



Republic of Namibia
Annotated Statutes

Deeds Registries Act 47 of 1937 (SA)

(SA GG 2443)

came into force in South West Africa on 1 June 1972 when the amendments made by Act 3 of 1972, including the insertion of section 102A were brought into force

APPLICABILITY TO SOUTH WEST AFRICA: Section 102A, as inserted by Act 3 of 1972, states “This Act and any amendment thereof, save sections 70 to 74*bis*, inclusive, and sections 84 and 85, shall apply also in the territory of South-West Africa, including the Eastern Caprivi Zipfel.” It was amended by the *Registration of Deeds in Rehoboth Act 93 of 1976* to read as follows: “This Act and any amendment thereof, save sections 70 to 74*bis*, inclusive, and sections 84 and 85, shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel, but excluding the Rehoboth Gebiet as described in section 6 of the Rehoboth Self-Government Act, 1976.” (The excluded sections relate to mineral rights and prospecting contracts.) Section 102 defines “Government”, “provincial administration”, “Republic”, “State”, and “Territory” accordingly. In Rehoboth, the analogous law is the *Registration of Deeds in Rehoboth Act 93 of 1976*.

TRANSFER TO SOUTH WEST AFRICA: The administration of this Act was transferred to South West Africa by the Executive Powers (Justice) Transfer Proclamation, AG 33 of 1979, dated 12 November 1979. Section 3(1)(b) of that Proclamation as originally enacted excluded section 2, section 103(2) and the references to the Republic in the Act from the operation of the Executive Powers Transfer (General Provisions) Proclamation, AG 7 of 1977 (the “General Proclamation”). Section 2(a)(i) of the original transfer proclamation provided that the references to the Government of the Republic in sections 3(1)(c) and (l) and in section 99 of the Act were to be construed as *including* a reference to the Administrator-General.

The Executive Powers (Justice) Transfer Amendment Proclamation, AG 32 of 1985 (OG 5060) – which was deemed to have come into force on 1 June 1984 and which amended both the Executive Powers (Justice) Transfer Proclamation and the *Deeds Registries Act 47 of 1937* – states in section 1(2): “In the application of the provisions of the Executive Powers Transfer (General Provisions) Proclamation, 1977 (Proclamation AG. 7 of 1977) (hereinafter referred to as the General Proclamation) in respect of sections 2, 9, 45, 45*bis*, 48 and 102 of the Deeds Registries Act, 1937 (Act 47 of 1937), this Proclamation shall be deemed to be a transfer proclamation as defined in section 1 of the General Proclamation, and the reference in section 5 of the General Proclamation to a law referred to in section 2 of that Proclamation, shall be construed as a reference to sections 2, 9, 45, 45*bis*, 48 and 102 of the said Deeds Registries Act, 1937”. All of the sections of the *Deeds Registries Act 47 of 1937* cited in AG 32 of 1985 were amended by that Proclamation.

Section 3(1)(b) of the Executive Powers (Justice) Transfer Proclamation, AG 33 of 1979, as amended by AG 32 of 1985, excluded section 103(2) from the operation of section 3(1) of the General Proclamation – meaning that this section (which deals with the State President’s power to repeal by proclamation certain laws in force only in South Africa) was not transferred to South West Africa. Section 3(1)(b) also excluded all the references to the Republic and all the references to the State in the Act from the operation of section 3(1) of the General Proclamation – meaning that prior to independence these terms retained the meaning given to them in section 102 of the Act as it stood at that time (covering both South Africa and South West Africa). Section 2(a)(i) of the transfer proclamation as amended continued to provide that the references to the Government of the Republic in sections 3(1)(c) and (l) and in section 99 of the Act were to be construed as *including* a reference to the Administrator-General.

Section 2, which provides for the appointment of registrars, was initially excluded from the operation of section 3(1) of the General Proclamation, but this exclusion was removed by AG 32 of 1985,

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which also substituted section 2 in its entirety. The provisions of the Act relating to the Deeds Registry Regulation Board were initially excluded from transfer by section 3(2)(b) of the General Proclamation, which exempted from the operation of section 3(1) of the General Proclamation “those provisions of any law ... which provide for or relate to the institution, constitution or control of any juristic person or any board or any other body of persons that may exercise powers or perform other functions in or in respect of both the territory and the Republic”. However, section 9 of the Act – which pertains to this Board – was explicitly transferred to South West Africa by AG 32 of 1985, which also amended the provisions of section 9 on the constitution of the Board. The purpose of citing other specific sections of the Act for transfer in AG 32 of 1985, after the administration of the Act as a whole had already been transferred to South West Africa by AG 33 of 1979, is not clear.

None of the amendments to the Act in South Africa after the date of transfer and prior to Namibian independence – the *Deeds Registries Amendment Act 44 of 1980* (RSA GG 6991), the *Deeds Registries Amendment Act 27 of 1982* (RSA GG 8079), the *Deeds Registries Amendment Act 62 of 1984* (RSA GG 9241), the *Matrimonial Property Act 88 of 1984* (RSA GG 9322), the *Black Communities Development Amendment Act 74 of 1986* (RSA GG 10333), the *Deeds Registries Amendment Act 75 of 1987* (RSA GG 10952), the *Marriage and Matrimonial Property Law Amendment Act 3 of 1988* (RSA GG 11171) and the *Deeds Registries Amendment Act 24 of 1989* (RSA GG 11777) – were applicable to South West Africa because none were made expressly so applicable.

as amended by

Deeds Registries Amendment Act 15 of 1953 (SA) (SA GG 5120)

came into force on date of publication: 14 August 1953

Matrimonial Affairs Act 37 of 1953 (SA) (SA GG 5170)

came into force on date of publication: 28 October 1953

General Law Amendment Act 50 of 1956 (SA) (SA GG 5703)

came into force on date of publication: 22 June 1956

Deeds Registries Amendment Act 43 of 1957 (SA) (SA GG 5887)

brought into force on 19 July 1957 by SA Proc. 205/1957 (SA GG 5912)

Deeds Registries Amendment Act 43 of 1962 (RSA) (RSA GG 236)

came into force on date of publication: 4 May 1962

General Law Amendment Act 80 of 1964 (RSA) (RSA GG 829)

came into force on date of publication: 24 June 1964.

with the amendments to this Act deemed to have come into force on 1 September 1937

Deeds Registries Amendment Act 87 of 1965 (RSA) (RSA GG 1163)

brought into force on 6 August 1965 by RSA Proc. 174/1965 (RSA GG 1197)

Mining Titles Registration Act 16 of 1967 (RSA) (RSA GG 1670)

came into force on the date of the commencement of the Mining Rights Act 20 of 1967

(section 68 of Act 16 of 1967); that Act was brought into force

on 1 October 1967 by RSA Proc. 239/1967 (RSA GG 1850)

Deeds Registries Amendment Act 61 of 1969 (RSA) (RSA GG 2412)

came into force in part on date of publication: 28 May 1969, and brought into force

in part on 1 November 1969 by RSA Proc. 187/1969 (RSA GG 2482)

(see annotations to individual sections)

Deeds Registries Amendment Act 3 of 1972 (RSA) (RSA GG 3404)

brought into force on 1 June 1972 by RSA Proc. 125/1972 (RSA GG 3506)

Land Survey Amendment Act 71 of 1972 (RSA) (RSA GG 3561)

brought into force in relevant part on 1 November 1972 by RSA Proc. R.208/1972 (RSA GG 3641)

General Law Amendment Act 62 of 1973 (RSA) (RSA GG 3947)

came into force on date of publication: 27 June 1973

General Law Amendment Act 29 of 1974 (RSA) (RSA GG 4220)

came into force on date of publication: 15 March 1974

General Law Amendment Act 57 of 1975 (RSA) (RSA GG 4760)

brought into force in relevant part, in part, on 1 September 1975

by RSA Proc. R.185/1975 (RSA GG 4816) (sections 9 and 12 of Act 57 of 1975);

sections 10 and 11 of Act 57 of 1975 would also have amended the Act,

but no proclamation bringing them into force has been located

Expropriation Act 63 of 1975 (RSA) (RSA GG 4780)

brought into force on 1 January 1977 by RSA Proc. 273/1976 (RSA GG 5363)

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Registration of Deeds in Rehoboth Act 93 of 1976 (RSA) (RSA GG 5183)

brought into force on 26 November 1976 by RSA Proc. 255/1976 (RSA GG 5341)

Deeds Registries Amendment Act 41 of 1977 (RSA) (RSA GG 5505)

came into force on date of publication: 13 April 1977

Deeds Registries Amendment Act 92 of 1978 (RSA) (RSA GG 6074)

came into force on date of publication: 23 June 1978

Native Laws Amendment Proclamation, AG 3 of 1979 (OG 3898)

deemed to have come into force in relevant part on 1 August 1978 (section 5 of AG 3 of 1979)

Executive Powers (Justice) Transfer Amendment

Proclamation, AG 32 of 1985 (OG 5060)

deemed to have come into force on 1 June 1984 (section 8 of AG 32 of 1985);

note that this Proclamation is amended by Act 26 of 1985 (which adds a transitional provision)

Deeds Registries Amendment Act 26 of 1985 (OG 5146)

brought into force in relevant part on 1 May 1986 by AG Proc. 21/1986 (OG 5184)

Deeds Registries Amendment Act 2 of 1996 (GG 1323)

brought into force on 15 July 1996 by GN 155/1996 (GG 1340), with the short title being

amended by Act 22 of 1996 (to change the short title "Deeds Registries Amendment Act, 1995" to "Deeds Registries Amendment Act, 1996")

Deeds Registries Further Amendment Act 22 of 1996 (GG 1465)

deemed to have come into operation on 15 July 1996 (section 4 of Act 22 of 1996)

ACT

To consolidate and amend the laws in force in Namibia relating to the registration of deeds.

[The Government Gazette does not state the date of assent or which language version was signed.]

ARRANGEMENT OF SECTIONS

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LAWS REPEALED

Second Schedule

BE IT ENACTED by the King's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa as follows:-

[The Act is inconsistent in its use of "sub-section" and "subsection", in the spelling of "fidei commissum" as two words or "fideicommissum" as one word, and in the spelling of "fideicommissary" without a hyphen or "fidei-commissary" with a hyphen.

Act 43 of 1962 amends the Act throughout to substitute "State" for "Crown" and "State land" for "Crown land". This has been interpreted to also require the substitution of "State" for "Crown" in the phrase "Crown title".

Act 3 of 1972 amends the Act throughout to substitute "State President" for "Governor-General" and "Republic" for "Union".

Act 2 of 1996 amends the Act throughout to substitute "Minister" for "Administrator-General", and "Namibia" for "the Territory", "the territory of South West Africa" and "the Republic".]

CHAPTER I

ADMINISTRATION

Deeds registries

1. (1) (a) There shall be deeds registries at Cape Town, Kingwilliamstown, Kimberley, Vryburg, Pietermaritzburg, Pretoria, Bloemfontein and Windhoek, each to serve its respective area as defined in the Second Schedule.

[paragraph (a) substituted by Act 3 of 1972]

- (b) The Rand townships registration office at Johannesburg, established under section 53 of the Townships Amendment Act, 1908 (Act No. 34 of 1908), of the Transvaal, shall continue to exist notwithstanding the repeal of that section by section 10 of the Deeds Registries Amendment Act, 1969, and shall also be a deeds registry, but only in connection with the registration of documents relating to immovable property in any township in the area served thereby as defined in the said Schedule,

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**[Subsection (1) is substituted by Act 61 of 1969 with effect from 1 November 1969.
The comma at the end of paragraph (b) should be a full stop.]**

(1A) After the commencement of section 1 of the Deeds Registries Amendment Act, 1969 -

- (a) any document affecting the title of the land included in a township referred to in subsection (1)(b) or of an erf in any such township shall, notwithstanding anything to the contrary in any other law contained, be registered only in the Rand townships registration office;
- (b) any such document registered in the deeds registry at Pretoria at such commencement and of which a copy has been furnished by the registrar at Pretoria to the Rand townships registrar in terms of any law repealed by section 10 of that Act or in terms of any other law, and has been entered by the last-mentioned registrar in his registers or is kept in his office, shall be deemed to be registered in the Rand townships registration office;
- (c) the copy of a document referred to in paragraph (b) shall for the purposes of any relevant law be deemed to be the registry duplicate of the document in question;
- (d) any entry made by the Rand townships registrar in the duplicate kept in his office of any register opened and kept in the deeds registry at Pretoria, and any entry in a copy of any such register furnished to that registrar in terms of any law, shall be deemed to be an entry in the register in question, and such register shall be kept by that registrar in so far as it may be relevant for the purposes of paragraph (a).

[Subsection (1A) is inserted by Act 61 of 1969, with effect from 1 November 1969, which is also the commencement date referred to in the introductory phrase.]

(2) In every deeds registry in Namibia existing at the commencement of this Act there shall be carried out to completion as if this Act had not been passed all matters which immediately prior to such commencement were pending in that registry, and each registry mentioned in sub-section (1) shall be a continuation of the deeds registry existing at the commencement of this Act in the area served thereby.

[Act 2 of 1996 makes a global substitution of "Namibia" for "the Republic", but this change is not logical in this subsection since the Act commenced prior to Namibian independence.]

(3) The State President may from time to time, upon the authority of resolutions passed by both Houses of Parliament, alter by proclamation in the *Gazette* any area defined in the Second Schedule to this Act as the area served by any deeds registry.

Appointment of registrar and deputy registrar of deeds

2. (1) The Minister shall, subject to the provisions of the Government Service Act, 1980 (Act 2 of 1980), appoint a person as registrar of deeds who -

[The Government Service Act 2 of 1980 has been replaced by the Public Service Act 13 of 1995.]

- (a) shall be the chairman and executive officer of the deeds registries regulation board mentioned in section 9; and
- (b) shall be in charge of the deeds registry,

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and who shall have the power, subject to the regulations, to do any act or thing which may lawfully be done under this Act or any other law by the registrar of deeds.

(2) The Minister may, subject to the provisions of the Government Service Act, 1980 (Act 2 of 1980), appoint one or more deputy registrars of deeds, who may, subject to the control and directions of the registrar of deeds referred to in subsection (1), do anything which may lawfully be done by the registrar of deeds.

[The Government Service Act 2 of 1980 has been replaced by the Public Service Act 13 of 1995.]

(3) Whenever it becomes, in the opinion of the Minister, necessary that an acting registrar of deeds be appointed, the Minister may appoint any deputy registrar referred to in subsection (2) or any other competent officer in the government service contemplated in section 2 of the said Government Service Act to act as registrar of deeds for the period for which such appointment may be necessary.

[The word "Service" in the phrase "Government Service Act" is misspelt in the Government Gazette, as reproduced above. The Act referred to has been replaced by the Public Service Act 13 of 1995.]

(4) The Minister may delegate in writing any power conferred on him or her by subsection (3) to a staff member in the Public Service.

[subsection (4) amended by Act 2 of 1996]

(5) Every registrar or deputy registrar appointed under, or referred to in, this section shall hereinafter be referred to as the registrar.

(6) The registrar of deeds shall have a seal of office which shall be affixed to all deeds executed or attested by him and to all copies of deeds issued by him to serve in lieu of the original deeds.

[Section 2 is amended by Act 43 of 1957, Act 43 of 1962, Act 87 of 1965, Act 61 of 1969 (with effect from 1 November 1969), Act 3 of 1972 and Act 62 of 1973, and substituted by AG 32 of 1985.]

Section 2(2) of AG 32 of 1985, inserted by Act 26 of 1985 and deemed to have come into force on 1 June 1984 (at the same time as the rest of AG 32 of 1985), provides the following transitional provision:

"The person who held the office of registrar of deeds immediately before the commencement of this Proclamation [AG 32 of 1985, which commenced on 1 June 1984] by virtue of an appointment under section 2 of the Deeds Registries Act, 1937, and the person who so held the office of assistant registrar of deeds, shall be deemed to have been appointed at such commencement, under the said section 2, as amended by subsection (1) of this section, as registrar of deeds and deputy registrar of deeds, respectively."

[Section 2 was initially excluded from the operation of section 3(1) of the Executive Powers Transfer (General Provisions) Proclamation, AG 7 of 1977, but this exclusion was removed by AG 32 of 1985, which also substituted section 2 in its entirety.]

