

GENERAL NOTICES • ALGEMENE KENNISGEWINGS

DEPARTMENT OF RURAL DEVELOPMENT AND LAND REFORM NOTICE 101 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

PRETORIA

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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.

REPUBLIC OF SOUTH AFRICA

DEEDS REGISTRIES AMENDMENT BILL, 2016

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*(As introduced in the National Assembly as a section 75 Bill; Bill
published in Government Gazette No. 39792 of 9 March 2016)
(The English text is the official text of the Bill)*
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(MINISTER OF RURAL DEVELOPMENT AND LAND REFORM)

[B — 2016]

for the deletion of provisions that provide for the lodgement of general plans and diagrams; to provide 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; to provide for the electronic execution of a deed of transfer by a conveyancer upon authorisation of the owner of the land; to provide for deeds to contain reference to diagrams that have been approved under the Land Survey Act, 1997 and to provide for such diagrams not to be lodged; to provide for mortgage bonds to be prepared in the prescribed form and to be electronically executed by the conveyancer upon authorisation of the owner; to provide for the registration of a notarial bond to be effective as registration for the whole republic; to provide for the full names and identity numbers of witnesses to be disclosed in powers of attorney; to provide for the definition of 'authorized user', 'deed or document', electronic deeds registration system', 'register' and 'signature'; to provide for the amendment of the definition of 'diagram' and 'general plan' in respect of the approval and filing thereof by the surveyor-general; to provide for transitional provisions in respect of electronic registration; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Insertion of section 1B in Act 47 of 1937

1. The following section is hereby inserted in the Deeds Registries Act, 1937 (hereinafter referred to as "the principal Act") after section 1A:

"Electronic deeds registration system

1B. (1) The chief registrar of deeds must, subject to the provisions of the Electronic Communications and Transactions Act, 2002, establish and maintain the electronic deeds registration system which utilises computer and any other electronic technology for the preparation, lodgement, execution and storing of deeds and documents registerable in terms of this Act or any other law.

(2) The Minister must prescribe—

(a) standards for—

(i) the operation of the electronic deeds registration system in deeds registries; and

(ii) the collection and storing of data through the electronic deeds registration system;

(b) procedures to be adopted and technological specification required for the electronic deeds registration system; and

(c) other matters related to the functioning of the electronic deeds registration system."

Amendment of section 2 of Act 47 of 1937, as amended by section 1 of Act 43 of 1957, section 1 of Act 43 of 1962, section 1 of Act 87 of 1965, section 2 of Act 61 of 1969, section 2 of Act 3 of 1972, section 7 of Act 62 of 1973, section 2 of Act 27 of 1982, section 2 of Act 62 of 1984, section 1 of Act 14 of 1993, section 35 of Act 47 of 1997, section 1 of Act 93 of 1998, section 1 of Act 12 of 2010 and section 1 of Act 4 of 2011

2. Section 2 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection:

"(5) Subject to section 19(3) of the Electronic Transactions and Communications Act, 2002, each registrar **[shall] must** have a seal of office which **[shall] must** be signed and affixed electronically to all **[deeds executed or attested by him and to all copies of deeds issued by him to serve in lieu of the original deeds]**—

(a) deeds or documents executed by the registrar;

(b) deeds or documents executed by a conveyancer and registered by the registrar; and

(c) copies of deeds or documents issued by the registrar."

Amendment of section 3 of Act 47 of 1937, as amended by section 14 of Act 50 of 1956, section 2 of Act 43 of 1957, section 2 of Act 43 of 1962, section 2 of Act 87 of 1965, section 1 of Act 41 of 1977, section 1 of Act 92 of 1978, section 1 of Act 44 of 1980, section 3 of Act 27 of 1982, section 28 of Act 88 of 1984, section 2 of Act 14 of 1993, section 9 of Act 122 of 1993, section 68 of Act 67 of 1995, section 1 of Act 11 of 1996, section 110 of Act 28 of 2002, section 53 of Act 24 of 2003, section 1 of Act 11 of 2005, section 2 of Act 11 of 2005, section 1 of Act 5 of 2006 and section 2 of Act 12 of 2010

3. Section 3 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraphs (d), (e), (t), (u) and (y)—

"(d) **[attest or]** execute and register deeds of transfer of land[,] and **[execute and register]** certificates of title to

(e) **[attest and]** register mortgage bonds;

(t) **[register general plans of erven or of sub-divisions of land,]** open registers of the erven or sub-divisions of land shown on **[such]** general plans, and record the conditions upon which the erven or sub-divisions have been laid out or established;

(u) register powers of attorney whereby the agents named therein are authorized to act generally for the principals granting such powers, or to carry out a series of acts or transactions registrable in a deeds registry [, and **register copies of such powers registered in another deeds registry, which have been certified by the**

registrar thereof, or which have been issued for the purpose of being acted upon in a deeds registry by a Master or registrar of the High Court of South Africa];

- (y) keep [, **whether by means of a computer or in any other manner or by means of a computer and in any other manner,**] electronically such registers containing such particulars as are necessary for the purpose of carrying out the provisions of this Act or any other law and of maintaining an efficient electronic system of deeds registration calculated to afford security of title and ready reference to any registered deed;"

(b) by the deletion of subsections (2) and (4); and

(c) by the addition of the following subsection:

"(5) Subject to section 14 of the Electronic Communications and Transactions Act, 2002, a deed or document generated and registered electronically and any other registered deed or document scanned or otherwise incorporated into the electronic deeds registration system by electronic means is for all purposes deemed to be the only original and valid record, and the original client's copy thereof is deemed to be a copy for information purposes only."

Amendment of section 4 of Act 47 of 1937, as amended by section 3 of Act 43 of 1957, section 2 of Act 170 of 1993 and section 1 of Act 34 of 2013

4. Section 4 of the principal Act is hereby amended –

- (a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:

"(a) to require **[the production of]** proof upon affidavit or otherwise of any fact necessary to be established in connection with any matter or thing sought to be performed or effected in his or her registry; Provided that this requirement is met if such proof exists in paper or electronic form and an electronic copy that has been certified in terms of the provisions of section 18 of the Electronic Communications and Transactions Act, 2002, is produced by a conveyancer, notary or statutory officer to be a true copy of the original thereof;";

- (b) by the substitution in subsection (1)(b) for the words preceding subparagraph (i) of the following words:

"whenever it is in his or her opinion necessary or desirable to rectify in any deed or other document, registered or filed in his or her registry, an error in the name or the description of any person or property mentioned therein, or in the conditions affecting any such property to rectify the error: Provided that the owner or holder applies for the rectification: Provided further that —";

- (c) by the substitution in subsection (1) for paragraph (c) of the following paragraph:

"(c) to issue, under conditions prescribed by regulation, certified copies of deeds or other documents registered or filed in his or her deeds registry, for information and judicial purposes;"; and

- (d) by the deletion in subsection (1) of paragraph (d).

