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GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF AGRICULTURE, LAND REFORM AND RURAL DEVELOPMENT

NO. 4748

24 April 2024

**PUBLICATION OF ELECTRONIC DEEDS REGISTRATION SYSTEMS
AMENDMENT BILL, 2024 AND EXPLANATORY MEMORANDUM FOR PUBLIC
COMMENT**

The Minister for Agriculture, Land Reform and Rural Development hereby publishes the Electronic Deeds Registration Systems Amendment Bill, 2024 and Explanatory Memorandum in the Government Gazette for public comment.

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

By Post: The Chief Registrar of Deeds
For attention: Ms AS Reynolds
Private Bag X250, Agriculture Place, Arcadia, Pretoria, 0002

By Hand: Chief Registrar of Deeds: 20 Steve Biko Road, Agriculture Place,
Arcadia, Pretoria, 0002

By e-mail: Antoinette.reynolds@dalrrd.gov.za or
Carlize.knoesen@dalrrd.gov.za

Telephone (Office): 012 337 9325

The Bill is available for viewing on the Departmental Website at: www.dalrrd.gov.za

Comments received after the closing date will not be considered.

REPUBLIC OF SOUTH AFRICA

ELECTRONIC DEEDS REGISTRATION SYSTEMS AMENDMENT BILL, 2024

*(As introduced in the National Assembly as a section 75 Bill; Bill published in
Government Gazette No. of)(The English text is the official text of the
Bill)*

(MINISTER OF AGRICULTURE, LAND REFORM AND RURAL DEVELOPMENT)

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Electronic Deeds Registration Systems Act, 2019, so as to provide that a client copy of a registered or executed deed or document remains a valid copy for certain purposes; to provide that a transaction pertaining to a property registered electronically will result in subsequent transactions being registered electronically; to provide for the consequential amendment of certain legislation to the extent set out in the Schedule; and to provide for matters connected therewith.

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

Amendment of section 3 of Act 19 of 2019

1. The following section is hereby substituted for section 3 of the Electronic Deeds Registration Systems Act, 2019 (Act No. 19 of 2019) (hereinafter referred to as the principal Act):

“Validity of deeds and documents

3.(1) Subject to section 14 of the Electronic Communications and Transactions Act, a deed or document generated, registered and executed electronically and any other registered or executed deed or document scanned or otherwise incorporated into the electronic deeds registration system by electronic means is, subject to the provisions of subsection (2), for all purposes deemed to be the only original and valid record.

(2) A client copy of a registered or executed deed or document processed manually is valid for purposes of subsequent preparation, lodgement, registration, execution and filing of such deed or document as contemplated in section 6(4) only until such time as a further subsequent transaction in respect of such property is registered electronically.”.

Amendment of section 6 of Act 19 of 2019

2. Section 6 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) Notwithstanding subsections (2) and (3), the Chief Registrar of Deeds may issue a directive for the continuation of the preparation, lodgement, registration, execution and filing of deeds and documents manually, as prescribed by the Deeds Registries Act and the Sectional Titles Act, whereupon a conveyancer, statutory officer and notary public may either use the said manual system or the electronic deeds registration system, until such period as may be determined by the Chief Registrar: Provided that if a transaction pertaining to a property is registered electronically during such period, subsequent transactions pertaining to such property must be registered electronically.”.

Amendment of legislation

3. The laws mentioned in the Schedule are amended to the extent indicated in the fourth column of the Schedule.

Short title and commencement of Act

4. This Act is called the Electronic Deeds Registration Systems Amendment Act, 20..., and comes into operation on a date to be determined by the President by proclamation in the *Gazette*.