Duties of registrar

3. (1) The registrar shall, subject to the provisions of this Act -
 - (a) take charge of and, except as provided in subsection (2) or (3), 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 has been appointed: Provided that the registrar may destroy or otherwise

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dispose of any record as prescribed which has been cancelled in terms of this subsection;

[paragraph (a) amended by Act 41 of 1977]

- (b) examine all deeds or other documents submitted to him for execution or registration, and after examination reject any such deed or other document the execution or registration of which is not permitted by this Act or by any other law, or to the execution or registration of which any other valid objection exists: Provided that such deed or document need not be examined in its entirety before being rejected;
- (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;

[Prior to Namibian independence, the reference to the Government of the Republic in paragraph (c) was to be construed as *including* a reference to the Administrator-General.]

- (d) attest or execute and register deeds of transfer of land, and execute and register certificates of title to land;
- (e) attest and register mortgage bonds;
- (f) register cessions (including cessions made as security) of registered mortgage bonds, and register cancellations of such cessions if made as security;
- (g) 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;
- (h) 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;
- (i) register waivers of preference in respect of registered real rights in land, in favour of mortgage bonds, whether registered or about to be registered;
- (j) register notarial bonds, and cancellations and cessions thereof (including cessions made as security) and cancellations of such cessions if made as security;
- (j)*bis* 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;
- (k) register ante-nuptial contracts, and register such notarial deeds of donation (including a donation to be held in trust), and such other notarial deeds having

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reference to persons and property within the area served by the registry in question as are required or permitted by law to be registered;

- (l) register grants or leases lawfully issued by the Government, of rights to minerals;

[Prior to Namibian independence, the reference to the Government of the Republic in paragraph (l) was to be construed as *including* a reference to the Administrator-General.]

- (m) register notarial cessions, leases or sub-leases of rights to minerals and notarial variations of such cessions, leases or sub-leases, notarial cessions of such registered leases or sub-leases, notarial cancellations of such leases or sub-leases, certificates of registration of such rights, and reservations of such rights made in grants or transfers of land, and notarial variations of such reservations;
- (n) register on the title deeds of the land and of the rights to minerals affected, and in the relative registers, the issue of mynpachtbrieven;
- (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, and notarial renewals and notarial cancellations of such leases and sub-leases and notarial releases of any part of the property leased;
- (q) register notarial prospecting contracts and notarial cessions thereof and cancellations of such contracts;
- (r) register any real right, not specifically referred to in this sub-section, 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;

[paragraph (s) amended by Act 26 of 1985]

- (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;

[paragraph (t) amended by Act 92 of 1978]

- (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, and register copies of such powers registered in another deeds registry, which have been certified by the registrar thereof, or which have been issued for the purpose of being acted upon in a deeds registry by a Master or registrar of the Supreme Court of South Africa or a registrar of mining titles or a mining commissioner in his capacity as a registration officer;
- (v) make, in connection with the registration of any deed or other document, or in compliance with the requirements of any law, such endorsements on any registered

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deed or other 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 in terms of any law;
- (x) remove from his 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 of a notice of liquidation or an order of liquidation or sequestration or in pursuance of the lodging with him by the Master of a return under section *ten* of the Administration of Estates Act, 1965;
- (y) keep, whether by means of a computer or in any other manner or by means of a computer and in any other manner, 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 system of registration calculated to afford security of title and ready reference to any registered deed;

[paragraph (y) amended by Act 92 of 1978]

and generally the registrar shall discharge all such duties as by law may or are to be discharged by a registrar of deeds or as are necessary to give effect to the provisions of this Act: Provided that nothing in this Act contained shall be construed as imposing upon the Rand townships registrar the duty of registering any deed or other document which he would not have registered if this Act had not been passed.

- (2) (a) If the registrar concerned is satisfied that any record referred to in paragraph (a) of subsection (1) has become so dilapidated or has deteriorated to such an extent that it requires urgent restoration for the preservation thereof, he may transfer such record to the Director of Archives for restoration and preservation.
 - (b) The Director of Archives shall -
 - (i) forthwith furnish the registrar concerned with so many photographic copies of any record received for restoration and preservation as the registrar may require;
 - (ii) as soon as any record has been restored for preservation, furnish the registrar concerned with so many photographic copies thereof as the registrar may require;
 - (iii) preserve any record restored under this sub-section in the archives depot at the seat of the provincial administration within the territorial limits of which the deeds registry in question is situate.
 - (c) Any photographic copy (certified by the Director of Archives or any person designated by him for the purpose) of any record furnished under this sub-section by the Director of Archives to a registrar of deeds shall, for the purposes of a deeds registry, be deemed to be the original record.
- (3) The registrar concerned may reproduce or cause to be reproduced any record referred to in paragraph (a) of subsection (1) by means of microfilming or any other process which in his opinion accurately reproduces any such record in such manner that any such

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reproduction forms a durable medium for reproducing and preserving any such record, and preserve or cause to be preserved such reproduction in lieu of such record.

[subsection (3) inserted by Act 41 of 1977]

(4) A reproduction referred to in sub-section (3) shall, for the purposes of a deeds registry, be deemed to be the original record, and a copy obtained by means of such reproduction and which has been certified by the registrar as a true copy of such reproduction shall be admissible in evidence and shall have all the effects of the original record concerned.

[subsection (4) inserted by Act 41 of 1977]

[section 3 amended by Act 50 of 1956, Act 43 of 1957 and Act 43 of 1962, and substituted by Act 87 of 1965]

Powers of registrar

4. (1) Each registrar shall have power -
- (a) to require the production of 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 registry;
 - (b) whenever it is in his opinion necessary or desirable to rectify in any deed or other document, registered or filed in his registry, an error in the name or the description of any person or property mentioned therein or in the conditions affecting any such property, to rectify the error: Provided that -
 - (i) every person appearing from the deed or other document to be interested in the rectification, has consented thereto in writing;
 - (ii) if any such person refuse to consent thereto the rectification may be made on the authority of an order of Court;
 - (iii) if the error is common to two or more deeds or other documents, including any register in his registry, the error shall be rectified in all those deeds or other documents;
 - (iv) no such rectification shall be made if it would have the effect of transferring any right;
 - (v)

[paragraph (b) amended by Act 43 of 1957, including deletion of subparagraph (v)]

- (c) to issue, under conditions prescribed by regulation, certified copies of deeds or other documents registered or filed in his registry;
- (d) if in his opinion any deed or other document submitted to him has become illegible or unserviceable, to require that a certified copy thereof be obtained to take its place.

(2) Each registrar shall perform, in case of dispute, all the functions of a taxing officer of the court in relation to fees charged by conveyancers and notaries public for performing any acts which are required or permitted under this Act to be performed by conveyancers or notaries public in connection with deeds executed, registered or filed or intended to be executed,

registered or filed in a deeds registry or in relation to fees charged by other legal practitioners in connection with the preliminary work necessary for the purposes of any such deed.

Transactions affecting land in areas served by different deeds registries

5. If it is sought to register transactions affecting separate pieces of land situate within the areas served by different deeds registries, the registrars concerned may, subject to the provisions of any regulations, by mutual arrangement, effect such registration in such manner as may be found expedient.

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

6. (1) Save as is otherwise provided in this Act or in any other law 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 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 sub-section (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 shall cancel the relevant endorsement thereon evidencing the registration of the cancelled deed.

[Section 6 is amended by Act 43 of 1962. The word "mortgage" in subsection (2) is misspelt in the *Government Gazette*, as reproduced above.]

Inspection of records and supply of information

7. Each registrar shall on conditions prescribed and upon payment of the prescribed fees, permit any member of the public to inspect the public of registers and other public records in his registry, other than the index to such registers or records, and to make copies of those records or extracts from those registers and to obtain such other information concerning deeds or other documents registered or filed in the registry as prior to the commencement of this Act could, customarily, be made or obtained: Provided that no such fee shall be payable in respect of any search or inspection made in a deeds registry -

- (a) by a conveyancer or notary public in connection with any deed which he has been instructed to prepare, attest or lodge in such registry; or
- (b) by any land surveyor in connection with any survey which he has been instructed to perform; or
- (c) by any sheriff or messenger of a magistrate's court or his deputy, in connection with the exercise of his duties as such.

[section 7 amended by Act 43 of 1957 and substituted by Act 87 of 1965]

8.

[section 8 deleted by Act 43 of 1962]

Regulations board

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9. (1) There shall be established a deeds registries regulations board (in this section called “the board”), with power to make regulations upon the subjects mentioned in section 10.

(2) The board shall consist of the registrar of deeds, as chairman and executive officer, and four other members appointed by the Minister, of whom -

- (a) one shall be a deputy registrar of deeds or, if there is no deputy registrar, the most senior officer on the staff of the registrar;
- (b) one shall be an officer of the Ministry of Justice with experience or expertise in conveyancing matters, nominated for appointment by the Minister of Justice.

[Paragraph (b) is amended by Act 2 of 1996. The amendment markings are incomplete. The full stop at the end should be a semicolon.]

- (c) two shall be conveyancers nominated by the Council of the Law Society of South West Africa.

[subsection (2) substituted by AG 32 of 1985]

- (3) (a) A member of the board appointed by the Minister shall hold office for the period determined by the Minister, but the Minister may, if in his opinion there is good reason for doing so, terminate the appointment of such a member at any time before the expiration of his period of office.
- (b) A member of the board whose period of office has expired shall be eligible for re-appointment.
- (4) (a) The board shall meet at the times and places determined by the chairman.
- (b) The Minister may at any time direct the chairman of the board to convene a meeting of the board at a time and place specified by the Minister.
- (5) In the absence of the chairman of the board, the member referred to in subsection (2)(a) shall act as chairman.
- (6) (a) Three members of the board, of whom one shall be a member appointed in terms of subsection (2)(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 shall have a casting vote in addition to his deliberative vote.
- (7) The board may regulate the proceedings at its meetings as it may think fit and shall cause minutes of such proceedings to be kept.
- (8) With the Minister’s approval the board may make regulations also without holding a meeting, provided any regulations so made have been agreed to by all the members of the board.
- (9) No regulation made by the board shall take effect unless it has been approved by the State President and has been published in the *Gazette* at least one month before the date specified in the relevant notice as the date of commencement thereof.

(10)

[subsection (10) deleted by AG 32 of 1985]

[section 9 amended by Act 3 of 1972, Act 71 of 1972
and Act 62 of 1973, and substituted by Act 57 of 1975]

Regulations

10. (1) The board established under section *nine* may make regulations prescribing -

(a)

[paragraph (a) deleted by Act 92 of 1978]

(b) the fees of office (if any) to be charged in respect of any act, matter or thing required or permitted to be done in or in relation to a deeds registry, including any report made to the court by the registrar in connection with any application or action to which he is not a party;

(c) the fees and charges of conveyancers and notaries public in connection with the preparation, passing and registration of deeds or other documents registered or filed or intended for registration or filing in a deeds registry and the fees and charges of any other legal practitioners in connection with the preliminary work required for the purpose of any such deed or other document and the fees and charges in connection with the taxation of any such fees or charges;

(d) the manner and form in which and the qualifications of the person by whom any deed or other document required or permitted to be lodged, registered or filed in any deeds registry shall be prepared, lodged executed, registered, filed or delivered and the time within which any deed shall be executed;

[Paragraph (d) is amended by Act 43 of 1962. The amendment inadvertently results in a double semicolon at the end of the paragraph.]

(e)

[paragraph (e) deleted by Act 92 of 1978]

(f) the particular documents which, when produced in a deeds registry, shall be attested or witnessed, and the manner in which any such document shall be attested or witnessed;

(g) the divisions, districts or other areas within the area served by any deeds registry, which shall be adopted in numbering for the purposes of registration, the farms or other pieces of land situate therein;

(h) the method according to which farms or other pieces of land in any such division, district or other area shall be numbered;

(i)

[paragraph (i) deleted by Act 92 of 1978]

(j) the manner and form in which the identity of persons shall be established;

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[paragraph (j) amended by Act 92 of 1978]

- (k) the conditions upon which conveyancers, land surveyors and other persons may conduct any search in a deeds registry, and the precautions which shall be taken to ensure preservation of the records from damage by improper handling or otherwise;

[paragraph (k) amended by Act 43 of 1957]

- (l)

[paragraph (l) deleted by Act 92 of 1978]

- (m) the conditions under which copies of deeds and other documents registered in a deeds registry may be issued for judicial purposes, or purposes of information or in substitution of deeds or other documents which have been lost, destroyed, defaced or damaged and the conditions under which extracts from registers or from any documents registered or filed in a deeds registry may be furnished;
- (n) the manner and form in which consent shall be signified to any cancellation, cession, part payment, release or amendment of or other registrable transaction affecting any bond or other document registered in a deeds registry;
- (o) the conditions under which a copy of a power of attorney may be accepted by a registrar in lieu of the original;
- (p) the forms of deeds which shall be used in circumstances not provided for in this Act;
- (q)

[paragraph (q) amended by Act 43 of 1962 and deleted by Act 92 of 1978]

- (r)

[paragraph (r) deleted by Act 92 of 1978]

- (r)*bis* the records which may be destroyed in terms of the proviso to paragraph (a) of subsection (1) of section *three*;

[paragraph (r)*bis* inserted by Act 87 of 1965]

- (s) any matter which under this Act is required or permitted to be prescribed.

(2) Different regulations may be made in respect of the several deeds registries and the matters to be dealt with therein.

[The word “registries” is misspelt in the *Government Gazette*, as reproduced above.]

(3) Any regulations wade under paragraph (g) or (h) of subsection (1) shall come into operation within the areas served by the several deeds registries upon dates to be fixed by the Minister by notice in the *Gazette*.

[subsection (3) amended by Act 92 of 1978]

(4) In making any regulation prescribing the fees and charges of conveyancers in connection with the preparation and passing of deeds the board may prescribe separate fees for the preparation and the passing of deeds in the event of the deeds being prepared by one conveyancer and passed by another.

[subsection (4) substituted by Act 87 of 1965]

(5) Notwithstanding anything contained in section *one* of Act No. 29 of 1908 and sub-section (1) of section *three* of Act No. 34 of 1908, both of the Transvaal, the State President may, by proclamation in the *Gazette*, declare the whole or any part of the regulations published under Government Notice No. 1498 of 1918, as amended by Government Notice No. 1631 of 1922, to be no longer of force and effect, and thereupon the regulations board may make in lieu of those regulations new regulations in relation to the matters referred to in sub-section (1) of this section.

[subsection (5) substituted by Act 87 of 1965]

(6) The regulations published under Government Notice No. 1498 of 1918, as amended as aforesaid shall remain in force, notwithstanding the repeal of the Deeds Registries Act, 1918, until they have been declared to be no longer of force and effect in the manner provided in sub-section (5) of this section.

(7) The regulations made under the Registration of Deeds Proclamation, 1939 (Proclamation 37 of 1939), of Namibia, and in force at the commencement of the Deeds Registries Amendment Act, 1972, shall be deemed to have been made under this section in respect of the deeds registry at Windhoek.

[Subsection (7) is inserted by Act 3 of 1972. The date of commencement referred to is 1 June 1972.]

CHAPTER II

REGISTRATION

11.

[section 11 deleted by Act 92 of 1978]

12.

[section 12 amended by Act 43 of 1962 and deleted by Act 92 of 1978]

General Provisions

When registration takes place

13. (1) Deeds executed or attested by a registrar shall be deemed to be registered upon the affixing of the registrar's signature thereto, and deeds, documents or powers of attorney lodged for registration shall be deemed to be registered when the deeds registry endorsement in respect of the registration thereof is signed: Provided that no such deed, document or power which is one of a batch of interdependent deeds, documents or powers of attorney intended for registration together, shall be deemed to be registered until all the deeds,

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documents or powers of attorney or the registration endorsements in respect thereof, as the case may be, have been signed by the registrar.

(2) If by inadvertence the registrar's signature has not been affixed to a deed executed or attested by him, or to the registration endorsement in respect of the registration of a deed, document or power of attorney lodged for registration, at the time at which the signature should have been affixed in the ordinary course, the registrar may affix his signature thereto when the omission is discovered, and the deed, document or power of attorney shall thereupon be deemed to have been registered at the time aforesaid.

(3) All endorsements or entries made on deeds, documents or powers of attorney or in registers, in connection with the registration of any deed, document or power of attorney, shall be deemed to have been effected simultaneously with the affixing of the signature of the registrar thereto in respect of deeds executed or attested by a registrar or with the signing of his registration endorsement in respect of deeds, documents or powers of attorney lodged for registration, although in fact they may have been made subsequent thereto.

