



Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID-AFRIKA

Vol. 568

Pretoria, 5 October 2012
Oktober

No. 35767

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GENERAL NOTICE

NOTICE 809 OF 2012

DEPARTMENT OF RURAL DEVELOPMENT AND LAND REFORM

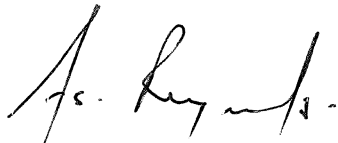
PUBLICATION OF THE DEEDS REGISTRIES AMENDMENT BILL, 2012 FOR GENERAL COMMENT

The Minister for Rural Development and Land Reform has approved the publication of the Deeds Registries Amendment Bill, 2012 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:

Ms AS Reynolds
Deputy Registrar of Deeds
Department of Rural Development and Land Reform
Private Bag X918
PRETORIA
0001

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1 CHIEF REGISTRAR OF DEEDS

REPUBLIC OF SOUTH AFRICA

DEEDS REGISTRIES AMENDMENT BILL, 2012

*(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 RURAL DEVELOPMENT AND LAND REFORM)

[B — 2012]

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.
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BILL

To amend the Deeds Registries Act, 1937, so as to provide discretion in respect of the rectification of errors in the name of a person or the description of property mentioned in deeds and other documents; to provide for the issuing of certificates of registered title taking the place of deeds that have become incomplete or unserviceable; to substitute an obsolete reference; to substitute an outdated heading; to delete reference to the repealed Agricultural Credit Act, 1966; to further regulate the updating of deeds in respect of the change of names of companies, close corporations and the surnames of women; to amend a definition; and to provide for matters connected therewith.

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

Amendment of section 4 of Act 47 of 1937, as amended by section 3 of Act 43 of 1957 and section 2 of Act 170 of 1993

1. Section 4 of the Deeds Registries Act, 1937 (Act No. 47 of 1937) (hereinafter referred to as "the principal Act"), is hereby amended by the substitution in subsection (1) for subparagraph (iii) of paragraph (b) of the following subparagraph:

"(iii) if the error is common to two or more deeds or other documents, including any register in his or her registry, the error shall be rectified in all those deeds or other documents, unless the registrar, on good cause shown, directs otherwise;"

Amendment of section 38 of Act 47 of 1937

2. Section 38 of the principal Act is hereby amended—

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

"Certificate of registered title taking place of lost, [or] destroyed, incomplete or unserviceable deed";

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

"(1) If the title deed of any land has been lost, **[or]** destroyed, incomplete or unserviceable, and the registry duplicate of such title deed has also been lost, **[or]** destroyed, incomplete or unserviceable, 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."; and

(c) by the substitution for subsection (5) of the following subsection:

"(5) A certificate of registered title issued under this section shall be as nearly as practicable in the prescribed form and shall take the place of the lost, **[or]** destroyed, incomplete or unserviceable title deed and shall embody or refer to every condition, servitude, bond, lease or other encumbrance which according to the records of the registry was embodied or referred to in the lost, **[or]** destroyed, incomplete or unserviceable title deed or in any endorsement thereon."

Amendment of section 44 of Act 47 of 1937, as amended by section 18 of Act 43 of 1962, section 16 of Act 87 of 1965, section 5 of Act 92 of 1978, section 53 of Act 24 of 2003 and section 1 of Act 11 of 2005

3. Section 44 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) If rectification of title is required in respect of any one piece of land in consequence of a survey or re-survey of such land or of the correction of any error in the diagram thereof under the Land Survey Act, **[1927]** 1997, the registrar may, on written application by the owner of the land accompanied by the title deed and the new or the corrected diagram thereof, any bond thereon and any registered deed of lease or other registered deed

whereby any real right therein is held by any other person and the written consent of the holder of such bond, lease or right, endorse on the aforesaid deed a description of the land according to the new or corrected diagram, which description shall supersede the description already appearing in the aforesaid deeds."

Amendment of section 48 of Act 47 of 1937, as amended by section 6 of Act 61 of 1969

4. Section 48 of the principal Act is hereby amended by the substitution for the heading of the following heading:

"Special provisions regarding a bond over land in [a Rand township] the area of jurisdiction of the deeds registry at Johannesburg and other land".

Amendment of section 56 of Act 47 of 1937, as amended by section 26 of Act 43 of 1957, section 23 of Act 87 of 1965, section 8 of Act 3 of 1972, section 15 of Act 27 of 1982 and section 16 of Act 14 of 1993

5. Section 56 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph:

"(b) by the trustee of an insolvent estate, an executor administering and distributing an estate under section 34 of the Administration of Estates Act, 1965 (Act 66 of 1965), the liquidator of a company or a close corporation which is unable to pay its debts and which is being wound

up by or under the supervision of the court or the Master [a liquidator or trustee elected or appointed under the Agricultural Credit Act, 1966 (Act No. 28 of 1966)]; or".

