

CHAPTERS 1 TO 5

REPUBLIC OF SOUTH AFRICA

LAND RIGHTS REGISTRATION BILL, 2026

(Preliminary Title)

*(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 LAND REFORM AND RURAL DEVELOPMENT)

[B – 2026]

BILL

To provide for the appointment, responsibilities and duties of the Chief Registrar of Deeds; to provide for the appointment, duties and powers of the Registrar of Deeds; to provide for the development, establishment and maintenance of the electronic deeds registration system; to provide for the establishment and the functions of the Land Rights Registration Regulations Board; to provide provisions relating to the registration of transactions affecting land in areas served by different deeds registries; to provide for registered deeds not to be cancelled except by an order of court; to provide provisions relating to the inspection of records and supply of information; to provide provisions relating to the registration and transfer of land; to provide for the registration of mortgage and notarial bonds;(to be completed) to amend certain laws; to repeal the Deeds Registries Act, 1937 and the Electronic Deeds Registration Systems Act, 2019; and to provide for matters connected therewith.

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

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CHAPTER 1

INTERPRETATION AND ADMINISTRATION

Definitions

1. In this Act, unless the context indicates otherwise—

“attorney” means an attorney as defined in the Legal Practice Act and includes in respect of transactions with State Land, an attorney in the employ of the Department of Land Reform and Rural Development;

"authorised user" means a user of the electronic deeds registration system contemplated in section 10 and "user" has a corresponding meaning;

"Board" means the Land Rights Registration Regulations Board established in terms of section 12;

"Chief Registrar" means a Chief Registrar of Deeds of South Africa appointed in terms of section 3;

“Child-headed family” means a household where both parents are deceased and where all occupants of the property are minor children of the deceased parents;

“conveyancer” means a conveyancer as defined in the Legal Practice Act, and practicing as such in the Republic, and includes a person admitted as an attorney in terms of the relevant **Transkeian legislation** and physically practicing as such within the area of the former Republic of Transkei on or before the date of commencement of Proclamation R9 of 1997 and further includes, in respect of transactions with State Land, a conveyancer in the employ of the Department of Land Reform and Rural Development;

"court" means any court in the Republic as defined in section 166 of the Constitution, with the necessary jurisdiction, or any Tribunal Court established in terms of legislation;

"deed or document", for the purpose of any act of registration, execution or filing in terms of this Act or any other law, means a deed or document in the form of a data message as defined in the Electronic Communications and Transactions Act, generated, submitted, received or stored by electronic means in the electronic deeds registration system, and includes scanned images of a deed or document;

"deeds registry" means—

- (a) when used in relation to immovable property, the deeds registry which serves the area in which that property is situated;
- (b) when used in relation to any deed or document, any deeds registry in the Republic wherein that deed or 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;

“department” means the Department of Land Reform and Rural Development;

“diagram” means a diagram as defined in section 1 of the Land Survey Act, 1997 (Act 8 of 1997);

"Electronic Communications and Transactions Act" means the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002);

"electronic deeds registration system" means a system as provided for in section 9;

"erf" means every piece of land registered as an erf, lot, plot or stand in a deeds registry, and includes every defined portion, not intended to be a public place, of a piece of land laid out as a township, whether or not it has been formally recognised, approved or proclaimed as such;

"executor" includes any representative of a deceased person recognised by law;

“Family” means a group of persons united by ties of marriage, blood, or adoption and interacting with each other in their respective social positions, usually that of spouse, parents, grandparents, children, grandchildren and siblings;

➤ *(Possible insertion) See Shomang case*

“Family Rights Agreement”, means an agreement appointing a family member on behalf of the family, as custodian of a title deed to immovable property or a real right in immovable property, and affording such custodian a supervisory role over such property on behalf of the family, and in which the rights to use and occupy remain within the direct family.’

‘Family title’, means a title registered in the name of a family member, subject to descendants of the family being granted full rights to the property in accordance to a Family Rights Agreement, and of which the family members (male and female members, past, present and future through the male line of descent) both sons and daughters inherit patrilineal family membership, and of which the immovable property or real rights in immovable property cannot be alienated by the sole decision of the person in whose name it is registered.

"general plan" means a general plan as defined in section 1 of the Land Survey Act, 1997 (Act 8 of 1997)

"immovable property" means land, including land tenure rights, as well as any registered lease of land which when entered into was—

- (a) for a period of not less than ten years; or
- (b) for the natural life of a lessee or any other person mentioned in the lease; or
- (c) for a period which is renewable from time to time at the will of the lessee indefinitely; or
- (d) for a period which is renewable and which together with the period referred to in (c) amount in all to not less than ten years;

"Indigent person", for the purpose of this Act, includes a household or category households, including a child-headed family earning a combined gross income, as determined by the Land Rights Registration Regulations Board;

"land" includes a share in land;

"Land Survey Act" means the Land Survey Act, 1997 (Act No. 8 of 1997);

"land tenure right" means a land tenure right created or confirmed by legislation, and includes a share in a land tenure right;

"Legal Practice Act" means the Legal Practice Act, 2014 (Act No. 28 of 2014);

"Marriage" means a marriage as defined in the Marriage Act 20.... (Act No. ... of 20...), and marital status has a corresponding meaning;

NOTE: Wording of this definition must be reconsidered and finalized pending the promulgation of the Marriage Bill.

"Master" means the Master as defined in section 1 of the Administration of Estates Act, 1965 (Act No. 66 of 1965);

"Minister" means the Minister of Land Reform and Rural Development;

"mortgage bond" means a bond attested by the Registrar specially hypothecating immovable property;

"notarial bond" means a bond attested by a notary public hypothecating movable property generally and or specially;

"notarial deed" means a deed attested by a notary public and does not include a document to which a signature is merely authenticated by a notary public, or a copy of a document which has been certified as correct by a notary public;

"notary public" means a notary as defined in the Legal Practice Act, and practicing as such in the Republic, and includes regarding creating or conveying real rights over

State Land, a notary in the employ of the Department of Land Reform and Rural Development and in relation to any document executed outside the Republic, a person practicing as such in the place where the document is executed;

"owner" means, in relation to—

- (a) immovable property, subject to paragraph (b), the person registered as the owner or holder thereof and includes the trustee in an insolvent estate, the business rescue practitioner of a company which is the owner, the liquidator of a company or a close corporation which is an owner, and the executor or representative of any owner who has died or the representative recognised by law of any owner who is a minor or of unsound mind or is otherwise under disability, provided such trustee, liquidator, executor or legal representative is acting within the authority conferred on him or her by law;
- (b) immovable property and notarial bonds which are—
 - (i) registered in the name of both spouses in a marriage in community of property, either one or both of the spouses;
 - (ii) registered in the name of only one spouse and which forms part of the joint estate of both spouses in a marriage in community of property, either one or both of the spouses;
 - (iii) registered under section 24(1) in the name of both spouses in a marriage in community of property to which Chapter III of the Matrimonial Property Act, 1984 (Act No. 88 of 1984), is not applicable, the husband; or
 - (iv) registered in the name of only one spouse and which form part of the joint estate of both spouses in a marriage in community of property to which Chapter III of the Matrimonial Property Act, 1984, is not applicable, the husband;

NOTE: Wording of this definition must be reconsidered and finalized pending the promulgation of the Marriage Bill.

"person" means a person as defined in the Interpretation Act, 1957 (Act No. 33 of 1957), and includes a trust for the purpose of the registration of immovable trust property only;

"prescribed" means prescribed by regulation made in terms of section ...;

"province" means the geographical area of a province of the Republic of South Africa as determined in the Constitution of the Republic of South Africa, 1996;

"real right" includes any right which becomes a real right upon registration;

“recorded” means recorded in a deeds registry;

NOTE: Definition may be removed upon confirmation that recordals is not to take place in deeds registry

"registered" means registered in a deeds registry;

"Registrar" means a Registrar of Deeds appointed in terms of section 6;

"regulation" means a regulation made under section ...;

"right of leasehold" means a right of leasehold as defined in section 1 of the Black Communities Development Act, 1984 (Act No.4 of 1984), excluding a right in respect of a sectional leasehold unit referred to in that definition;

"share" in relation to land and land tenure rights, means undivided share;

"signature" in respect of any act performed in terms of this Act by a conveyancer, notary public, statutory officer or Registrar in attesting his or her signature to an electronically created deed or document or a scanned image of a deed or document in respect of the registration thereof, means an advanced electronic signature as defined in section 1 of the Electronic Communications and Transactions Act, and "electronic signature" has a corresponding meaning;

“statutory officer” means a person, other than an attorney, conveyancer or notary public, duly authorised by any law to prepare a deed or other document for execution, registration or filing in a deeds registry;

"Surveyor-General" means the Surveyor-General as defined in section 1 of the Land Survey Act, 1997 (Act No. 8 of 1997);

"this Act" includes the regulations made under section ...;

"township" includes—

- (a) a group of pieces of land, or of sub-divisions of a piece of land, which are combined with public places and are used mainly for residential, industrial or similar purposes, or are intended to be so used;
- (b) any combination of such groups which is suitable for registration in one register;
- (c) any area of land registered or recognised at the commencement of this Act in a deeds registry as a township if a general plan thereof is filed in that deeds registry or in the office of the Surveyor- General concerned; and
- (d) any township established, approved, proclaimed or otherwise recognised as such in terms of any other law.

Deeds Registries

2. (1) The Minister may from time to time, subject to the laws governing the public service, by notice in the *Gazette*—

- (a) establish a deeds registry or deeds registries for any province, define the respective areas of jurisdiction, determine the seats thereof and give names to the deeds registries;
- (b) disestablish any deeds registry or incorporate it, or part thereof, with any other deeds registry;
- (c) establish or disestablish sub-deeds registries within the area of any deeds registry;
- (d) for the purpose of providing information, establish call centers, kiosks or satellite offices;
- (e) amend or withdraw a notice referred to in paragraphs (a), (b), (c) and (d);
- (f) subject to the provisions of this Act or any other law, determine the registration acts or other acts which are required or permitted to be performed in any such deeds registry or sub-deeds registry, or amend any such determination.

