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GENERAL NOTICE

NOTICE 1108 OF 2009

DEPARTMENT OF RURAL DEVELOPMENT AND LAND REFORM

PUBLICATION OF THE DEEDS REGISTRIES AMENDMENT BILL, 2009, FOR GENERAL COMMENT

The Minister for Rural Development and Land Reform has approved the publication of the Deeds Registries Amendment Bill, 2009 in the Government Gazette for general comment. Comment must be submitted in writing within a period of 21 days from the date of publication hereof to:

Mr NS Lefafa
Chief Registrar of Deeds
Department of Rural Development and Land Reform
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NS LEFAFA
CHIEF REGISTRAR OF DEEDS

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REPUBLIC OF SOUTH AFRICA

DEEDS REGISTRIES AMENDMENT BILL, 2009

(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 FOR AGRICULTURE AND LAND AFFAIRS)

[B – 2009]

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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 Deeds Registries Act, 1937, so as to provide for the substitution for the expression of "Supreme Court" of the expression of "High Court"; to delete the reference to a registrar of mining titles or a mining commissioner acting as a registration officer; to provide for the extension of the duties of a registrar; to provide for the appointment of alternate members to the deeds registries regulations board; to provide for the disclosure of the full names and marital status of persons in all deeds and documents to be executed or lodged for registration or record in a deeds registry; to provide for the issuing of a certificate of registered title in respect of a fraction of an undivided share in land; to amend the definition of "Master"; 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 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 53 of Act 24 of 2003, section 46 of Act 11 of 2004 and section 1 of Act 5 of 2006

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1. Section 3 of the Deeds Registries Act, 1937 (Act No. 47 of 1937) (hereinafter referred to as the principal Act), is hereby amended -

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

"*(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 **[Supreme]** High Court of South Africa **[or a registrar of mining titles or a mining commissioner in his capacity as a registration officer]**;"; and

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

"(z) give effect to practice and procedure directives issued from time to time by the chief registrar of deeds.".

Amendment of section 9 of Act 47 of 1937, as amended by section 3 of Act 3 of 1972, section 17 of Act 71 of 1972, section 8 of Act 62 of 1973, section 9 of Act 57 of 1975, section 4 of Act 27of 1982, section 4 of Act 14 of 1993 and section 10 of Act 11 of 1996

2. Section 9 of the principal Act is hereby amended by the insertion after subsection (2) of the following subsection:

"(2A) For every member of the regulation board appointed in terms of paragraphs (a) to (c) of subsection (2), there shall be an alternate member appointed in the same manner as such member, and any alternate member so appointed shall act in the place of the member in respect of whom he or she has

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been appointed as alternate member, during such member's absence or inability to act as a member of the regulation board.".

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 and section 53 of Act 24 of 2003

3. Section 17 of the principal Act is hereby amended by the substitution in subsection (2) for the words preceding paragraph (*a*) of the following words:

"(2) Every deed **[executed or attested by a registrar, or attested by a notary public and required to be registered in a deeds registry, and made by or on behalf of or in favour of any person,]** or other document lodged with a deeds registry for execution or registration or record, shall -".

Amendment of section 34 of Act 47 of 1937, as amended by section 14 of Act 87 of 1965

4. Section 34 of the principal Act is hereby amended by the insertion after subsection (1) of the following subsection:

"(1A) The provisions of subsection (1) shall apply, with the necessary changes, to any person who is the owner of a piece of land and who wishes to obtain a certificate of registered title of any fraction of his or her undivided share in such land.".

Amendment of section 102 of Act 47 of 1937, as amended by section 12 of Act 3 of 1972, section 13 of Act 3 of 1972, section 58 of Act 93 of 1976, 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 7 of Act 24 of 1989, section 32 of Act 113 of 1991, section 22 of Act 14 of 1993, section 23 of

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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 and section 46 of Act 11 of 2004

5. Section 102 of the principal Act is hereby amended by the substitution for the definition of "Master" of the following definition:

"'Master' means the Master or Assistant Master of any provincial or local division of the **[Supreme]** High Court and when used in relation to any particular matter means the Master or Assistant Master who has jurisdiction in respect thereof;".

Short title

6. This Act is called the Deeds Registries Amendment Act, 2009.

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MEMORANDUM ON THE OBJECTS OF THE DEEDS REGISTRIES AMENDMENT BILL, 2009

1. PURPOSE

The Deeds Registries Amendment Bill, 2009 (hereinafter referred to as "the Bill"), proposes certain amendments to the Deeds Registries Act, 1937 (Act No. 47 of 1937) (hereinafter referred to as "the Act"), pertaining to the substitution of certain obsolete expressions and the improvement of the application of the Act as set out in this Memorandum.

2. OBJECTS OF THE BILL

2.1.1. The amendment proposed in Clause 1(a) of the Bill is consequential to the promulgation of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), which provides for the discontinuation of the registration of mineral rights in a deeds registry. The substitution for the expression "Supreme Court" of the expression "High Court", seeks to rectify the present legal situation with reference to the High Court.

2.1.2. Registrars of deeds are not obliged to follow the practice and procedure directives that are issued from time to time by the chief registrar of deeds. The result is that different practices and procedures are being followed in the different deeds registries. The amendment proposed in Clause 1(b) of the Bill seeks to eliminate this problem by obliging registrars to comply with directives and thus promote uniformity in all deeds registries throughout the country.

2.2. It often happens that members of the deeds registries regulations board cannot attend meetings due to unforeseen circumstances. The absence of members to a meeting may lead to a quorum not being formed and the meeting to be cancelled. The amendment of section 9, as proposed in Clause

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2 of the Bill, to provide for the appointment of alternate members to the board, is a necessary and logical step.

2.3. Section 17(2) of the Act provides for the disclosure of the full names and marital status of a person in a deed that needs to be lodged for registration or record or execution in a deeds registry. The proposed amendment of section 17(2), in Clause 3 of the Bill, is necessary to also provide for the disclosure of the full names and marital status of a person in documents, other than deeds, that need to be registered, recorded, or executed by a registrar of deeds.

2.4. Section 34 of the Act allows an owner of a piece of land to apply for a certificate of registered title for his/her undivided share in land, only in instances where such land is owned in joint ownership. The proposed amendment of section 34, in Clause 4 of the Bill, caters for the issuing, to any owner, of a certificate of registered title of any fraction of his/her undivided share in such land.

2.5. The amendment of the definition of "Master", as proposed in Clause 5 of the Bill, is consequential to the change of name of the High Court, as contemplated in Clause 1(a) of the Bill.

2.6. Clause 6 of the Bill contains the short title.

3. FINANCIAL IMPLICATIONS FOR STATE

None.

4. DEPARTMENTS / BODIES / PERSONS CONSULTED

Deeds Registries Regulations Board
Law Society of South Africa

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5. CONSTITUTIONAL IMPLICATIONS

None.

6. COMMUNICATION IMPLICATIONS

To be undertaken by the Department of Land Affairs.

7. PARLIAMENTARY PROCEDURE

7.1 The State Law Advisers and the Department of Land Affairs 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 contains no provision to which the procedure set out in section 74 or section 76 of the Constitution applies.

7.2 The State Law Advisers are of the opinion that it is not necessary to refer this 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 No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

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