(4) Any deed, document or endorsement which under this section is required to be signed by a registrar, may, if the registrar is not available to sign such deed, document or endorsement, be signed by the successor in office of the registrar or by any person acting in the place of the registrar, whereupon any reference in sub-section (1) or (3) to the signature of the registrar shall be deemed to include a reference to the signature of such successor or person acting as registrar, as the case may be.

[subsection (4) inserted by Act 87 of 1965]

[section 13 substituted by Act 43 of 1957]

Deeds to follow sequence of their relative causes

14. (1) Save as 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 shall 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 shall 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 shall not be lawful 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 descendants, and one or other of these descendants has died a minor and intestate and no executor has been appointed in his 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;

[The word "descendants" in its second use in subparagraph (i) is misspelt in the *Government Gazette*, as reproduced above.]

- (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 equalled or exceeded by the costs involved in transferring or ceding it to

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the heir or legatee, and the heir or legatee has sold the property, 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 any redistribution of the whole or any portion of the assets in such estate takes place among the heirs and legatees (including ascertained fidei-commissary heirs and legatees) of the deceased, or between such heirs and legatees and the surviving spouse, the executor or administrator 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 proviso (iii) it shall be lawful to introduce movable property not forming part of the estate for the purpose of equalizing the division;
- (v) the provisions of proviso (iii) shall apply *mutatis mutandis* with reference to a redistribution of assets of the joint estate of spouses who were married in community of property and have been divorced or judicially separated, and with reference to a redistribution of assets of 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 shall be competent to transfer the land or cede the real right direct to the fidei-commissary;
- (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 and a court of a Commissioner), 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.

[paragraph (b) amended by Act 43 of 1957 and by Act 43 of 1962,
substituted by Act 87 of 1965, and amended by AG 3 of 1979]

(2) In any transfer or cession in terms of any proviso to paragraph (b) of sub-section (1) there shall be paid the transfer duty and death duties which would have been payable had the property concerned been transferred or ceded to each person becoming entitled thereto.

Preparation of deeds by conveyancer

15. Save as is otherwise provided in any other law, no deed of transfer, mortgage bond, deed of grant or certificate of title or registration of any kind mentioned in this Act shall be attested, executed or registered by a registrar unless it has been prepared by a conveyancer who may recover the fees and charges to which he may be entitled in accordance with any regulation made under section 10.

[section 15 amended by Act 26 of 1985;
not all of the changes are indicated by amendment markings]

Prove of certain facts in connection with deeds and documents by means of certain certificates

[The word "prove" in the heading should be "proof" to be grammatically correct.]

15A. (1) A conveyancer who prepares a deed or other document for the purposes of registration or filing in the deeds registry, and who signs a prescribed certificate on such deed or

document, accepts by virtue of any such signing the responsibility, to the extent prescribed by regulation for the purposes of this section, for the accuracy of those facts mentioned in any such deed or document or which are relevant in connection with the registration or filing thereof, which are prescribed by regulation.

(2) The provisions of subsection (1) shall apply *mutatis mutandis* to any person other than a conveyancer, who is prescribed by regulation, and who has in accordance with the regulations prepared a deed or other document prescribed by regulation for registration or filing in a deeds registry.

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

[section 15A inserted by Act 26 of 1985]

How real rights shall be transferred

16. Save as otherwise provided in this Act or in any other law the ownership of land may be conveyed from one person to another only by means of a deed of transfer executed or attested by the registrar, and other real rights in land may be conveyed from one person to another only by means of a deed of cession attested by a notary public and registered by the registrar: Provided that notarial attestation shall not be necessary in respect of the conveyance of real rights acquired under a mortgage bond: Provided further that where the State acquires all the land held under any title deed, the registrar shall make such alterations and entries in his registers and such endorsements on such title deed as may be necessary to register transfer to the State of the property so acquired free of charge.

[section 16 amended by Act 80 of 1964 and substituted by Act 87 of 1965]

Registration of property in name of married persons

17. (1) From the commencement of the Deeds Registries Amendment Act, 1996, immovable property, real rights in immovable property and notarial bonds which would upon transfer, cession, or registration thereof form part of a joint estate shall be registered in the name of the husband and the wife, unless that transfer, cession, or registration takes place only in the name of a partnership, and the husband or wife is involved therein only in the capacity of partner in that partnership.

[subsection (1) amended by Act 22 of 1996]

(2) Every deed or other document executed or attested by a registrar, or attested by a notary public and required to be registered in a deeds registry, and made by or on behalf of or in favour of any person, shall -

- (a) state the full names of the person concerned and whether he or she is married or unmarried;

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- (b) where the marriage concerned is governed by the law in force in Namibia, state whether the marriage is in or out of community of property or is a marriage governed by the Recognition of Certain Marriages Act, 1991 (Act 18 of 1991);
- (c) where the marriage of the person concerned is in community of property or is governed by the Recognition of Certain Marriages Act, 1991, state the full names of his or her spouse; and
- (d) where the marriage concerned is governed by the law of any country other than Namibia, state that the marriage is governed by the law of that country and state the full names of his or her spouse.

(3) Where a marriage in community of property or governed by the Recognition of Certain Marriages Act, 1991, has been dissolved by the death of one of the spouses before property or a mortgage or notarial bond which on transfer or cession thereof would have formed part of the joint estate could be transferred or ceded, that property, mortgage, or notarial bond shall be transferred or ceded 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) If immovable property, a real right in immovable property, or a notarial bond forming part of a joint estate is registered in the deeds registry in the name of one of the spouses, the registrar shall on the written application of either of the spouses, or a conveyancer as his or her duly authorized agent, if the registrar is satisfied as to the relevant facts, endorse on the relevant deed or bond or, if such deed or bond cannot be produced to him or her due to the other spouse's refusal to produce such deed or bond in his or her possession or under his or her control, only on the registry duplicate thereof and in the appropriate registers -

- (a) the full name of such other spouse; and
- (b) that the spouses are married in community of property or, where applicable, that the marriage of the spouses is governed by the Recognition of Certain Marriages Act, 1991.

(5) A transfer, cession, or registration referred to in subsection (1) in the name of a husband and wife shall not constitute in the case of agricultural land referred to in section 3 of the Subdivision of Agricultural Land Act, 1970 (Act 70 of 1970), an act to which that section is applicable.

(6) A person married in terms of a marriage the legal consequences of which are governed by the law of any country other than Namibia -

- (a) shall be assisted by his or her spouse in executing any deed or other document required or permitted to be executed or registered in the deeds registry or required or permitted to be produced in connection with any such deed or document; or
- (b) shall produce the consent of his or her spouse to such execution, registration, or production,

unless the assistance or consent of such spouse is in terms of this Act or on any other grounds considered by the registrar to be unnecessary.

[section 17 amended by Act 15 of 1953, Act 37 of 1953, Act 43 of 1957, Act 43 of 1962 and Act 3 of 1972, and substituted by Act 2 of 1996]

CHAPTER III

REGISTRATION OF LAND

*Transfer of Land***Manner of dealing with State land**

18. (1) The ownership of unalienated State land may be transferred from the State only by a deed of grant issued under proper authority and, save as hereinafter provided, having a diagram of the land annexed thereto.

(2) The ownership of land alienated from and reacquired by the State may be transferred from the State either by deed of grant or by deed of transfer issued or executed, as the case may be, under proper authority, but in either case the deed of grant or transfer shall contain a reference to the title deed by which the State held the land and to the title deed to which the diagram of the land is annexed and shall set forth the conditions upon which the land is alienated and the rights to the land reserved by the State on this alienation.

(3) If any piece of unalienated State land has been surveyed and is represented on a diagram the registrar concerned shall, upon written application by the Minister of Agriculture or, in the case of Namibia, by the Administrator of the Territory, accompanied by the diagram of the land in duplicate, 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 thereof prepared by a conveyancer.

[Subsection (3) is substituted by Act 3 of 1972. Act 2 of 1996 makes global substitutions of "Minister" for "Administrator-General" and "Namibia" for "the Territory", but there is no directive on changes to the phrase "Administrator of the Territory".]

(4) Transfer of the ownership of land held by the State under certificate of registered State title shall 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 shall contain a reference to the certificate and to the diagram annexed to the certificate.

(5) 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.

19.

[section 19 deleted by Act 43 of 1957]

Form and manner of execution of deeds of transfer

20. Deeds of transfer shall be prepared in the forms prescribed by law or by regulation, and, save as in this Act or any other law provided or as ordered by the court in respect of deeds of transfer executed by the registrar, shall be executed in the presence of the registrar by the owner of the land described therein, or by a conveyancer authorized by power of attorney to act on behalf of the owner, and shall be attested by the registrar.

Transfer from joint estate

21. In any transfer lodged in a deeds registry relating to land which is an asset in a joint estate, the surviving spouse shall be joined in his personal capacity with the executor of the estate of the deceased spouse except -

- (a) where the executor is only dealing with the share of the deceased spouse; or
- (b) where the land 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

[Paragraph (c) is amended by Act 43 of 1957. The full stop after the word "adiated" should have been changed to a semicolon when additional paragraphs were added.]

- (d) where such transfer is in favour of the surviving spouse; or

[paragraph (d) inserted by Act 43 of 1957]

- (e) where the surviving spouse has signed as executor, the power of attorney to pass such transfer.

[paragraph (e) inserted by Act 43 of 1957]

Transfer of two or more pieces of land by one deed

22. (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 authorized by the provisions of a law or by an order of court.

(2) Two or more pieces of land may by one deed be transferred by one person or by two or more persons holding such pieces of land in undivided shares, to one person or to two 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 person or by two or more persons holding the whole of such piece of land in undivided shares to one person or to two 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. The diagrams of all such portions shall be annexed to the deed.

Transfer of undivided shares in land by one deed

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

Transfer of shares in properties to more than one transferee in one deed

23bis. Undivided shares in more than one piece of land may not be transferred to more than one transferee in the same deed if the shares appropriated to any one transferee are not the same in respect of each piece of land.

[section 23bis inserted by Act 87 of 1965]

Special provisions relating to transfer of undivided shares

24. (1) No transfer of an undivided share in land which is intended or calculated to represent or purports 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

24bis. (1) If land or a real right registered in the name of a firm or partnership is acquired by any member or partner of such firm or partnership in his individual capacity, transfer or cession thereof shall 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 as provided in the regulations.

(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, the registrar shall on written application signed by all the members or partners constituting such firm or partnership, accompanied by proof of dissolution and such other documents as may be required or prescribed, endorse on the title deed of the land or real right that such land or real right vests in the individuals therein named, and thereupon such persons shall be entitled to deal therewith as if they had taken formal transfer or cession in their names of their shares in such land or real rights.

(3) If the land or real right referred to in sub-section (2) is hypothecated under a registered mortgage bond, the endorsement contemplated in the said sub-section shall not be made unless such bond is cancelled or the holder thereof consents in writing (in duplicate) 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; such application to be in duplicate and witnessed; and
- (ii) the individual members or partners are competent to mortgage the land; and
- (iii) where applicable, the individual members or partners renounce in the said application the exception *de duobus vel pluribus reis debendi*; and
- (iv) where the member or partner is a woman, she renounces in the said application any special legal exceptions which she would otherwise be entitled to raise.

[subsection (3) inserted by Act 87 of 1965]

[section 24bis inserted by Act 43 of 1962]

Transfer to unascertained children

25. (1) If land or a real right 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 of the land or cession of the real right or bond 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,

[subsection (1) substituted by Act 43 of 1962]

(2) If land or a real right 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 sub-section (1), may for the purposes of such transfer or cession, accept the donation.

[subsection (2) amended by Act 43 of 1962]

(3) When the identity of all such children has been established the registrar shall make an endorsement on the title deed or bond setting out their names, whereupon the title deed or bond shall be deemed to be to and in favour of such children in the same manner as if the transfer or cession had originally been passed to them by name notwithstanding the provisions of section 17(1).

[subsection (3) amended by Act 43 of 1962 and by Act 2 of 1996]

Deeds of partition transfer

26. (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 shall, on production to him of a power of attorney by such persons authorizing the passing of deeds of partition transfer of such land in accordance with the agreement of partition, which agreement shall be embodied in the power of attorney or annexed thereto, and on compliance with the further provisions of this section, attest deeds of partition transfer which shall be as nearly as practicable in the prescribed form, conveying to the respective owners the land or shares therein awarded to them under the said agreement.

(1)*bis* Any agreement of partition referred to in sub-section (1) may exclude from partition any rights to minerals in the land to be partitioned: Provided that if the share or shares owned by any of the parties to a partition appear from the title deeds of the said land to be subject to a reservation or cession or exclusion of any rights to minerals, then the agreement of partition shall exclude from partition all rights to minerals in the land to be partitioned and the partition transfers shall not be attested unless the rights to minerals are so excluded.

[subsection (1)*bis* inserted by Act 43 of 1962]

(2) In the power of attorney or agreement of partition referred to in sub-section (1) there shall be described -

- (a) the land to be partitioned;
- (b) the share or 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 equalizing the partition.

(3) There shall also be produced to the registrar 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 extent of any one of the pieces of land to be partitioned.

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(4) Subject to the provisions of this section, the provisions of sections *twenty*, *twenty-one*, *twenty-two* and *twenty-three* shall *mutatis mutandis* apply in respect of deeds of partition transfer.

(5) Any deed of partition transfer attested under sub-section (1) shall 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 shall not vary or affect the conditions of tenure of the said land or any other conditions affecting the said land generally, save in so far as such last-mentioned conditions may be varied, defined or limited by the agreement of partition or the consents of interested parties.

(6) The provisions of this section shall *mutatis mutandis* apply to a partition of land ordered by the court or determined by an award of arbitrators.

(7) The provisions of this section shall also apply to partitions of land registered in different deeds registries.

[subsection (7) inserted by Act 43 of 1957 and amended by Act 87 of 1965]

Requisites where share in land partitioned is mortgaged

27. (1) If the share or shares owned by any of the parties to a partition is mortgaged, the partition transfers shall not be attested unless the bond is produced to the registrar together with 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 share in all the properties partitioned.

[subsection (4) inserted by Act 43 of 1957]

Requisites where share in land partitioned is subject to other rights

28. (1) If the share or shares owned by any of the parties to a partition appear from the title deeds of the land partitioned to be subject to a lease, personal servitude or other real right (excluding any rights to minerals), the written consent of the holder thereof to the partition

and allocation of the lease, servitude or such other real right,, together with the deed, if any, by which the lease, servitude or real right is held, shall be produced to the registrar.

[Subsection (1) is amended by Act 43 of 1962. The amendment results in a superfluous comma after the phrase “other real right”.]

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

(3) If there exists any bond by which the lease, servitude or real right is itself mortgaged, that bond shall also be produced to the registrar, together with 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 shall make the endorsements and entries mentioned in section *twenty-seven* on the bond, the deeds concerned and in the registers.

[Subsection (3) is amended by Act 43 of 1962. The amendment results in a superfluous comma after the phrase “other real right”.]

Effect of compliance with sections 27 and 28

29. Upon completion of the endorsements and entries mentioned in sections *twenty-seven* and *twenty-eight* 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 *fidei commissum*

30. (1) Any piece of land the whole or any share of which is subject to a *fidei commissum* may, where partition has not been prohibited, be partitioned with the written consent of the *fidei commissary* heirs or successors if they are ascertained and are majors and otherwise competent; if they are ascertained but any of them are minors, the consent of the Master shall be produced in respect of the minors; if they are ascertained but any of them have been declared insolvent, or if they are under curatorship or otherwise under disability the consent of their trustees or curators or other legal representatives shall be produced on their behalf; if they are not ascertained or if they cannot be found, proof shall 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 *fidei commissum* is an equivalent of that share.

[The word “agreement” is misspelt in the *Government Gazette*, as reproduced above.]

(2) The land so awarded shall in the deed of partition transfer be made subject to the *fidei commissum* 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

31. (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 shall, upon lodgment with him of a deed of transfer in the prescribed form prepared by a conveyancer in favour of the transferee, execute the same, and if the land is hypothecated, he shall endorse the fact of such transfer on the registry duplicate of the bond, and if the original bond is at any time

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lodged in his office for any purpose except cancellation, he shall make a similar endorsement thereon: Provided that no such transfer shall prejudice any claim to compensation which any owner or other person may have in respect of the change of ownership of such land.

