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THE GROWING IMPORTANCE OF ELECTRONIC SIGNATURES IN SOUTH AFRICAN CONVEYANCING PRACTICE

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Like many industries, the legal profession has undergone significant transformation in line with technological developments. The COVID-19 pandemic brought about the adoption of electronic communication at an accelerated pace, thus prompting legal practitioners to reconsider traditional approaches applied to the execution of documents through electronic signatures.

In conveyancing, however, the transition to digital processes has been more cautiously applied due to the formalities and requirements set out by the Deeds Registries Act 47 of 1937 and supporting legislation that requires wet-ink signatures to be affixed to a variety of documents.

Understanding Electronic Signatures

Electronic signatures in South Africa are legally recognised in terms of the Electronic Communications and Transactions Act 25 of 2002 (hereinafter referred to as “ECTA”). Section 13 of ECTA importantly distinguishes between ordinary electronic signatures and advanced electronic signatures.

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An ordinary electronic signature may include a typed name, scanned signature, or a digital signature attached to an electronic document. An advanced electronic signature, however, must be authenticated through an accredited authority and offers a higher level of security and verification.

The Position in Conveyancing Transactions

Transfer documents, mortgage bonds, powers of attorney, and affidavits lodged at Deeds Registries for registration purposes, require original signatures. Conveyancers are thus tasked with the responsibility of certifying the authenticity of documents. As a result, Deeds Registries continue to operate based on physical examination of original documents as opposed to the electronic examination. Although electronic signatures cannot be used for all conveyancing documents, they have found increasing application in internal processes performed prior to the registration. Examples include:

- Mandates appointing estate agents.
- Signature of certain bond documents prior to registration.
- Internal firm documentation.

These documents should be authenticated through an accredited authority to ensure that a higher level of security is applied.

The ability to sign these documents electronically has improved efficiency, particularly where parties are located in different provinces or countries.

Risks and Challenges

Despite the advantages that electronic signatures present, there are several risks associated with the signature of electronic documents.

Fraudsters may attempt to impersonate sellers, purchasers or duly authorised representatives of legal entities with the intention of committing property theft. It has thus become increasingly important for conveyancers to implement robust identity verification measures to ensure the authenticity of the parties involved in the transactions.

In addition, conveyancing firms have more frequently become targets of cybercrime, particularly through compromised e-mail correspondence and trust account fraud. Electronically signed documents may present a cybersecurity threat as they are more susceptible to unauthorised alterations.

Although currently paper based, the conveyancing profession is moving towards an electronic registration system through the Electronic Deeds Registration Systems Act, 2019. Although the practical implementation of this process is still within the early stages of implementation, it represents a significant step towards the digitalisation and modernisation of the property registration system.

Electronic signatures have become a crucial part of modern legal practice due to the efficiency and convenience presented in conveyancing transactions. As the conveyancing profession gradually

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transitions towards digitalisation and electronic registrations, practitioners who understand the limitations and opportunities of emerging technologies will be in a better position to navigate the ever-evolving landscape while ensuring maintenance and compliance with professional standards upon which the profession is founded.

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