



COMMENTS BY THE LAW SOCIETY OF SOUTH AFRICA ON THE DEEDS REGISTRIES AMENDMENT BILL, 2020

The Law Society of South Africa (LSSA) constitutes the collective voice of the approximately 30 000 attorneys within the Republic. It brings together the Black Lawyers Association, the National Association of Democratic Lawyers and nine provincial attorneys' associations, in representing the attorneys' profession.

Having considered the Deeds Registries Amendment Bill, 2020, published for comment in Government Gazette 44822 dated 9 July 2021, the LSSA hereby submits the following comments:

1. Apart from the comments hereunder, the proposed amendments generally appear to be sensible, practical and intended to bring the Deeds Registries Act (the principal Act) into line with formal requirements.
2. CLAUSE 3, AMENDING SECTION 3 OF THE PRINCIPAL ACT
 - 2.1 Clause 3 of the Bill proposes an amendment of Section 3 of the Deeds Registries Act by extending the duties of the Registrar, one of which is to record land tenure rights. While we have no problem with the principle of this, we believe that, before this duty is passed on to the Registrar, legislation should be passed as to how land tenure rights, which now have to be recorded by the Registrar of Deeds, are to be established. There are currently various forms of land tenure rights, some of which are probably capable of easy determination and recordal and some of which would probably be very difficult to establish and record. It is of concern that the Registrar of Deeds could be bogged down dealing with dubious or unclear rights or become involved in litigation in respect of matters which are somewhat vague.

2.2 The proposed amendment to Section 3(1)(u) as contained in Clause 3(c) of the Bill is not supported. It is a business requirement for powers of attorney to be seamlessly registered in the various Deeds Offices in the Republic. The certification by the Registrar of the power of attorney for use in another deeds registry serves that purpose. There are 10 Deeds Offices in the Republic. It would be inappropriate to require, for example, a financial institution to prepare and sign 10 separate powers of attorney for registration in each deeds registry. This would constrain business efficacy. The cancellation of a power in one deeds registry but not in the deeds registry in which its copy was registered has simply nothing to do with fraud, but arises from an administrative failure in the Deeds Office. If a deeds registry acted in the manner currently prescribed, no difficulties would be encountered. A cancellation of a power of attorney would be automatically triggered in the other deeds registries. The registration and cancellation of the power of attorney is well within the control of the deeds registry. It is imperative that the deeds registry should facilitate the requirements of business and not constrain business simply because of some internal administrative control measure that needs to be taken.

3. CLAUSE 5, AMENDING SECTION 9 OF THE PRINCIPAL ACT

It is proposed that the Minister must make the Regulations upon the recommendation of the Board. However, it is submitted that it is a constitutional requirement that these Regulations be published in the Government Gazette *for comment prior to promulgation*. It appears that this practice is not being adhered to.

The proposed composition of the Regulations Board is not supported. The South African deeds registration system is underpinned by cadastre. We believe that the Chief Surveyor General or his/her nominee must accordingly be a member of the Regulations Board. It is submitted that there should be three practicing conveyancers on the Regulations Board, one of whom should be a practicing Notary Public. The proposed amendment for a member to be a conveyancer from the State Attorney is also not supported. The Office of the State Attorney attends to a very limited amount of conveyancing. Overwhelmingly, conveyancing is attended to by the private sector. It therefore follows that the appointment of a conveyancer from the State Attorney is not supported.

See also our comment below in clause 4 about the proposal that the Regulations be made by the Minister instead of by the Board.

4. CLAUSE 6, AMENDING SECTION 10 OF THE PRINCIPAL ACT

- 4.1 We note that there is a proposed change in substance, in that the Deeds Registries Regulations Board may no longer make Regulations. The proposal is that Regulations must be made by the Minister on recommendation of the Deeds Registries Regulations Board. This also appears from the proposed amendment of Section 9 of the principal Act.

There are two aspects to the registration of deeds. The first is the legislation which sets out the law that applies to deeds registration. Although the Deeds Registries Act is sometimes referred to as a procedural Act, it also has a substantive law element. The Regulations, on the other hand, are purely of a procedural nature and are designed to give effect to and involve practical implementation of the Act. That being the position, we are of the view that the Board, which consists primarily of officials from the Registrar of Deeds Office and conveyancers, is best suited to formulate the Regulations as opposed to the Minister. In terms of the amendment, while the Minister may make regulations “upon recommendation of the Deeds Registries Regulations Board”, the final decision is made by the Minister.

Further, since the Regulations are of a procedural nature, they may have to be amended quickly and on short notice. The Board itself can amend the Regulations far more speedily than they can be amended if recommendations have to be made to the Minister and the Minister then has to make those Regulations. Accordingly, we do not support this particular amendment.

- 4.2 The second amendment relates to the Board establishing or determining the form of applications etcetera, used in connection with the recordal of land tenure rights. While we do not have problems with this insertion as such, we believe that it should first be established precisely what the pre-requisites for recording of land tenure rights are. This should be done by way of legislation, not regulation. The Regulations should provide the procedure for doing so, following on from the legislation.
- 4.3 The third amendment deals with the recordal of personal information “for statistical and land audit purposes only”. We do not have any objection to the collection of the information for statistical and land audit purposes only, as long as the process that needs to be followed does not lead to delays in the registration process or impose an unfair onus on conveyancers.

5 CLAUSE 9, AMENDING SECTION 62 OF THE PRINCIPAL ACT

The amendment set out in Clause 9 is supported except as hereinafter provided.

Registration in each successive registry should be within a further additional period of four months (and not one month) or within such extended period as the court may on application allow. It would generally take much longer than a month to obtain release of the notarial bond for onward registration purposes. A reasonable period of time must be allowed for registration. In most cases, it would be practicably impossible to register in successive deeds registries within the one-month time frame. The option of an application to court does not assist, as it is costly and time consuming.

6 CLAUSE 11, INSERTING SECTION 99A

Although the need to penalise unauthorised execution or signature of a preparation clause is understandable, we are concerned that the current wording of the proposed section is too wide. It is suggested that it be amended to read as follows:

“Any person who signs a preparation certificate for a deed or document or executes or attests to a document and is not a conveyancer in terms of this or any other Act, is guilty of an offence and liable on conviction to a fine or to imprisonment or to both such fine and imprisonment”.

7 AMENDMENTS TO THE ELECTRONIC DEEDS REGISTRATION SYSTEMS ACT

We note the proposed amendments to the Electronic Deeds Registration Systems Act and do not have any objections.