**[Subsection (1) is substituted by Act 61 of 1969 with effect from 28 May 1969.
The word "execute" is misspelt in the Government Gazette, as reproduced above.]**

- (2) (a) The transferee shall produce the title deed of such land to the registrar together with the aforesaid deed of transfer, and the registrar shall thereupon endorse the transfer on such title deed.
- (b) Failing the production of such title deed, the transferee shall produce to the registrar an affidavit to the satisfaction of the registrar that he has been unable to obtain possession of the title deed and the registrar shall thereupon endorse such transfer on the registry duplicate of such title deed, and if the original title deed is at any time lodged in his office for any purpose, he shall make a similar endorsement thereon.

**[subsection (2) is amended by Act 43 of 1957 and substituted
by Act 61 of 1969 with effect from 28 May 1969]**

(3)

[subsection (3) deleted by Act 61 of 1969 with effect from 28 May 1969]

- (4) (a) The registrar shall not execute the said deed of transfer unless a certificate has been furnished to him by the transferee referred to in sub-section (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 shall be registered subject to all existing conditions affecting the land in question which have not been expropriated or vested in the transferee.

(5) No deed by the expropriating authority purporting to transfer such land or to create or deal with any real right therein shall be registered in a deeds registry until transfer thereof has been passed in accordance with sub-section (1).

(6) (a) Immediately after any land has been expropriated the expropriating authority shall lodge with the registrar a certified copy of the notice of expropriation and two copies of the relevant expropriation plan of the land in question and the registrar shall cause a note of the expropriation to be made in his registers and endorsed on the office copy of the title deed, and if at any time the original of the title deed is lodged in his registry for any purpose, he shall cause a similar note to be endorsed thereon and a copy of the expropriation plan to be annexed thereto; Provided that the aforementioned expropriation plans shall be dispensed with where the whole of a piece of land has been expropriated.

(b) The existence of any endorsement referred to in paragraph (a), shall not debar the registered owner of the land in question from transferring or otherwise dealing with that land and upon registration of a transfer deed in favour of the transferee in pursuance of the expropriation, any such endorsement shall lapse: Provided that where the entire extent of a piece of land recognized as a separate entity in a deeds registry has been expropriated, the registered owner of the said land shall be debarred from transferring it or otherwise dealing therewith except to effect registration of a transfer deed in favour of the transferee in pursuance of the expropriation.

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

(8)

[subsection (8) deleted by Act 63 of 1975]

[section 31 amended by Act 43 of 1957 and by Act 43 of 1962, and substituted by Act 87 of 1965]

Registration of expropriated servitudes or servitudes vested by statute

32. (1) Whenever any right of servitude or right to minerals 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 shall, upon lodgment with him 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 or right to minerals is hypothecated, endorse the fact of such cession on the registry duplicate of the bond, and if the original bond is at any time lodged in his office for any purpose except cancellation, he shall make a similar endorsement thereon: Provided that no such cession shall prejudice any claim to compensation which any owner or other person may have as a result of the expropriation or vesting of such servitude or right to minerals.

[subsection (1) substituted by Act 61 of 1969 with effect from 28 May 1969]

- (2) (a) The cessionary shall produce the title deed of the land or right to minerals to the registrar together with the aforesaid deed of cession and the registrar shall thereupon endorse the cession on such title deed.
- (b) Failing the production of such title deed, the cessionary shall produce to the registrar an affidavit to the satisfaction of the registrar that he has been unable to obtain possession of such title deed and the registrar shall thereupon endorse such cession on the registry duplicate of such title deed, and if the original title deed is at any time lodged in his office for any purpose, he shall make a similar endorsement thereon.

[subsection (2) substituted by Act 61 of 1969 with effect from 28 May 1969]

(3)

[subsection (3) deleted by Act 61 of 1969 with effect from 28 May 1969]

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

[subsection (4) substituted by Act 61 of 1969 with effect from 28 May 1969]

(5) Immediately after any right of servitude over any land or right to minerals therein has been expropriated, the expropriating authority shall lodge with the registrar a certified copy of the notice of expropriation and two copies of the relevant expropriation plan of the servitude

in question, or where the right to minerals in only a portion of the land has been expropriated, two copies of the relevant expropriation plan of such portion, and the registrar shall cause a note of the expropriation to be made in his registers and endorsed on the office copy of the title deed of the land which is subject to the servitude or the title under which the right to minerals in question is held, as the case may be, and if at any time the original of the title deed or of such title is lodged in his registry for any purpose, he shall cause a similar note to be endorsed thereon and a copy of the expropriation plan to be annexed thereto.

[subsection (5) substituted by Act 29 of 1974]

(5A) Whenever any right of servitude or right to minerals over land has been expropriated and formal cession of such right of servitude or right to minerals to the cessionary has not been effected, the registrar shall, on written application by the cessionary and the owner of the land or right to minerals, cancel any note of the expropriation in his registers or endorsement on the title deed of the land or the title under which the right to minerals is held, and thereupon the expropriated right of servitude or right to minerals shall vest in such owner.

[subsection (5A) inserted by Act 62 of 1973]

(6)

[subsection (6) substituted by Act 62 of 1973 and deleted by Act 63 of 1975]

[section 32 amended by Act 43 of 1957 and by Act 43 of 1962,
and substituted by Act 87 of 1965 and by Act 62 of 1973]

Registration of title by other than the ordinary procedure

33. (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 name in the usual manner and according to the sequence of the successive transactions or successions in pursuance of which the right to the ownership of such property has devolved upon him, may apply to the court by petition for an order authorizing the registration in his name of such property.

(2) If rates, duly levied by any competent local authority in respect of unoccupied immovable property, have not been paid for a period of five years, the local authority with the consent of the Administrator and after publication and service of the notices prescribed in the relevant Ordinances, may apply to the court by petition for an order authorizing the attachment and sale of such property and registration of transfer to the purchaser in the prescribed form and giving directions as to the disposal of the purchase price.

[Act 2 of 1996 makes a global substitution of "Minister" for "Administrator-General",
but there is no directive on changes to the word "Administrator".]

(3) Every petition to the court under the provisions of this section shall be lodged with the registrar of the said court and the allegations contained in such petition shall be supported by sworn declarations and all available documentary evidence which the applicant may be able to adduce.

(4) Every such petition shall be laid before one of the judges in chambers, who shall make such order thereon as to him shall seem fit, and any such judge may order that any matter arising upon any such petition shall be argued before and determined by the full court.

(5) The court considering any petition for registration of title, may, if such court shall deem it expedient to do so, grant a rule *nisi* setting forth the description of the immovable

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property mentioned in such petition, and calling upon all persons claiming to have any right or title to such property to appear and establish their claims to the same upon a day to be named in the rule, and may give directions as to the mode of service or publication of such rule.

(6) Upon the return day of any such rule granted as aforesaid, and no cause being shown to the contrary, the court may order the registrar of deeds to register the property mentioned in such order as the property of the person therein named, subject to such terms and conditions as may be therein mentioned.

(7) In case any person should appear to show cause against any rule *nisi* granted as aforesaid, the court may, if it shall see fit to do so, and without the issue of any summons, require any issue of fact to be tried upon pleadings or make such order as will determine the matter in controversy.

(8) Subject to the terms of any order made under this section any deed of transfer passed in pursuance of such order shall 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 shall, 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 registry, before such deed is delivered to the applicant.

(9) 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 shall be 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.

(10) If in pursuance of any order made under this section the registrar of deeds registers any property in the name of any person, such person shall be liable to pay such taxes, duties and fees of office in respect of such registration as he would have been liable to pay if such property had been transferred to him in the usual manner directly from the last registered owner thereof, but shall not be liable to pay any tax, duty, quitrent or interest thereon which such owner or any intermediate holder of the right to such property may have become liable to pay, unless he shall by agreement have bound himself to pay such tax, duty, quitrent or interest, or unless the delay in obtaining the registration in his name was due to the neglect or default of himself or his agent: Provided that any person who has become liable to pay any tax, duty, quitrent or interest in respect of any property shall continue to be so liable notwithstanding that such property has, in pursuance of an order made under this section, been registered in the name of another person.

(11) Upon production to the registrar of deeds of any order made under this section and of a certificate by the proper officer as to the payment of the transfer duty, if any, which the person named in the order is liable to pay, and on compliance with any other requirements which have under this Act to be complied with, the registrar shall register such property in accordance with the said order, by executing a deed of transfer thereof in the prescribed form in favour of the person named in the order: Provided that it shall not be necessary to produce the title deed of the property or a certified copy thereof, if an affidavit by the transferee is produced that he has been unable to obtain possession of such title deed.

[subsection (11) substituted by Act 87 of 1965]

(12) The provisions of this section shall be in addition to and not in substitution for the provisions of any other law.

[section 33 amended by Act 43 of 1957 and substituted by Act 43 of 1962]

*Substituted Title Deeds***Certificate of registered title of undivided share**

34. (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 the provisions of section *thirty-seven*, obtain a certificate of registered title of his undivided share in such land, and no transfer of a fraction only of his undivided share or hypothecation or lease of the whole or any fraction of his undivided share in the land shall 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 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 share by deeds of transfer to be registered simultaneously.

[subsection (1) substituted by Act 87 of 1965]

(2) If the title deed under which land or shares therein is held in joint ownership is lost or destroyed any joint owner may, upon compliance with the prescribed requirements, obtain a certificate of registered title in respect of his share in the land without obtaining a certified copy of the deed which has been lost or destroyed.

(3) The provisions of sub-sections (1) and (2) shall apply also 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 shall be included in the certificate of registered title and shall be described in separate paragraphs.

Certificate of registered title of aggregate share

35. 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 *thirty-seven*, obtain a certificate of registered title in respect of his aggregate share in the land: Provided that if there are two or more pieces of land the several pieces of land or shares therein shall be described in separate paragraphs.

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

36. 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 *thirty-seven*, 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 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 issue of certificates of registered title

37. (1) A certificate of registered title mentioned in section *thirty-four*, *thirty-five* or *thirty-six* may be obtained upon written application by the owner to the registrar accompanied, save as provided in sub-section (2) of section *thirty-four*, by the title deed of the land and shall be as nearly as practicable in the prescribed form.

(2) If the property concerned is subject to a registered mortgage bond, that bond shall be produced to the registrar by the holder thereof, upon the request and at the expense of the applicant for the certificate of registered title.

[subsection (2) substituted by Act 43 of 1957]

(3) Before issuing any such certificate the registrar shall cause to be made upon the title deed or deeds in question and the registry duplicates thereof or in the case provided in subsection (2) of section *thirty-four*, upon the registry duplicate only, and upon the mortgage bond (if any) an endorsement 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. The registrar shall further make entries in the registers of the issue of the certificate and shall, if the property is mortgaged, endorse that fact upon the certificate.

[subsection (3) amended by Act 43 of 1957]

(4) Any such certificate when issued shall 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 issue 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 or destroyed deed

38. (1) If the title deed of any land has been lost or destroyed and the registry duplicate of such title deed has also been lost or destroyed, the registrar shall, on written application by the owner of the land, accompanied by a diagram of the land, if no diagram thereof is filed in the 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 issuing the certificate the registrar shall, at the expense of the applicant, publish in the prescribed form notice of intention to issue the certificate in two consecutive ordinary issues of the *Gazette* and in two consecutive issues of a newspaper printed in the division, district or county in which the land is situate, or if there is no such newspaper then in any newspaper circulating in such division, district or county.

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

(4) Any person who has lodged with the registrar an objection to the issue of the certificate may, in default of any arrangement between him 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 issuing the certificate, and the court may make such order on the application as it may deem fit.

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

Certificate of registered title to correct error in registration

39. (1) If by reason of an error the same land has been registered in the names of different persons, the registrar may, upon transfer of the land being given to one of them by the other or others, issue to the person to whom transfer is so given a certificate of registered title of the land held by him 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 issue to him of a certificate of registered title in respect of such land free of such conditions or servitudes.

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

(4) The provisions of section *thirty-seven* shall *mutatis mutandis* apply in respect of the issue of such certificate.

[section 39 amended by Act 43 of 1957]

Certificate of consolidated or amended title of two or more pieces of land

40. (1) If a diagram has been framed and approved under the provisions of the Land Survey Act, 1927, 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)

[paragraph (c) deleted by Act 43 of 1957]

- (d) registered in the same property register; and

[Paragraph (d) should have been amended to delete the word "and" and to end with a full stop after the deletion of paragraph (e).]

- (e)

[paragraph (e) amended by Act 43 of 1962 and deleted by Act 26 of 1985]

the title deed or deeds of the said pieces of land may on compliance with the requirements of this section be superseded by a certificate of consolidated title issued by the registrar in the prescribed form.

[subsection (1) amended by Act 43 of 1957]

- (2)

[subsection (2) deleted by Act 43 of 1957]

(3) Every such certificate shall be in accordance with the new diagram and shall be issued on written application by the owner or owners of the pieces of land in question accompanied by the title deed or deeds thereof and any bond thereon, together with the written consent of the holder of the bond.

[subsection (3) substituted by Act 43 of 1957]

(4) In registering the certificate, the registrar shall endorse on the title deed or deeds that they have, in respect of the land described in the certificate, been superseded by the

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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 shall make such endorsements on the bond and such entries in the registers as shall 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.

[subsection (4) substituted by Act 43 of 1957]

- (5) (a) If a portion only of the land represented on the new diagram is mortgaged, a certificate may not be issued 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 issued unless the bonds are cancelled.

[subsection (5) substituted by Act 43 of 1957]

- (6) (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 shall not be issued unless a diagram of such portion is already annexed to the said registered deed, or, if no such diagram is so annexed, unless a diagram in duplicate (or triplicate if required by the registrar) of such portion is produced: Provided that it shall not be 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.

**[proviso to paragraph (a) inserted by Act 43 of 1957;
a colon has accordingly been inserted before the proviso]**

- (b) The said diagram shall be annexed to the registered deed aforesaid and the registry duplicate thereof, and shall be mentioned in any endorsement made on or reference made in the certificate concerning such registered deed.
- (7)

[subsection (7) deleted by Act 43 of 1957]

(8) No diagram representing a combination of portions of two or more pieces of land shall be accepted in a deeds registry for purposes of transfer until a certificate of consolidated title has been issued for the land represented on such diagram.

[subsection (8) amended by Act 43 of 1957]

(9) 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.

[subsection (9) amended by Act 43 of 1957]

41.

[section 41 amended by Act 87 of 1965 and deleted by Act 26 of 1985]

Certificate of uniform title

42. (1) If the owner of two or more pieces of land which are -
- (a) contiguous to each other;
 - (b) situate 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 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 Agriculture or, in the case of Namibia, of the Administrator of the Territory, and on compliance with the provisions of this section, be superseded by a certificate of uniform title issued 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.

[Subsection (1) is amended by Act 43 of 1962 and substituted by Act 3 of 1972. Act 2 of 1996 makes global substitutions of "Minister" for "Administrator-General" and "Namibia" for "the Territory", but there is no directive on changes to the phrase "Administrator of the Territory".]

(2) The provisions of sub-sections (3) to (6) inclusive of section *forty* shall *mutatis mutandis* apply in respect of such certificate.

(3) The Minister of Agriculture or, in the case of Namibia, the Administrator of the Territory, may agree with the owner as to the aforesaid uniform conditions of tenure or uniform rights in favour of the State, and may consent to the issue of a certificate of uniform title.

[Subsection (3) is substituted by Act 3 of 1972. Act 2 of 1996 makes global substitutions of "Minister" for "Administrator-General" and "Namibia" for "the Territory", but there is no directive on changes to the phrase "Administrator of the Territory".]

(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 shall be produced to the registrar the written consent of the holder of any such bond, lease or right to the issue of the certificate of uniform title and to the uniform conditions of tenure or uniform rights in favour of the State, which may have been agreed upon.

(5) The provisions of this section shall *mutatis mutandis* apply 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 a piece of land

43. (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 may on written application by the owner of the land accompanied by the diagram of such portion, the title deed of the land, any bond thereon and the written consent of the holder of any such bond,, issue a

certificate of registered title in respect of such portion, as nearly as practicable in the prescribed form.

[Subsection (1) is amended by Act 43 of 1957. The amendment results in a superfluous comma after the phrase “any such bond”.]

(2) In registering the certificate the registrar shall 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 shall make such endorsements on the bond and such entries in the registers as shall clearly indicate that the land is now owned by virtue of the certificate and is subject to such bond.

[Subsection (1) is amended by Act 43 of 1957. The amendment results in a superfluous comma after the words “by the bond” and another superfluous comma at the end of the paragraph preceding the full stop.]

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

(4) No defined portion of a piece of land shall 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) (a) Save in the case of a transfer of a whole erf, no owner of a township or settlement in whose title deed the individual erven are not separately described, shall deal separately in any way with an individual erf in such township or settlement or any portion thereof or share therein until he has obtained a certificate of registered title of such erf in the prescribed form.

