 1937) (hereinafter referred to as 'the Act'), to both the conveyancer (who prepares and lodges deeds and documents) and the Registrar of Deeds whose registration function is calculated to afford security of title.
- 1.2 A computer system known as the Deeds Registration System is in place for the purpose of maintaining the electronic land register. Apart from this electronic process, the preparation and lodgement by the conveyancer, as well as the processing of deeds and documents by the Registrar of Deeds, all take place manually. With the advent of the internet, e-commerce and global computerisation, there has been an increased need for electronic service delivery and a number of new challenges are now facing the Deeds Registries. For example, the inability of the present registration infrastructure and resources to accommodate the increase in volume in respect of an anticipated 20 million land parcels of the government's land reform measures; the need to link with the electronic Cadastral Information System in order to improve efficiency and accuracy of South Africa's land information management; the demand for decentralisation of services in order to effect delivery at point of need; the necessity for consolidating and rationalising diversified registration procedures created through legislation by the previous political dispensation; and the need to provide registration capability for other forms of land tenure that the government may introduce in future.
- 1.3 To meet the above-mentioned challenges, the Office of the Chief Registrar of Deeds embarked on a project for the implementation of e-Commerce principles in order to facilitate an electronic deeds registration system ("e-DRS"). The e-DRS will provide for, amongst other things, the registration of large volumes of deeds effectively; improved turn-around times for providing registered deeds and documents to clients; provide country wide access to deeds registration services; enhanced accuracy of examination and registration; availability of information to the

public; and security features including confidentiality, non-repudiation, integrity and availability.

- 1.4 The Deeds Registries Amendment Bill, 2015 ("the Bill") has been drafted to amend the Act to, amongst other things, provide for an electronic deeds registration system; the electronic keeping of registers; the electronic lodgement of proof in paper and electronic form; the electronic issuing of deeds for information and judicial purposes only; the making of regulations in respect of electronic lodgement of deeds and documents and requirements relating to electronic or digital signatures; conveyancers to register as authorised users of the electronic deeds registration system; the electronic preparation of deeds and documents and the save-keeping and filing thereof by conveyancers.

2 CURRENT POSITION

The Act provides for registration processes to take place manually. However, a need exists for a fully electronic deeds registration system to provide, amongst other things, for the fast delivery of land.

3 OBJECTS OF BILL

The main objectives of the Bill are to -

- (a) facilitate the enactment of electronic deeds registration provisions in order to effect the registration of large volumes of deeds as necessitated by the government's land reform initiatives; and to
- (b) expedite the registration of deeds by decreasing the time required for the deeds registration process.

4 SUMMARY OF BILL

The Bill provides for the amendment of the Act as follows:

- 4.1 The insertion of section 1A provides provisions pertaining to the establishment and maintaining of an electronic deeds registration system.
- 4.2 The amendment of section 2 provides for a seal of office to be electronically affixed to deeds and documents.
- 4.3 The amendment of section 3 provides for the deletion of reference to the '*attestation*' of deeds. It further provides for the electronic keeping of registers and

the maintaining of an efficient electronic deeds registration system and the electronic registered deeds registry copy of a deed to be deemed the original deed.