Amendment of section 10 of Act 47 of 1937, as amended by section 5 of Act 43 of 1957, section 5 of Act 43 of 1962, section 4 of Act 87 of 1965, section 4 of Act 3 of 1972, section 2 of Act 92 of 1978, section 5 of Act 27 of 1982, section 3 of Act 62 of 1984, section 5 of Act 14 of 1993, section 3 of Act 170 of 1993, section 68 of Act 67 of 1995 and section 1 of Act 11 of 2000

5. Section 10 of the principal Act is hereby amended—

(a) by the insertion in subsection (1) after paragraph (a) of the following paragraph:

"(aA) the procedures for the electronic lodgement of deeds and documents and the procedures for electronic record retention by deeds registries;"

(b) by the insertion in subsection (1) after paragraph (c) of the following paragraph:

"(cA) the manner in which the payment of fees may be enforced, which may include the suspension and prohibition of the use of lodgment facilities for a deed or document by any person in default of payment of such fees;"

(c) by the deletion of paragraph (d);

(d) by the insertion in subsection (1) after paragraph (d) of the following paragraph:

"(dA) the qualifications of the person who prepares, executes, lodges, registers or files any deed or document required or permitted to be prepared, executed, lodged, registered or filed in any deeds registry;"; and

- (e) by the substitution in subsection (1) for paragraph (m) of the following paragraph:

"(m) the conditions under which copies of deeds and other documents registered in a deeds registry may be issued for **[judicial purposes, or purposes of]** information **[or in substitution of deeds or other documents which have been lost, destroyed, defaced or damaged]** judicial or information purposes and the conditions under which extracts from registers or from any documents registered or filed in a deeds registry may be furnished;"

Amendment of section 13 of Act 47 of 1937, as amended by section 6 of Act 43 of 1957 and section 5 of Act 87 of 1965

6. Section 13 of the principal Act is hereby amended –

- (a) by the substitution for subsection (1) of the following subsection:

"(1) Deeds executed **[or attested]** by a registrar **[shall be]** are deemed to be registered upon the affixing of the registrar's signature thereto, and deeds, documents or powers of attorney lodged for registration **[shall be]** are deemed to be registered when the deeds registry endorsement in respect of the registration thereof is signed **[:**
Provided that no such deed, document or power which is one of a batch of inter-dependent deeds, documents or powers of attorney intended for registration together, shall be deemed to be registered until all the deeds, documents or powers of attorney or

the registration endorsements in respect thereof, as the case may be, have been signed by the registrar].";

(b) by the substitution for subsection (2) of the following subsection:

"(2) If by inadvertence the registrar's signature has not been affixed to a deed executed **[or attested]** by him or her, or to the registration endorsement in respect of the registration of a deed, document or power of attorney lodged for registration, at the time at which the signature should have been affixed in the ordinary course, the registrar may affix his or her signature thereto when the omission is discovered, and the deed, document or power of attorney shall thereupon be deemed to have been registered at the time aforesaid.";
and

(c) by the substitution for subsection (3) of the following subsection:

"(3) All endorsements or entries made on deeds, documents or powers of attorney or in registers, in connection with the registration of any deed, document or power of attorney, **[shall be]** are deemed to have been effected simultaneously with the affixing of the signature of the registrar thereto in respect of deeds executed or **[attested]** signed by a registrar or with the signing of **[his]** the registration endorsement in respect of deeds, documents or powers of attorney lodged for registration, although in fact they may have been made subsequent thereto."

Substitution of section 15 of Act 47 of 1937, as amended by section 4 of Act 170 of 1993 and section 2 of Act 93 of 1998

7. The following section is hereby substituted for section 7 of the principal Act:

"Preparation of deeds by conveyancer

15. (1) Except in so far as may be otherwise provided in any other law, no deed of transfer, mortgage bond or certificate of title or any certificate of registration of whatever nature, mentioned in this Act, **[shall]** may be [attested,] executed or registered by a registrar unless it has been prepared by a conveyancer.

(2) The conveyancer must be registered as an authorised user of the electronic deeds registration system in the manner and under conditions as may be prescribed.

(3) Subsection (2) applies with the necessary changes to any person other than a conveyancer who is authorised by any other law to prepare a deed or document for registration or filing in a deeds registry."

Amendment of section 15A of Act 47 of 1937, as amended by section 6 of Act 27 of 1982 and section 7 of Act 14 of 1993

8. Section 15A of the principal Act is hereby amended by the addition after subsection (3) of the following subsection:

"(4) A conveyancer and person contemplated in subsection (2), who electronically prepares a deed or document in accordance with the prescribed procedures, must keep and file all the documents pertaining to

such deed or document and take reasonable steps for the safe keeping thereof."

Substitution of section 16 of Act 47 of 1937, as amended by section 4 of Act 80 of 1964, section 7 of Act 87 of 1965, section 7 of Act 27 of 1982, section 4 of Act 62 of 1984 and section 3 of Act 93 of 1998

9. The following section is hereby substituted for section 16 of the principal Act:

"How real rights shall be transferred

16. Save as otherwise provided in this Act or in any other law the ownership of land may be conveyed from one person to another only by means of a deed of transfer executed **[or attested]** by a conveyancer and registered by the registrar or executed and registered by the registrar, and other real rights in land may be conveyed from one person to another only by means of a deed of cession attested by a notary public and registered by the registrar: Provided that notarial attestation shall not be necessary in respect of the conveyance of real rights acquired under a mortgage bond: Provided further that where the State acquires all the land held under any title deed, whether by way of expropriation or otherwise, or where a local authority by virtue of the provisions of any law acquires all the land held under a title deed by any other such authority, the registrar **[shall] must** make such alterations and entries in his or her registers and such endorsements on any such title deed as may be necessary to register transfer to the State or such authority,

as the case may be, of the property so acquired free of charge, and that the provisions of subsection (4) (a) of section 31 of this Act **[shall apply *mutatis mutandis*]** applies with the necessary changes in respect of such a transfer by endorsement."

Substitution of section 16A of Act 47 of 1937, as amended by section 5 of Act 62 of 1984 and section 1 of Act 24 of 1989

10. The following section is hereby substituted for section 16A of the principal Act:

"Registration of transfer of right of leasehold

16A. When a right of leasehold which has under any provision of the Black Communities Development Act, 1984, been granted to any person, is registered in the name of a person, that right shall, subject to the provisions of the said Act, and of the regulations thereunder, be transferred in the prescribed manner by means of a deed of transfer executed or **[attested]** registered by the registrar and subject to the conditions of the grant, to another person: Provided that where the State is the transferor such transfer may be effected by means of a deed of grant."