(b) The provisions of this sub-section shall not apply in respect of State land.

[subsection (5) inserted by Act 43 of 1957]

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

43A. (1) In the event of land reverting to the land register in terms of the provisions of the Sectional Titles Act, 1971 (Act 66 of 1971), without revival of the developer's title deed under the said Act, the registrar shall issue a certificate of registered title in the prescribed form in respect of such land in substitution of the certificates of registered sectional title 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 shall be annexed to the certificate of registered title.

[The Sectional Titles Act 66 of 1971 has been replaced by the Sectional Titles Act 2 of 2009.]

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

[section 43A inserted by Act 26 of 1985]

Change of title by endorsement

Rectification of title by endorsement

Deeds Registries Act 47 of 1937 (SA)

44. (1) 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, 1927, the registrar may, on written application by the owner of the land accompanied by the title deed and the new or the corrected diagram thereof, any bond thereon and any registered deed of lease or other registered deed whereby any real right therein is held by any other person and the written consent of the holder of such bond, lease or right, endorse on the aforesaid deed a description of the land according to the new or corrected diagram, which description shall supersede the description already appearing in the aforesaid deeds.

[subsection (1) amended by Act 43 of 1962 and by Act 92 of 1978;
not all of the changes made by Act 92 of 1978 are indicated by amendment markings]

(2) If a new diagram is produced the registrar shall in making the said endorsement substitute the new diagram for the old one.

[subsection (2) amended Act 92 of 1978]

(3) The provisions of sub-sections (1) and (2) shall *mutatis mutandis* apply in respect of a deed of cession or certificate of rights to minerals when the surveyor-general has approved a new or corrected diagram in consequence of a surveyor re-survey of the land over which such rights operate or for the purpose of correcting any error in the diagram thereof in terms of the Land Survey Act, 1927 (Act No. 9 of 1927).

[Subsection (3) is inserted by Act 87 of 1965. The Land Survey Act 9 of 1927 has been replaced by the Land Survey Act 33 of 1993.]

Transfer or cession by means of endorsement

45. (1) If immovable property or a lease under any law or a bond is registered in a deeds registry in the name of the survivor of two spouses who were married in community of property or whose marriage is governed by the Recognition of Certain Marriages Act, 1991 (Act 18 of 1991), or the deceased spouse of such spouses, or in the name of the joint estate of such spouses, or in the name of both such spouses, and the surviving spouse has lawfully acquired the share of the deceased spouse in the property, lease, or bond, the registrar shall on written application by the executor in the estate of the deceased spouse and by the surviving spouse, save where the surviving spouse has signed as executor, accompanied by such other documents as may be prescribed, endorse on the title deeds of the property or on the deed of lease or on the bond that the surviving spouse is entitled to deal with such property, lease, or bond, and thereupon such surviving spouse shall be entitled to deal therewith as if he or she had taken formal transfer or cession into his or her own name of the share of the deceased spouse in the property, lease, or bond.

[subsection (1) amended by Act 43 of 1957, Act 43 of 1962 and Act 2 of 1996;
not all changes of punctuation made by Act 2 of 1996 are indicated by amendment markings]

(2) If the immovable property mentioned in sub-section (1) is hypothecated under a registered mortgage bond the endorsement provided for in the said sub-section shall not be made unless -

(a) such bond is cancelled; or

(a)*bis* the said property or the share of the deceased spouse therein is released from the bond; or

[paragraph (a)*bis* inserted by Act 43 of 1962]

- (b) the estate of the deceased spouse is released from liability under the bond and the survivor assumes full liability for all the indebtedness of the joint estate thereunder;; or

[Paragraph (b) is substituted by Act 43 of 1957 and amended by Act 43 of 1962. The amendment results in a superfluous semicolon at the end of paragraph (b).]

- (c) the said bond has been passed by the surviving spouse alone or by both spouses who were married in community of property or whose marriage is governed by the Recognition of Certain Marriage Act, 1991, and a written consent (which shall be in duplicate, in the prescribed form and signed by the surviving spouse and the legal holder of the bond) to the release of the estate of the deceased spouse from liability under the bond and to the substitution of the surviving spouse as sole debtor in respect thereof, is produced to the registrar together with the bond.

[paragraph (c) amended by Act 2 of 1996]

(3) The registrar shall, in any case of release and substitution in terms of paragraph (c) of sub-section (2), when he endorses on the title deeds of the property that the survivor is entitled to deal therewith -

- (a) make in the appropriate register an entry setting forth that the estate of the deceased spouse is released from liability in respect of the obligation secured by the bond and that the survivor has become sole debtor in respect of the bond;
- (b) annex one duplicate of the written consent referred to in the said paragraph to the bond and file the other with the registry duplicate of the bond; and
- (c) endorse on the bond that the estate of the deceased spouse is released from liability in respect of the obligation secured thereby and that the survivor has become sole debtor in respect of the bond.

(4) As from the date of the endorsement on the title deeds of the property in terms of subsection (1), the estate of the deceased spouse shall be absolved from any obligation secured by the bond and the surviving spouse shall become sole debtor in respect thereof in the same manner as if he or she had passed the bond at that date 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 surviving spouse.

[subsection (4) amended by Act 2 of 1996]

(5) Any reference in this section to a bond shall include a charge in favour of the Agricultural Bank of Namibia or the State.

[subsection (5) inserted by Act 43 of 1962 and amended by AG 32 of 1985 and by Act 2 of 1996]

Endorsement of deeds on divorce

[heading of section 45*bis* changed by Act 2 of 1996 without being indicated by amendment markings]

45*bis*.(1) If immovable property or a lease under any law or a bond is registered in a deeds registry in the name of one of two spouses or in the name of both such spouses who were married in community of property or whose marriage was governed by the Recognition of

Deeds Registries Act 47 of 1937 (SA)

Certain Marriages Act, 1991 (Act 18 of 1991), but who have been divorced, and the person in whose name such property, lease or bond is registered or, where such property, lease, or bond is registered in the name of both spouses, one of them has lawfully acquired the share of his or her former spouse in the property, lease, or bond, the registrar may, on written application by that person, accompanied by such documents as the registrar deems necessary, endorse on the title deeds of the property or on the lease or the bond that such person is entitled to deal with such property, lease or bond, and thereupon such person shall be entitled to deal therewith as if he or she had taken formal transfer or cession into his or her own name of the share of the former spouse or his or her spouse, as the case may be, in the property, lease, or bond.

(1A) If immovable property or a lease under an law or a bond is registered in the deeds registry in the name of both spouses who were married in community of property or whose marriage was governed by the Recognition of Certain Marriages Act, 1991, but who have been divorced, and such property, lease, or bond accrues to both the former spouses in undivided shares in terms of the division of the joint estate, the registrar may on written application by any of the spouses, accompanied by such documents as the registrar deems necessary, endorse on the title deeds of such property, or on the lease or bond or, if such deed, lease, or bond cannot be produced by such spouse due to the other spouse's refusal to produce the deed, lease, or bond in his or her possession or under his or her control, only on the registry duplicate thereof, that such spouses are entitled to deal with such property, lease, or bond, and thereupon such spouses shall be entitled to deal therewith as if they had taken formal transfer or cession into their names of their respective shares in such property, lease, or bond.

- (2) (a) If immovable property referred to in subsection (1) is hypothecated under a registered mortgage bond, the provisions of subsections (3) and (4) of section 45 shall *mutatis mutandis* apply.
- (b) If immovable property referred to in subsection (1A) is hypothecated under a registered mortgage bond, the endorsement provided for in the said subsection shall not be made unless -
- (i) such bond is cancelled; or
 - (ii) the said property or the share of the other spouse therein is released from the bond; or
 - (iii) the former spouses jointly and severally assume liability in writing (in the prescribed form and signed by both such spouses and the legal holder of the bond) for all the indebtedness and renounce the exception *de duobus vel pluribus reis debendi*.

[The entire phrase "*de duobus vel pluribus reis debendi*" should be italicised.]

(3) The reference in subsection (2) to a bond shall include a charge in favour of the Agricultural Bank of Namibia or the State.

[Section 45bis is inserted by Act 43 of 1957 and amended by Act 43 of 1962, AG 32 of 1985 and Act 2 of 1996 (which also inserts subsection (1A)).
Not all of the changes made by Act 2 of 1996 are indicated by amendment markings.]

Endorsement of deeds where a spouse is entitled in terms of section 8 of the Married Persons Equality Act, 1996, to immovable property forming part of the joint estate

45ter. Where during the subsistence of the marriage of a spouse is entitled, as a result of a settlement made to such spouse in terms of section 8 of the Married Persons Equality Act, 1996, to immovable property forming part of the joint estate, the registrar shall on the written

application of that spouse, accompanied by such documents as the registrar deems necessary and if the registrar is satisfied as to the relevant facts, endorse on the relevant title deed or, if such deed cannot be produced by such spouse due to the other spouse's refusal to produce the deed in his or her possession or under his or her control, only the registry duplicate thereof and in the relevant registers, that the spouse to whom the settlement in question was made is entitled to deal with such immovable property, and thereupon such spouse shall, subject to subsection (5) of the said section 8, be entitled to deal therewith as if he or she had taken formal transfer in his or her name of such property.

[section 45ter inserted by Act 2 of 1996 and amended by Act 22 of 1996]

CHAPTER IV

Townships and Settlements

Requirements in the case of sub-division of land into lots or erven

46. (1) If land has been sub-divided into lots or erven shown on a general plan, the owner of the land sub-divided shall furnish a copy of the general plan to the registrar, who shall, subject to compliance with the requirements of this section and of any other law, register the plan and open a register in which all registrable transactions affecting the respective lots or erven shown on the plan shall be registered.

(2) For the purposes of registration of such a general plan the title deed of the land which has been sub-divided shall be produced to the registrar together with the diagram thereof and any mortgage bond endorsed on the title deed and the mortgagee's consent to the endorsement of such bond to the effect that it attaches to the land described in the plan

[subsection (2) amended by Act 43 of 1957]

(3) 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 shall make upon the title deed and the registry duplicate thereof an endorsement indicating that the land has been laid out as a township or settlement, as the case may be, in accordance with the plan, and that the lots or erven shown on the plan are to be registered in the relative register.

[subsection (3) amended by Act 92 of 1978]

(4) If the land sub-divided as shown on the general plan forms a portion only of any registered piece of land held by the title deed the registrar shall, on written application by the owner of the land, issue a certificate of township or settlement title in his favour in respect of the said portion as nearly as practicable in the prescribed form 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. The registrar shall make on such certificate the endorsement mentioned in sub-section (3).

[subsection (5) amended by Act 43 of 1957]

(6) The provisions of section *forty-three* and of sub-sections (3) to (6) inclusive of section *forty* shall respectively and *mutatis mutandis* apply in respect of the certificates of township or settlement title mentioned in sub-section (4), and the certificates of consolidated title mentioned in sub-section (5).

[subsection (6) amended by Act 43 of 1957]

(7) Where a general plan has been registered in terms of sub-section (1), it shall not be necessary, where a whole erf is transferred, to produce a diagram thereof: Provided that where a diagram has not been produced, a reference shall be made to the general plan in the relevant deed of transfer: Provided further that the provisions of this subsection shall apply only with reference to general plans lodged for registration on or after the date of commencement of the Deeds Registries Amendment Act, 1965.

[subsection (7) inserted by Act 87 of 1965]

Special requirements in the case of subdivision into lots or erven of land in the area of Rand townships registration office

46A. (1) Notwithstanding the provisions of section 46, no general plan referred to in subsection (1) of that section in respect of land situated in the area of the Rand townships registration office shall be registered in terms of that subsection, and no register so referred to in respect of the lots or erven shown on such general plan shall be opened, unless the land subdivided forms the whole of the land held under the relevant title deed or forms a portion of land registered in the Rand townships registration office.

(2) When any such general plan is to be registered in respect of land situated in the area of the Rand townships registration office and registered in the deeds registry at Pretoria, the registrar at Pretoria shall, after the necessary examination and after having made the endorsements contemplated in section 46(3), furnish certified copies of the title deed of such land and of all other deeds and documents relating to such land and registered or recorded in his office, to the Rand townships registrar.

(3) The Rand townships registrar shall thereupon register the general plan and open the register contemplated in subsection (1) of section 46 in accordance with the requirements of that subsection and shall enter in his registers or file of record in his office, as the circumstances may require, the copies of the title deed, other deeds and documents furnished to him under subsection (2) of this section.

(4) In the application of any relevant law in relation to the land in question, a title deed, other deed or document of which a copy has in terms of this section been furnished to the Rand townships registrar and entered in his registers, shall be deemed to be registered or recorded in his office, as the circumstances may require, and any such copy shall in so far as may be necessary be deemed to be the registry duplicate of the title deed, other deed or document in question.

(5) If any land ceases to be land included in a township in the area of the Rand townships registration office, the Rand townships registrar shall furnish certified copies of the title deed of such land and of all other deeds and documents registered in his office and relating to such land and which may be necessary for the registration or recording of any further legal transactions in relation to such land in the deeds registry at Pretoria, to the registrar at Pretoria who shall, after making such endorsements as he may deem necessary on such copies, enter such copies in his registers, and thereupon the title deed, other deeds and documents shall be deemed to be registered or recorded, as the case may be, in the deeds registry at Pretoria.

[section 46A inserted by Act 61 of 1969 with effect from 1 November 1969]

Transfer of township or portion thereof

Deeds Registries Act 47 of 1937 (SA)

47. The owner of land in respect of which a register has been opened under section *forty-six* may transfer, by one deed, the whole or 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 shall be passed in accordance with a diagram (to be annexed to such deed) from which shall be excluded all erven on the land represented thereon which have already been transferred, and on which the total area of such transferred erven shall be indicated;
 - (ii) the boundaries of such portion shall coincide with one or more of the lines of division shown on the general plan and shall 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 there shall be produced to the registrar a certificate of remainder signed by the surveyor-general; and

[paragraph (b) amended by Act 43 of 1962]

- (c) the deed of transfer shall disclose that the land conveyed thereby has been laid out as a township or is a portion of land so laid out, that such land remains subject to the provisions of the law relating to townships, and, 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.

Special provisions regarding a bond over land in a Rand township and other land

48. (1) Where land situated in a township in the area of the Rand townships registration office is hypothecated together with other land not registered in that registration office, the bond shall be cancelled or that land or such other land be released from the bond before any other legal transaction in relation to that land or such other land is registered.

(2) In subsection (1) “bond” includes a charge in favour of the Land and Agricultural Bank of South Africa, the Land and Agricultural Bank of South West Africa or any Department of State.

[Subsection (2) is amended by AG 32 of 1985. Act 2 of 1996 changes other references to the “Land and Agricultural Bank of South Africa” and “the Land and Agricultural Bank of South West Africa” to the “Agricultural Bank of Namibia”, and references to “any Department of State” to “the State”.
However, this section was probably not similarly amended by Act 2 of 1996 as it has no relevance to independent Namibia.]

[section 48 substituted by Act 61 of 1969 with effect from 1 November 1969]

Special provisions regarding town ships in the Transvaal

49. (1) If any area of land in the province of the Transvaal constitutes by reason of its situation a portion of an existing township, the Administrator may, by proclamation in the official *Gazette* of that Province, extend the boundaries of that township to include such area, and thereupon such area of land shall be deemed to be and shall be registered as an erf in that township.

[Act 2 of 1996 makes a global substitution of “Minister” for “Administrator-General”, but there is no directive on changes to the word “Administrator”.]

(2) If that township is situate in the area served by the Rand townships registration office at Johannesburg, the registrar at Pretoria shall furnish the Rand townships registrar with certified copies of the title to the land to be included in such township and of all deeds affecting it, and the Rand Townships registrar shall thereupon enter the same in the appropriate registers.

(3) No township shall be established or laid out in the Transvaal or be approved by the Administrator of the Transvaal unless the land to be included in such township is wholly situated either within or outside the area of the Rand townships registration office.

[Subsection (3) is inserted by Act 61 of 1969 with effect from 1 November 1969. Act 2 of 1996 makes a global substitution of “Minister” for “Administrator-General”, but there is no directive on changes to the phrase “Administrator of the Transvaal”.]

CHAPTER V

BONDS

General Provisions

Execution of bonds

50. (1) A mortgage bond shall be executed in the presence of the registrar by the owner of the immovable property therein described or by a conveyancer duly authorized by such owner by power of attorney, and shall be attested by the registrar.