(2) Any deeds registry which existed when this Act came into operation, must for purposes of this Act be regarded as having been established in terms of subsection (1).

Appointment of Chief Registrar of Deeds

3. (1) The Minister shall, in accordance with the Public Service Act, 1994 (Proclamation 103 of 1994), appoint a person who is holding, or who previously held, the position of a Registrar of Deeds, to be called the Chief Registrar of Deeds of South Africa.

(2) The Chief Registrar of Deeds shall, subject to the directions of the Minister, exercise the powers and perform the duties conferred upon, or assigned to, the Chief Registrar of Deeds by this Act or any other law.

(3) Whenever the Chief Registrar of Deeds, because of absence or for any other reason, is unable to carry out the functions of that office, or whenever such office becomes vacant, the Minister may authorise any Registrar of Deeds contemplated in sections 6(1)(a) and (c), to act in the place of such Chief Registrar of

Deeds during the period of such absence or incapacity, or to act in the vacant office until the vacancy is filled, as the case may be.

(4) The Minister may delegate any power conferred on him or her by this section, to the Director-General: Land Reform and Rural Development.

(5) Any person holding, at the commencement of this Act, the office of Chief Registrar of Deeds shall be deemed, as from date of such commencement, to have been appointed under this section as Chief Registrar of Deeds.

Responsibilities of Chief Registrar of Deeds

4. (1) The Chief Registrar of Deeds shall lead the—
- (a) management of Deeds Registration Corporate Support Services;
 - (b) management of the Deeds Registration Information Communication Technology Services;
 - (c) management of the Deeds Registration Legislation, Litigation and Training Services;
 - (d) coordination of service delivery by all deeds registries and Chief Directorates in the Branch Deeds Registration; and
 - (e) audit and risk management regarding all deeds registries and Chief Directorates in the Branch Deeds Registration and report findings to the Director-General.

Duties of Chief Registrar of Deeds

5. (1) The Chief Registrar of Deeds must, subject to the provisions of this Act or any other law—

- (a) act as chairperson and executive officer of—
 - (i) the Land Rights Registration Regulations Board referred to in section 12; and
 - (ii) the Sectional Titles Regulations Board referred to in section 54 of the Sectional Titles Act, 1986 (Act No. 95 of 1986);
- (b) develop, establish and maintain the electronic deeds registration system, as contemplated in section 9(1) of the Act;

- (c) consult with the Land Rights Registration Regulations Board on matters contemplated by section 9(2);
- (d) exercise such supervision over all the deeds registries as may be necessary to bring about uniformity in their practice and procedure: Provided that the supervision includes the issuing of practice and procedure directives;
- (e) provide opinions in respect of matters referred for a reviewing process;
- (f) be accountable for the electronic deeds registration system;
- (g) be accountable for the deeds registration information;
- (h) be accountable for the archiving and safeguarding of deeds and documents.

Appointment of Registrar, Deputy Registrar and Assistant Registrar of Deeds

6. (1) The Minister shall appoint, in terms of the Public Service Act, 1994 (Proclamation 103 of 1994):

- (a) in respect of each deeds registry, a Registrar, who must be in charge of the deeds registry in which such Registrar has been appointed;
- (b) in respect of each deeds registry, one or more Deputy Registrars and one or more Assistant Registrars, who must respectively have the powers, subject to the regulations, to perform any act which may lawfully be done under this Act or any other law by a Registrar;
- (c) in respect of the office of the Chief Registrar, one or more Registrars, one or more Deputy Registrars, and one or more Assistant Registrars, or a Law Lecturer to perform support functions in the office of the Chief Registrar.

(2) Any person holding, at the commencement of this Act, the office of Registrar, Deputy Registrar or Assistant Registrar, is deemed, as from the date of such commencement, to have been appointed under this section as Registrar or Deputy Registrar or Assistant Registrar, as the case may be.

Duties of Registrar of Deeds

- 7.** (1) Subject to the provisions of this Act the Registrar must -

- (a) take charge of and, preserve or cause to be preserved all records which were prior to the commencement of this Act, or may become after such commencement, records of any deeds registry in respect of which he or she has been appointed: Provided that the Registrar may, in a prescribed manner, destroy or otherwise dispose of any record which has been cancelled in terms of this subsection or any record in connection with a caveat that has expired in terms of section 17 (3), section 18B or section 127A of the Insolvency Act, 1936 (Act No. 24 of 1936);
- (b) examine in full all deeds or other documents submitted to him or her for execution or registration and after examination defer or reject any such deed or document of which the execution or registration is not permitted by this Act or by any other law, or to which a valid objection against the execution or registration exists;
- (c) register grants or leases of land lawfully issued by the Government or grants issued by any other competent authority, and register amendments, renewals and cancellations of such leases, and releases of any part of the property leased;
- (d) record, in compliance with the requirements of any law, land tenure rights lawfully issued by Government or any other competent authority, and record the amendment and cancellation thereof;
- (e) register, in compliance with the requirements of any law, the conversion of land tenure rights to another form of land tenure right, including ownership;

NOTE: Paras. (d) and (e) may be removed upon confirmation that records is not to take place in a deeds registry

- (f) attest or execute and register deeds of transfer of land, and execute and register certificates of title to land;
- (g) attest and register mortgage bonds;
- (h) register cessions (including cessions made as security) of registered mortgage bonds, and register cancellations of such cessions if made as security;
- (i) register cancellations of registered mortgage bonds, releases of any part of the property hypothecated thereby or of all such property if the debt is further secured by a collateral bond, releases of any joint debtor or of

any surety in respect of any such bond, the substitution of another person for a debtor in respect of any such bond, reductions of cover in respect of any such bond intended to secure future debts, and part payments of the capital amount due in respect of any such bond other than a bond intended to secure future debts;

- (j) register waivers of preference in respect of registered mortgage bonds and notarial bonds with regard to the whole or any part of the property hypothecated thereby in favour of other such bonds whether registered or about to be registered;
- (k) register notarial waivers of preference in respect of registered real rights in land in favour of mortgage bonds and leases, whether registered or about to be registered;
- (l) register notarial bonds, and cancellations and cessions thereof (including cessions made as security) and cancellations of such cessions if made as security;
- (m) register releases of any part of the property hypothecated by any registered notarial bond or of all such property if the debt is further secured by a collateral bond, releases of any joint debtor or of any surety in respect of any such bond, reductions of cover in respect of any such bond intended to secure future debts, and part payments in respect of the capital amount due in respect of any such bond other than a bond intended to secure future debts;
- (n) register antenuptial contracts, including orders under section 20, and contracts contemplated in section 21, of the Matrimonial Property Act, 1984 (Act No. 88 of 1984) and register such notarial deeds having reference to persons and property within the area served by the registry in question as are required or permitted by law to be registered;
- (o) register any servitude, whether personal or praedial, and record the modification or extinction of any registered servitude;
- (p) register notarial leases, sub-leases, and cessions of leases or of sub-leases of land, and notarial cessions of underhand leases or sub-leases of land, which have been registered prior to the commencement of this Act, and notarial amendments of such leases and sub-leases, notarial

renewals and notarial cancellations of such leases and sub-leases and notarial releases of any part of the property leased;

- (q) despite the repeal of the regulations, proclamations and by-laws made under sections 25(1), 30(2) and 30A(1) of the Black Administration Act, 1927 (Act No. 38 of 1927), by the Repeal of the Black Administration Act and Amendment of Certain Laws Act, 2005 (Act No. 28 of 2005) —
 - (i) continue to register any registrable transaction concerning a right originally acquired in terms of or under the Black Administration Act, 1927, in accordance with the legislation which created that right; and
 - (ii) exercise all the other powers and perform all the other duties vested in or imposed upon a Chief Commissioner or registration officer by or under the Black Administration Act, 1927;
- (r) register any real right, not specifically referred to in this subsection, and any cession, modification or extinction of any such registered right;
- (s) register against any registered mortgage or notarial bond any agreement entered into by the mortgagor and the holder of that bond, whereby any terms of that bond, with the exception of terms relating to the relevant cause of debt, the mortgaged security or the amount of the debt secured by the bond, have been varied;
NOTE: BWS to inform whether this clause must remain.
- (t) register general plans of erven or of sub-divisions of land, open registers of the erven or sub-divisions of land shown on such general plans, and record the conditions upon which the erven or sub-divisions have been laid out or established;
NOTE: BWS to inform whether this clause must remain.
- (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, or register copies of such powers which have been issued for the purpose of being acted upon in a deeds registry by a Master or registrar of the High Court of South Africa;
- (v) make, in connection with the registration of any deed or document or in compliance with the requirements of any law, such endorsements on any

registered deed or document as may be necessary to give effect to such registration or to the objects of such law;

- (w) record all notices, returns, statements, or orders of court lodged with him or her in terms of any law;
- (x) remove from his or her records, with the approval of the Master and after the lapse of ten years from the date of entry in such records, any entry made therein, whether before or after the commencement of this Act, in pursuance of the transmission to him or her of a notice of liquidation or an order of liquidation or sequestration;
- (y) keep, electronically such registers containing such particulars as are necessary for the purpose of carrying out the provisions of this Act or any other law and of maintaining an efficient electronic deeds registration system calculated to afford security of title and ready reference to any registered deed;
- (z) implement practice and procedure directives issued from time to time by the Chief Registrar as contemplated in section 5(1)(d) and directives as contemplated in section 9(2) of the Act; and
- (zA) generally discharge all such duties as by law may or are to be discharged by a Registrar or as are necessary to give effect to the provisions of this Act.