Amendment of section 17 of Act 47 of 1937, as amended by section 1 of Act 15 of 1953, section 1 of Act 37 of 1953, section 8 of Act 43 of 1957, section 8 of Act 43 of 1962, section 5 of Act 3 of 1972, section 29 of Act 88 of 1984, section

1 of Act 75 of 1987, section 9 of Act 14 of 1993, section 1 of Act 132 of 1993, section 2 of Act 11 of 1996, section 12 of Act 120 of 1998, section 1 of Act 9 of 2003, section 53 of Act 24 of 2003 and section 4 of Act 12 of 2010

11. Section 17 of the principal Act is hereby amended by the substitution in subsection (4) for the words following paragraph (d) of the following words:

"the registrar **[shall] must** on the written application by the person concerned and on the submission **[of the deed in question and]** of proof of the relevant facts, endorse the change in status or make a note to the effect that the said person is a party to a marriage in community of property, as the case may be: Provided that where there are two or more mutually dependent deeds, all such deeds must be **[submitted for endorsement]** endorsed: Provided further that in the case of an order of court envisaged in section 7 (9) of the Recognition of Customary Marriages Act, 1998 (Act No. 120 of 1998), the registrar **[shall] must**, on submission of the relevant **[deed and]** court order and without the necessity of a written application, make the endorsement or note accordingly."

Amendment of section 18 of Act 47 of 1937, as amended by section 6 of Act 3 of 1972, section 8 of Act 27 of 1982, section 10 of Act 14 of 1993 and section 4 of Act 93 of 1998

12. Section 18 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

"(1) The ownership of unalienated State land may be transferred from the State only by a deed of grant issued under proper

authority, and, except where otherwise provided in this Act or the regulations, or unless the land is represented on a general plan, the deed of grant must **[have a]** make reference to the general plan or diagram of the land **[annexed thereto]."**;

(b) by the substitution for subsection (2) of the following subsection:

"(2) The ownership of land alienated from and re-acquired by the State may be transferred from the State either by deed of grant or by deed of transfer **[issued]** registered or executed, as the case may be, under proper authority, but in either case the deed of grant or transfer **[shall]** must contain a reference to the title deed by which the State held the land and to the **[title deed to which the]** diagram of the land **[is annexed]** and shall set forth the conditions upon which the land is alienated and the rights to the land reserved by the State on this alienation.";

(c) by the substitution for subsection (3) of the following subsection:

"(3) If any piece of unalienated State land has been surveyed and is represented on a diagram the registrar concerned **[shall]** must, upon written application by **[the Minister of Public Works or an officer of the State authorized by him, accompanied by the diagram of the land in duplicate,]** a member of the Cabinet or of an Executive Council responsible for the administration of the State land in question, or an officer of the State authorised by the said member, enter particulars of the land in the appropriate registers and execute in the prescribed form and in accordance with the diagram, a

certificate of registered State title thereof prepared by a conveyancer.";

and

(d) by the substitution for subsection (4) of the following subsection:

"(4) Transfer of the ownership of land held by the State under certificate of registered State title **[shall] must** be effected by deed of grant containing reference to the certificate of registered State title and the diagram, and must be issued under proper authority **[, but it shall not be necessary to annex a diagram of the land thereto: Provided that the grant shall contain a reference to the certificate and to the diagram annexed to the certificate].**".

Substitution of section 20 of Act 47 of 1937, as amended by section 5 of Act 62 of 1984 and section 1 of Act 24 of 1989

13. The following section is hereby substituted for section 20 of the principal Act:

"Form and manner of execution of deeds of transfer

20. (1) Deeds of transfer **[shall] must** be prepared in the forms prescribed by law or by regulation **[, and, save as in this Act or any other law provided or as ordered by the court, including a court with the necessary jurisdiction established in terms of the Magistrates' Courts Acts, 1944 (Act No. 32 of 1944), in respect of deeds of transfer executed by the registrar, shall be executed in the presence of the registrar by the**

owner of the land described therein, or by a conveyancer authorized by power of attorney to act on behalf of the owner, and shall be attested by the registrar].

(2) Except where otherwise provided in this Act, any other law, or by an order of the court, including a magistrate court with necessary jurisdiction, a deed of transfer must—

(a) save in respect of deed of transfer executed by the registrar, be executed by the conveyancer duly authorised by—

(i) the power of attorney to act on behalf of the owner of the land and the person to whom the transfer is to be passed; or

(ii) their respective agents duly authorised by the power of attorney to act on their behalf; and

(b) be registered by the registrar."

Amendment of section 22 of Act 47 of 1937

14. Section 22 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) Two or more portions of a piece of land may by one deed be transferred by one person or by two or more persons holding the whole of such piece of land in undivided shares to one person or to two or more persons acquiring such portions in undivided shares: Provided that each portion is described in a separate paragraph in which reference is made to the diagram of that portion. **[The diagrams of all such portions shall be annexed to the deed.]"**

Amendment of section 26 of Act 47 of 1937, as amended by section 11 of Act 43 of 1957, section 11 of Act 43 of 1962, section 10 of Act 87 of 1965 and section 54 of Act 24 of 2003

15. Section 26 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

"(1) If two or more persons who own in undivided shares the whole of any piece or pieces of land, have agreed to partition that land, the registrar **[shall] must**, on production to him or her of a power of attorney by such persons authorizing the passing of deeds of partition transfer of such land in accordance with the agreement of partition, which agreement **[shall] must** be embodied in the power of attorney **[or annexed thereto]**, and on compliance with the further provisions of this section, **[attest] register** deeds of partition transfer which **[shall] must** be as nearly as practicable in the prescribed form, conveying to the respective owners the land or shares therein awarded to them under the said agreement."; and

(b) by the deletion of subsection (3).

Amendment of section 27 of Act 47 of 1937, as amended by section 12 of Act 43 of 1957

16. Section 27 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) If the share or shares owned by any of the parties to a partition is mortgaged, the partition transfers **[shall]** will not be **[attested]** registered unless **[the bond is produced to]** the registrar **[together]** is provided with the written consent of the legal holder of the bond, to the partition and to the substitution of the land awarded on partition to the mortgagor for the share or shares mortgaged."