SCHEDULE
LEGISLATION AMENDED BY SECTION 3

Item No.	No. and year of Act	Short title	Extent of amendment
1.	Act No. 47 of 1937	Deeds Registries Act, 1937	1. The amendment in section 3 for subsection (1) for paragraph (b) of the following paragraph: “(b) examine all deeds or other documents submitted to him <u>or her</u> for execution, [or] registration, <u>or recordal</u>, and after examination reject any such deed or other document the execution, [or] registration <u>or recordal</u> of which is not permitted by this Act or by any other law, or to the execution, [or] registration, <u>or recordal</u> of which any other valid objection exists: Provided that such deed or document need not be examined in its entirety before being rejected;”; 2. The addition in section 3 after subsection 4 of the following subsection: <u>“(5) A registrar must, in respect of a deed or document submitted electronically as provided for in the Electronic Deeds Registration Systems Act, perform his or her duties in sub-section (1) subject to the provisions of this Act, the Electronic</u>

			<u>Deeds Registration Systems Act, and the regulations and directives issued thereunder.”; and</u> 3. The insertion of the following section after section 3: <u>“3A. Deeds submitted under the Electronic Deeds Registration Systems Act</u> <u>The provisions of this Act apply, with the necessary changes, in respect of deeds and documents submitted electronically in terms of the provisions of the Electronic Deeds Registration Systems Act, which changes includes:</u> <u>(a) that in the case of a certificate of title provided for in this Act, application must be made for the registration thereof and not for the issuing thereof;</u> <u>(b) any provision in this Act or Regulations that require the lodgement of a title deed, any registered bond and any registered deed of lease or other registered deed whereby any real right therein is held, does not apply if such registered deed or bond is stored on the electronic deeds registration system.</u>
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			<u>(c) A deed or document contemplated by Chapter IV of this Act, in respect of which a certified copy must be provided by a registrar to another registrar mentioned in the said Chapter must, if such deed or document is stored on the electronic deeds registration system, be accessed on the said system by the relevant registrar and be dealt with in accordance the relevant provision under the said chapter”.</u>
			4. The insertion of the following section after section 38: <u>“38. A (1) If a title deed of any land stored on the electronic deeds registration system has been lost, the registrar shall, 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.</u> <u>(2) Before executing the certificate referred to in subsection (1) the registrar shall, at his or her expense, publish in the prescribed form notice of intention to register the certificate in</u>

			<u>two consecutive ordinary issues of the Gazette and in two consecutive issues of a newspaper circulating in such division, district or county in which the land is situated.</u> <u>(3) A draft of the proposed certificate and a copy of the diagram, if any, accompanying the application, shall be open for inspection in the registry free of charge by any interested person, for a period of two weeks after the date of the first publication of the notice in the Gazette, during which period any person interested may object to the registration of the certificate.</u> <u>(4) Any person who has lodged with the registrar an objection to the registration of the certificate may, in default of any arrangement between him and the applicant, apply to the court within one month after the last day upon which an objection may be lodged, for an order prohibiting the registrar from registering the certificate, and the court may make such order on the application as it may deem fit.</u> <u>(5) A certificate of registered title registered under this section shall be as nearly as practicable in the prescribed form and shall take the place of the lost title deed and shall embody or refer to every condition,</u>
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			<u>servitude, bond, lease or other encumbrance which according to the records of the registry was embodied or referred to in the lost title deed or in any endorsement thereon.”</u>
			5. The substitution in section 62 for subsection (1) of the following subsection: “(1) Save as provided in subsections <u>(1A)</u>; (3) and (4), every notarial bond shall be registered in the deeds registry for the area in which the debtor resides and carries on business, or if he resides and carries on business in areas served by different deeds registries, in the deeds registry for the area in which he resides and in every deeds registry serving any area in which he carries on business: Provided that notarial bonds passed in Natal in pursuance of the Notarial Bonds (Natal) Act, 1932 (Act 18 of 1932), irrespective of whether the debtor resides or carries on business in Natal, shall be sufficiently registered for the purposes of this Act if registered in the deeds registry at Pietermaritzburg.”