(2) A mortgage bond or notarial bond may be registered to secure an existing debt or a future debt or both existing and future debts.

(3) Mortgage bonds or notarial bonds intended to secure loans for building purposes shall be deemed to be bonds to secure existing debts.

(4) 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.

(5) 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.

[section 50 substituted by Act 87 of 1965]

Irrelevant provisions

50A. Notwithstanding the provisions of section 3(1)(b) a registrar shall not examine any provisions relating to a bond which are not relevant to the registration of the bond.

[section 50A inserted by Act 57 of 1975]

Requirements in case of bonds intended to secure future debts

51. (1) Except where passed, in Natal or the Orange Free State, on the authority of a power of attorney granted prior to the commencement of the Deeds Registries Act, 1918, or, in the Transvaal, on the authority of a power of attorney granted prior to the commencement of the

Deeds Registries Act 47 of 1937 (SA)

Registration of Deeds and Titles Act, 1909 (Act No. 25 of 1909) of the Transvaal, which power of attorney has in either case been duly registered in terms of sub-section (2) of section *fifty* of the first-mentioned Act, no mortgage bond or notarial bond attested or registered after the commencement of this Act 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.

(2) If a mortgage bond or notarial bond purports to secure payment by the mortgagor of the costs of preserving and realizing the security or of fire insurance premiums, cost of notice or bank exchange, such costs and charges shall not be deemed to be future debts within the meaning of sub-section (1).

[section 51 substituted by Act 87 of 1965]

Cession of bond to secure future advances

52. 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.

[section 53 substituted by Act 43 of 1957, amended by Act 43 of 1962 and substituted by Act 87 of 1965]

Exclusion of general clause in mortgage bonds

53. (1) Save as provided in any other law the registrar shall not attest any mortgage bond which purports to bind movable property or which contains the clause, commonly known as the general clause, purporting to bind generally all the immovable or movable property of the debtor or both and shall not register any notarial bond which purports to bind immovable property.

(2) No mortgage bond shall be passed by two or more mortgagors unless it purports to bind immovable property of each mortgagor: Provided that notwithstanding the provisions of sub-section (1) of section *fifty*, 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 thereof and such person 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.

[Subsection (2) is amended by Act 43 of 1957 to add the proviso.
The full stop before the proviso has accordingly been changed to a colon.]

No bond to be passed in favour of an agent

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

[section 54 substituted by Act 87 of 1965]

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

Deeds Registries Act 47 of 1937 (SA)

55. (1) 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 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.

(1)*bis* 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.

(2) 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.

[section 55 amended by Act 43 of 1957 and by Act 43 of 1962, and substituted by Act 87 of 1965]

Rights of Mortgagees

Transfer of hypothecated immovable property

56. (1) No transfer of mortgaged land shall be attested 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 or unless, in the case of any such mortgage bond which has been lost or destroyed, the registrar has on application by the registered holder thereof, cancelled the registry duplicate of such bond: Provided that no such cancellation or release shall be necessary if the transfer or cession is made -

[introductory phrase of subsection (1) amended by Act 26 of 1985; not all of the changes are indicated by amendment markings]

- (a) in execution of the judgment of any court (including a magistrate's court and a court of a Commissioner) by the competent officer; or

[paragraph (a) substituted by Act 87 of 1965 and amended by AG 3 of 1979]

- (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 which is unable to pay its debts and which is being wound up by or under the supervision of the court or a liquidator or trustee elected or appointed under the Agricultural Credit Act, 1966 (Act No. 28 of 1966); or

[Paragraph (b) is substituted by Act 3 of 1972. The Agricultural Credit Act 28 of 1966 was repealed by the Agricultural Bank Amendment Act 27 of 1991. The relevant law is now the Agricultural Bank of Namibia Act 5 of 2003.]

- (c) in any other circumstances in this Act or in any other law specially provided or as ordered by the court.

[subsection (1) amended by Act 43 of 1957]

(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

57. (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 mortgage bond to secure the obligations of a surety (not being a person referred to in paragraph (b) of sub-section (1) of section *fifty-six*) 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 sub-section (1) of the said section, register the transfer and substitute the transferee for the transferor as debtor in respect of the bond: Provided that there is produced to him, in duplicate, 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..

**[Subsection (1) is amended by Act 43 of 1957 and by Act 43 of 1962.
The amendments result in a superfluous full stop at the end of the subsection.]**

- (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 transferror as debtor; and

[The word “transferor” is misspelt in the *Official Gazette*, as reproduced above.]

- (c) make such consequential entries in the registry records as he deem necessary.

**[subsection (2) amended by Act 43 of 1962 and by
Act 92 of 1978, and substituted by Act 26 of 1985]**

(3) As from the date of the transfer deed the transferor shall be absolved from any obligation secured by the bond and the transferee shall be substituted for him as the debtor in respect of such bond and shall be bound by the terms thereof in the same manner as if he had himself passed the bond and had renounced therein the benefit of all relevant exceptions.

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

- (a) to a person who would not himself 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 sub-section (1) the exception *de duobus vel pluribus reis debendi*;

**[Paragraph (b) is amended by Act 26 of 1985.
It should end with a full stop after the deletion of paragraph (c).]**

- (c)

[paragraph (c) amended by Act 43 of 1957 and deleted by Act 26 of 1985]

(5) The provisions of sub-sections (1) to (4), inclusive, shall *mutatis mutandis* apply in respect of immovable property other than land which is hypothecated under a registered mortgage bond.

[subsection (5) inserted by Act 43 of 1957]

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

58. (1) Immovable property which has vested in a trustee under the law relating to insolvency and which has not in accordance with that law been re-vested in the insolvent may, 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 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 transfer thereof in such manner as may be prescribed.

(2) If under the provisions of the law relating to insolvency an insolvent has been re-vested with the ownership of any property, such property may not be transferred, mortgaged or otherwise dealt with by the insolvent until an endorsement that the property has been restored to him, has been made by the registrar on the title deed of the property.

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

(4) The provisions of this section shall apply *mutatis mutandis* in respect of -

- (a) estates administered and distributed under section 34 of the Administration of Estates Act, 1965 (Act 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, 1973 (Act 61 of 1973); and

[The Companies Act 61 of 1973 has been replaced by the Companies Act 28 of 2004.]

- (c) assets of an applicant referred to in Part III of the Agriculture Credit Act, 1966 (Act 28 of 1966), which are administered by a liquidator or trustee who has received from the Master a certificate mentioned in section 29 of the said Act.

[Section 58 is amended by Act 3 of 1972 and by Act 92 of 1978, and substituted by Act 26 of 1985. The Agricultural Credit Act 28 of 1966 was repealed by the Agricultural Bank Amendment Act 27 of 1991. The relevant law is now the Agricultural Bank of Namibia Act 5 of 2003.]

59.

[section 59 deleted by Act 26 of 1985]

Consent of bondholder to registration of merger of rights of mortgagor

60. 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

61. (1) Every notarial bond executed before or after the commencement of this Act shall be registered in a deeds registry within the period of three months after the date of its execution or within such extended period as the court may on application allow.

[subsection (1) substituted by Act 87 of 1965]

(2)

[subsection (2) deleted by Act 43 of 1957]

(3) Every notarial bond shall disclose -

- (a) the place at and the date on which it was executed, as well as the place where the notary practises; and
- (b) the place where the debtor resides and the place or places, if any, where he carries on business.

(4)

[subsection (4) deleted by Act 43 of 1957]

Where notarial bond is to be registered

62. (1) Save as provided in sub-sections (3) and (4), every notarial bond shall be registered in the deeds registry for the area in which the debtor resides and carries on business, or if he resides and carries on business in areas served by different deeds registries, in the deeds registry for the area in which he resides and in every deeds registry serving any area in which he carries on business: Provided that notarial bonds passed in Natal in pursuance of the Notarial Bonds (Natal) Act, 1932 (Act No. 18 of 1932), irrespective of whether the debtor resides or carries on business in Natal, shall be sufficiently registered for the purposes of this Act if registered in the deeds registry at Pietermaritzburg.

[Subsection (1) is amended by Act 43 of 1957 to add the proviso.
The full stop before the proviso has accordingly been changed to a colon.]

(2) Registration of a notarial bond in accordance with the provisions of sub-section (1) shall be effective as registration for the whole Republic.

[Act 2 of 1996 makes a global substitution of "Namibia" for "the Republic",
but there is no directive for changes to the phrase "the whole Republic".]

(3) Registration of a notarial bond in the deeds registry for any area in which the debtor resides or carries on business shall be effective for such area.

(4) Registration of a notarial bond executed by a company incorporated with limited liability shall, if the bond is registered in the deeds registry for the area in which the registered office of the company is situated at the date of the registration of such bond, be effective as registration for the whole of Namibia.

(5) A notarial bond which is required to be registered in more than one deeds registry shall be registered in the first registry within the period prescribed by sub-section (1) of section *sixty-one*, in the second registry within an additional period of one month and in each successive registry within a further period of one month.

(6) For the purpose of registration in the other registries it shall be sufficient if the original bond registered in the first registry is produced together with a further duplicate or grosse or a copy thereof certified by a notary public for filing in the registry concerned: Provided that in the event of simultaneous registration in more than one deeds registry being necessary, the registrars in respect of the other registries may each accept one duplicate or grosse or a copy thereof certified by a notary, for registration and for filing as the registry duplicate and on production of the original bond registered in the first registry, shall endorse thereon the facts of registration in such other registries, and similarly record on the registry duplicate facts of registration in other registries.

[Subsection (6) is amended by Act 43 of 1962. This amendment adds a proviso, so the full stop before the inserted proviso has accordingly been changed to a colon.]

[Section 62 is substituted by Act 15 of 1953, with the substitution deemed to have come into force on 1 September 1937 (section 2(2) of Act 15 of 1953).]

CHAPTER VI

RIGHTS IN IMMOVABLE PROPERTY

General Provisions

Restriction on registration of rights in immovable property

63. (1) No deed, or condition in a deed, purporting to create or embodying any personal right, and no condition which does not restrict the exercise of any right of ownership in respect of immovable property, shall be capable of registration: Provided that a deed containing such a condition as aforesaid may be registered if, in the opinion of the registrar, such condition is complementary or otherwise ancillary to a registrable condition or right contained or conferred in such deed.

(2) The provisions of subsection (1) shall not apply with reference to any condition in a mortgage bond or lease or in a deed referred to in section 3(1)(c), (l), (m), (p) or (q).

[section 63 amended by Act 43 of 1962 and substituted by Act 62 of 1973]

Certificates of registered real rights

64. (1) Any person who either before or after the commencement of this Act has transferred land subject to the reservation of any real right in his favour (other than a right to minerals) may on application in writing to the registrar accompanied by the title deed of the land obtain a certificate of registration of that real right as nearly as practicable in the prescribed form.

(2) Such person shall not separately mortgage or otherwise deal with such right or transfer a share thereof (if transferable) unless he has obtained such certificate in the manner aforesaid.

(2)*bis* Any person who transfers land or on whose land a township or settlement is established subject to a reservation in his favour of the right to receive the claim and stand licence moneys or rents, or any part thereof, accruing under any law relating to mining to the owner of such land, shall simultaneously with the passing of transfer or the opening in the deeds registry of a register in respect of such township or settlement, as the case may be, take out in the prescribed form a certificate of registered real rights in respect of the right so reserved; where the register has been opened, such certificate may be taken out in respect of the remainder of the township or settlement upon a certificate from the Surveyor-General as to the remainder.

[subsection (2)*bis* inserted by Act 87 of 1965]

(3) The provisions of sub-sections (2) to (4) inclusive of section *thirty-seven* shall *mutatis mutandis* apply in respect of such certificate.

Personal Servitudes

Registration of notarial deed creating personal servitude

65. (1) Save as provided in any other law, a personal servitude may be created by means of a deed executed by the owner of the land encumbered thereby and the person in whose favour it is created, and attested by a notary public: Provided that in the case of a servitude in favour of the public or of all or some of the owners or occupiers of erven or lots in a township or settlement, the registrar may, if in his opinion it is impracticable to require such deed to be executed by the persons in whose favour the servitude is created, register such deed notwithstanding the fact that it has not been executed by such persons: Provided further that where it is desired to register a road or thoroughfare in favour of the public at the same time as the registration of a subdivision which it serves, it shall in like manner and without the registration of a notarial deed be permissible to register it in the deed relating to the subdivision and also to endorse the deed of the remainder accordingly: Provided further that conditions which restrict the exercise of any right of ownership in immovable property may be included in any deed of transfer of such immovable property tendered for registration if such conditions are capable of being enforced by some person who is mentioned in, or, if not mentioned therein, is ascertainable from the said deed of transfer or from other evidence and such person, if determinable, has signified acceptance of such right.

[subsection (1) amended by Act 43 of 1957 and by Act 43 of 1962]

(2) Such deed shall contain a sufficient description of the land encumbered by the servitude and shall mention the title deed of such land.

(3) If the land to be encumbered by a personal servitude is mortgaged or subject to any other real right with which the said personal servitude may conflict, the bond or other registered deed by which such right is held shall be produced to the registrar together with a consent in writing of the legal holder of such bond or other right to the registration of the said personal servitude and, in the case of a bond, free from the bond.

[subsection (3) substituted by Act 43 of 1957 and by Act 26 of 1985]

Restriction on registration of personal servitudes

66. No personal servitude of *usufruct*, *usus* or *habitatio* purporting to extend beyond the lifetime of the person in whose favour it is created shall be registered, nor may a transfer or cession of such personal servitude to any person other than the owner of the land encumbered thereby, be registered.

Reservation of personal servitudes

67. A personal servitude may be reserved by condition in a deed of transfer of land, if the reservation is in favour of the transferor, or in favour of the transferor and his spouse or the survivor of them, if they are married in community of property, or in favour of the surviving spouse if transfer is passed from the joint estate of spouses who were married in community of property.

Registration of lapse of personal servitude

68. (1) If for any reason a personal servitude has lapsed, the registrar shall, on written application by or on behalf of the owner of the land encumbered thereby, accompanied by proof of the lapse of the servitude, the title deed of the land and, if available, the title deed, if any, of the servitude (which title deed the holder of the servitude shall on demand hand over to the owner of such land) note on the title deed of the land and of the servitude, if the title deed of the servitude has been produced, that the servitude has lapsed.

(2) Cancellation of the registration of a personal servitude in pursuance of an agreement between the owner of the land encumbered and the holder of the servitude shall be effected by notarial deed: Provided that no such deed shall be registered if the servitude is mortgaged, unless the mortgagee consents in writing to the cancellation of the bond or the release of the servitude from its operation.

Transfer and mortgage of land with personal servitude thereon

69. (1) If the owner of land subject to a personal servitude and the holder of that servitude have disposed of the land or any portion thereof together with the rights of servitude to another person, they may together give transfer thereof to the person acquiring it.

(2) The transfer deed shall describe the transferors as the owner of the land and holder of the servitude respectively, but no mention of the servitude shall be made in the description of the land therein.

(3) The owner of land subject to a personal servitude and the holder of that servitude may together mortgage the land to the full extent of their respective rights therein.

(4) The owner of the land and the holder of the servitude may either of them as principal debtor mortgage the land or the servitude respectively and the other of them may in the same bond mortgage the servitude or the land as surety.

Joint transactions by fiduciary and fideicommissary

69bis. (1) If the owner of land subject to a *fideicommissum* and the fideicommissary, if the latter is competent so to do, have disposed of the land or any portion thereof, together with the fideicommissary rights, to any other person, they may together give transfer thereof to that person.

(2) The transfer deed shall describe the transferors as the owner of the land and the holder of the fideicommissary right respectively, but no mention of the fideicommissary right shall be made in the description of the land therein.

(3) The owner of land subject to a *fideicommissum* and the fideicommissary, if the latter is competent so to do, may together mortgage the land to the full extent of their respective rights therein.

[section 69*bis* inserted by Act 43 of 1957]

Rights to Minerals

[This part of the Act, comprising sections 70-74*bis*, was not made applicable to South West Africa.]

Praedial Servitudes

Creation of praedial servitude by notarial deed

75. (1) A praedial servitude in perpetuity or for a limited period may be created by means of a deed executed by the owners of the dominant and servient tenements and attested by a notary public.

[subsection (1) amended by Act 43 of 1957]

(2) If the servient tenement is mortgaged or subject to any other real right with which the servitude may conflict the bond or other registered deed by which such right is held shall be produced together with the consent in writing of the legal holder thereof to the registration of the servitude.