Amendment of section 28 of Act 47 of 1937, as amended by section 12 of Act 43 of 1962, section 53 of Act 24 of 2003 and section 12 of Act 43 of 1962

17. Section 28 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

"(1) If the share or shares owned by any of the parties to a partition appear from the title deeds of the land partitioned to be subject to a lease, personal servitude or other real right, the written consent of the holder thereof to the partition and allocation of the lease, servitude or other such real right **[, together with the deed, if any, by which the lease, servitude or real right is held, shall]** must be produced to the registrar."; and

(b) by the substitution for subsection (3) of the following subsection:

"(3) If there exists any bond by which the lease, servitude or real right is itself mortgaged, **[that bond shall also be produced to the registrar, together with]** the registrar must be provided with the written consent of the legal holder thereof to the partition and allocation of the lease, servitude or such other real right,

and the registrar **[shall]** must make the endorsements and entries mentioned in section twenty-seven on the bond, the deeds concerned and in the registers."

Amendment of section 31 of Act 47 of 1937, as amended by section 13 of Act 43 of 1957, section 13 of Act 43 of 1962, section 11 of Act 87 of 1965, section 3 of Act 61 of 1969, section 95 of Act 63 of 1975, section 10 of Act 27 of 1982, section 6 of Act 62 of 1984 and section 26 of Act 45 of 1992

18. Section 31 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

"(1) (a) Whenever any land has, under the authority of any law, been expropriated by, and whenever the ownership of any land has by statute been vested in, the State, any public or local authority or any corporate body or any association of persons, the registrar **[shall]** must, upon lodgment **[with him]** of a deed of transfer in the prescribed form prepared by a conveyancer in favour of the transferee, execute the same, and if the land is hypothecated, **[he shall]** endorse the fact of such transfer on **[the registry duplicate of]** the bond **[, and if the original bond is at any time lodged in his office for any purpose except cancellation, he shall make a similar endorsement thereon]**: Provided that no such transfer shall prejudice any claim to compensation which any owner or other person may have in respect of the change of ownership of such land: Provided further that no such deed of transfer shall be registered in favour of the State if

transfer of the land has already been registered in favour of the State by an endorsement as contemplated in the second proviso to section 16.

(b) The registrar must endorse the title deed of the land in respect of the transfer as contemplated in paragraph (a).";

- (b) by the deletion of subsection (2); and
- (c) by the substitution in subsection (6) for paragraph (a) of the following paragraph:

"(a) Immediately after any land has been expropriated the expropriating authority **[shall] must** lodge with the registrar a certified copy of the notice of expropriation, **[two copies] a copy** of the relevant expropriation plan of the land in question, and a certificate describing the land and stating the name, number and administrative district thereof, as well as the full names and surname of the registered owner and the number (consisting of the serial and year number) of the title deed, and the registrar **[shall] must** cause a note of the expropriation to be made in his or her registers, and **[if at any time the original of the title deed is lodged in his registry for any purpose, or application is made for the issue of a certified copy thereof, he shall]** cause an appropriate note to be endorsed on the relevant title deed [thereon as well as on the office copy thereof and a copy of the expropriation plan to be annexed thereto as well as to the office copy thereof]: Provided that the afore-mentioned expropriation plans **[shall] must** be dispensed with where the whole of a piece of land has been expropriated."

Amendment of section 32 of Act 47 of 1937, as amended by section 14 of Act 43 of 1957, section 14 of Act 43 of 1962, section 12 of Act 87 of 1965, section 4 of Act 61 of 1969, section 9 of Act 62 of 1973, section 10 of Act 29 of 1974, section 95 of Act 63 of 1975, section 7 of Act 62 of 1984 and section 27 of Act 45 of 1992, section 53 of Act 24 of 2003 and section 1 of Act 11 of 2005

19. Section 32 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

"(1) (a) Whenever any right of servitude over any land has under the authority of any law been expropriated by, or has by statute been vested in, the State, any public or local authority or any corporate body or any association of persons, the registrar **[shall must, upon lodgment [with him] of a deed of cession in the prescribed form prepared by a conveyancer in favour of the cessionary, execute and register such deed, and if the land is hypothecated, endorse the fact of such cession on the [registry duplicate of] the bond [, and if the original bond is at any time lodged in his office for any purpose except cancellation, he shall make a similar endorsement thereon]**: Provided that no such cession shall prejudice any claim to compensation which any owner or other person may have as a result of the expropriation or vesting of such servitude.

(b) The registrar must endorse the title deed of the land in respect of the cession as contemplated in paragraph (a).";

(b) by the deletion of subsection (2); and

(c) by the substitution for subsection (5) of the following subsection:

"(5) Immediately after any right of servitude over any land has been expropriated, the expropriating authority **[shall] must** lodge with the registrar a certified copy of the notice of expropriation, **[two copies] a copy** of the relevant expropriation plan of the servitude in question and a certificate describing the land and stating the name, number and administrative district thereof, as well as the full names and surname of the registered owner and the number (consisting of the serial and year number) of the title deed, and the registrar **[shall] must** cause a note of the expropriation to be made in his or her registers, and **[if at any time the original of the title deed is lodged in his or her registry for any purpose or application is made for the issue of a certified copy of such title deed, the registrar shall]** cause an appropriate note to be endorsed **[thereon as well as on the office copy thereof and a copy of the expropriation plan to be annexed thereto as well as to the office copy thereof]** on the title deed of the land.".

Amendment of section 33 of Act 47 of 1937, as amended by section 15 of Act 43 of 1957, section 15 of Act 43 of 1962, section 13 of Act 87 of 1965 and section 11 of Act 14 of 1993,

20. Section 33 of the principal Act is hereby amended—

(a) by the substitution for subsection (8) of the following subsection:

"(8) Subject to the terms of any order made under this section any deed of transfer passed in pursuance of such order **[shall]** must be passed subject to every condition, servitude, bond or other encumbrance to which, according to the records of the deeds registry, the property to which the application relates, is subject, and the registrar **[shall]** must, in connection with such condition, servitude bond or other encumbrance, make the usual and proper entries and endorsements upon or in respect of such deed of transfer in his or her registry **[, before such deed is delivered to the applicant].**"; and

(b) by the substitution for subsection (11) of the following subsection:

"(11) Upon production to the registrar of deeds of any order made under this section and of a certificate by the proper officer as to the payment of the transfer duty, if any, which the person named in the order is liable to pay, and on compliance with any other requirements which have under this Act to be complied with, the registrar **[shall]** must register such property in accordance with the said order, by executing a deed of transfer thereof in the prescribed form in favour of the person named in the order **[: Provided that it shall not be necessary to produce the title deed of the property or a certified copy thereof, if an affidavit by the transferee is produced that he has been unable to obtain possession of such title deed].**".

