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GENERAL NOTICE

NOTICE 360 OF 2008

DEPARTMENT OF LAND AFFAIRS

PUBLICATION OF THE DEEDS REGISTRIES AMENDMENT BILL, 2008, FOR GENERAL COMMENT

The Minister for Agriculture and Land Affairs has approved the publication of the Deeds Registries Amendment Bill, 2008 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 N S Lefafa
Chief Registrar of Deeds
Department of Land Affairs
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T GWANYA
DIRECTOR-GENERAL

TP056

REPUBLIC OF SOUTH AFRICA

DEEDS REGISTRIES AMENDMENT BILL, 2008

*(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 - 2008]

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 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 certificates of registered title to replace lost or destroyed deeds; to provide for the issuing of replacement mortgage bonds in respect of lost or destroyed mortgage bonds; 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

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 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

2. Section 17 of the principal Act is hereby amended by the substitution in subsection (2) for the words preceeding 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 38 of Act 47 of 1937

3. Section 38 of the principal Act is hereby amended –

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

“(1) A registrar must, [If] if [the] a title deed [of any land] has been lost or destroyed and the registry duplicate of such title deed has also been lost or destroyed, **[the registrar shall,]** on written application by the registered owner or holder [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] deed** in accordance with the diagram **[of the land].**”; and

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

“(2) The registrar must, [Before] before issuing the certificate, **[the registrar shall]** at the expense of the applicant, publish in the prescribed form a notice [of intention to issue the certificate] in two consecutive ordinary issues of the *Gazette* and in two consecutive issues of a newspaper **[printed in the division, district or county]** circulating in the area of jurisdiction of the deeds registry in which the **[land is situate, or if there is no such newspaper then in any newspaper circulating in such division, district**

or county] title deed is registered, of his or her intention to issue the certificate.".

Insertion of section 60A in Act 47 of 1937

4. The following section is hereby inserted in the principal Act after section 60:

"Replacement mortgage bond for lost or destroyed mortgage bond

60A (1) A registrar must, if a mortgage bond has been lost or destroyed and the registry duplicate of such mortgage bond has also been lost or destroyed, on written application by the holder of such mortgage bond accompanied by the consent of the mortgagor and a draft of a replacement mortgage bond, execute the replacement mortgage bond and allocate thereto the original mortgage bond number of the lost or destroyed mortgage bond.

(2) The registrar must, before issuing a replacement mortgage bond, at the expense of the applicant, publish in the prescribed form a notice in two consecutive ordinary issues of the *Gazette* and in two consecutive issues of a newspaper circulating in the area of jurisdiction of the deeds registry in which the mortgage bond is registered, of his or her intention to issue the replacement mortgage bond.

(3) The draft of the replacement mortgage bond shall be open for inspection in the deeds registry, free of charge, to any person for a period of 6 weeks after the date of the first publication of the notice in the *Gazette*, during which period any person may object to the registrar to the issuing of the replacement mortgage bond.

(4) Any person who has lodged an objection to the issuing of a replacement mortgage bond may, in default of any arrangement between him or her and the applicant, apply to the court within 30 days after the last day upon which an objection may be lodged, for an order prohibiting the registrar from issuing the

replacement mortgage bond, and the court may make such order as it may deem appropriate.

(5) A replacement mortgage bond executed under this section must, as far as feasible, be lodged in the destroyed or lost mortgage bond's original form, and replaces such bond."

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. 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, 2008.

MEMORANDUM ON THE OBJECTS OF THE DEEDS REGISTRIES AMENDMENT BILL, 2008

1. PURPOSE

The Deeds Registries Amendment Bill, 2008 (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 thereof 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 of "Supreme Court" of the expression of "High Court", seeks to rectify the present legal situation with reference to this 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 2(1)(b) of the Bill seeks to eliminate this problem by obliging registrars to comply with directives and thus promote uniformity in all the deeds registries throughout the country.

2.2. 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 executed in or lodged for registration or record in a deeds registry. The proposed amendment of section

17(2) in Clause 2 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 executed or attested by a registrar of deeds.

2.3.1. Section 38(1) of the Act makes provision for the issuing of a certificate of registered title in instances where the original title deed of land has been lost or destroyed and the registry duplicate of such title deed has also been lost or destroyed. The section, however, does not provide for the issuing of a certificate of registered title where the title deed of a registered real right in immovable property and the registry duplicate of such title deed, have both been lost or destroyed. The proposed amendment in Clause 3(a) of the Bill, seeks to enable a registrar to also issue a certificate of registered title in such instances.

2.3.2. Section 38(2) of the Act provides for the publication of a notice in two consecutive issues of the *Gazette* and in two consecutive issues of a newspaper printed in the division, district or county in which land is situated, of a registrar's intention to issue a certificate of registered title. The proposed amendment of section 38(2) in Clause 3(b) of the Bill seeks to simplify and facilitate the publication of the notice. In many divisions, districts or counties no newspapers as contemplated by the subsection, are printed. However, newspapers printed in other areas are circulating within the specific areas.

2.4 The Act does not provide for any measures in instances where the original registered mortgage bond and the registrar's duplicate thereof have been lost or destroyed. The insertion of section 60A as proposed in Clause 4 of the Bill, now creates a mechanism whereby such a lost or destroyed mortgage bond can be replaced which will obviously also contribute towards mortgagees' peace of mind in respect of their security.

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 the Constitution of the Republic of South Africa, 1996.

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

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.