

**COMMENTS BY THE LAW SOCIETY OF SOUTH AFRICA
ON THE DRAFT ELECTRONIC DEEDS REGISTRATION SYSTEMS BILL, AS
AMENDED**

The Law Society of South Africa (LSSA) wishes to comment as follows on the Draft Electronic Deeds Registration Systems Bill, as amended in respect of the comment received from the public:

“Conveyancer” is defined with reference to the definition in Section 102 of the Deeds Registries Act. “Notary” is likewise defined in the DRA, but no reference is made to a notary in the Bill. When read with the further requirements for registration, execution of deeds and the requirement for an advanced electronic signature for every document to be registered in the deeds office, the question arises what the legal position will be for a notarial deed signed before a notary (for that matter also a sectional mortgage bond signed before a conveyancer) prior to lodgement in the deeds office, then rejected or required to be amended in some or other respect. What happens to the incorrect deed with advanced electronic signature and what happens to the protocol (presumably also now having to be in electronic form)? There can be little harm in including the definition of a Notary in the Bill to cater for a possible situation where the powers of the Chief Registrar of Deeds are not defined in the Bill in order to deal with matters notarial.

Section 5(2):

We question the necessity to specify that each deeds office can make its own regulations when by definition the electronic system will be open for all users from anywhere in South Africa. The different municipal planning By-laws issued under the Spatial Planning Land Use Management Act is perhaps an example of bureaucracy running amok when one standardised By-law could have been implemented throughout the country. Is there really a legitimate need for different regulations in different deeds offices, which should in theory have a uniform approach?

Section 6(2):

The experience of practitioners with organs of state implementing new electronic procedures are almost invariably bad when, upon implementation the system does not work as promised, or even at all. Perhaps after the words "...regulations are in place," the words "*functions properly and is generally accessible to all users*" should be inserted to allow for a transitional period, that is from the time when the authorities say that everything is "in place" until users generally agree that the system is functioning properly, which period may be months or even years. The British approach of first introducing e-conveyancing as "optional", then as "preferred" and only thereafter to terminate the old paper system, has much practical merit and will save much frustration and financial loss.

Section 6(3):

The meaning of "statutory" in line one after "A conveyancer and..." is neither defined, nor clear. Does it mean "statutory user" or perhaps "authorised user" as in the definitions?