~~[(2) The Registrar concerned must reproduce or cause to be reproduced any record referred to in subsection (1), by means of microfilming or any other process prescribed by the Chief Registrar in such manner that any such reproduction forms a durable medium for reproducing and preserving any such record, deed or document and preserve or cause to be preserved such reproduction for deep archiving and disaster recovery purposes].~~

NOTE: Clause 2 must be removed as a duty of the Registrar of Deeds and be added as a duty of the CRD. ICT to assist with drafting of a suitable new section re reproduction/preservation of deeds/documents.

Powers of Registrar of Deeds

8. (1) Each Registrar has the power —
- (a) to require proof upon affidavit or otherwise of any fact necessary to be established in connection with any matter or thing sought to be performed or effected in his or her deeds registry: Provided that where a

copy of proof is lodged in electronic format, such copy must be certified in terms of section 18 of the Electronic Communications and Transactions Act, 2002, by a conveyancer, notary or statutory officer to be a true copy of the original thereof;

- (b) whenever it is in his or her opinion necessary or desirable to rectify an error in any deed or document registered or filed in his or her deeds registry regarding the name or the description of any person or property mentioned therein, or in the conditions contained therein, to rectify the error: Provided that —
 - (i) the owner or holder applies for the rectification;
 - (ii) every person appearing from the deed or document who has an interest in the rectification has consented thereto in writing;
 - (iii) if any such person who has an interest in the rectification refuses to consent thereto the rectification may be made on the authority of an order of court;
 - (iv) if the error is common to two or more deeds or documents, including any register in his or her deeds registry, the error must be rectified in all those deeds or documents; and
 - (v) no such rectification will be made if it will have the effect of transferring any rights;
- (c) to issue, under such conditions as may be prescribed, certified copies of deeds or documents registered or filed in his or her deeds registry for information and judicial purposes.

Electronic deeds registration system

9. (1) The Chief Registrar of Deeds must, subject to the Electronic Communications and Transactions Act, develop, establish and maintain the electronic deeds registration system using information and communications technologies for the preparation, lodgment, registration, execution and storing of deeds and documents.

(2) In achieving the objectives contemplated in subsection (1), the Chief Registrar of Deeds may, after consultation with the Board referred to in section 12, issue directives for—

- (a) the functional requirements of the electronic deeds registration system;

- (b) the technical specifications for the electronic deeds registration system;
- (c) the specifications for the interface between the electronic deeds registration system and any party interfacing in the system which will be authorised to access the electronic deeds registration system;
- (d) the standards governing the information security of the electronic deeds registration system;
- (e) the operation of the electronic deeds registration system;
- (f) the processing of deeds and documents using the electronic deeds registration system; and
- (g) the secure retention and subsequent production of deeds and documents, or any other electronic records, which may be pertinent to the registration of rights in the deeds registry or that may be required for the administrative or legal proceedings that must be complied with by users interacting with the electronic deeds registration system; and
- (h) any other matter specifically relating to the electronic deeds registration system.

Authorised users

10. Any user of the electronic deeds registration system authorized by the regulations must be registered in the manner and under conditions as may be directed by the Chief Registrar of Deeds.

Validity of deeds and documents

11. (1) Subject to section 14 of the Electronic Communications and Transactions Act, a deed 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.

(2) This Act does not affect the validity of any registrations effected prior to the coming into operation thereof.

Land Rights Registration Regulations Board

12. There is hereby established a Board to be known as the Land Rights Registration Regulations Board.

Constitution of Board

13. (1) The Board shall consist of the Chief Registrar of Deeds as chairperson and executive officer as contemplated in section 5(1)(a)(i), the Senior Financial Officer: Deeds Registration Trading Entity, the Chief Director Deeds Registration Information, Communication and Technology, and seven other members appointed by the Minister, of whom—

- (a) one shall be a Registrar of Deeds occupying an office mentioned in section 6(1)(a) or section 6(1)(c);
 - (b) one shall be an officer of the Department of Land Reform and Rural Development;
 - (c) two shall be conveyancers nominated by the South African Legal Practice Council established in terms of section 4 of the Legal Practice Act;
 - (d) one shall be a conveyancer from the Office of the State Attorney;
 - (e) one shall be a Senior Financial Officer of the Department of National Treasury;
 - (f) one shall be an officer in the employ of the Banking Association of South Africa; and
- (2) (a) The Minister must in the same manner in which a member of the Board is appointed in terms of subsection (1), 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.

Functions of Board

14. The functions of the Board are—

- (a) to make recommendations to the Minister concerning any matter specified in section in regard to which the Minister may make regulations;
- (b) to keep regular review of the operations and implementation of the Act and the regulations and to make recommendations to the Minister regarding any amendments of the Act and the regulations or other actions that may be advisable;
- (c) to advise the Minister on any matter referred to it by the Minister; and
- (d) to entertain consultations contemplated by section 9(2).

Term of office of members of Board and filling of vacancies

15. (1) A member or an alternate member of the Board appointed by the Minister must hold office for the period determined by the Minister, but the Minister may, if in his or her opinion there is good reason to do so, terminate the appointment of such a member at any time before the expiration of his or her period of office.

(2) A member or an alternate member of the Board whose term of office has expired, is eligible for re-appointment.

(3) If a member or an alternate member for any reason vacates his or her office, the Minister may appoint a person to act in the place of such member or alternate member for the unexpired period of his or her term of office.

(4) A member or an alternate member of the Board who is not in the full-time employment of the State, may be paid such allowances as the Minister, with the concurrence of the Minister of Finance, may determine.

Meetings of Board

16. (1) The Board must meet at the times and places determined by the chairperson.

(2) The Minister may at any time direct the chairperson of the Board to convene a meeting of the Board at a time and place specified by the Minister.

(3) (a) Subject to paragraph (c), five members of the Board who

have a vote on a specific matter, of whom one shall be a member appointed in terms of section 13(1)(c), shall form a quorum for a meeting of the Board.

- (b) The decision of a majority of the members present at any meeting of the Board shall be the decision of the Board, and in the event of an equality of votes the person presiding at the meeting must have a casting vote in addition to his or her deliberative vote.
- (c)
 - (i) The Senior Financial Officer: Deeds Registration Trading Entity and the member appointed in terms of section 13(1)(e) shall only have a vote in respect of financial aspects; and
 - (ii) The members appointed in terms of section 13(1)(c) and section 13(1)(f) shall not have a vote in respect of financial matters.

(4) The Board may regulate the proceedings at its meetings as it may think fit and must cause the minutes of such meeting to be kept.

(5) The Chief Registrar may designate a member to act in his or her place as chairperson at meetings, which he or she is unable to attend.

(6) The Board may make recommendations to the Minister concerning matters specified in section ... also without holding a meeting, provided that any recommendation so made have been agreed to by all the members of the Board.

(7) At the commencement of this Act, the Board existing immediately prior to the commencement of this Act is deemed to have been established in terms of this Act and any person appointed as a member of such Board by the Minister prior to its commencement, is deemed to have been appointed under this Act.

Transactions affecting land in areas served by different deeds registries

17. (1) Where it is sought to register transactions affecting separate pieces of land situated within the areas served by different deeds registries, the Registrars concerned may subject to the provisions of any regulations or other

prescriptions, by mutual arrangement, effect such registration in such manner as may be found expedient.

(2) Where land situated in the area of a deeds registry is hypothecated together with other land not registered in that deeds registry, the bond must be cancelled or that land or such other land must be released from the bond before any other legal transaction in relation to that land or such other land is registered.

Registered deeds not to be cancelled except upon an order of court

18. (1) No registered deed of grant, deed of transfer, certificate of title or other deed conferring or conveying title to land, or any real right in land other than a mortgage bond, and no cession of any registered bond not made as security, shall be cancelled by a Registrar, except where it is otherwise provided for in this Act, in any other law or upon an order of court.

(2) Upon the cancellation of any deed conferring or conveying title to land or any real right in land other than a mortgage bond as provided for in subsection (1), the deed under which the land or such real right in land was held immediately prior to the registration of the deed which is cancelled, shall be revived to the extent of such cancellation, and the Registrar must cancel the relevant endorsement thereon evidencing the registration of the cancelled deed.

(3) The Registrar must give effect to the provisions of sub-section (2) in the prescribed manner.

Inspection of records and supply of information

19. (1) Each Registrar of Deeds and the Chief Registrar of Deeds must on conditions prescribed and upon payment of the prescribed fees, permit any person to-

- (a) inspect the public registers and other public records in his or her deeds registry and in the case of the Chief Registrar of Deeds, he or she may permit any person to inspect the registers on the electronic deeds registration system;
- (b) obtain copies of those records or extracts from those registers; and

- (c) obtain such other information concerning deeds or documents registered or filed in the deeds registry as prior to the commencement of this Act could, customarily, be made or obtained.

(2) Notwithstanding any provision to the contrary in any other law, no person, including the State, is exempted from the payment of the prescribed fees referred to in subsection (1).

CHAPTER 2

REGISTRATION OF LAND

General provisions

Deeds to follow sequence of their relative causes

20. (1) Except where otherwise provided in this Act, or in any other law or as directed by the court—

- (a) transfers of land and cessions of real rights therein must follow the sequence of the successive transactions in pursuance of which they are made, and if made in pursuance of testamentary disposition or intestate succession they must follow the sequence in which the right to ownership or other real right in the land accrued to the persons successively becoming vested with such right.