- 4.4 The amendment of section 4 provides for the electronic lodgement of proof in paper and electronic form and the electronic issuing of deeds for information and judicial purposes only.
- 4.5 The amendment of section 10 provides for the making of regulations in respect of electronic lodgement of deeds and documents, the enforcement of payment of fees, and requirements relating to electronic or digital signatures.
- 4.6 The amendment of sections 13, 15, 16A, 26, 27, 53, 91 and 92 provides for the deletion of reference to the '*attestation*' of deeds.
- 4.7 The amendment of section 15 provides for conveyancers to register as authorised users of the electronic deeds registration system, the electronic preparation of deeds and documents and the safe-keeping and filing thereof by conveyancers.
- 4.8 The amendment of sections 17, 27, 28, 31, 32, 33, 37, 40, 43, 44, 45, 46, 46A, 47, 64, 65, 68, 75, 76, 78, 82 and 87 provides for the deeds registry copy of a title deed, bond or other deed to be endorsed and for the client's copy of such title deed, bond or other deed not to be lodged for endorsement.
- 4.9 The amendment of section 18, 22, 40, 43A, 44, 46, 46A and 47 provides for deeds to contain reference to diagrams and general plans that have been approved under the Land Survey Act, 1997 and to provide for such diagrams and plans not to be lodged; It further provides for a member of Cabinet of an Executive council responsible for the administration of state land to apply for the issuing of a certificate of registered state title.
- 4.10 The amendment of section 20 provides for the electronic execution of a deed of transfer by a conveyancer upon authorization of the owner of the land.
- 4.11 The amendment of section 50 provides for mortgage bonds to be prepared in the prescribed form and to be electronically executed by the conveyancer upon authorization of the owner.
- 4.12 The amendment of section 61 provides for the registration of a notarial bond to be effective as registration for the whole republic.

4.13 The amendment of section 95 provides for the full names and identity numbers of witnesses to be disclosed in powers of attorney.

4.14 The amendment of section 102 provides for the insertion of the definition of 'authorized user', 'deed or document', electronic deeds registration system', 'register' and 'signature'. It further provides for the amendment of the definition of 'diagram' and 'general plan' in respect of the approval and filing thereof by the surveyor-general.

5 DEPARTMENTS / BODIES CONSULTED

5.1 The following bodies were consulted:

- (a) The Deeds Registries Regulations Board; and
- (b) The Law Society of South Africa.

5.2 A more comprehensive consultation process will be held after the Bill has been approved by Cabinet for purposes of publication for public comment.

5.3 After the formal consultation process the Bill will be reviewed and re-submitted to Cabinet for approval for introduction to Parliament.

6 FINANCIAL IMPLICATIONS FOR STATE

The project relating to the implementation of the e-DRS has already commenced and expenditure relating thereto is financed by the Deeds Registries Trading Account. The main source of funding this Account is the fees that are charged by the various deeds registries for the registration of deeds and the sale of deeds registration information, as provided for in regulation 84 of the Act.

7 CONSTITUTIONAL IMPLICATIONS

None.

8 COMMUNICATION IMPLICATIONS

To be undertaken by the Department of Rural Development and Land Reform.

9 PARLIAMENTARY PROCEDURE

9.1 The Department of Rural Development and Land Reform and the State Law Advisers are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it does not deal with

any of the matters to which the provisions of section 76 or 74 would apply. The main objectives of the Bill are to facilitate the enactment of electronic deeds registration provisions in order to effect the registration of large volumes of deeds as necessitated by the government's land reform initiatives; and to expedite the registration of deeds by decreasing the time required for the deeds registration process.

- 9.2 "Deeds" in general or "deeds registration" is not a matter listed in schedule 4 or 5 of the Constitution. In *Tongoane v Minister of Agriculture and others*¹ the Constitutional Court confirmed and upheld the test for tagging that was formulated in Ex Parte President of the Republic of South Africa: In re Constitutionality of the Liquor Bill [1999] ZACC 15;2000 (1) SA 732 (CC); 2000 (1) BCLR 1 (CC), where the Constitutional Court held that the heading of section 76, namely, 'Ordinary Bills affecting provinces' provides a strong textual indication that section 76(3) must be understood as requiring that any Bill whose provisions in substantial measure fall within a functional area listed in Schedule 4, be dealt with under section 76.
- 9.3 We have carefully considered the Bill and measured it against the matters listed in Schedule 4 or 5 to the Constitution and we are of the view that the Bill does not deal with any of those matters. Since the Bill does not deal within a functional area listed in Schedule 4 or Schedule 5 to the Constitution, we are of the view that the procedure set out in section 76 of the Constitution is not applicable.
- 9.4 The State Law Advisers are of the opinion that it is not necessary to refer the Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

¹ CCT 100/09 [2010] ZACC 10.