Amendment of section 37 of Act 47 of 1937, as amended by section 16 of Act 43 of 1957

21. Section 37 of the principal Act is hereby amended—

- (a) by the deletion of subsection (2);
- (b) by the deletion of subsection (3); and
- (c) by the insertion after subsection (3) of the following subsection:

"(3A) Before executing any certificate referred to in subsection (1), the registrar must—

- (a) if the property concerned is subject to a registered mortgage bond, endorse upon the title deeds in question and upon the mortgage bond the fact that a certificate of registered title has, in accordance with the appropriate section of this Act, been substituted for the said title deed or deeds in respect of the property in question; and
- (b) if the property is mortgaged, make the necessary entries in the registers in respect of such certificate and endorse that fact upon the certificate."

Amendment of section 38 of Act 47 of 1937, as amended by section 2 of Act 34 of 2013

22. Section 38 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) If the deeds registry copy of a title deed of any land has been lost[,] or destroyed[,] or become incomplete or unserviceable, **[and the registry duplicate of such title deed has also been lost, destroyed, incomplete or unserviceable,]** the registrar **[shall] must,** on written

application by the owner of the land, accompanied by a diagram of the land[,] if no diagram thereof is filed **[in the registry or]** in the office of the surveyor-general concerned, execute a certificate of registered title in respect of such land in accordance with the diagram of the land."

Amendment of section 40 of Act 47 of 1937, as amended by section 18 of Act 43 of 1957, section 16 of Act 43 of 1962 and section 6 of Act 93 of 1998

23. Section 40 of the principal Act is hereby amended—

(a) by the substitution for subsection (3) of the following subsection:

"(3) Every such certificate **[shall] must** be in accordance with the new diagram and **[shall] must** be issued on written application by the owner or owners of the pieces of land in question accompanied by the **[title deed or deeds thereof and any bond thereon, together with the]** written consent of the holder of **[the] any** bond registered over the land.";

(b) by the substitution in subsection (6) for paragraph (a) of the following paragraph:

"(a) If portion only of the said land is subject to any registered deed of lease or other registered deed other than a bond, whereby any real right in the land is held by any other person, the certificate **[shall] may** not be issued unless a diagram of such portion **[is already annexed to the said registered deed, or, if no such diagram is so annexed, unless a diagram in duplicate (or triplicate if required by the registrar) of such portion is produced: Provided**

that it shall not be necessary to produce a diagram of such portion if the diagram of the consolidated land shows that portion by dotted lines or in such other way as to identify it] has been framed and approved under the Land Survey Act, 1997 or the diagram of the consolidated land shows that portion by dotted lines or in such other way as to identify it."; and

- (c) by the substitution in subsection (6) for paragraph (b) of the following paragraph:

"(b) The [said diagram shall be annexed to the registered deed aforesaid and the registry duplicate thereof, and shall] diagram referred to in paragraph (a) must be mentioned in any endorsement made on or reference made in the certificate concerning such registered deed."

Amendment of section 43 of Act 47 of 1937, as amended by section 19 of Act 43 of 1957 and section 4 of Act 11 of 1996

- 24.** Section 43 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) If a defined portion of a piece of land has been surveyed and a diagram thereof has been approved by the surveyor-general concerned, the registrar may on written application by the owner of the land accompanied by the [diagram of such portion, the title deed of the land, any bond thereon and the] written consent of the holder of any [such] bond registered

over the land, issue a certificate of registered title in respect of such portion, as nearly as practicable in the prescribed form."

Amendment of section 43A of Act 47 of 1937, as amended by section 13 of Act 14 of 1993 and section 13 of Act 27 of 1982

25. Section 43A of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) In the event of land reverting to the land register under the provisions of the Sectional Titles Act, 1986 (Act No. 95 of 1986), without revival of the developer's title deed in terms of the said Act, the registrar **[shall] must** issue a certificate of registered title in the prescribed form in respect of such land in substitution of the certificates of registered sectional titles under which the land was held prior to such reversion: Provided that where the land which reverts to the land register forms a portion only of the land previously registered in the land register, a diagram thereof **[shall be annexed to the certificate of registered title]** has been framed and approved under the Land Survey Act, 1997."

Amendment of section 44 of Act 47 of 1937, as amended by section 18 of Act 43 of 1962, section 16 of Act 87 of 1965, section 5 of Act 92 of 1978, section 53 of Act 24 of 2003, section 1 of Act 11 of 2005 and section 3 of Act 34 of 2013

26. Section 44 of the principal Act is hereby amended—
(a) by the substitution for subsection (1) of the following subsection:

"(1) If rectification of title is required in respect of any one piece of land in consequence of a survey or re-survey of such land or of the correction of any error in the diagram thereof under the Land Survey Act, 1997, the registrar may, on written application by the owner of the land accompanied by the **[title deed and the new or the corrected diagram thereof, any bond thereon and any registered deed of lease or other registered deed whereby any real right therein is held by any other person and the]** written consent of the holder of **[such]** any bond, lease or right, endorse on the **[aforesaid]** title deed, bond, lease, or other deed a description of the land according to the new or corrected diagram, which description **[shall supersede]** supersedes the description already appearing in the aforesaid deeds."; and

(b) by the deletion of subsection (2).

Amendment of section 45 of Act 47 of 1937, as amended by section 20 of Act 43 of 1957, section 19 of Act 43 of 1962, section 31 of Act 88 of 1984, section 2 of Act 24 of 1989, section 14 of Act 14 of 1993 and section 5 of Act 11 of 1996

27. Section 45 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (c) of the following paragraph:

"(c) a written consent **[(which shall be in duplicate,]** in the prescribed form and signed by the survivor and the legal holder of the bond **[)]** , to the release of the estate of the deceased spouse from liability under the bond and to the substitution of the survivor as sole debtor in

respect thereof, is produced to the registrar **[together with the bond]**."