(b) it is unlawful to depart from any such sequence in recording in any deeds registry any change in the ownership in such land or of such real right: Provided that—

- (i) if the property has passed in terms of a will or through intestate succession from a deceased person to his or her descendants, and one or other of these descendants has died a minor and intestate and no executor has been appointed in his or her estate, transfer or cession of the property which has vested in that descendant may be passed by the executor in the estate of the deceased person direct to the heirs *ab intestato* of the descendant;

- (ii) if the Registrar is satisfied that the value of the immovable property which has vested in any heir or legatee in terms of a will or through intestate succession would be equaled or exceeded by the costs involved in transferring or ceding it to the heir or legatee, and the heir or legatee has sold the property, then the transfer or cession thereof may, with the consent in writing of the heir or legatee, be passed by the executor in the estate of the deceased person direct to the purchaser;
- (iii) if in the administration of the estate of a deceased person, including a fiduciary, any redistribution of the whole or any portion of the assets in such estate takes place among the heirs and legatees, including ascertained *fideicommissary* heirs and legatees, of the deceased, or between such heirs and legatees and the surviving spouse, the executor or trustee of such estate may transfer the land or cede the real rights therein direct to the persons entitled thereto in terms of such redistribution;
- (iv) in a redistribution mentioned in subparagraph (iii), it is lawful to introduce movable property not forming part of the estate for the purpose of equalising the division;
- (v) subparagraph (iii) applies with the necessary changes with reference to a redistribution of assets of—
 - (aa) the joint estate of spouses who were married in community of property and have been divorced or judicially separated; and
 - (bb) a partnership on dissolution of the partnership;
- (vi) if a fiduciary interest in land or in a real right terminates before transfer of the land or cession of the real right has been registered in favour of the fiduciary, it is competent to transfer the land or cede the real right direct to the *fideicommissary*;
- (vii) if the right of any person to claim transfer of such land or cession of such real right from any other person has been vested in any third person in terms of any judgment or order of any court, including a magistrate's court, or in terms of a sale in execution held pursuant to any such judgment or order, transfer of such land

or cession of such real right may be passed direct to such third person by the person against whom such right was exercisable.

(2) In any transfer or cession in terms of subsection (1)(b), the transfer duty receipts must be **obtained** with regard to the transfer duty which would have been paid had the property concerned been transferred or ceded to each person successively becoming entitled thereto.

Preparation and execution of deeds and documents

21. (1) No deed of transfer, mortgage bond or certificate of title or any certificate of registration mentioned in this Act, shall be attested, executed or registered by the Registrar, unless it has been prepared by a conveyancer or any person other than a conveyancer who is authorised by this Act or any other law to do so: Provided that an attorney, conveyancer or notary in the employ of the Department may attend to the preparation of deeds and documents in respect of transactions with State Land, and in cases where an indigent person is a party to a transaction.

(2) Deeds and documents for execution or registration must be electronically prepared on the e-DRS in the manner and format as stipulated in directives issued by the Chief Registrar in terms of section 9(2) of the Act.

(3) The conveyancer, other person authorised by this Act or any other law, and must be registered as an authorised user of the e-DRS in the manner and under conditions as may be prescribed.

(4) Except where otherwise provided in this Act, any other law, or by an order of the court, a deed of transfer must, save in respect of a deed of transfer executed by the Registrar, be executed by a conveyancer duly authorised by a power of attorney to act on behalf of the owner of the land, and be attested by the Registrar.

Proof of certain facts in connection with deeds or documents

22. (1) A conveyancer or other person authorised by this Act or any other law, who prepares a deed or document for the purposes of registration or filing in a deeds registry, accepts by virtue of the electronic submission of such deed or document the responsibility, to the extent prescribed by regulation for the purposes of

this section, for the accuracy of the facts mentioned in such deed or document or which are relevant in connection with the registration or filing thereof.

(2) A Registrar must accept, during the course of his or her examination of a deed or document in accordance with the provisions of this Act, that the facts referred to in subsection (1) in connection with the registration or filing of a deed or document, have for the purposes of such examination been conclusively proved: Provided that this subsection shall not derogate from the obligation of a Registrar to give effect to any order of court or any other notification recorded in the deeds registry in terms of this Act or any other legal provision, and which affects the registration or filing of such deed or document.

(3) In respect of the filing and safe keeping of files and documents relating to matters dealt with on behalf of clients:

- (a) a conveyancer and notary public must comply with the provisions of the Rules made by the South African Legal Practice Council in terms of the Legal Practice Act;
- (b) other persons authorised by this Act or any other law must comply with the provisions as prescribed in the Regulations.

Transfer of ownership of land and real rights in land

23. (1) Except where otherwise provided in this Act, or in any other law, the ownership of land and real rights in land may be conveyed from one person to another only—

- (a) in the case of land, by means of a deed of transfer executed or attested by a Registrar; and
- (b) in the case of real rights in land, by means of a deed of cession attested by a notary public and registered by the Registrar: Provided that notarial attestation is not necessary in respect of the conveyance of real rights acquired under a mortgage bond.

(2) When a right of leasehold which has been granted to any person under any legislation, is registered in the name of a person, that right must, subject to the provisions of that Act and of the regulations hereunder, be transferred in a prescribed manner by means of a deed of transfer executed or attested by the

Registrar subject to the conditions of the grant, to another person: Provided that where the state is the transferor, such transfer may be effected by means of a deed of grant.

(3) Despite the repeal of the Black Administration Act, 1927 (Act No. 38 of 1927), by the Repeal of the Black Administration Act and Amendment of Certain Laws Act, 2005 (Act No. 28 of 2005), and despite the other provisions of this Act and any other law or any Proclamation, a right originally acquired in terms of or under the Black Administration Act, 1927, or any Proclamation, must be transferred in accordance with the legislation which created that right.

Registration of immovable property in name of married persons

24. (1) Immovable property, real rights in immovable property and notarial bonds which would upon transfer, cession or registration thereof form part of a joint estate must be registered in the name of both spouses, unless that transfer, cession or registration takes place only in the name of a partnership, and one of the spouses is involved therein only in the capacity of a partner in that partnership.

(2) Every deed or document lodged in a deeds registry for execution or registration or record, must—

- (a) where the marriage concerned is governed by the law of the Republic, state the full name and marital status of the person concerned;
- (b) where the person concerned is married in community of property and the immovable property, bonds or notarial bonds are excluded from a joint estate, state the full name of his or her spouse; and
- (c) where the marriage concerned is governed by the law of any other country, state the full name of the spouse and the law governing the marriage.

(3) Where a marriage has been dissolved by the death of one of the spouses before property which on transfer, cession or registration thereof would have formed part of the joint estate could be transferred, ceded or registered, that property must be transferred, ceded or registered to the joint estate of the spouses, pending the administration thereof, and is, subject to the provisions of any disposition with regard to that property, deemed to be the joint property of the surviving spouse and of the estate of the deceased spouse.

(4) Where immovable property, a real right in immovable property or a notarial bond—

- (a) is registered in the name of a person who has married since the registration took place;
- (b) is registered in the name of a person and which immovable property, a real right in immovable property or notarial bond does not form part of a joint estate or whose marriage was on that date governed by the law of another country, and whose marriage was subsequently dissolved by death or divorce;
- (c) forms an asset in a joint estate and was registered in the name of one of the spouses only; or
- (d) is registered in the name of a person who on the date of the registration was a party to a marriage, but in respect of which immovable property, a real right in immovable property or a notarial bond does not form part of a joint estate, the Registrar must on the written application by the person concerned and on the submission of proof of the relevant facts, endorse the change in status or make a note to the fact that the said person is a party to a marriage in community of property, as the case may be, on the deed in question: Provided that—
 - (i) where there are two or more mutually dependent deeds, all such deeds must be endorsed; and
 - (ii) in the case of a court order envisaged in section 15(5)(a) of the Marriage Act, the Registrar must, on the written application by the person concerned and on submission of the court order, make the endorsement or note accordingly.

(5) A transfer, cession or registration referred to in subsection (1) in the name of spouses, must not be deemed in a case where agricultural land referred to in section 3 of the Subdivision of Agricultural Land Act, 1970 (Act No. 70 of 1970) is concerned, to constitute an act to which a provision of the said section 3 is applicable.

(6) A person married in terms of a marriage the legal consequences of which are governed by the law of any other country, must be assisted by his or her spouse in executing any deed or document required or permitted to be registered in any deeds registry or required or permitted to be produced in connection with any such deed or document, unless the assistance of the spouse is in terms of this Act or on other grounds deemed unnecessary by the Registrar.

NOTE: This clause must be finalized upon promulgation of the Marriage Bill. It differs in some respects from section 17 of the DRA in view of the Marriage Bill, especially in view of the definition of "marriage" therein.

CHAPTER 3

TRANSFER OF LAND

Manner of dealing with State land

25. (1) The ownership of unalienated State land may be transferred from the State only by a deed of grant issued under proper authority and represented on an approved general plan or diagram.

(2) The ownership of land alienated from and re-acquired by the State may be transferred from the State either by a deed of grant or by a deed of transfer issued or executed, as the case may be.

(3) The deed of grant or deed of transfer contemplated by subsection (2) must—

- (a) contain a reference to the title deed by which the State held the land;
- (b) set forth the conditions upon which the land is alienated;
- (c) set forth the rights to the land reserved by the State on this alienation;
- (d) contain the diagram of the land.

(4) If any piece of unalienated State land has been surveyed and is represented on a diagram, the Registrar must, upon written application by the Minister of Public Works and Infrastructure or an officer of the State authorised by such Minister, accompanied by the diagram of the land, enter particulars of the land in the appropriate registers and execute in the prescribed form and in accordance with the diagram, a certificate of registered State title.

(5) Transfer of the ownership of land held by the State under certificate of registered State title must be effected by deed of grant issued under proper authority, but it shall not be necessary to annex a diagram of the land thereto: Provided that the grant contains a reference to the certificate and to the diagram annexed to the certificate.

(6) No deed (other than a deed of grant conveying ownership) purporting to create or deal with or dispose of any real right in any piece of unalienated State land, shall be capable of registration until a certificate of registered State title has been executed in respect of that piece of land.

