

REPUBLIC OF SOUTH AFRICA

DEEDS REGISTRIES AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. 33316 of 21 June 2010)
(The English text is the official text of the Bill)*

(MINISTER OF RURAL DEVELOPMENT AND LAND REFORM)

[B 13—2010]

ISBN 978-1-77037-651-9

No. of copies printed 1 800

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 substitute certain obsolete expressions; 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; and to amend certain definitions; and to provide for matters connected therewith.

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

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 48 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 10 of Act 11 of 1996, Proclamation R9 of 31 January 1997, section 35 of Act 47 of 1997 and section 1 of Act 93 of 1998 5

1. Section 2 of the Deed Registries Act, 1937 (Act No. 47 of 1937) (hereinafter referred to as the principal Act), is hereby amended— 10

(a) by the substitution for the heading of the following heading:

“**Appointment of chief registrar, registrar and assistant registrar of deeds**”; and

(b) by the insertion after subsection (1C) of the following subsection:

“(1D) For the purposes of subsection (1)(a), “supervision” includes the issuing of practice and procedure directives.”. 15

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 20

2. Section 3 of 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 addition in subsection (1) after paragraph (y) of the following paragraph:
- “(z) implement practice and procedure directives that are 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 27 of 1982, section 4 of Act 14 of 1993 and section 10 of Act 11 of 1996

3. Section 9 of the principal Act is hereby amended—

- (a) by the substitution in subsection (2) for paragraph (b) of the following paragraph:
- “(b) one shall be an officer of the Department of **[Land Affairs]** Rural Development and Land Reform; and”; and
- (b) by the insertion after subsection (3) of the following subsection:
- “(3A) (a) The Minister must in the same manner in which a member of the board is appointed in terms of subsection (2), appoint an alternate member for each member of the board.
- (b) An alternate member may in the absence of a member of the board from a meeting of the board, attend such meeting on behalf of such member and is deemed to be a member of that meeting.
- (c) The provisions of subsection (3) are, with the necessary changes, applicable to the appointment of an alternate member.”.

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

- 4. 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 any other document lodged with a deeds registry for execution, registration or record, shall—”.

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

- 5. 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 sole 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 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

6. Section 102 of the principal Act is hereby amended by the substitution for the definitions of “Master” and “Minister” of the following definitions, respectively: 10

“ ‘**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; 15

‘**Minister**’ means the Minister of [Land Affairs] Rural Development and Land Reform;”.

Short title

7. This Act is called the Deeds Registries Amendment Act, 2010.

MEMORANDUM ON THE OBJECTS OF THE DEEDS REGISTRIES AMENDMENT BILL, 2010

1. OBJECTS OF BILL

The main objective of the Bill is to amend the Deeds Registries Act, 1937 (Act No. 47 of 1937) (hereinafter referred to as “the Act”), in order to substitute certain obsolete expressions and to enhance the application of the Act to conform to current and uniform practices of the deeds registries.

2. CLAUSE BY CLAUSE ANALYSIS

2.1 Clause 1 of the Bill seeks to clarify the powers of the chief registrar by defining “supervision” to include the issuing of practice and procedure directives.

2.2 The amendment proposed in clause 2(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.

2.3 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 2(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.

2.4 It often happens that members of the deeds registries regulations board cannot attend meetings due to unforeseen circumstances. The absence of members of the board at a meeting may lead to the absence of a quorum and the cancellation of that meeting. The amendment of section 9, as proposed in clause 3 of the Bill, seeks to provide for the appointment of alternate members to the board. This amendment will prevent cancellation of meetings due to lack of a quorum and will ultimately save costs.

2.5 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 record or execution in a deeds registry. The proposed amendment of section 17(2), in clause 4 of the Bill, seeks to provide for the disclosure of the full names and marital status of a person in any documents, other than deeds, that need to be registered, recorded or executed by a registrar of deeds.

2.6 Section 34 of the Act allows an owner of a piece of land to apply for a certificate of registered title for his or her undivided share in land, but only in instances where such land is owned in joint ownership. The proposed amendment of section 34, in clause 5 of the Bill, caters for the issuing, to any sole owner, of a certificate of registered title for any fraction of his or her undivided share in such land.

2.7 The amendment of the definition of “Master”, as proposed in clause 6 of the Bill, is consequential to the change of name of the High Court, as contemplated in clause 2 of the Bill. The amendment of the definition of the “Minister” also proposed in clause 6 seeks to express the correct title of the Minister in view of the recently changed name of the Cabinet portfolio.

3. FINANCIAL IMPLICATIONS FOR STATE

None.

4. DEPARTMENTS/BODIES/PERSONS CONSULTED

- Deeds Registries Regulations Board.
- Law Society of South Africa.
- General public.

5. CONSTITUTIONAL IMPLICATIONS

None.

6. COMMUNICATION IMPLICATIONS

To be undertaken by the Department of Rural Development and Land Reform.

7. PARLIAMENTARY PROCEDURE

7.1 The State Law Advisers and the Department of Rural Development and Land Reform 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.