(2)*bis* If it is sought to cancel a servitude, and the dominant tenement is mortgaged, the bond shall be produced together with the consent in writing of the legal holder thereof to the registration of the cancellation.

[subsection (2)*bis* amended by Act 43 of 1957]

(3) The provisions of sub-sections (2) and (3) of section *sixty-five* shall *mutatis mutandis* apply in respect of praedial servitudes.

Conditions of registration of praedial servitudes

76. (1) A praedial servitude in perpetuity or for a limited period may be created in a transfer of land only if the servitude is imposed on the land transferred in favour of other land registered in the name of the transferor, or is imposed in favour of the land transferred on other land registered in the name of the transferor: Provided that if -

- (a) the land to be transferred is admitted by the person seeking to pass transfer thereof to be subject to unregistered rights of servitude in favour of land registered in a third person's name; and
- (b) the person to whom the transfer is to be passed consents in writing to such servitude being embodied in the transfer; and

[paragraph (b) substituted by Act 87 of 1965]

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- (c) such third person appears either in person or by duly authorized agent before the registrar at the time of execution of the transfer and accepts the servitude in favour of his land,

the servitude may be embodied in such transfer. The appearance of such third person as aforesaid and his acceptance of the servitude shall be recited in the deed of transfer and the title deed of the dominant tenement shall be produced for endorsement thereon of the terms of the servitude.

[subsection (1) amended by Act 43 of 1957]

(1)*bis* If a praedial servitude for a limited period has lapsed, the registrar shall on written application by or on behalf of any owner of the land affected thereby, and on production of the title deeds of the dominant and servient properties, and the title deed, if any, of the servitude (which title deeds the holder of the servitude and the owners of the dominant and servient tenements shall on demand produce), note on the title deeds of the land and the servitude that the servitude has lapsed.

[subsection (1)*bis* inserted by Act 43 of 1962]

(2) If the servitude is imposed on other land in favour of the land to be transferred, and that other land is mortgaged or is subject to any other registered real right with which the servitude may conflict, the consent in writing of the legal holder of the bond or of such other right, to the registration of the servitude shall be produced, together with the bond or other deed evidencing such other right and the title deed of the servient tenement.

(3) In registering the deed of transfer in which the servitude is embodied the registrar shall endorse the terms of the servitude and the number and date of the transfer on the title deed of the other tenement and if a bond or other deed is produced, as aforesaid, also thereon.

(4) In the sub-division of land which is entitled to a servitude over other land, it shall be competent for the owner when transferring such sub-division to stipulate in his power of attorney that the exercise of the rights is restricted to the land still held by him, and in that event the transfer of the portion in question shall make no reference to the servitude, nor shall it be necessary to record on the title of the servient tenement that the rights are so restricted.

[subsection (4) inserted by Act 43 of 1957]

- (5)

[subsection (5) inserted by Act 43 of 1957, substituted by Act 43 of 1962 and deleted by Act 87 of 1965]

Leases

Registration of leases and subleases

77. (1) Save where provision to the contrary is made in any law, any lease or sub-lease of land or of any rights to minerals in land and any cession of such a lease or sub-lease intended or required to be registered in a deeds registry, shall be executed by the lessor and the lessee or by the lessee and the sub-lessee or by the cedent and the cessionary, as the case may be, and shall be attested by a notary public: Provided that any such lease shall be registered for the full term thereof, including periods of renewal.

[Subsection (1) is amended by Act 43 of 1962 to add the proviso. The full stop before the proviso has accordingly been changed to a colon.]

(1)*bis* Whenever a cession of a lease is to be registered in respect of any portion of the land leased, a notarial copy of the lease shall be attached to such cession and after registration such cession with the notarially certified copy of the lease annexed thereto shall be deemed to be the title to the portion of the lease so ceded, and for any subsequent registration in respect thereof it shall be part of the title.

[subsection (1)*bis* inserted by Act 87 of 1965]

(2) If the land or right leased or sub-leased is mortgaged or subject to rights of any other person it shall not be necessary for purposes of registration of the lease or sub-lease or any cession thereof to produce the bond or the other deed whereby such rights are held or the consent of the legal holder thereof.

Termination of registered lease

78. (1) When a registered lease or sub-lease has terminated the registrar shall on written application by the owner of the land affected thereby, or the holder of the lease, as the case may be, accompanied by proof of the termination of the lease or sub-lease and, in the case of the termination of the lease, by the title deed of the land and if available the deed of lease, or in the case of the termination of the sub-lease, by the deed of lease and if available the deed of sub-lease, note in the case of the termination of the lease, on the title deed of the land and on the deed of lease, if produced, or in the case of the termination of the sub-lease, upon the deed of lease and upon the deed of sub-lease, if produced, that the lease or sub-lease as the case may be, has terminated.

(2) If the full term, including periods of renewal, of a registered lease or sub-lease has expired no further transactions affecting that lease or sub-lease shall be registered.

Where lease to be registered

79. Save where provision to the contrary is made in any law, any lease of immovable property which is registered in the name of the lessor in a deeds registry may be registered in that registry and any sub-lease of any lease so registered may be registered in that registry.

Cessions of leases and sub-leases

80. No cession of a lease or sub-lease shall be registered in any deeds registry unless the lease or sub-lease has been registered therein.

Hypothecation of leases and sub-leases

81. No hypothecation of a lease or sub-lease shall be registered in any deeds registry unless such hypothecation is effected by means of -

- (a) a mortgage bond, if the lease or sub-lease is immovable property; or
- (b) a notarial bond, if the lease or sub-lease is not immovable property.

Notarial bonds hypothecating leases or sub-leases

82. (1) For the registration of a notarial bond specially hypothecating a registered lease or sub-lease the deed of lease or sub-lease shall be produced to the registrar.

[subsection (1) amended by Act 43 of 1962]

(2) In registering such bond the registrar shall endorse on the deed that the lease or sub-lease has been hypothecated by the bond.

(3) The provisions of sub-section (1) of section *fifty-six* shall *mutatis mutandis* apply in respect of any lease or sub-lease so hypothecated.

Hypothecation of land settlement lease after exercise of option to purchase

83. (1) If in any lease entered into under any law relating to land settlement the lessee is given the option to purchase the property leased or any portion thereof, and he has exercised the option, the rights to the property so acquired by the lessee may, if the lease is registered in a deeds registry and is not subject to an existing bond, be hypothecated by a notarial bond.

(2) The provisions of section *eighty-two* shall *mutatis mutandis* apply in respect of the registration of such a bond.

(3) If such lease is subject to an existing bond at the date of the exercise of the option the rights acquired by the exercise of such option shall be subject to such bond.

Prospecting Contracts

[This part of the Act, comprising sections 84-85, was not made applicable to South West Africa.]

CHAPTER VII

ANTENUPTIAL CONTRACTS

Antenuptial contracts to be registered

86. An antenuptial contract executed before and not registered at the commencement of this Act or executed after the commencement of this Act, shall be registered in the manner and within the time mentioned in section *eighty-seven*, and unless so registered shall be of no force or effect as against any person who is not a party thereto.

Manner and time of registration of antenuptial contracts

87. (1) An antenuptial contract executed in Namibia shall be attested by a notary and shall be registered in a deeds registry within three months after the date of its execution or within such extended period as the court may on application allow.

(2) An antenuptial contract executed outside Namibia shall be attested by a notary or otherwise be entered into in accordance with the law of the place of its execution, and shall be registered in a deeds registry within six months after the date of its execution or within such extended period as the court may on application allow.

(3) Registration of an antenuptial contract in any one deeds registry in the manner prescribed in this section shall be effective as registration for the whole Republic: Provided that if any transaction in connection with which evidence of such contract is necessary takes place in a deeds registry other than that in which such contract has been registered, a copy of such

contract certified by the registrar of the place of registration or a notary public shall be recorded and filed in such first-mentioned deeds registry.

[Act 2 of 1996 makes a global substitution of “Namibia” for “the Republic”, but there is no directive for changes to the phrase “the whole Republic”.]

(4)

[subsection (4) deleted by Act 3 of 1972]

[section 87 amended by Act 15 of 1953 and by Act 43 of 1957, and substituted by Act 87 of 1965]

Postnuptial execution of antenuptial agreement

88. Notwithstanding the provisions of sections *eighty-six* and *eighty-seven* the court may, subject to such conditions as it may deem desirable, authorize postnuptial execution of a notarial contract having the effect of an antenuptial contract, if the terms thereof were agreed upon between the intended spouses before the marriage, and may order the registration, within a specified period, of any contract so executed.

89.

[section 89 deleted by Act 50 of 1956]

CHAPTER VIII

MISCELLANEOUS

Cancellation of registration on lapse of certain registered rights

- 90.** (1) If it is expressly provided in -
- (a) a registered lease of land or rights to minerals; or
 - (b) a registered deed creating or evidencing a servitude; or
 - (c) a registered prospecting contract,

that it shall lapse upon failure to make regularly any periodical payments mentioned therein, the registrar shall upon written application accompanied by an affidavit by the lessor or grantor of the registered right (as the case may be) that the said periodical payments have not been duly made, cancel the registration of the lease, servitude or contract: Provided that -

- (i) if the address of the lessee or grantee is stated in the registered document, or the address or any change thereof has been notified to the registrar, notice shall be given to such lessee or grantee by the applicant by prepaid registered letter that cancellation of the registration of the document is sought on the ground of failure to make the periodical payments mentioned therein, and that unless written objection to the cancellation specifying the grounds of objection is lodged with the registrar within one month, if the address is in Namibia, or within three months or such further period as the registrar may in special circumstances determine, if the address is outside Namibia, application will be made to the registrar for cancellation of the registration of the said document;

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- (ii) if the address of the lessee or grantee is not stated in the document or has not been notified to the registrar as aforesaid, the applicant shall publish the notice aforesaid once in the *Gazette* and twice in a newspaper published in the division or district in which the land in question is situated (or if there be no such newspaper then in any newspaper circulating in such division or district) and in a newspaper (to be indicated by the registrar) circulating in the division or district of the lessee's or grantee's last-known address, which shall be disclosed by the applicant in an affidavit;
 - (iii) if any objection is lodged which, in the registrar's opinion, discloses reasonable ground for refusing cancellation of the registration, he shall not cancel it until the objection is withdrawn or falls away or cancellation is ordered by the court;
 - (iv) if any of the rights to be cancelled are mortgaged, notice in writing shall be given by the applicant by prepaid registered letter to the mortgagee of the intention to cancel such rights, before the cancellation is effected.
- (2) For the purposes of this section the lessor or grantor means -
- (a) in the case of a registered lease of land or a registered deed of servitude, the person who from the records in the deeds registry appears to be the owner of the land concerned; and
 - (b) in the case of a registered lease of rights to minerals or a registered prospecting contract, the person who from the records in the deeds registry appears to be the holder of the rights to minerals referred to in such lease or prospecting contract.

Transfer and cession not to be passed as security

91. No transfer of land and no cession of any registered lease or sub-lease or other real right in land except a mortgage made as security for a debt or other obligation shall be attested by any registrar or registered in any deeds registry.

[section 91 amended by Act 80 of 1964, with the amendment deemed to have come into effect on 1 September 1937]

Taxes and transfer duty to be paid before transfer of land

92. (1) No deed of grant or transfer of land shall be registered unless accompanied by a receipt or certificate of a competent public revenue officer that the taxes, duties, fees and quitrent (if any) payable to the Government or any provincial administration on the property to be granted or transferred have been paid.

(2) If land or any real right in land has been settled upon or donated to an intended spouse in terms of an antenuptial contract, no transfer or cession of such land or right by the donor to any person other than the donee and no mortgage thereof by the donor shall be executed, attested or registered by the registrar unless the transfer duty (if any) payable on the settlement or donation has been paid.

Registration of change of name

93. (1) If any person or partnership whose name appears in any registered deed or other document has changed his or its name, the registrar shall, upon written application by that person or partnership accompanied by proof of the change of name, and if he is satisfied that no

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change of legal personality is implied in such change of name, endorse on the said deed or other document that the name of the person or partnership has been changed to the name stated in the application: Provided that -

- (a) if it appears from such deed or other document that any other person is affected by such change of name, such other person shall consent in writing to the aforesaid endorsement;
- (b) the application shall be accompanied by any other operative deed registered in the registry in which the applicant's old name appears as a party thereto other than as transferor or cedent; and
- (c) a woman who assumes her husband's surname or resumes her former surname shall not be obliged to record such assumption or resumption of surname against any registered deed or other document to enable her to deal with land or a real right in land held by her under such deed or other document.

[Subsection (1) is amended by Act 43 of 1962 and substituted by Act 26 of 1985, which provides the following transitional provision in section 12(2):

"The provisions of subsection (1) of section 93 of the principal Act [Act 47 of 1937] as they existed prior to the substitution of that subsection by subsection (1) of this section [referring to the substitution of subsection (1) by Act 26 of 1983], shall, notwithstanding such substitution, continue to apply in respect of any application for registration of a change of name referred to in that subsection and which has been lodged with the registrar of deeds before the coming into operation of this section [on 1 June 1984]."

(2) No change in the name of any immovable property shall be recorded in a deeds registry except if required by the registrar and the Surveyor-General in order to record a new designation as a result of the introduction of a system of land numbering where no such system previously existed.

[subsection (2) amended by Act 43 of 1957]

94.

[section 94 deleted by Act 2 of 1996]

Attestation of powers of attorney executed in Namibia

95. (1) Any power of attorney executed within Namibia shall, if it purports to give authority to pass, cede, amend or cancel a deed capable of being registered or to perform any act proper to be performed in a deeds registry, be attested either by two witnesses above the age of fourteen years, competent to give evidence in any court of law in Namibia, or by a magistrate, justice of the peace, commissioner of oaths or notary public, duly described as such: Provided that no person shall be competent to attest any power of attorney under which he is appointed as an agent or derives any benefit.

(2)

[subsection (2) deleted by Act 16 of 1967]

Execution of deeds by prospective owners

96. If any deed or document required to be executed by the owner of immovable property has been executed by a person who has acquired the right to receive transfer or cession of such property, such deed or document shall, upon the person aforesaid receiving transfer or

cession of such property, for the purposes of this Act be deemed to have been executed by the owner of such property.

Notice to registrar of application to court

97. (1) Before any application is made to the court for authority or an order involving the performance of any act in a deeds registry, the applicant shall give the registrar concerned at least seven days' notice before the hearing of such application and such registrar may submit to the court such report thereon as he may deem desirable to make.

(2) Subject to notice in terms of sub-section (1) being given to the registrar concerned, any order made by a court having jurisdiction over a person in respect of that person's property or rights to property situate in another province shall be given effect to by the registrar of such other province without the necessity of having such order confirmed by the court of the province in which the property is situate.

[section 97 amended by Act 43 of 1957]

Substituted copy of lost deed supersedes original which must be surrendered on recovery

98. (1) If a copy of a registered deed or other document has been issued, in manner prescribed by regulation, in substitution of a deed or other document which has been lost or is believed to have been destroyed, the original deed or other document, if still in existence, shall thereupon become void.

(2) If a deed or other document which has become void as aforesaid, comes into the possession or custody of any person who knows that a copy has been issued in substitution thereof, he shall forthwith deliver or transmit such deed or other document to the registrar concerned.

Exemption from liability for acts or omissions in deeds registry

99. No act or omission of any registrar or of any officer employed in a deeds registry shall render the Government or such registrar or officer liable for damage sustained by any person in consequence of such act or omission: Provided that, if such act or omission is *mala fide* or if such registrar or officer has not exercised reasonable care and diligence in carrying out his duties in connection with such act or omission, the Government shall be liable for the damage aforesaid: Provided further that the registrar or officer guilty of such act or omission shall be liable to make good any loss or damage resulting therefrom to the Government if such act or omission was *mala fide*.

[Prior to Namibian independence, the reference to the Government of the Republic in section 99 was to be construed as *including* a reference to the Administrator-General.]

Formal defects

100. No act in connection with any registration in a deeds registry shall be invalidated by any formal defect, whether such defect occurs in any deed passed or registered, or in any document upon the authority of which any such deed has been passed or registered or which is required to be produced in connection with the passing or registration of such deed, unless a substantial injustice has by such act been done which in the opinion of the court cannot be remedied by any order of the court.