NOTE: Business Workstream informed that provisions relating to the lodgement of diagrams / general plans must remain in the Bill until clarity is provided regarding interfacing with NGMS

Transfer or cession from joint estate

26. In any deed of transfer or deed of cession lodged in a deeds registry and relating to an asset in a joint estate, the surviving spouse must be joined in his or her personal capacity with the executor of the estate of the deceased spouse except—

- (a) where the executor is dealing only with the share of the deceased spouse; or
- (b) where the asset has been sold to pay the debts of the joint estate; or
- (c) where there has been a massing of the joint estate and the surviving spouse has adiated; or
- (d) where such transfer or cession is in favour of the surviving spouse; or
- (e) where the surviving spouse is dealing with the joint estate in the capacity of executor.

Transfer of two or more pieces of land by one deed

27. (1) Two or more persons each owning a different piece of land may not transfer those pieces of land to one or more persons by the same deed of transfer, unless such transfer is authorised by law or by an order of court.

(2) Two or more pieces of land may in one deed be transferred by one or more persons holding such pieces of land in undivided shares, to one or more persons acquiring such pieces of land in undivided shares: Provided that each piece of land is described in a separate paragraph.

(3) Two or more portions of a piece of land may by one deed be transferred by one or more persons holding the whole of such piece of land in undivided shares to one or more persons acquiring such portions in undivided shares: Provided that each portion is described in a separate paragraph in which reference is made to the diagram of that portion, and such diagrams must be annexed to the deed.

Transfer of undivided shares in land

28. (1) Land held by one person may be transferred by one deed from that person to two or more persons in undivided shares.

(2) Land held by two or more persons in undivided shares may be transferred by one deed from those persons to any other person or more other persons in undivided shares.

(3) Undivided shares in more than one piece of land may not be transferred to more than one person in the same deed if the shares appropriated to any person are not the same in respect of each piece of land.

Special provisions relating to transfer of undivided shares

29. (1) No transfer of an undivided share in land which is intended to represent a defined portion of land, shall be capable of being registered.

(2) If a piece of land is owned by two or more persons in undivided shares and one or more of such persons acquires the share or shares of the remaining owner or owners in a defined portion of that piece of land, all the owners jointly, including the owner or owners acquiring the share or shares, may transfer such portion to the person or persons acquiring it.

Transfer from firm or partnership

30. (1) If land or a real right registered in the name of a firm or partnership is acquired by any member or partner of that firm or partnership in his or her individual capacity, transfer or cession thereof must be given by all the members or partners constituting such firm or partnership: Provided that in any other case land or real rights owned by a firm or partnership may be dealt with by such firm or partnership in the prescribed manner.

(2) If on dissolution of a firm or partnership any land or real right owned by such firm or partnership is awarded to all the members or partners, transfer or cession thereof must be given by all the members or partners constituting such firm or partnership.

(3) If the land or real right referred to in subsection (2) is hypothecated under a registered mortgage bond, such bond must be cancelled or the holder thereof must consent in writing to the substitution of the individual members or

partners as debtors under the bond: Provided that such substitution shall not be allowed unless-

- (i) the individual members or partners apply in writing to be substituted, jointly and severally as debtors under the bond, and such application must be witnessed; and
- (ii) the individual members or partners are competent to mortgage the land; and
- ~~(iii) where applicable, the individual members or partners renounce the exception *de duobus vel pluribus reis debendi*, in the said application.~~

NOTE: The conditions allowed for insertion in e-mortgaged bonds will determine whether sub-clause (iii) must remain

Transfer to unascertained children

31. (1) If land or a real right in land or a bond is donated or bequeathed to the children born or to be born of any person or of any marriage, or is otherwise acquired on behalf of such children, transfer or cession on behalf of such children may be passed in the case of children born or to be born of a person, to that person in trust for such children, and in the case of children born or to be born of a marriage, to the person who would be the guardian of those children during their minority, in trust for such children.

(2) If land or a real right in land or a bond is donated to the children born or to be born of any person or of any marriage, the person to whom transfer or cession may be passed in terms of subsection (1), may for the purposes of such transfer or cession, accept the donation.

(3) When the identity of such children has been established, the person to whom transfer or cession had been passed in terms of subsection (1), must transfer or cede the land or a real right in land or a bond to such children by name, notwithstanding the provisions of section 24(1).

Deed of partition transfer

32. (1) If two or more persons who own in undivided shares the whole of any piece or pieces of land, have agreed to partition that land, the Registrar must, on production of a power of attorney by such persons authorising the passing of deeds of

partition transfer of such land in accordance with the agreement of partition, which agreement must be embodied in the power of attorney, and on compliance with the further provisions of this section, attest the deeds of partition transfer conveying to the respective owners the land or shares therein awarded to them under the said agreement.

(2) In the power of attorney or agreement of partition, there must be described—

- (a) the land to be partitioned;
- (b) the shares registered in the name of each joint owner;
- (c) the land or share therein awarded to each of the owners;
- (d) the conditions, if any, affecting any land or share therein so awarded; and
- (e) the consideration, if any, given for the purpose of equalising the partition.

(3) The deeds of partition transfer must refer to the title deeds of the land to be partitioned and the necessary diagrams: Provided that no new diagram need be produced in respect of the whole or the remaining extend of any one of the pieces of land to be partitioned.

(4) Subject to the provisions of this section, sections 21, 26, 27 and 28 apply with the necessary changes in respect of the deeds of partition transfer.

(5) Any deed of partition transfer attested under subsection (1) must in respect of the land therein described take the place of the deed or deeds by which it was previously held, but the partition transfer may not vary or affect the conditions affecting the said land, except where such conditions may be varied, defined or limited by the agreement of partition or the consents of interested parties.

(6) The provisions of this section apply with the necessary changes to a partition of land ordered by the court or determined by an award of arbitrators.

Requisites where share in land partitioned is mortgaged

33. (1) If the share or shares owned by any of the parties to a partition is mortgaged, the partition transfers must not be attested unless there is produced to the Registrar the written consent of the legal holder of the bond to the partition and to the substitution of the land awarded on partition to the mortgagor for the share or shares mortgaged.

- (2) In registering the transfer the Registrar shall-
- (a) endorse on the bond that the land awarded to the mortgagor has been substituted for the share or shares mortgaged;
 - (b) make an entry of the substitution in the registers; and
 - (c) endorse on the transfer that the land described therein is, in accordance with this section, mortgaged by the bond.

(3) If only a fraction of the share or shares owned by any of the parties to a partition is mortgaged, the substitution referred to in this section shall only take place in respect of the fraction so mortgaged, if from the agreement of partition or from other evidence it appears that a defined portion or share therein has been separately awarded in respect of such mortgaged fraction.

(4) Where more than one property is partitioned by the same partition and the whole of any one or more of the properties affected is awarded to an owner, such property or properties may be substituted under that owner's bond, if the bond is over his or her share in all the properties partitioned.

Requisites where share in land partitioned is subject to other rights

34. (1) If the share or shares owned by any of the parties to a partition appears from the title deeds of the land partitioned to be subject to a lease, personal servitude or other real right, the written consent of the holder thereof to the partition and allocation of the lease, servitude or other such real right, must be produced to the Registrar.

(2) The land described in the deed of partition transfer must be made subject to the lease, servitude or real right to the same extent as the shares for which it is substituted, and the deed, if any, by which the lease, servitude or real right is held, must be endorsed in the same manner as the bond mentioned in section 33.

(3) If there exists any bond by which the lease, servitude or real right is itself mortgaged, there must be produced to the Registrar, the written consent of the legal holder thereof to the partition and allocation of the lease, servitude or such other real right, and the Registrar must make the endorsements and entries mentioned in section 33 on the bond, the deeds concerned and in the registers.

Effect of compliance with sections 33 and 34

35. Upon completion of the endorsements and entries mentioned in sections 33 and 34, the land described in the deeds of partition transfer, and the lease, personal servitude or real right, if any, shall be deemed to be as fully and effectually mortgaged as if they had been hypothecated by the bond at the time of its execution and the said land shall be deemed to be as fully and effectually encumbered by the said lease, personal servitude or real right as if it had been encumbered thereby at the time of the registration thereof.

Partition of land subject to *fideicommissum*

36. (1) Any piece of land the whole or any share of which is subject to a *fideicommissum* may, where partition has not been prohibited, be partitioned with the written consent of the *fideicommissary* heirs or successors if they are ascertained and are majors and otherwise competent, but—

- (a) if they are ascertained but any of them are minors, the consent of the Master must be produced in respect of the minors; or
- (b) if they are ascertained but any of them have been declared insolvent, or are under curatorship or otherwise under disability, the consent of their trustees or curators or other legal representatives must be produced on their behalf; or
- (c) if they are not ascertained or if they cannot be found, proof must be produced to the satisfaction of the Registrar that the land awarded in the agreement of partition to the owner of any share subject to the *fideicommissum* is an equivalent of that share.

(2) The land so awarded must in the deed of partition transfer be made subject to the *fideicommissum* in the same manner as the corresponding share was in its title deed made subject thereto before partition.

Transfer of expropriated land or land vested by statute

37. (1) Whenever any land has, under the authority of any law, been expropriated by, and whenever the ownership of any land has by statute been vested in, the State, any public or local authority or any corporate body or any association of

persons, the Registrar must, upon lodgment of a deed of transfer in the prescribed form prepared by a conveyancer in favour of the transferee, execute the same and endorse such transfer on the title deed of the land, and if the land is hypothecated, endorse the fact of such transfer on the bond: Provided that no such deed of transfer must be registered in favour of the State if transfer of the land has already been registered in favour of the State by an endorsement as contemplated in the second proviso to section 16 of the Deeds Registries Act, 1937 (Act No. 47 of 1937), prior to the repeal thereof.