			6. The insertion in section 62 after subsection (1) of the following subsection: <u>“(1A) if a debtor under a notarial bond resides and carries on business in areas served by different deeds registries, such notarial bond shall, if submitted electronically in terms of the provisions of the Electronic Deeds Registration Systems Act, be effective for the whole of the Republic if registered in the deeds registry that serves the area where the debtor resides”.</u>
			7. The amendment in section 77 for subsection (1) <i>bis</i> of the following subsection: “(1) <i>bis</i> Whenever a cession of a lease is to be registered in respect of any portion of the land leased, a notarial copy of the lease shall be attached to such cession and after registration such cession with the notarially certified copy of the lease annexed thereto shall be deemed to be the title to the portion of the lease so ceded, and for any subsequent registration in respect thereof it shall be part of the title: <u>Provided that if a cession is submitted electronically in</u>

			<u>terms of the provisions of the Electronic Deeds Registration Systems Act, a notarial certified copy of the lease must not be attached to the cession if such notarial lease is stored on the electronic deeds registration system.</u>".
2.	Act No. 95 of 1986	Sectional Titles Act, 1986	8. The insertion in section 1 after the definition of "'draft sectional plan'" of the following definition: <u>"Electronic Deeds Registration Systems Act"</u> means the <u>Electronic Deeds Registration Systems Act, 2019 (Act 19 of 2019);</u>". 9. The amendment in section 3 for the heading of the following heading: <u>"Application of Deeds Registries Act, the Electronic Deeds Registration Systems Act, reproduction of documents, and units deemed to be land"</u>; 10. The substitution in section 3 for subsection (1) of the following subsection: <u>"(1) Save as is otherwise provided in this Act; the Electronic Deeds Registration Systems Act or any other law or the context otherwise</u>

			indicates, the provisions of the Deeds Registries Act shall, in so far as such provisions can be so applied, apply mutatis mutandis in relation to all documents registered or filed or intended to be registered or filed in a deeds registry in terms of this Act.”; and 11. The insertion in section 3 after subsection (4) of the following subsection: <u>“(5) The provisions of this Act apply, with the necessary changes, in respect of deeds, documents and sectional plans submitted electronically in terms of the provisions of the Electronic Deeds Registration Systems Act, which changes include:</u> <u>(a) that in the case of a certificate of title and certificate of real rights provided for in this Act, application must be made for the registration thereof and not for the issuing thereof;</u> <u>(b) any provision in this Act or Regulations that require the lodgement of a title deed, any registered bond and any registered deed of lease or other registered deed whereby any</u>
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			<u>real right therein is held, will not apply if such registered deed or bond is stored on the electronic deeds registration system;</u> <u>(c) sectional plans must, notwithstanding any provision herein but subject to any provision of a directive issued under section 2 of the Electronic Deeds Registration Systems Act, be lodged in single”.</u>
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MEMORANDUM ON THE OBJECTS OF THE ELECTRONIC DEEDS REGISTRATION SYSTEMS AMENDMENT BILL, 2024

1. BACKGROUND

1.1 The Department of Agriculture, Land Reform and Rural Development ("the Department") drafted the Electronic Deeds Registration Systems Amendment Bill, 2024 ("the Bill"), which proposes certain amendments to the Electronic Deeds Registration Systems Act, 2019 (Act 19 of 2019) ('EDRS Act'), to improve the application and implementation of the Act. The EDRS Act generally provides for the development of an electronic deeds registration system.

1.2 Procedures relating to the registration of land and rights in land are currently performed manually in terms of the provisions of the Deeds Registries Act, 1937 (Act 47 of 1937), and the Sectional Titles Act, 1986 (Act 95 of 1986). Electronic deeds registration will be facilitated by the EDRS Act and it is therefore necessary to amend

the Deeds Registries Act and Sectional Titles Act to provide for processes relating to the preparation, lodgement, registration, and execution of deeds and documents to be conducted either manually or electronically, as provided for in section 6(4) (transitional provisions) of the EDRS Act.