Amendment of section 93 of Act 47 of 1937, as amended by section 38 of Act 43 of 1957, section 36 of Act 43 of 1962, section 21 of Act 27 of 1982 and section 21 of Act 14 of 1993

6. Section 93 of the principal Act is hereby amended by the substitution in subsection (1) for paragraphs (a), (b) and (c) of the following paragraphs:

- "(a) if it appears from such deed or other document that any other person is affected by such change of name, such other person shall (save for the registration of a change of name of a company or close corporation) consent in writing to the aforesaid endorsement;
- (b) the application shall (save for the registration of a change of name of a company or close corporation) be accompanied by any other operative deed registered in the same registry in which the applicant's old name appears as a party thereto other than as transferor or cedent; and
- (c) a woman—
- (i) who assumes her husband's surname or resumes her former surname; or
- (ii) who, whether married or divorced, or a widow who adds to the surname which she assumed after the marriage any surname which she bore at any prior time,

shall not be obliged to record such assumption or resumption of surname against any registered deed or other document to enable her to deal with land or a real right in land held by her under such deed or other document."

Amendment of section 102 of Act 47 of 1937, as amended by section 12 of Act 3 of 1972, 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 32 of Act 113 of 1991, section 22 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, section 46 of Act 11 of 2004 and section 6 of Act 12 of 2010

7. Section 102 of the principal Act is hereby amended by the substitution for the definition of "deeds registry" of the following definition:

" **'deeds registry'** means—

- (a) when used in relation to immovable property, the deeds registry which serves the area in which that property is situate;
- (b) when used in relation to any deed or other document, any deeds registry in the Republic wherein that deed or other document is registered or registrable; or
- (c) when used in relation to a registrar, the deeds registry of which he or she is in charge [,

but does not include the mining titles office referred to in section three of the Registration of Deeds and Titles Act, 1909 (Act No. 25 of 1909) of the Transvaal];".

Short title

8. This Act is called the Deeds Registries Amendment Act, 2012.

MEMORANDUM ON THE OBJECTS OF THE DEEDS REGISTRIES AMENDMENT BILL, 2012

1. OBJECTS OF BILL

The Deeds Registries Amendment Bill, 2012 (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”), to improve the application and implementation of the Act.

2. CLAUSE BY CLAUSE ANALYSIS

2.1 Section 4(1)(b) of the Act provides for the rectification of an error in the name of a person or the description of a property mentioned in deeds or documents. If such error is common to two or more deeds or other documents, all such deeds or documents must be lodged for amendment. The proposed amendment to section 4(1)(b)(iii), as contained in clause 1 of the Bill, aims to afford the registrar of deeds discretion with regards to the lodgement, or not, of all the relevant deeds and documents.

2.2 Section 38 of the Act provides for the issuing of certificates of registered title to take the place of lost or destroyed title deeds. The proposed amendment to section 38, as contained in clause 2 of the Bill, seeks to also provide for the issuing of certificates of registered title in instances where title deeds become incomplete or unserviceable.

2.3 Section 44(1) of the Act refers to the Land Survey Act, 1927 (Act No. 9 of 1927), which Act was repealed by the Land Survey Act, 1997 (Act No. 8 of 1997). The proposed amendment to section 44(1) of the Act, as contained in clause 3 of the Bill, seeks to reflect a reference to the correct Land Survey Act.

2.4 The heading to section 48 of the Act still refers to “a Rand township” and is outdated. The substitution of the heading is necessary to provide legal certainty with regard to which deeds registry has jurisdiction for the purposes of section 48. This is especially necessary since there are two deeds registries located within the Gauteng province. The proposed amendment contained in clause 4 of the Bill seeks to provide clarity in this regard.

2.5 Section 56(1)(b) of the Act makes reference to liquidators or trustees appointed under the Agricultural Credit Act, 1966 (Act No. 28 of 1966), which Act was repealed by the Agricultural Debt Management Act, 2001 (Act No. 45 of 2001). The proposed amendment of section 56 (1)(b), in clause 5 of the Bill, aims to rectify the situation.

2.6.1 Section 93 of the Act provides for the registration of a change of name, in a deed or document, of a person or partnership. Section 93(1)(a) provides for the lodgement of consents from other persons that may be affected by a change of name, and section 93(1)(b) provides for the lodgement of all operative deeds in which the old name appears, for purposes of endorsement regarding the change of name. However, problems are experienced with the lodgements of consents and

operative deeds in instances of the change of names of big companies or close corporations. The proposed amendment of section 93(1)(a) and (b), as contained in clause 6 of the Bill, aims to address the issue.

2.6.2 Section 93(1)(c) deals with the upgrading of title deeds in respect of the change of surnames of women. The proposed amendment of section 93(1)(c), to provide for 'double barrel surnames', is necessary in order to bring it in line with section 26 of the Births and Deaths Registration Act, 1992 (Act No. 51 of 1992). Clause 6 provides for the amendment in this regard.

2.7 The amendment of the definition of 'deeds registry', as proposed in clause 7 of the Bill, is consequential to the promulgation of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), which Act provides for the discontinuation of the registration of mineral rights in a deeds registry.

2.8 Clause 8 contains the short title of the Bill.

3. FINANCIAL IMPLICATIONS FOR STATE

None

4. DEPARTMENTS/BODIES CONSULTED

The followings bodies were consulted:

- * The Deeds Registries Regulations Board; and
- * The Law Society of South Africa.

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.

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Advertisements: Tel: (012) 334-4673, 334-4674, 334-4504
Subscriptions: Tel: (012) 334-4735, 334-4736, 334-4737
Cape Town Branch: Tel: (021) 465-7531

Gedruk deur en verkrygbaar by die Staatsdrukker, Bosmanstraat, Privaatsak X85, Pretoria, 0001
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