(2) (a) The Registrar must not execute the said deed of transfer unless a certificate has been furnished by the transferee referred to in subsection (1), to the effect that the provisions of any law in connection with the change of ownership in the land in consequence of expropriation or vesting, have been complied with.

(b) The said deed of transfer must be registered subject to all existing conditions affecting the land in question which have not been expropriated or vested in the transferee.

(3) No deed by the expropriating authority purporting to transfer such land or to create or deal with any real right therein may be registered until transfer thereof has been passed in accordance with subsection (1), or the relevant title deed was prior to the repeal of the Deeds Registries Act 1937, (Act No. 47 of 1937) endorsed in terms of the second proviso to section 16(1) thereof.

(4) (a) Immediately after any land has been expropriated the expropriating authority must lodge with the Registrar—

- (i) a certified copy of the notice of expropriation;
- (ii) a copy of the relevant expropriation plan of the land in question; and
- (iii) a certificate describing the land and stating the name, number and administrative district thereof, as well as the full names and surname of the registered owner and the number and year of the title deed,

and the Registrar must endorse the title deed of the land and make an appropriate note in his or her registers regarding the expropriation: Provided that the expropriation plan referred to in subparagraph (ii) must be dispensed with where the whole of a piece of land has been expropriated.

(b) The existence of an endorsement referred to in paragraph (a), does not debar the registered owner of the land in question from transferring or otherwise dealing with that land and upon registration of a deed of transfer in favour

of the transferee in pursuance of the expropriation, any such endorsement lapses: Provided that where the entire extent of a piece of land recognised as a separate entity in a deeds registry has been expropriated, the registered owner of the said land is debarred from transferring it or otherwise dealing therewith except to effect registration of a deed of transfer in favour of the transferee in pursuance of the expropriation.

(5) Where any land has been expropriated and formal transfer of such land to the transferee has not been effected, the Registrar must, on written application by the transferee and the owner, cancel any endorsement made in connection with the expropriation in his or her registers or on the title deed of the land, and thereupon the land so expropriated vests in such owner.

Registration of expropriated servitude or servitude vested by statute

38. (1) Whenever any right of servitude over any land has under the authority of any law been expropriated by, or has by statute been vested in, the State, any public or local authority or any corporate body or any association of persons, the Registrar must, upon lodgment of a deed of cession in the prescribed form prepared by a conveyancer in favour of the cessionary, execute and register such deed, and if the land is hypothecated, endorse the fact of such cession on the bond.

(2) The conveyancer must lodge with the Registrar the deed of cession referred to in subsection (1) and the Registrar must thereupon endorse the facts of such cession on the title deed of the land.

(3) The Registrar may not register the said deed unless a certificate has been furnished by the cessionary to the effect that the provisions of any law in connection with the expropriation or vesting of such servitude have been complied with, and if it appears from the said certificate that such servitude has been expropriated or vested subject to any existing conditions, the deed must be registered subject to those conditions.

(4) Immediately after any right of servitude over any land has been expropriated, the expropriating authority must lodge with the Registrar—

- (a) a certified copy of the notice of expropriation;
- (b) a copy of the relevant expropriation plan of the servitude in question; and

(c) a certificate describing the land and stating the name, number and administrative district thereof, as well as the full names and surname of the registered owner and the number and year of the title deed, and the Registrar must endorse the title deed of the land and make an appropriate note in his or her register regarding the expropriation.

(5) Whenever any right of servitude over land has been expropriated and formal cession of such right of servitude to the cessionary has not been effected, the Registrar must, on written application by the cessionary and the owner of the land, cancel any note of the expropriation in his or her registers or endorsement on the title deed of the land and thereupon the expropriated right of servitude vests in such owner.

Registration of title other than by ordinary procedure

39. (1) Any person who has acquired in any manner, other than by expropriation, the right to the ownership of immovable property registered in the name of any other person and who is unable to procure registration thereof in his or her name in the usual manner and according to the sequence of the successive transactions in pursuance of which the right to the ownership of such property has devolved upon him or her, may apply to the court for an order authorising the registration in his or her name of such property.

(2) Subject to the terms and conditions of any order made under this section any deed of transfer passed in pursuance of such order must be passed subject to every condition, servitude, bond or other encumbrance to which, according to the records of the deeds registry, the property to which the application relates, is subject, and the Registrar must, in connection with such condition, servitude, bond or other encumbrance, make the usual and proper entries and endorsements upon or in respect of such deed of transfer in his or her deeds registry.

(3) The registration of immovable property in the name of any person in pursuance of an order made under this section shall have the effect of vesting such person with a title to such property which is liable to be annulled, limited or altered on every ground on which the title of such person to such property would have been liable to be annulled, limited or altered if such property had been transferred to such person in the ordinary course.

(4) Upon production to the Registrar of any order made under this section and of a certificate by the proper officer as to the payment of transfer duty, if any, which the person named in the order is liable to pay, and on compliance with any other requirements which under this Act have to be complied with, the Registrar must register such property in accordance with the said order, by executing a deed of transfer in the prescribed form in favour of the person named in the order.

(5) The provisions of this section apply in addition to and not in substitution for the provisions of any other law.

Substituted Title Deeds

Certificate of registered title of undivided share

40. (1) Any person who is the joint owner of a piece of land the whole of or shares in which is or are held by such person and others under one title deed, may, subject to section 43, obtain a certificate of registered title of his or her undivided share in such land, and no transfer of a fraction only of his or her undivided share or hypothecation or lease of the whole or any fraction of his or her undivided share in the land or real right thereover may be registered in a deeds registry, unless a certificate of registered title of such undivided share is produced to the Registrar: Provided that all the joint owners so holding under one title deed may together transfer an undivided share in the land or a fraction of the share held under such deed or hypothecate or effect the registration of a lease of the whole of such land or share or register a real right thereover without the production of such a certificate: Provided further that such a certificate shall not be necessary where a joint owner disposes of the whole of his or her share by deeds of transfer to be registered simultaneously.

(2) Subsection (1) applies with the necessary changes—

- (a) to any person who is the owner of the whole of or a share in 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; and
- (b) where two or more pieces of land or shares therein are held in joint ownership by the same title deed: Provided that all the pieces of land or the shares therein must be included in the certificate of registered title and must be described in separate paragraphs.

Certificate of registered title of aggregate share

41. Any person who is, by virtue of more than one title deed, the owner of undivided shares in one or more than one piece of land may, subject to the provisions of section 43, obtain a certificate of registered title in respect of his or her aggregate share in the land: Provided that if there are two or more pieces of land the several pieces of land or shares therein must be described in separate paragraphs.

Certificate of registered title of one or more properties held under one deed

42. Any person who holds two or more pieces of land, or undivided shares therein, by one title deed may, subject to the provisions of section 43, obtain a certificate of registered title in respect of one or more of such pieces of land or of the undivided share or shares held by him or her therein: Provided that at least one of the pieces of land or the share therein held by such deed remains held thereby.

Conditions governing the registration of certificates of registered title

43. (1) A certificate of registered title mentioned in section 40, 41 or 42 may be obtained upon written application by the owner.

(2) Before executing any certificate referred to in subsection (1), the Registrar must—

- (a) endorse upon the title deed or deeds in question and upon the mortgage bond, if any, the fact that a certificate of registered title has, in accordance with the appropriate section of this Act, been substituted for the said title deed or deeds in respect of the property in question; and
- (b) if the property is mortgaged, make entries in the registers in respect of such certificate and endorse that fact upon the certificate.

(3) Any such certificate when registered must in respect of the property described therein take the place of the title deed or deeds by which such property was previously held, and the registration of the certificate shall not in any manner affect any right or obligation in connection with such property.

Certificate of registered title taking place of lost, destroyed, incomplete or unserviceable deed

44. (1) If a title deed of any land stored on the electronic deeds registration system has been lost or destroyed, or become incomplete or unserviceable, the Registrar must, on written application by the owner of the land, accompanied by a diagram of the land, if no diagram thereof is filed in the deeds 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.

(2) Before executing the certificate referred to in subsection (1) the Registrar must, at his or her expense, publish in the prescribed manner a notice of intention to execute the certificate in two consecutive ordinary issues of the *Gazette* and in two consecutive issues of a newspaper circulating in the administrative district in which the land is situated.

(3) A draft of the proposed certificate and a copy of the diagram, if any, accompanying the application, must be open for inspection in the deeds registry free of charge by any interested person, for a period of three weeks after the date of the first publication of the notice in the *Gazette*, during which period any person interested may object to the execution of the certificate.

(4) Any person who has lodged with the Registrar an objection to the execution of the certificate may, in default of any arrangement between him or her and the applicant, apply to the court within one month after the last day upon which an objection may be lodged, for an order prohibiting the Registrar from executing the certificate, and the court may make such order on the application as it may deem fit.

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

Certificate of registered title to correct error in registration and to replace deeds reflecting conditions which have lapsed by merger

45. (1) If by reason of an error the same land has been registered in the names of different persons, the Registrar must, upon transfer of the land being given to one of them by the other or others, execute a certificate of registered title of the land in the name of the person to whom transfer is given and now held by him or her under the various title deeds.

(2) Any person who is the registered owner of any one or more defined portions of land under a registered deed reflecting conditions or servitudes which have lapsed by merger duly noted or which have been cancelled, may apply for the execution of a certificate of registered title in his or her name in respect of such land free of such conditions or servitudes.

(3) The certificate of registered title referred to in subsection (2) must be in the prescribed form and supersedes the title under which the land was previously held.

(4) The provisions of section 43 apply with the necessary changes in respect of the registration of such certificate.

