DYKES VAN HEERDEN
ATTORNEYS AND CONVEYANCERS

NOVEMBER 2019

ELECTRONIC DEEDS REGISTRATIONS SYSTEMS ACT 19 OF 2019

The Electronic Deeds Registrations Systems Act 19 of 2019 (the "Act") was enacted and signed by the President on 19 September 2019. The Act is not yet in force and will become effective on a date to be proclaimed in the Government Gazette. According to a press release from the office of the President:

> *"The Electronic Deeds Registration System Act provides for the development of an Electronic Deeds Registration System – also known as e-DRS – through which South Africa will take advantage of the benefits offered by internet access, e-commerce and global computerisation in the management of security of property title.*
>
> *The new system will enable the electronic processing, preparation and lodgement of deeds and documents by conveyancers and the Registrar of Deeds.*
>
> *It will also enable the registration of large volumes of deeds effectively; improved turn-around times for providing registered deeds and documents to clients; countrywide access to deeds registration services; enhanced accuracy of examination and registration; availability of information to the public, and security features including confidentiality, non-repudiation, integrity and availability.*
>
> *This will greatly enhance security of title and the acquisition and disposal of fixed assets."* [1]

In terms of section 2 of the Act the Registrar of Deeds must develop, establish and maintain the electronic deeds registration system using information and communications technologies for the preparation, lodgement, registration, execution and storing of deeds and documents.

The electronic system to be implemented will be a step towards South Africa implanting a quicker, simpler and more accurate transfer process of immovable property.

Comparatively, for example, the Torrens system is a method of recording and registering land ownership and interests on a single title document. As the land titles register contains all the information of ownership, it is not necessary to prove ownership and

[1] https://www.gov.za/speeches/president-ramaphosa-assents-various-bills-law-2-oct-2019-0000 accessed 29 October 2019

other titles by other longer documents such as title deeds. Countries that use the Torrens system include Australia, New Zealand, Ireland, Malaysia, Singapore, Iran, Canada, Madagascar, England and Wales. The Torrens title system works on the following three principles:

i. The maintenance of a public register of titles and interests on land;

ii. The assurance that, once registered, a title or interest cannot be defeated; and

iii. The guarantee of a compensation fund in the event of a fraudulent or erroneous registration. [2]

In New Zealand since 2002, the titles, survey plans and related documents have been held in an electronic database called Landonline. The relevant transfer documents are submitted electronically on the LINZ (Land Information New Zealand) system, and registration takes place nearly instantaneously on the same day that the relevant documents are submitted on LINZ by the legal practitioner. The parties select the date of registration by agreement, which date is based on logistical arrangements of both parties. The transfer process if far less complicated and in a cash transaction, where the property is not subject to a mortgage bond transfer can take place in a couple of days of the signature of the sale agreement.

South Africa will still continue to operate as a both a positive and a negative land system (we are not adopting the Torrens system in terms of which the Government guarantees the accurateness of the registry). The existing legal framework regulating immovable property and the transfer of immoveable property will remain largely the same, the main difference resulting from the Act being that the Deeds Office registries and transfer process will become electronic.

Section 3 of the Act states that deeds 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 for all purposes deemed to be the only original and valid record. This is subject to the provisions of the Electronic Communications and Transactions Act.

In terms of section 5, Regulations will be issued by the Minister of Rural Development and Land Reform which will deal with amongst other aspects:

- the procedures for the electronic lodgement of deeds and documents;

---

[2] *"A Conceptual Framework for Conveyancing Processes"*, A. Amadi-Echendu and R Pellissier, Department of Business Management, University of South Africa, SAIIE25 Proceedings, 9th – 11th of July 2013, Stellenbosch, South Africa © 2013 SAIIE, at para 4.3

- the procedures for electronic record storing by deeds registries;
- the manner of identification of the person who prepares, executes, lodges, registers or stores any deed or document required or permitted to be prepared, executed, lodged, registered or stored in any deeds registry;
- the procedure and manner for accessing the electronic deeds registration system for information purposes only.

Going Beyond

The DVH group is a national group of attorney practices with offices situated in the Western Cape, Gauteng, and Kwa Zulu Natal.

www.dvh.law.za or scan the QR to contact us.

This newsflash has been prepared for information purposes only and does not constitute legal advice, or a legal opinion, the practical application of the provisions of this newsflash will vary depending on the facts of each case.