

SUBMISSION BY THE LAW SOCIETY OF SOUTH AFRICA (LSSA)
REGARDING THE PARTIAL UNLOCKING OF DEEDS OFFICES

The Law Society of South Africa (LSSA) reiterates its full support for the exemplary actions taken by government to endeavour curbing the spread of Covid-19 in South Africa. We are aware that the President has received numerous applications from a number of organisations for the business they represent to be declared an “essential business” and is acutely aware of the urgency to ensure that the economy is stimulated and progress is under way.

The legal profession is however also alive to the fact that trading in, and borrowing against, property is fundamental to the functioning of an economy. It is inconsistent that one can trade in shares and securities on the Stock Exchange, but cannot trade on the platform set up for immovable property – the Deeds Office -, albeit that the latter does not take place electronically but requires the physical presence of certain qualified individuals to effect the registration of transfers or mortgage bonds. Many people and businesses will need to leverage their properties in order to generate much needed cash flow to survive and to keep their businesses afloat, and they must be able to register the securities required by financial institutions. Moreover, the loss of transfer duty generated by the property industry, cannot be afforded by the South African Revenue Service in these times when tax revenue is vital.

The closing of the Deeds Offices has had, and will continue to have, a massive impact on the economy of the country and the lives of people. The payment of billions of rand is dependent on registration of property transactions. The continued full-scale lockdown of the Deeds Offices and property industry will have a disastrous impact on the South African economy.

The inability to register property transactions has, amongst a myriad of consequences, the following immediate dire consequences:

1. Sellers cannot access their funds;
2. Sellers must pay extra interest on their bonds because of the delay in registration, causing financial loss and even possibly a shortfall in some current transactions;
3. Sellers who have bridging finance have extra interest to pay on the bridging finance because of the delay in registration, causing financial loss and even possibly a shortfall in current transactions;
4. Purchasers must pay extra occupational rent because of the delay in registration, also causing financial loss;

5. Rates and levy clearances will expire causing the transactions not to be registered, resulting in unnecessary time delays and extra funds to be disbursed to obtain extended certificates.
6. Not being able to register mortgage bonds, means that banks and financial institutions that may be willing to afford loans and other facilities to businesses and individuals, will be at risk and therefore unlikely to process such loans unless they are able to receive the security of a registered mortgage bond over fixed property.

We believe that a partial unlocking of Deeds Offices will alleviate some of the problems experienced, taking into consideration that the general public has very little contact with a Deeds Office. The contact is primarily between the Registrar of Deeds and his/her staff on the one hand, and conveyancers and limited staff on the other.

In anticipation of a potential extension of the initial lockdown period, the LSSA has invited legal practitioners to make suggestions on how the Regulations can be relaxed in the interest of safety, justice and the rule of law. We have been inundated with innovative and practical recommendations from legal practitioners.

Essentially, practitioners are pleading for a progressive relaxation of the Regulations in a manner that will not compromise the health and wellbeing of the nation – both physically and economically.

We are also aware that it will certainly not be business as usual, even after the lockdown period has come to an end, and we will have to introduce adjustments to the registration system as a whole, not only in the Deeds Offices. Certain restrictions and safety measures will have to be imposed for a considerable time after the lockdown.

It is suggested that a phased approach to making the Deeds Offices available be adopted as follows:

- During phase 1 of the relaxation period, transactions that were already in the system prior to lockdown should be prioritized. We understand that several billion rand's worth of transactions are currently in the various Deeds Offices awaiting registration. This will also prevent further backlogs. This should be implemented urgently as external factors, such as expiry of clearance certificates, cancellation figures and guarantees play a role.

- During phase 2, firms should be allowed to deal with matters ready for lodgement. Therefore, where all the documents have already been signed and supporting documents are ready, the conveyancer may continue to lodge the transaction in the Deeds Office.
- In matters where the offer to purchase was dated before the lockdown, the firm may during phase 3 continue with preparing the documentation for the matter and attend to lodgement.

Such a phased approach will assist to avoid any further losses for sellers, purchasers, banks and, by implication, the economy.