Certificate of consolidated title of two or more pieces of land

46. (1) If a diagram has been framed and approved under the Land Survey Act, 1997, and such diagram represents two or more pieces of land which are—

- (a) contiguous to each other;
- (b) owned by the same person or by two or more persons in the same undivided shares in each such piece of land;
- (c) registered in the same property register;
- (d) situated in the same administrative district; and
- (e) situated in the same province,

the title deed or deeds of the said pieces of land may be superseded by a certificate of consolidated title in the prescribed form and executed by the Registrar, provided the requirements of this section are met.

(2) Every such certificate must be in accordance with the new diagram and must be executed on written application by the owner or owners of the pieces of land in question, accompanied by the written consent of the holder of any bond.

(3) In registering the certificate, the Registrar must—

- (a) endorse on the title deed or deeds that the said deeds have, in respect of the land described in the certificate, been superseded by the certificate, and on the certificate that the land therein described or the share thereof referred to in such endorsement, is mortgaged by such bond; and
- (b) make such endorsements on the bond and such entries in the registers to clearly indicate that the land is now owned by virtue of the certificate and that the land or such share thereof is subject to such bond.

(4) (a) If a portion only of the land represented on the new diagram is mortgaged, a certificate may not be executed unless the bond is cancelled: Provided that on the written application of the owner and with the consent of the mortgagee, all the land included in the new diagram may be substituted for the land originally mortgaged under the bond.

(b) If different portions of the land represented on the new diagram are mortgaged under different bonds, the certificate may not be executed unless the mortgage bonds are cancelled.

(5) (a) If portion only of the said land is subject to any registered deed of lease or other registered deed other than a bond, whereby any real right in the land is held by any other person, the certificate may not be executed unless a diagram of such portion is already annexed to the said registered deed, or, if no such diagram is annexed, unless a diagram of such portion is produced: Provided that it is not necessary to produce a diagram of such portion if the diagram of the consolidated land shows that portion by dotted lines or in such other way as to identify it.

(b) The said diagram must be annexed to the registered deed aforesaid and must be mentioned in any endorsement made on or reference made in the certificate concerning such registered deed.

(6) No diagram representing a combination of portions of two or more pieces of land is acceptable for purposes of transfer until a certificate of consolidated title has been registered for the land represented on such diagram.

(7) More than one combination of portions of two or more pieces of land, each of which combinations is represented on a separate diagram, may be

included in one certificate of consolidated title: Provided that each combination is described in a separate paragraph therein.

Certificate of uniform title

- 47.** (1) If the owner of two or more pieces of land which are-
- (a) contiguous to each other;
 - (b) situated in the same administrative district;
 - (c) registered in the same property register; and
 - (d) held on different conditions of tenure, or subject to different rights reserved in favour of the State,

desires to consolidate his or her title in respect of those pieces of land on uniform conditions of tenure or subject to the reservation of uniform rights in favour of the State, the title deeds of the said pieces of land may, with the written consent of the Minister of Public Works and on compliance with the provisions of this section, be superseded by a certificate of uniform title executed by the Registrar, in the prescribed form, subject to such uniform conditions of tenure or to the reservation of such uniform rights in favour of the State, as are set forth in such written consent.

(2) The provisions of subsections (2) to (5) inclusive of section 46 apply, with the necessary changes, in respect of such certificate.

(3) The Minister of Public Works and Infrastructure must agree with the owner as to the aforesaid uniform conditions of tenure or uniform rights in favour of the State and must consent to the issue of a certificate of uniform title.

(4) If the said land is subject to any bond or if the said land or any portion thereof is subject to any registered deed of lease or other registered deed whereby any real right in the land is held by any other person, there must be produced to the Registrar the written consent of the holder of any such bond, lease or right to the execution of the certificate of uniform title and to the uniform conditions of tenure or uniform rights in favour of the State, which must have been agreed upon.

(5) The provisions of this section apply with the necessary changes in respect of land comprising portions which are held on different conditions of tenure or subject to different rights reserved in favour of the State, and the title to which has been consolidated prior to the commencement of this Act.

Certificate of registered title of portion of piece of land

48. (1) If a defined portion of a piece of land has been surveyed and a diagram thereof has been approved by the Surveyor-General concerned, the Registrar must on written application by the owner of the land accompanied by the diagram of such portion and the written consent of the holder of any bond over such land, execute a certificate of registered title in respect of such portion, as nearly as practicable in the prescribed form.

(2) In registering the certificate, the Registrar must endorse on the title deed that it has been superseded by the certificate in respect of the land described in the certificate, and on the certificate that the land described therein is mortgaged by the bond, and make such endorsements on the bond and such entries in the registers to clearly indicate that the land is now owned by virtue of the certificate and is subject to such bond.

(3) The provisions of this section also apply where two or more defined portions of a piece of land have been surveyed and the diagrams thereof approved: Provided that each portion is described in a separate paragraph in the certificate.

(4) No defined portion of a piece of land may be mortgaged until the owner thereof has obtained a certificate of registered title in respect of such portion in accordance with the provisions of this section.

(5) Except in the case of a transfer of a whole erf, no owner of a township in whose title deed the individual erven are not separately described, may deal separately in any way with an individual erf in such township or any portion thereof or share therein until such owner has obtained a certificate of registered title of such erf in the prescribed manner.

Certificate of registered title in respect of land previously held under sectional title

49. (1) In the event of land reverting to the land register under the provisions of the Sectional Titles Act, 1986 (Act No. 95 of 1986), without revival of the developer's title deed in terms of the said Act, the Registrar must execute a certificate of registered title in the prescribed form in respect of such land in substitution of the

certificates of registered sectional titles under which the land was held prior to such reversion: Provided that where the land which reverts to the land register forms a portion only of the land previously registered in the land register, a diagram thereof must be annexed to the certificate of registered title.

(2) The Registrar must make all the necessary entries in the deeds registry registers and records, and endorsements on the relevant registered deeds or documents, in order to give effect to the reversion of the land to the land register in terms of subsection (1).

Change of title by endorsement

Rectification of title by endorsement

- **50.** 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, 1997, the Registrar must, on written application by the owner of the land accompanied by the new or the corrected diagram thereof and the written consent of the holder of any bond, lease or registered right, endorse on the title deed, bond, lease or other deed, a description of the land according to the new or corrected diagram, which description supersedes the description already appearing in the aforesaid deeds.

***NOTE:** Transfer by endorsement from a joint estate, i.e. section 45 and 45bis of the DRA, is not included. This is not cost saving, and a formal deed of transfer should be done.*

- ***TEMM and BWS to advise regarding omission or retaining these sections.***

CHAPTER 4

TOWNSHIPS AND OTHER GROUPS OF PIECES OF LAND

Requirements in case of sub-division of land into erven

51. (1) If land has been sub-divided into erven shown on a general plan, the Registrar must on application by the owner of such land, subject to compliance

with the requirements of this section and of any other law, register the plan and create a register in which all registrable transactions affecting the respective erven shown on the plan must be registered.

(2) If the land sub-divided as shown on the general plan forms the whole of any registered piece of land held by the title deed, the Registrar must make upon the title deed an endorsement indicating that the land has been laid out as a township in accordance with the plan, and that the erven shown on the plan are to be registered in the relevant register.

(3) If the land so sub-divided as shown on the general plan is hypothecated under a mortgage bond the mortgagee's consent to the registration of the general plan, the opening of the relevant register and the endorsement of such bond to the effect that it attaches to the land described on the plan must be produced.

(4) If the land sub-divided as shown on the general plan forms a portion only of the land held by the title deed the Registrar must, on written application by the owner of the land, execute a certificate of township title in favour of the owner in respect of the said portion and in accordance with a diagram thereof.

(5) If the land sub-divided as shown on the general plan comprises the whole or portions of two or more registered pieces of land, the Registrar may require the owner to obtain a certificate of consolidated title of the land so sub-divided and the Registrar must make on such certificate the endorsement mentioned in subsection (2).

(6) The provisions of section 48 and section 46(2) to 46(5) apply respectively and with the necessary changes in respect of the certificates of township title mentioned in subsection (4), and the certificates of consolidated title mentioned in subsection (5).

(7) Where a general plan has been registered in terms of subsection (1), it is not necessary, where a whole erf is transferred or a certificate of registered title contemplated by section 48 is registered, for a diagram to be framed thereof: Provided that a reference is made to the general plan in the relevant deed of transfer.

NOTE: Bill has dropped reference to 'settlements' as it appears in section 46 of the DRA. The words 'other groups of pieces of land', as it is currently referred to in the definition of 'settlements' in the DRA, has been adopted.

Sections 46A, 48 and 49 of the DRA which deals with special requirements regarding JHB deeds registry are not included in in view of the re-alignment of jurisdiction areas.

Section 51 applies with necessary changes to land otherwise subdivided

52. The provisions of section 51 do not preclude the registration of a general plan and opening of a register in respect of any land other than land subdivided into erven, and the provisions of that section apply with the necessary changes to such land.

Transfer of township or portion thereof

53. The owner of land in respect of which a register has been opened under section 51 may transfer, by one deed, the whole of any portion of such land or a share in the whole of such land: Provided that—

- (a) if a portion only of the land is sought to be transferred—
 - (i) the transfer must be passed in accordance with a diagram from which all erven on the land represented thereon which have already been transferred, and on which the total area of such transferred erven is indicated, are excluded;
 - (ii) the boundaries of such portion must coincide with one or more of the lines of division shown on the general plan and must not intersect any of the erven shown thereon;
- (b) if the remainder of the land is sought to be transferred or mortgaged or otherwise dealt with, a certificate of remainder signed by the Surveyor-General must be produced to the Registrar; and
- (c) the deed of transfer must disclose—
 - (i) that the land conveyed thereby has been laid out as a township or is a portion of land so laid out;
 - (ii) that the land remains subject to the provisions of the law relating to townships; and
 - (iii) if any public place or portion thereof in such township forms part of the land transferred, that the rights of owners of erven and of other persons to such public place are not affected by such transfer.