2. OBJECTS OF BILL

The Bill seeks to amend the EDRS Act in order to—

- (a) provide for a client's copy of a registered or executed deed and document to remain a valid copy for purposes of preparation, lodgement, registration, execution and filing of deeds and documents manually, as contemplated in section 6(4) of the Act, until such time a transaction in respect of such property is registered electronically, or until such time the registration, execution and filing procedures in terms of the Deeds Registries Act and the Sectional Titles Act are discontinued, as contemplated by section 6(1) (transitional provisions) of the EDRS Act;
- (b) provide that if a transaction pertaining to a property was registered electronically, all future transactions pertaining to such property must also be registered electronically; and to
- (c) provide for the amendment of the Deeds Registries Act and the Sectional Titles Act to the extent set out in the *Schedule*, with a view to align relevant provisions with that of the EDRS Act.

3. CLAUSE-BY- CLAUSE ANALYSIS

3.1 Clause 1

3.1.1 Clause 1 of the Bill seeks to amend section 3 of the EDRS Act which deals with the '*Validity of deeds and documents*'. Section 3 provides that all deeds and documents generated, registered and executed electronically, and all other *already* registered or executed deeds or documents scanned or otherwise incorporated into the electronic deeds registration system ('e-DRS'), shall be deemed to be the *only original and valid record* of such deed or document. The current wording of section 3 has the effect that *all* registered deeds scanned or otherwise incorporated into the e-

DRS, regardless of same being prepared and registered manually and of which the owner is in possession of, is regarded invalid due to the e-DRS copy being regarded as the only valid record of such copy. Such a situation will compromise the effective continuation of the preparation, lodgement, registration, execution and filing of deeds and documents manually, as prescribed by the Deeds Registries Act and the Sectional Titles Act during the transition period as contemplated by section 6(4) of the EDRS Act.

3.1.2 The insertion of section 3(2), to provide for the client's copy of a registered or executed deed or document to remain a valid copy for purposes of preparation, lodgement, registration, execution and filing of deeds and documents *manually* as contemplated in section 6(4), will clarify the position and will ensure the effective continuation of the manual system in instances where such system may be used.

3.2 Clause 2

Clause 2 of the Bill seeks to amend section 6 of the EDRS Act which deals with '*Transitional provisions*'. Section 6(4) provides during the transitional period for a dual system, in so far as it concerns the preparation, lodgement, registration, execution and filing of deeds and documents manually or electronically, for a period as may be determined by the Chief Registrar of Deeds. The client may choose to either use the manual procedure or the electronic procedure. However, it will be practically impossible to use the manual procedure once a transaction relating to a property was done electronically. To provide clarity and to regulate the matter, it is necessary to insert a proviso to section 6(4) which provides that once a transaction in respect of a property has been registered electronically, no further registration pertaining to such property may be registered manually.

3.3 Clause 3

Clause 3 provides for the amendment of legislation, to the extent set out in the *Schedule* to the Bill. The EDRS Act provides for electronic preparation, lodgement, registration, execution and storing of deeds and documents. However, procedures relating to such are performed manually in terms of the provisions of the Deeds Registries Act and Sectional Titles Act. The electronic preparation, lodgement, registration and execution of deeds and documents will be facilitated by EDRS Act and it is therefore necessary to amend the Deeds Registries Act and Sectional Titles

Act to limit the processes therein relating to the preparation, lodgment, registration, and execution of deeds and documents to be conducted manually.

3.4 Clause 4

Clause 4 of the Bill provides for the short title and commencement of the Act.

4. FINANCIAL IMPLICATIONS FOR STATE

None.

5. DEPARTMENTS/BODIES CONSULTED

Registrars of Deeds, senior managers in the Department of Agriculture, Land Reform and Rural Development were consulted and support the amendments to the Act.

6. COMMUNICATION IMPLICATIONS

To be undertaken by the Department.