Whilst we fully appreciate that the registration process is a fairly labour-intensive process and that communication between various role players is required for the registration of a transaction, we believe that measures for limitation of contact at the Deeds Offices can fairly easily be implemented. These might include:

- Deeds Office officials should work on a skeleton basis. Consideration can be given to working on a rotational basis. Staff that have adhered to the lockdown and have been isolated and show no symptoms should be allowed to go to the office.
- The Deeds Offices should remain closed for the general public.
- Only admitted and practising conveyancers and limited specifically named professional staff should be allowed to access the Deeds Offices and only in designated areas.
- All visitors to the Deeds Offices should sign a register / declaration containing their full contact details, and confirming that they understand the “social distancing” rules, undertake to adhere to those and sanitise hands and tables. This will also serve to track people entering the offices.
- All visitors and Deeds Office staff should observe the social distancing rules, wear masks and keep the workplace sanitised.
- Deeds Office operating hours should be extended, and in particular the execution period, so as to limit numbers by spreading out the flow of foot traffic. To offset the extension of operating hours, a shorter week, such as a 3-day work week, could be implemented.

- Entry to execution rooms, lodgement counters, information counters, preparation rooms and access to examiners should be limited to a certain number of people at a time to ensure appropriate distancing.
- Time slots could be allocated to conveyancers, to prevent everyone attending at the same time.
- Deeds Office functions should be limited, e.g. the delivery of documents after registration could be delayed until after the lockdown period has ended.
- Although the Deeds Offices are not yet equipped to register transactions electronically, some functions can be performed online and telephonically. We understand that in some registries examiners already examine deeds online. This can be extended to other registries. Conveyancers can keep a copy of each set of documents lodged at the Deeds Offices and examiners can make notes that can be scanned and mailed to the conveyancer's firm for a response. Senior examiners and monitors could possibly email conveyancers whose deeds are up for preparation and when they are ready to hand in the deeds (and when deeds are rejected). Consultations with examiners can be done via email or by telephone, alternatively by appointment only and at a designated area in order to limit access to the buildings. This will reduce the time spent at the Deeds Office as well as incidental contact with more people than are absolutely necessary.
- Where logistically possible, space can be made available for conveyancers in a temporary designated area to deal with the pre-linking of deeds before lodgement and registration. This will limit unnecessary access into certain parts of the buildings. Deeds can be "lodged" at the office of the pivotal conveyancer in a batch (for instance the transferring conveyancer), who then lodges the complete batch on behalf of all simultaneous transactions in the Deeds Office. Pivotal conveyancers can execute all deeds in the batch with written permission of the other conveyancers. It should not be difficult for the Registrars to regulate the appointment of conveyancers by way of Registrar's Circulars.

The above will facilitate a significant reduction in the number of persons in the Deeds Offices, whilst allowing critical matters to be registered.

The main problem with conveyancing matters is the lapsing of rates clearance certificates. This already prejudices clients as the entire conveyancing process has been placed on hold. It would assist a great deal if the Deeds Office would accept Council's rates clearance certificates as being valid until the end of the validity period as noted by the Council, as opposed to being valid only for 60 days post issue.

If the suggestion of a partial unlocking of the Deeds Offices finds favour, the Regulations relating to the travel across provincial borders need to be considered. In certain areas, the Deeds Office is in a different jurisdiction, which will necessitate the conveyancer to travel or to send documents across provincial borders to access the Deeds Office.

A partial unlocking of the Deeds Offices will necessitate other role players, such as municipalities and the Masters' Offices to function, albeit on a limited basis. A number of City Councils have been moving over to electronic issuing of clearance certificates. If City Councils, Home Owners Associations and Body Corporates can be called upon to have some staff re-start working or continuing work (in a safe environment) back at their offices, some clearance figures can be issued in the interim, and if electronic certificates could be accepted in lieu of originals (for at least a temporary period) this will greatly assist the process.

The Regulations, insofar as the Masters' Office is concerned, are that only documentation required for the burial of a deceased person will be processed; and only urgent appointment of curators will be processed. Where possible, application for endorsement of powers of attorney to pass transfer should be permitted to be lodged electronically. Master's Offices could be reopened with skeleton staff and electronic mail addresses of persons working from home could be provided.