

ALL ABOUT THE ELECTRONIC DEEDS REGISTRATION SYSTEMS ACT (EDRSA)

The Electronic Deeds Registration Systems Act was signed into law on 2 October 2019. Although not yet operational, it formally announces that South Africa has adopted a system of electronic deeds registration. The Act can best be described as 'enabling legislation', in that it provides the framework to commence development and implementation of such a system, moving away from the current paper and written signature requirements in the deeds office.

The Act can be viewed [here](#).

THE ELECTRONIC DEEDS REGISTRATION SYSTEMS ACT

1. Background

With the advent of the internet, e-commerce and computerisation, there has been an increased need for electronic service delivery. From a deeds registration point of view, more modern methods will accommodate the anticipated increase in registration volumes relating to government's land reform measures, and enables decentralisation of deeds registry services. To meet such (and other) needs, the Office of the Chief Registrar of Deeds embarked on a project for the implementation of e-commerce principles in the deeds registration process in order to facilitate an Electronic Deeds Registration System (e-DRS). The Electronic Deeds Registration Systems Act (EDRSA) was signed into law on 2 October 2019 and authorises the Chief Registrar of Deeds to implement a system for electronic registration of deeds.

The e-DRS will ultimately replace the current manual preparation and lodgement procedures prescribed in the 1937 Deeds Registries Act and the 1986 Sectional Titles Act. According to the draughtspersons of the Act, the e-DRS will promote: (i) security of title (ii) improved turn-around times for registration (iii) country-wide access to registration services (iv) overall availability of information and (v) enhanced accuracy of information. It is specifically recorded in the Explanatory Memorandum which accompanied the 2017 Bill, that "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) ("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." The e-DRS will maintain and enhance this security.

2. What is the manual system that will be replaced?

At present – and until such time as the EDRSA becomes fully operational – deeds are registered manually every day in all the deeds registries in South Africa. This means that a conveyancer, appointed by his or her client in terms of a written Power of Attorney, appears in person before the Registrar of Deeds or a deputy Registrar, to sign a deed in which property rights are dealt with in some or other way. On the moment of signature, the rights are transferred or ceded or otherwise dealt with, as the case may be.

A computer system is in place that records registration transactions in respect of land and rights in land. Therefore the public has access to records of transactions that were recorded in the deeds office.

3. A summary of the Electronic Deeds Registration Act

The EDRSA is a short statute, made up of only 7 sections (listed below), covering 4 pages. It sets out to enable electronic registration of deeds in line with advances in our law regarding the regulation of electronic communications and transactions.

The sections are:

1. **Definitions**
2. **Development, establishment and maintenance of electronic deeds registration system**
3. **Validity of deeds and documents**
4. **Authorised users**
5. **Regulations**
6. **Transitional provisions**
7. **Short title and commencement**

Definitions – section 1

Under the definitions in section 1, the following concepts are important for an understanding of the new envisaged system of deeds registration:

"Deed or document", for the purpose of registration, execution or filing in terms of the Deeds Registries Act and Sectional Titles Act, means a deed or document in the form of a 'data message' as defined in the Electronic Communications and Transactions Act (ECTA), generated, submitted, received or stored by electronic means in the electronic deeds registration system, and includes scanned images of a deed or document. (A data message is essentially an electronic document, for example an email or a scanned document.)

"Signature" of a conveyancer, notary or the Registrar of Deeds, for purposes of registration, shall refer to an advanced electronic signature as defined in the ECTA.

Development, establishment and maintenance of electronic deeds registration system - section 2:

This section obliges the Chief Registrar of Deeds to establish and maintain an electronic deeds registration system and to use information and communications technologies for the preparation, lodgment, registration, execution and storing of deeds and documents, subject to the provisions of the ECTA.

Section 2(2) provides that the Chief Registrar of Deeds may, after consultation with the Regulations Board (established in terms of the Deeds Registries Act), issue directives for functional requirements, standards for information security and the like.

Validity of deeds and documents - section 3:

In terms of section 3, a deed or document generated, registered and executed electronically, scanned or otherwise incorporated in the e-DRS by electronic means, will for all purposes be deemed the only original and valid record.

Authorised users - section 4.

Anyone using the electronic deeds registration system must first be authorised. How this authorisation will work, is to be determined by the Registrar.

Regulations - Section 5

This section authorises the Minister to make regulations on the recommendation of the Regulations Board, regarding:

- a) the procedures for the electronic lodgement of deeds or documents;
- b) the procedures for electronic record storing by deeds registries;
- c) the manner of identification of the person who prepares, executes, lodges, registers or stores any deed or document required or permitted to be prepared, executed, lodged, registered or stored in any deeds registry;
- d) the manner in which electronic payment of fees may be introduced;
- e) the procedure and manner for accessing the electronic deeds registration system for information purposes only; the authorisation of any user of the electronic deeds registration system; and
- f) any matter that may be necessary to give effect to the objectives of this Act.

Transitional provisions – section 6

It is confirmed in section 6 that the EDRSA will not affect the validity of any registrations effected prior to the coming into operation thereof. Up until such time, the current procedure to register deeds will remain in place.

Short title and commencement - section 7

It is determined that the President may set different dates for the coming into operation of the different provisions of this Act or the different acts of registration under the Deeds Registries Act and Sectional Titles Act.

The President may also set different dates for the coming into operation of any or certain provisions of this Act for the different deeds registries.

4. Where in the process is the EDRSA positioned?

The electronic registration system will enter the 'usual' conveyancing process from the moment the documents are submitted to the deeds office for examination, up to registration and then recording (in their system and by way of microfilming).

Ultimately the Act enables a process that will have the effect that deeds can be electronically executed or registered, and such deeds "shall be deemed to have been executed or registered in the presence of the Registrar by the owner or by a conveyancer authorised by power of attorney to act on behalf of the owner".