7. PARLIAMENTARY PROCEDURE

7.1 The Constitution prescribes procedure for the classification of Bills, therefore a Bill must be correctly classified so that it does not become inconsistent with the Constitution.

7.2 State Law Advisors have considered the Bill against the provisions of the Constitution relating to the tagging of Bills and against the functional areas listed in Schedule 4 (functional areas of concurrent national and provincial legislative competence) and Schedule 5 (functional areas of exclusive provincial legislative competence) to the Constitution.

7.3 The established test for classification of a Bill is that any Bill whose provisions in substantial measure fall within a functional area listed in Schedule 4 to the Constitution must be classified in terms of that Schedule i.e. *Tongoane and Others v Minister for Agriculture and Land Affairs and Others Case CCT 100/09 [2010] ZACC 10*. The process is concerned with the question of how the Bill should be considered by the provinces and in the National Council of Provinces. Furthermore, how a Bill

must be considered by the provincial legislatures depends on whether it affects the provinces. The more the Bill affects the interests, concerns and capacities of the provinces, the more say the provinces should have on the contents of the Bill.

7.4 Therefore issue to be determined is whether the proposed amendments to the Act, as contained in the Bill, in substantial measure, fall within a functional area listed in Schedule 4 to the Constitution.

7.5 The proposed amendments reflected have been carefully examined to establish whether, in substantial measure, they fall within any of the functional areas listed in Schedule 4 to the Constitution.

7.6 It is the view of the State Law Advisers that the subject matter of the proposed amendments does not fall within any of the functional areas listed in Schedule 4 to the Constitution and it does not affect provinces whereby the procedure set out in section 76 of the Constitution would be applicable.

7.7 The State Law Advisers are therefore of the opinion that since this Bill does not deal with any of the matters listed in Schedule 4 to the Constitution, it must be dealt with in accordance with the procedure set out in section 75 of the Constitution.

7.8 With regard to the referral of the Bill to the House of Traditional Leaders by Parliament, section 39 of the Traditional and Khoi-san Leadership Act, 2019 (Act No. 3 of 2019) which commenced on 1 April 2021 provides as follows:

“(1) (a) Any Parliamentary Bill-

(i) which directly affects traditional or Khoi-San communities or pertaining to customary law or customs of traditional or Khoi-San communities; or

(ii) pertaining to any matter referred to in section 154 (2) of the Constitution, must, in the case of a Bill contemplated in subparagraph (i) and may, in the case of a Bill contemplated in subparagraph (ii), before it is passed by the house of Parliament where it was introduced, be referred by the Secretary to Parliament to the National House for its comments.

(b) The National House must, within 60 days from the date of such referral, make any comments it wishes to make and submit such comments to the Secretary to

Parliament: Provided that the National House may refer any such Bill to any provincial house for comments: Provided further that if the National House has no comments on any Bill referred to it, the National House must inform the Secretary to Parliament accordingly.

(2) A provincial legislature or a municipal council may adopt the same procedure referred to in subsection (1) in respect of the referral of a provincial Bill or a draft by-law to a provincial house or a local house, as the case may be."

7.9. Section 39(1) require Bills pertaining to customary law or customs of traditional communities to be referred to the National House. Section 154(2) of the Constitution provides that **draft national or provincial legislation that affects the status, institutions, powers or functions of local government** must be published for public comment before it is introduced in Parliament or a provincial legislature, in a manner that allows organised local government, municipalities and other interested persons and opportunity to make representations with regard to the draft legislation. Furthermore, the National House will have 60 days to provide the Secretary to Parliament with its comments on Bills referred to it.

7.10. This Bill is considered to be national legislation and does not specifically provide any provisions that impact or effect traditional or Khoi-San communities or matters pertaining to customary law or customs of traditional or Khoi-San communities. In light of this, it is the view of the State Law Advisors that the Bill does not have to be referred to the House of Traditional Leaders.

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