Amendment of section 46 of Act 47 of 1937, as amended by section 22 of Act 43 of 1957, section 17 of Act 87 of 1965 and section 6 of Act 92 of 1978

28. Section 46 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

"(1) If land has been sub-divided into lots or erven shown on a general plan, **[the owner of the land sub-divided shall furnish a copy of the general plan to the registrar, who shall,] the registrar must on application by the owner of the land so sub-divided,** subject to compliance with the requirements of this section and of any other law, **[register the plan and]** open a register in which all registrable transactions affecting the respective lots or erven shown on the plan shall be registered.";

(b) by the deletion of subsection (2);

(c) by the insertion after subsection (2) of the following subsection:

"(2A) If the land so sub-divided as shown on the general plan is hypothecated under a mortgage bond, there must be produced to the registrar the mortgagee's consent to the opening of the relevant register and the endorsement of such bond to the effect that it attaches to the land described on the plan.";

(d) by the substitution for subsection (3) of the following subsection:

"(3) If the land sub-divided as shown on the general plan forms the whole of any registered piece of land held by the title deed, the registrar **[shall]** must make upon the title deed **[and the registry duplicate thereof]** an endorsement indicating that the land has been laid out as a township or settlement, as the case may be, in accordance with the plan, and that the lots or erven shown on the plan are to be registered in the relative register.";

(e) by the deletion of subsection (7); and

(f) by the addition after subsection (7) of the following subsection:

"(7A) Where a register has been opened in terms of subsection (1), it is not necessary where a whole erf is transferred for a diagram to be framed thereof, provided a reference is made to the general plan in the relevant deed of transfer."

Substitution of section 46A of Act 47 of 1937, as amended by section 5 of Act 16 of 1969

29. The following section is hereby substituted for section 46A of the principal Act:

"Requirements in the case of subdivision of land into lots or erven of land in the area of deeds registry at Johannesburg

46A. (1) Notwithstanding the provisions of section 46, no register in respect of lots or erven shown on a general plan-referred to in subsection

(1) of that section **[in respect of land situated in the area of the deeds registry at Johannesburg shall be registered in terms of that subsection, and no register so referred to in respect of the lots or erven shown on such general plan shall]** may be opened, unless the land subdivided forms the whole of the land held under the relevant title deed or forms a portion of land registered in the deeds registry at Johannesburg.

(2) When any such **[general plan is to be registered]** register is to be opened in respect of land situated in the area of the deeds registry at Johannesburg and registered in the deeds registry at Pretoria, the registrar at Pretoria **[shall]** must, after the necessary examination and after having made the endorsements contemplated in section 46 (3), furnish **[certified copies of]** the title deed of such land and **[of all]** other deeds and documents relating to such land and registered or recorded in his or her office, to the registrar at Johannesburg.

(3) The registrar at Johannesburg **[shall]** must thereupon **[register the general plan and]** open the register contemplated in subsection (1) of section 46 in accordance with the requirements of that subsection and **[shall]** must enter in his or her registers or file of record in his or her office, as the circumstances may require, **[the copies of]** the title deed, other deeds and documents furnished to him or her under subsection (2) of this section.

(4) In the application of any relevant law in relation to the land in question, a title deed, other deed or document **[of]** which **[a copy]** has in terms of this section been furnished to the registrar at Johannesburg and entered in his or her registers, **[shall]** must be deemed to be registered or recorded in his or her office, as the circumstances may require **[, and any**

such copy shall in so far as may be necessary be deemed to be the registry duplicate of the title deed, other deed or document in question].

(5) If any land ceases to be land included in a township in the area of the deeds registry at Johannesburg, the registrar at Johannesburg **[shall] must** furnish **[certified copies of]** the title deed of such land and of all other deeds and documents registered in his or her office and relating to such land and which may be necessary for the registration or recording of any further legal transactions in relation to such land in the deeds registry at Pretoria, to the registrar at Pretoria who shall, after making such endorsements as he or she may deem necessary on such copies, enter such **[copies] title deed and other deeds and documents** in his or her registers, and thereupon the title deed, other deeds and documents **[shall be] are** deemed to be registered or recorded, as the case may be, in the deeds registry at Pretoria."

Substitution of section 46B of Act 47 of 1937, as amended by section 7 of Act 93 of 1998

30. The following section is hereby substituted for section 46B of the principal Act:

Section 46 applies [mutatis mutandis] with the necessary changes to land otherwise subdivided

46B. The provisions of section 46 do not preclude the **[registration of a general plan and]** opening of a register in respect of any land other than land subdivided into lots or erven, and the provisions of that section **[shall mutatis mutandis]** apply with the necessary changes to such land."

Amendment of section 47 of Act 47 of 1937, as amended by section 7 of Act 93 of 1998 and section 21 of Act 43 of 1962

31. Section 47 of the principal Act is hereby amended by the substitution in subsection (1)(a) for subparagraph (i) of the following subparagraph:

"(i) the transfer shall be passed in accordance with a diagram **[(to be annexed to such deed)]** from which shall be excluded all erven on the land represented thereon which have already been transferred, and on which the total area of such transferred erven shall be indicated;"

Amendment of section 49 of Act 47 of 1937, as amended by section 7 of Act 61 of 1969

32. Section 49 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) If that township is **[situate]** situated in the area served by the deeds registry at Johannesburg, the registrar at Pretoria **[shall]** must furnish the registrar at Johannesburg with **[certified copies of]** the title to the land to be included in such township and of all deeds affecting it, and the

registrar at Johannesburg [**shall**] must thereupon enter the same in the appropriate registers."

Amendment of section 50 of Act 47 of 1937, as amended by section 7 of Act 61 of 1969

33. Section 50 of the principal Act is hereby amended—

- (a) by the deletion of subsection (1); and
- (b) by the insertion after subsection (1) of the following subsection:

"(1A) A mortgage bond must be—

- (a) prepared in the prescribed form, except where it is otherwise provided in this Act, any other law or as ordered by the court;
- (b) executed by the conveyancer who is duly authorised by power of attorney to act on behalf of the owner or holder of the immovable property therein described or by their respective agents duly authorised by powers of attorney to act on their behalf; and
- (c) registered by the registrar."

Amendment of section 53 of Act 47 of 1937, as amended by section 24 of Act 43 of 1957

34. Section 53 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) Save as provided in any other law, the registrar [**shall not attest**] may not register any mortgage bond which purports to bind

movable property or which contains the clause, commonly known as the general clause, purporting to bind generally all the immovable or movable property of the debtor or both and **[shall]** must not register any notarial bond which purports to bind immovable property."

Amendment of section 56 of Act 47 of 1937, as amended by section 26 of Act 43 of 1957, section 23 of Act 87 of 1965, section 8 of Act 3 of 1972, section 15 of Act 27 of 1982, section 16 of Act 14 of 1993 and section 5 of Act 34 of 2013

35. Section 56 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"No transfer of mortgaged land **[shall be attested or executed by the registrar,]** and no cession of a mortgaged lease of immovable property, or of any mortgaged real right in land, **[shall]** may be registered until the bond has been cancelled or the land, lease or right has been released from the operation of the bond with the consent in writing of the holder thereof **[or unless, in the case of any such mortgage bond which has been lost or destroyed, the registrar has on application by the registered holder thereof, cancelled the registry duplicate of such bond]**: Provided that no such cancellation or release **[shall be]** is necessary if the transfer or cession is made—".

