

27 February 2019

Mr Asgar A Bawa  
Select Committee on Land and Mineral Resources  
National Council of Provinces  
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Dear Mr Asgar Bawa

### **ELECTRONIC DEEDS REGISTRATION SYSTEMS BILL [B35B-2017]**

Thank you for giving us an opportunity to comment on the above Bill.

#### **Who we are**

The Banking Association South Africa (The Banking Association) is an industry body representing all banks registered and operating in South Africa. Currently, The Banking Association has 33 - member banks which include both South African and International banks. All licenced banks are members of The Banking Association. Further information concerning The Banking Association is available on the internet website [www.banking.org.za](http://www.banking.org.za).

#### **Context**

The Banking Association recognises the importance of having an electronic deeds registration system and the dematerialisation of the deeds registry. We believe that such a system will have a positive impact on the property sector of South Africa. The Banking Association therefore welcomes and is supportive of the Electronic Deeds Registration Systems Bill. Moreover, we would like to like to express our appreciation for the inclusion of our previous comments in this version of the Bill.

#### **Additional Comments**

##### **Section 3 - Validity of deeds and documents**

In terms of this section, the Deeds Registry's electronically registered deed/document is deemed to be the only original and valid record of the deed/document and that the original client's copy is deemed to be a copy for information purposes only.

Credit providers and/or property owners presently retain the original of the deed/document that is registered within the deeds registry and the deed/document held by the deed's registry is a copy of all such deeds/documents. Credit providers require an original deed for security purposes as our legal process necessitates that original security documents need to accompany legal pleadings in the realisation process. Similarly, for properties which are free of such a lien, consumers require the original deed/document, as this constitutes their proof of ownership and is

also required in litigation matters. If the only process available would be to apply for copies for judicial purposes, we highlight that this will incur additional legal costs for the accounts of already financially distressed borrowers.

Over and above this, for the deed's registry to retain original deeds/documents raises concerns in respect of potential cybercrime.

Moreover, if the deeds' s registry holds the original deed/document, one can expect lenders and consumers alike to summons deeds' registry officials to participate in pleadings in the realisation process and/or other litigation matters.

We therefore do not understand the need for Section 3 to be altered in this way.

**Previous Recommendation**

Given the proposed amendment, we recommended that Section 3 be changed to reflect that:

“the client's copy is deemed to be the original deeds/document and the deeds/document held by the deed's registry is deemed to be the certified copy of the original deed/document”.

If this is not possible due to some legality which we are unaware of, as a lesser and not preferred option, the clients copy of all deeds/documents should contain text to the effect that for:

“for mortgagee security purposes and/or litigation matters, the copy held outside of the deed's registry is deemed to be a certified copy of the original deed/document”.

When this issue was raised at the public hearings, the Department explained that a summary of the title deed would be given to the property owners/mortgagees when a property is registered. Having sought legal opinion on this matter, we are of the opinion that it does not address our concerns for two reasons:

- A summary of a title deed does not detail the restrictions on the property;
- Mortgagees hold a real right over a mortgaged property and thus any changes to the title deed will require the mortgagee's permission to proposed changes. The process of issuing a summary may increase the risk of a change being made to the title deed without the approval of the mortgagee, as there is no mechanism that alerts the mortgagee if changes are made in the register without their knowledge.

We are therefore re-raising this as a material issue that requires address.

**Conclusion**

Once again, we thank the Department for considering our previous comments in the latest version of the Bill.

Yours faithfully



Pierre Venter  
General Manager  
Market Conduct Division