CHAPTER 5

BONDS

General Provisions

Execution of bonds

54. (1) A mortgage bond shall be executed by a conveyancer duly authorised by power of attorney to act on behalf of the owner of the immovable property therein described and shall be registered by the Registrar.

This clause is similar to section 50 of DRA. However, the requirement for execution by owner/authorized conveyancer in presence of ROD dropped.

(2) A mortgage or notarial bond registered in terms of this section secures any lawful debt or obligation, whether existing or future or both existing and future, up to the amount for which the bond is registered.

Section 50(3) of DRA that deals with the security of loans for building purposes was dropped as such should be contained in the conditions of a bond which will not form part of the bond to be registered.

(3) If in a mortgage bond or notarial bond purporting to secure a future debt the amount of an existing debt is mentioned, such existing debt shall be deemed to be secured as part of the maximum amount intended to be secured by such bond.

(4) Save as authorized by any other law or by order of the Court, debts or obligations to more than one creditor arising from different causes may not be secured by one mortgage bond or notarial bond.

Irrelevant provisions

55. Notwithstanding the provisions of section 7 (1) (b) a Registrar shall not examine any provisions relating to a bond which are not relevant to the registration of the bond.

➤ *Business Workstream and BASA to advise whether this clause should remain given that there will be a prescribed shortened form for a bond?*

Requirements in case of bonds intended to secure future debts

56. (1) No mortgage bond or notarial bond shall be of any force or effect for the purpose of giving preference or priority in respect of any debt incurred after the registration of such bond, unless-

- (a) it is expressly stipulated in the bond that the bond is intended to secure future debts generally or some particular future debt described therein; and
- (b) a sum is fixed in the bond as an amount beyond which future debts shall not be secured by the bond.

- *Section 51(2) of DRA dropped as it relates to cost. Aspects relating to cost should be addressed in the bond conditions.*
- *BWS and BASA to advise whether this clause should remain given that there will be a prescribed shortened form for a bond?*

Cession of bond to secure future advances

57. A cession of a mortgage bond or notarial bond passed to secure future advances may be registered and the registration of such a cession shall not affect the provisions of the bond relating to future advances up to the amount stated in such bond or the amount as reduced.

- *BWS and BASA to advise whether this clause must remain, given that there will be a prescribed shortened form for a bond?*

Mortgage bond to bind specific immovable property and notarial bond to bind movable property only

58. Except where provided for in any other law, the Registrar shall not attest or register:

- (a) any mortgage bond which purports to bind movable property, or which purports to bind generally all the immovable or movable property of the mortgagor or both; and
- (b) any notarial bond which purports to bind immovable property.

- *Same as section 53(1) of DRA.*
- *Current section 53(2) is now clause 60(1) and 60(2)*

No bond to be passed in favour of agent

59. No mortgage bond or notarial bond shall be passed in favour of any person as the agent of a principal.

Requirements in case of bonds passed by or in favour of two or more persons

60. (1) No mortgage bond shall be passed by two or more mortgagors unless it purports to bind immovable property of each mortgagor.

(2) Land held subject to a condition that on the happening of a certain event such land shall revert to a person named in such condition, may be mortgaged by the owner of the land and, notwithstanding the provisions of section 56(1), the person named in the condition, by means of a bond passed by them jointly and severally, or may be mortgaged by the owner of such land with the consent of such person.

(3) If a mortgage bond or notarial bond is passed by two or more mortgagors, no release from the bond—

- (a) of any mortgagor and his or her property, or of a portion of the property of any mortgagor may be registered without the written consent of the other mortgagor or mortgagors; or
- (b) of all the property of any mortgagor may be registered unless such mortgagor is also released.

(4) If a mortgage bond or notarial bond is passed by two or more mortgagors, no waiver of preference by the mortgagee in favour of a further mortgage bond or notarial bond over the property of one of the mortgagors may be registered without the written consent of the other mortgagor or mortgagors.

(5) No mortgage bond or notarial bond may be passed in favour of two or more persons in which it is stipulated that the share of one holder shall rank prior in order of preference to the share of another, nor may any transaction be registered which would have the effect of giving preference to one share in such bond over another share.

Rights of Mortgagees

Transfer of hypothecated immovable property

61. (1) No transfer of mortgaged land shall be registered or executed by the Registrar, and no cession of a mortgaged lease of immovable property, or of any mortgaged real right in land, shall be registered until the bond has been cancelled or the land, lease or right has been released from the operation of the bond with the consent in writing of the holder thereof: Provided that no such cancellation or release shall be necessary if the transfer or cession is made—

- (a) in execution of the judgment of any court;
- (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 No. 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; or
- (c) in any other circumstances in this Act or in any other law specially provided or as ordered by the court.

(2) A consent to the release from the operation of a bond of all the property mortgaged thereunder shall, except where the debt secured by such bond is further secured by a collateral bond, be deemed to be a consent to the cancellation of that bond.

Substitution of debtor in respect of a bond

62. (1) If the owner (in this section referred to as the transferor) of land which is hypothecated under a registered mortgage bond other than a mortgaged bond to secure the obligations of a surety (not being a person referred to section 61(1)(b)), transfers to another person the whole of the land hypothecated thereunder, and has not reserved any real right in such land, the Registrar may, notwithstanding the provisions of section 61(1), register the transfer and substitute the transferee for the transferor as debtor in respect of the bond: Provided that there is produced the written consent in the prescribed form of the holder of the bond and the transferee to the substitution of the transferee for the transferor as the debtor in respect of the bond for the amount of the debt disclosed therein or for a lesser amount.

(2) In registering the transfer in terms of subsection (1) the Registrar shall-

- (a) endorse upon the deed of transfer that the land has been transferred subject to the bond;
- (b) endorse upon the bond that the transferee has been substituted for the transferor as debtor; and
- (c) make such consequential entries in the registry records as may deem necessary.

(3) As from the date of the transfer, the transferor shall be absolved from any obligation secured by the bond and the transferee shall be substituted as the debtor in respect of such bond and shall be bound by the terms thereof in the same manner as if he or she had himself or herself passed the bond and had renounced therein the benefit of all relevant exceptions and, if the bond is a bond to secure future debts, the immovable property thereby mortgaged will secure any further or future advances which are made by the mortgagee of the bond to the transferee.

(4) The provisions of this section shall not apply if the mortgaged land is to be transferred-

- (a) to a person who would not be competent to mortgage it; or
- (b) to two or more persons, unless they take transfer of the land in undivided shares and renounce, in the written consent referred to in subsection (1), the exception *de duobus vel pluribus reis debendi*.

(5) The provisions of subsections (1) to (4), inclusive, shall with the necessary changes apply in respect of immovable property other than land which is hypothecated under a registered mortgage bond.

Powers in respect of certain property in insolvent and certain other estates

63. (1) Immovable property which has vested in a trustee in accordance with the law relating to insolvency and which has not, in terms of that law, been re-vested in the insolvent may, subject to section 25(3) of the Insolvency Act, 1936 (Act No. 24 of 1936), whether before or after rehabilitation of the insolvent, be transferred only by the trustee, and may not after such rehabilitation be transferred, mortgaged or otherwise dealt with by the insolvent until it has been transferred to him or her by the trustee: Provided that if after rehabilitation the trustee has been discharged or there is no trustee in existence, the Master shall, if satisfied that the rehabilitated insolvent is

entitled to the property, give him or her transfer thereof in such manner as may be prescribed.

(2) If by virtue of the provisions of the law relating to insolvency an insolvent has been re-vested with the ownership of any property, such property may not, subject to section 25(3) of the Insolvency Act, 1936 be transferred, mortgaged or otherwise dealt with by the insolvent until an endorsement that the property has been restored to him or her, has been made by the Registrar on the title deed of the property.

(3) Nothing contained in this section must be construed as modifying any provision of the law relating to insolvency.

(4) This section applies with the necessary changes in respect of—

- (a) estates administered and distributed under section 34 of the Administration of Estates Act, 1965 (Act No. 66 of 1965);
- (b) companies which are unable to pay their debts and are liquidated and wound up by or under supervision of the court under the Companies Act, 2008 (Act No. 71 of 2008);
- (c) close corporations which are unable to pay their debts and are liquidated and wound up by or under the supervision of the court under the Close Corporations Act, 1984 (Act No. 69 of 1984); and
- (d) co-operations which are unable to pay their debts and are liquidated and wound up by or under the supervision of the court under the Co-operatives Act, 2005 (Act No. 14 of 2005).

Consent of bondholder to registration of merger of rights of mortgagor

64. If the holder of a mortgaged lease of land or of mortgaged real rights in land acquires the ownership of that land, or if the holder of a mortgaged lease of real rights in land acquires those rights, or if the owner of mortgaged land which is entitled to rights of servitude over other land, acquires the ownership of that other land, such acquisition of the additional land or rights shall not be registered without the consent in writing of the holder of the bond.

Notarial Bonds

Registration of notarial bonds

65. (1) Every notarial bond must be registered in a deeds registry within a period of three months after the date of its execution or within such extended period as the court may on application allow.

(2) Every notarial bond must disclose—

- (a) the place at and the date on which it was executed, as well as the place where the notary practices; and
- (b) the address where the debtor resides or address where the debtor's registered office is situated and ~~the place or places, if any, where he or she carries on business.~~

(3) Registration of a notarial bond in a deeds registry and in accordance with subsections (1) and (2) is effective as registration for the whole Republic, if registered in the deeds registry that serves the area where the debtor resides, or in the area in which the debtor's registered office is situated.

- *Section 62 of DRA dropped due to e-registration of notarial bonds being effective as registration for the whole RSA, if registered in the deeds registry where the debtor resides.*
- *Should deeds offices continue to register notarial bonds?*