Amendment of section 57 of Act 47 of 1937, as amended by section 27 of Act 43 of 1957, section 24 of Act 43 of 1962, section 7 of Act 92 of 1978, section 16 of Act 27 of 1982 and section 4 of Act 24 of 1989

36. Section 57 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) If the owner (in this section referred to as the transferor) of land which is hypothecated under a registered mortgage bond other than a mortgage bond to secure the obligations of a surety (not being a person referred to in paragraph (b) of subsection (1) of section fifty-six) transfers to another person the whole of the land hypothecated thereunder, and has not reserved any real right in such land, the registrar may, notwithstanding the provisions of subsection (1) of the said section, register the transfer and substitute the transferee for the transferor as debtor in respect of the bond: Provided that there is produced to **[him, in duplicate,]** the registrar the written consent in the prescribed form of the holder of the bond and the transferee to the substitution of the transferee for the transferor as the debtor in respect of the bond for the amount of the debt disclosed therein or for a lesser amount."

Amendment of section 61 of Act 47 of 1937, as amended by section 28 of Act 43 of 1957 and section 24 of Act 87 of 1965

37. Section 61 of the principal Act is hereby amended by the addition after subsection (4) of the following subsection:

"(5) Registration of a notarial bond in a deeds registry and in accordance with subsections (1) and (2) is effective as registration for the whole Republic."

Repeal of section 62 of Act 47 of 1937

38. Section 62 of the principal Act is hereby repealed.

Amendment of section 64 of Act 47 of 1937, as amended by section 25 of Act 87 of 1965, section 3 of Act 75 of 1987, section 53 of Act 24 of 2003 and section 1 of Act 11 of 2005

39. Section 64 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) Any person who either before or after the commencement of this Act has transferred land subject to the reservation of any real right in his or her favour may on application in writing to the registrar [**accompanied by the title deed of the land**] obtain a certificate of registration of that real right as nearly as practicable in the prescribed form."

Amendment of section 65 of Act 47 of 1937, as amended by section 30 of Act 43 of 1957, section 27 of Act 43 of 1962 and section 19 of Act 27 of 1982

40. Section 65 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) If the land to be encumbered by a personal servitude is mortgaged or subject to any other real right with which the said personal servitude may conflict, **[the bond or other registered deed by which such right is held shall be produced to the registrar together with a] there must be produced to the registrar the consent in writing of the legal holder of such bond or other right to the registration of the said personal servitude and, in the case of a bond, free from the bond."**

Amendment of section 68 of Act 47 of 1937

41. Section 68 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) If for any reason a personal servitude has lapsed, the registrar **[shall] must**, on written application by or on behalf of the owner of the land encumbered thereby, accompanied by proof of the lapse of the servitude, **[the title deed of the land, and if available, the title deed, if any, of the servitude (which title deed the holder of the servitude shall on demand hand over to the owner of such land)]** note on the title deed of the land and of the servitude **[, if the title deed of the servitude has been produced,]** that the servitude has lapsed."

Amendment of section 75 of Act 47 of 1937, as amended by section 34 of Act 43 of 1957 and section 20 of Act 14 of 1993

42. Section 75 of the principal Act is hereby amended by the substitution for subsection (2)*bis* of the following subsection:

"(2)*bis* If it is sought to cancel a servitude, and the dominant tenement is mortgaged, **[the bond shall be produced together with]** the consent in writing of the legal holder thereof to the registration of the cancellation must be produced to the registrar.".

Amendment of section 76 of Act 47 of 1937, as amended by section 35 of Act 43 of 1957, section 33 of Act 43 of 1962 and section 28 of Act 87 of 1965

43. Section 76 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraph (c) of the following paragraph:

"(c) such third person appears either in person or by duly authorised agent together with the transferor before the **[registrar]** conveyancer at the time of execution of the deed of transfer and accepts the servitude in favour of his or her land,";

(b) by the substitution in subsection (1) for the words following paragraph (c) of the following words:

"the servitude may be embodied in such transfer. The appearance of such third person as aforesaid and his or her acceptance of the servitude **[shall]** must be recited in the deed of transfer, and the title deed of the dominant tenement **[shall be produced for endorsement thereon of the terms of the servitude]** must be endorsed in regard to the terms of the servitude.";

- (c) by the by the substitution for subsection (1)**bis** of the following subsection:

"(1)**bis** If a praedial servitude for a limited period has lapsed, the registrar [**shall**] must on written application by or on behalf of any owner of the land affected thereby, [**and on production of the title deeds of the dominant and servient properties, and the title deed, if any, of the servitude (which title deeds the holder of the servitude and the owners of the dominant and servient tenements shall on demand produce), note on**] endorse on the title deeds of the [**land and the servitude**] dominant and servient tenements and on the title deed of the servitude that the servitude has lapsed.";

- (d) by the by the substitution for subsection (2) of the following subsection:

"(2) If the servitude is imposed on other land in favour of the land to be transferred, and that other land is mortgaged or is subject to any other registered real right with which the servitude may conflict, the consent in writing of the legal holder of the bond or of such other right, to the registration of the servitude [**shall**] must be produced [**, together with the bond or other deed evidencing such other right and the title deed of the servient tenement**]."; and

- (e) by the by the substitution for subsection (3) of the following subsection:

"(3) In registering the deed of transfer in which the servitude is embodied the registrar [**shall**] must endorse the terms of the servitude and the number and date of the transfer on the title deed of the other tenement and if [**a bond or other deed is produced, as aforesaid, also thereon**] that other tenement is mortgaged or subject

to other rights as aforesaid, also on that bond or other deed of the servitude."

Amendment of section 78 of Act 47 of 1937

44. Section 78 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) When a registered lease or sub-lease has terminated the registrar **[shall] must**, on written application by the owner of the land affected thereby, or the holder of the lease, as the case may be, accompanied by proof of the termination of the lease or sub-lease **[and, in the case of the termination of the lease, by the title deed of the land and if available the deed of lease, or in the case of the termination of the sub-lease, by the deed of lease and if available the deed of sub-lease]**, note in the case of the termination of the lease, on the title deed of the land and on the deed of lease, **[if produced,]** or in the case of the termination of the sub-lease, upon the deed of lease and upon the deed of sub-lease, **[if produced,]** that the lease or sub-lease as the case may be, has terminated."

Amendment of section 82 of Act 47 of 1937, as amended by section 35 of Act 43 of 1962

45. Section 82 of the principal Act is hereby amended—
(a) by the substitution for subsection (1) of the following subsection:

"(1) For the registration of a notarial bond specially hypothecating a registered lease or sub-lease, the Registrar must

endorse on the deed of lease or sub-lease [shall be produced to the registrar] that the lease or sub-lease has been hypothecated by the bond."; and

(b) by the deletion of subsection (2).

Amendment of section 87 of Act 47 of 1937, as amended by section 3 of Act 15 of 1953, section 37 of Act 43 of 1957, section 30 of Act 87 of 1965 and section 11 of Act 3 of 1972

46. Section 87 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) Registration of an antenuptial contract in any one deeds registry in the manner prescribed in this section **[shall be] is** effective as registration for the whole Republic **[: Provided that if any transaction in connection with which evidence of such contract is necessary takes place in a deeds registry other than that in which such contract has been registered, a copy of such contract certified by the registrar of the place of registration or a notary public shall be recorded and filed in such first-mentioned deeds registry].**".

Amendment of section 89 of Act 47 of 1937, as amended by section 15 of Act 50 of 1956, section 32 of Act 88 of 1984, section 6 of Act 3 of 1988 and section 8 of Act 11 of 1996

47. Section 89 of the principal Act is hereby amended by the deletion of subsection (2).

Substitution of section 91 of Act 47 of 1937, as amended by section 5 of Act 80 of 1964

48. The following section is hereby substituted for section 91 of the principal Act:

"Transfer and cession not to be passed as security

91. No transfer of land and no cession of any registered lease or sub-lease or other real right in land except a mortgage made as security for a debt or other obligation **[shall] may** be **[attested by any registrar or]** registered in any deeds registry."

Amendment of section 92 of Act 47 of 1937

49. Section 92 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) If land or any real right in land has been settled upon or donated to an intended spouse in terms of an antenuptial contract, no transfer or cession of such land or right by the donor to any person other than the donee and no mortgage thereof by the donor **[shall] may** be **[executed, attested or]** registered by the registrar unless the transfer duty (if any) payable on the settlement or donation has been paid."

Amendment of section 93 of Act 47 of 1937, as amended by section 35 of Act 43 of 1957, section 33 of Act 43 of 1962 and section 28 of Act 87 of 1965

50. Section 93 of the principal Act is hereby amended:

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"If any person or partnership whose name appears in any registered deed or other document has changed his or its name, the registrar **[shall] must**, upon written application by that person or partnership accompanied by proof of the change of name, and if **[he] the registrar** is satisfied that no change of legal personality is implied in such change of name, endorse on the said deed or other document that the name of the person or partnership has been changed to the name stated in the application: Provided that any other operative deed registered in the same registry in which the applicant's old name appears as a party thereto other than as transferor or cedent, must be endorsed by the registrar in respect of the change of name: Provided further that—"; and

- (b) by the deletion of paragraph (b) of subsection (1).

Amendment of section 95 of Act 47 of 1937, as amended by section 67 of Act 16 of 1967

51. Section 95 of the principal Act is hereby amended by the addition after

subsection (2) of the following subsection:

"(3) The full names and identity numbers of witnesses must be disclosed in the power of attorney."

Repeal of section 98 of Act 47 of 1937

52. Section 98 of the principal Act is hereby repealed.

Amendment of section 102 of Act 47 of 1937, as amended by section 12 of Act 3 of 1972, section 22 of Act 27 of 1982, section 9 of Act 62 of 1984, section 4 of Act 75 of 1987, section 7 of Act 3 of 1988, section 6 of Act 24 of 1989, section 32 of Act 113 of 1991, section 22 of Act 14 of 1993, section 74 of Act 120 of 1993, section 68 of Act 67 of 1995, section 9 of Act 11 of 1996, section 10 of Act 11 of 1996, Proclamation R9 of 31 January 1997, section 10 of Act 93 of 1998, section 2 of Act 9 of 2003, section 53 of Act 24 of 2003, section 46 of Act 11 of 2004, section 6 of Act 12 of 2010 and section 7 of Act 34 of 2013

53. Section 102 of the principal Act is hereby amended—

(a) by the insertion of the following definition before the definition of "conveyancer":

"authorised user" means a person that has been registered as an authorised user as contemplated in section 15;

(b) by the insertion of the following definition after the definition of "court":

"deed or document", for the purpose of any act of registration in terms of this Act, means a deed or document in the form of a data

message as defined in the Electronic Communications and Transactions Act, 2002, submitted, received or stored by electronic means in the electronic deeds registration system;";

- (c) by the substitution for the definition of "diagram" of the following definition:

"diagram" means a diagram approved by a surveyor-general or other officer empowered under any law to approve such diagram, and filed in a surveyor-general's office;";

- (d) by the insertion of the following definitions after the definition of "diagram":

"Electronic Communications and Transactions Act, 2002" means the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002), as amended from time to time;

"electronic deeds registration system" means a system as provided for in section 1B;";

- (e) by the substitution for the definition of "general plan" of the following definition:

"general plan" means a plan approved by a surveyor-general or other officer empowered under any law to approve such plan and filed in a surveyor-general's office;";

- (f) by the insertion after the definition of "land" of the following definition:

"Land Survey Act, 1997" means the Land Survey Act, 1997 (Act No. 8 of 1997);

- (g) by the substitution for the definition of "mortgage bond" of the following definition:

"mortgage bond" means a bond [attested] registered by the registrar specially hypothecating immovable property;";

- (h) by the substitution for the definition of "person" of the following definition:

"person" includes a trust, association or any entity which in law is entitled to own immovable property:";

(i) by the insertion after the definition of "real right" of the following definition:

"register" means an electronic record of information:";

(j) by the deletion of the definition of "registry duplicate";

(k) by the insertion after the definition of "settlement" of the following definition:

"signature" in respect of any act performed in terms of this Act by a conveyancer, statutory officer, notary or registrar in attesting his or her signature to an electronically created deed or document or a scanned image of a deed or document, means an advanced electronic signature as defined in section 1 of the Electronic Communications and Transactions Act, 2002 ;" and

(l) by the substitution for paragraph (c) of the definition of "township" of the following paragraph:

"(c) any area of land registered or recognized at the commencement of this Act in a deeds registry as a township if a general plan thereof is filed in **[that deeds registry or in]** the office of the surveyor-general concerned; and".

Transitional provisions in respect of electronic registration

54. The amendment of the Act to provide for electronic registration does not affect the validity of any registrations effected prior to the coming into operation of the Deeds Registries Amendment Act, 2015.

Short title

55. (1) This Act is called the Deeds Registries Amendment Act, 2016 and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

(2) The President may set different dates for different provisions of this Act to come into operation.

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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.