Special provisions relating to Vryburg deeds registry

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101. (1) The practice prevailing prior to the commencement of the Deeds Registries Act, 1918, in the deeds registry at Vryburg of transferring or mortgaging land held under a certificate of ownership issued by the administrator of the territory known as British Bechuanaland prior to its annexation to the Colony of the Cape of Good Hope, and which was declared by that Act to be legal and of effect, shall continue to be legal and of effect. Provided that -

[Act 2 of 1996 makes global substitutions of “Minister” for “Administrator-General” and “Namibia” for “the Territory”, but there is no directive on changes to the phrase “administrator of the territory”.]

- (a) the provisions of this Act shall apply in respect of any transfer, partition transfer, certificate of title, mortgage or other deed sought to be registered in respect of any land so held;
- (b) no transfer of or other form of title to or mortgage of any defined portion of a piece of land so held shall be registered unless the surveyor-general concerned has certified that the boundaries of such piece of land are correctly represented on the diagram thereof;
- (c) if the surveyor-general is unable to certify as aforesaid the provisions of sections *forty*, *forty-one* and *forty-four* shall *mutatis mutandis* apply, notwithstanding anything to the contrary in any other law contained.

(2) The provisional registration in the deeds registry at Vryburg of any cession or assignment of rights to unascertained or unsurveyed land, prescribed by Government Notice (British Bechuanaland) of the thirteenth day of November, 1886, shall continue to be of force in respect of land to which a right of ownership was acquired prior to the annexation of British Bechuanaland to the Colony of the Cape of Good Hope, until such time as a grant of such land has been registered.

Definitions

102. In this Act unless inconsistent with the context -

“conveyancer” means, in respect of any deeds registry, a person practising as such in the province within which that deeds registry is situate and includes every person who at the commencement of the Deeds Registries Act, 1918 (Act No. 13 of 1918), or the Deeds Registries Proclamation, 1920 (Proclamation No. 8 of 1920), of Namibia, was authorized by law to prepare deeds of transfer and mortgage bonds within such province;

[definition of “conveyancer” substituted by Act 3 of 1972]

“court” or “the court” means the provincial or local division of the Supreme Court having jurisdiction or any judge thereof;

“deeds registry” means -

- (a) when used in relation to immovable property, the deeds registry which serves the area in which that property is situate;
- (b) when used in relation to any deed or other document, any deeds registry in Namibia wherein that deed or other document is registered or registrable;
- (c) when used in relation to a registrar, the deeds registry of which he is in charge,

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but does not include the mining titles office referred to in section *three* of the Registration of Deeds and Titles Act, 1909 (Act No. 25 of 1909) of the Transvaal;

“diagram” means a diagram which has been signed by a person recognized by law as a land surveyor, and which has been approved or certified by a surveyor-general or other officer empowered under any law so to approve or certify a diagram and includes a diagram or a copy thereof prepared in a surveyor-general’s office and approved or certified as aforesaid, or a diagram which has at any time prior to the commencement of this Act been accepted for registration in a deeds registry or surveyor-general’s office;

“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 recognized, approved or proclaimed as such;

“general plan” means a plan which represents the relative positions and dimensions of two or more pieces of land and has been signed by a person recognized by law as a land surveyor, and which has been approved or certified as a general plan by a surveyor-general or other officer empowered under any law so to approve or certify a general plan, and includes a general plan or copy thereof prepared in a surveyor-general’s office and approved or certified as aforesaid, or a general plan which has at any time, prior to the commencement of this Act, been accepted for registration in a deeds registry or surveyor-general’s office;

“Government” includes the Administration of Namibia;

[The definition of “Government” is inserted by Act 3 of 1972, to state “Government” includes the administration of the Territory”. Act 2 of 1996 makes a global substitution of “Namibia” for “the Territory”, but the resulting definition of “Government” is inappropriate for independent Namibia since the Government of Namibia is now the sole Government authority referenced in the Act.]

“immovable property” includes -

- (a) any registered lease of rights to minerals; and
- (b) any registered lease of land which, when entered into, was for a period of not less than ten years or for the natural life of the lessee or any other person mentioned in the lease, or which is renewable from time to time at the will of the lessee indefinitely or for periods which together with the first period amount in all to not less than ten years;

“land” includes a share in land;

[definition of “land” amended by Act 26 of 1985]

“Master” means the Master or Assistant Master of any provincial or local division of the Supreme Court and when used in relation to any particular matter means the Master or Assistant Master who has jurisdiction in respect thereof;

“Minister” means the Minister of Lands, Resettlement and Rehabilitation;

[definition of “Minister” substituted by Act 3 of 1972 and by Act 2 of 1996]

“mortgage bond” means a bond attested by the specially hypothecating immovable property;

“notarial bond” means a bond attested by a notary public hypothecating movable property generally or specially;

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“notarial deed” means a deed attested by a notary public, and does not include a document a signature to which 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, in relation to any deed or other document creating or conveying real rights in land, a person practising as such in the province within which the land is registered; in relation to any other document executed within Namibia, a person practising as such in any province; and in relation to any document executed outside Namibia, a person practising as such in the place where the document is executed;

“owner” means, in relation to -

- (a) immovable property, real rights in immovable property and notarial bonds, subject to paragraph (b), the person registered as the owner or holder thereof and includes the trustee in an insolvent estate, the liquidator of a company or a close corporation which is an owner or a holder and the representative recognized by law of any owner or holder who has died or who is a minor or of unsound mind or is otherwise under disability, provided such trustee, liquidator, or legal representative is acting within the authority conferred on him or her by law;
- (b) immovable property, real rights in immovable property and notarial bonds -
 - (i) which are registered under section 17 in the name of both spouses, either one of the spouses acting with the consent of the other spouse; and
 - (ii) which are registered in the name of only one spouse and which form part of the joint estate of both spouses, either one of the spouses acting with the written consent of the other spouse;

[definition of “owner” substituted by Act 3 of 1972 and by Act 2 of 1996]

“prescribed” means proscribed by this Act or any regulation;

“prospecting contract” means a notarial deed whereby the owner of land from which the right to minerals has not been excluded, or the registered holder of the right to minerals in land, grants the right to prospect and seek for any mineral or minerals in the land, together with -

- (a) the right to purchase the land or any portion thereof or to purchase the right to any such mineral or minerals; or
- (b) the right to lease any right to any such mineral or minerals;

“province” includes Namibia;

[The definition of “province” is inserted by Act 3 of 1972, to state “‘province’ includes the Territory”. Act 2 of 1996 makes a global substitution of “Namibia” for “the Territory”, but the resulting definition is inappropriate for independent Namibia.]

“provincial administration” includes the Administration of Namibia;

[The definition of “provincial administration” is inserted by Act 3 of 1972, to state “‘provincial administration’ includes the Administration of the Territory”. Act 2 of 1996 makes a global substitution of “Namibia” for “the Territory”, but the resulting definition is inappropriate for independent Namibia.]

“real right” includes any right which becomes a real right upon registration;

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“registered” means registered in a deeds registry;

“registrar” means a registrar of deeds appointed under this Act, and, when used in relation to any deeds registry means the registrar in charge of that deeds registry; and when used in relation to a document means the registrar in charge of the deeds registry wherein that document is registered or registrable or intended to be used or filed;

“registry duplicate” means the counterpart or copy of a deed consisting of more than one copy which is filed or intended to be filed of record in a deeds registry;

“regulation” means a regulation made under section *ten*;

“Republic” includes Namibia;

[The definition of “Republic” is inserted by Act 3 of 1972, to state “‘Republic’ includes the Territory”. Act 2 of 1996 makes a global substitution of “Namibia” for “the Territory”, but the resulting definition makes no sense in independent Namibia. This definition should probably have been deleted since Act 2 of 1996 has substituted “Namibia” for “the Republic” throughout the Act. However, two references to “the whole Republic” remain in the Act.]

“share” in relation to land and rights to minerals means an undivided share;

[definition of “share” amended by Act 26 of 1985]

“settlement” means a group of pieces of land or of sub-divisions of a piece of land which are used or intended for use mainly for farming or horticulture, and includes a combination of such groups which is suitable for registration in one register;

“State” includes the Government of Namibia, the Minister or a representative authority contemplated in the Representative Authorities Proclamation, 1980 (Proclamation AG. 8 of 1980);

[The definition of “State” is inserted by Act 3 of 1972 and substituted by AG 32 of 1985, to read as follows: “‘State’ includes the Government of the territory, the Administrator-General or a representative authority contemplated in the Representative Authorities Proclamation, 1980 (Proclamation AG. 8 of 1980);”. Act 2 of 1996 makes global substitutions of “Namibia” for “the Territory” and “Minister” for “Administrator-General”, but the resulting definition is inaccurate since the Minister responsible for the administration of the Act is part of the Government of Namibia. AG 8 of 1980 was repealed by the Namibian Constitution.]

“Territory” means Namibia;

[The definition of “Territory” is inserted by Act 3 of 1972 to state “‘Territory’ means the territory of South-West Africa”. Act 2 of 1996 makes a global substitution of “Namibia” for “the Territory of South-West Africa”, but the resulting definition makes no sense. This definition should probably have been deleted.]

“the commencement of this Act” means, in relation to Namibia and the deeds registry, and any person holding the office of registrar or assistant registrar of deeds, at Windhoek, the commencement of the Deeds Registries Amendment Act, 1972;

[The definition of “the commencement of this Act” is inserted by Act 3 of 1972. The date of commencement referred to is 1 June 1972.]

“this Act” includes the regulations made under section *ten*;

“township” includes -

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- (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 recognized 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 under any law.

(2) Any reference in this Act to any provision of the Administration of Estates Act, 1965 (Act No. 66 of 1965), shall, in the application of this Act in Namibia, be construed as a reference to the corresponding provision of the laws relating to estates which may be in force in Namibia from time to time.

[subsection (2) inserted by Act 3 of 1972]

Application of this Act to Namibia

102A. This Act and any amendment thereof, save sections 70 to 74*bis*, inclusive, and sections 84 and 85, shall apply also in Namibia, including the Eastern Caprivi Zipfel, but excluding the Rehoboth Gebiet as described in section 6 of the Rehoboth Self-Government Act, 1976.

[Section 102A is inserted by Act 3 of 1972 and substituted by Act 93 of 1976. An obvious error in the numbering of the substituted section (numbered in Act 93 of 1976 as “58” instead of “102A”) has been corrected here.]

Repeal of laws

103. (1) The laws specified in the First Schedule to this Act are hereby repealed to the extent set out in the fourth column of that Schedule.

- (2) The State President may, by proclamation in the *Gazette*, repeal any provision -
 - (a) of Proclamation No. 35 of 1902, Ordinance No. 6 of 1902 or Ordinance No. 6 of 1903 of the Transvaal or of any regulation made thereunder, which is, by virtue of section *one* of Act No. 29 of 1908 of the Transvaal, still in force; or
 - (b) of Law No. 15 of 1898 of the Transvaal which is, by virtue of sub-section (1) of section *three* of Act No. 34 of 1908 of the Transvaal, still in force.

[Subsection (2) was excluded from the operation of section 3(1) of the Executive Powers Transfer (General Provisions) Proclamation, AG 7 of 1977, meaning that the powers of the South African State President in terms of this subsection were not transferred to South West Africa prior to Namibian independence. The subsection has no relevance in independent Namibia.]

[Section 16 of Act 3 of 1972 repeals some additional laws in respect of South West Africa:

“Repeal of laws and savings

- (1) Subject to the provisions of subsection (2), the laws of the territory of South-West Africa mentioned in the Schedule, are hereby repealed to the extent set out in the third column of the Schedule.
- (2) The provisions of this Act -

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- (a) shall not apply to the registration in the Mining Titles Office at Windhoek of documents relating to rights granted or acquired under the Mines, Works and Minerals Ordinance, 1968 (Ordinance No. 20 of 1968), of the territory of South-West Africa, or any other law relating to mines or minerals and for the registration of which in the deeds registry mentioned in section 1 of the Deeds Registry Proclamation, 1939 (Proclamation No. 37 of 1939), of that Territory or in the said Mining Titles Office provision is made in that Proclamation or in the State President's Mining Titles Registration Proclamation, 1969 (Proclamation No. R.90 of 1969) or in any other law;
- (b) shall not affect any power, function or duty of the Registrar of Mining Titles appointed in terms of the said Mining Titles Registration Proclamation, 1969, and the provisions of the said Mining Titles Registration Proclamation, 1969, shall be administered as if this Act had not been enacted.
- (3) This section shall also apply in the Eastern Caprivi Zipfel."

The schedule to Act 3 of 1972 is as follows:

Schedule

LAWS REPEALED

No. and Year of Law	Short Title	Extent of Repeal
Proclamation No. 37 of 1939	Deeds Registry Proclamation, 1939	The whole.
Ordinance No. 31 of 1952	Deeds Registry Amendment Ordinance, 1952	The whole.
Ordinance No. 19 of 1958	Deeds Registry Amendment Ordinance, 1958	The whole.
Ordinance No. 32 of 1963	Deeds Registry Amendment Ordinance, 1963	The whole.
Ordinance No. 11 of 1964	Deeds Registry Amendment Ordinance, 1964	The whole.
Ordinance No. 17 of 1967	Deeds Registry Amendment Ordinance, 1967	The whole.
Ordinance No. 20 of 1968	Mines, Works and Minerals Ordinance, 1968	Sections 96 to 100, inclusive.

Short title and commencement of Act

104. This Act shall be called the Deeds Registries Act, 1937, and shall come into operation on a date to be fixed by the State President by proclamation in the *Gazette*.

First Schedule

LAWS REPEALED

Province.	No. and year of law.	Title or subject of law.	Extent of repeal.
Cape of Good Hope.	Placaat dated the 22nd day of April, 1793.	Regulations for the prevention of confusion in the Debt Registry.	The whole.
“	Placaat dated the 15th day of May, 1805.	Reform of the Debt Registry.	So much as is unrepealed.
“	Ordinance No. 27 of 1846.	Ordinance for amending the law relative to conventional hypothecations.	So much as is unrepealed.
“	Act No. 25 of 1804.	Glen Grey Act, 1894	Section <i>seventeen</i> so far as it requires registration of transfer by the registrar of deeds at Cape Town only.

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Natal	Law No. 22 of 1863.	To prevent community of goods attaching to certain marriages and to enable the spouses of such marriages to devise their properties.	Sections <i>two</i> and <i>seven</i> so far as they prescribe the payment of a fee of £1 for the registration of a contract, and section <i>seven</i> so far as it permits the registration of non-notarial postnuptial and antenuptial contracts.
“	Law No. 14 of 1882.	To amend Law 22 of 1863.	Sections <i>one</i> and <i>two</i> so far as they permit the registration of non-notarial antenuptial contracts [no full stop]
“	Law No. 19 of 1884.	To amend the law and practice of registration.	Sections <i>three</i> , <i>four</i> and <i>eight</i> .
Transvaal	Act No. 25 of 1909.	Registration of Deeds and Titles Act, 1909.	Section <i>fifty-five</i> so far as it relates to the deeds registries in the Transvaal.
Union	Act No. 13 of 1918.	Deeds Registries Act, 1918.	The whole.
“	Act No. 15 of 1922.	Deeds Registries Act, 1918, Amendment Act, 1922.	The whole.

Second Schedule

[Only paragraph (i) has relevance to independent Namibia.]

The areas served by the several deeds registries shall be:-

- (a) by the deeds registry at Cape Town, the Province of the Cape of Good Hope, exclusive of the area served by the deeds registries at Kingwilliamstown, Kimberley and Vryburg;
- (b) by the deeds registry at Kingwilliamstown, the territory known as British Kaffraria, defined by Proclamation No. 61 of 1860, as amended by Government Notice No. 26 of 1863, dated 26th September, 1863, but excluding the area within the boundaries of the municipality of Cathcart as defined in Proclamation No. 74 of 1883, dated 16th May, 1883,, comprising the divisions of Kingwilliamstown, East London, Komgha, Stutterheim and portions of the divisions of Cathcart and Victoria East;

[Paragraph (b) is amended by Act 43 of 1957. The amendment results in a superfluous comma after “1883”.]

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- (c) by the deeds registry at Kimberley, the divisions of Kimberley, Barkly West, Hay and Herbert, together with that portion of the division of Prieska which is situate to the North of the Orange River;
- (d) by the deeds registry at Vryburg, the divisions of Vryburg, Mafeking, Gordonia excluding Portions 22 and 205 of the farm Paarden Eiland and Drif Eiland,, Kuruman and Taungs;

[Paragraph (d) is amended by Act 43 of 1962. The amendment results in a superfluous comma after "Drif Eiland".]

- (e) by the deeds registry at Pietermaritzburg, the Province of Natal;
- (f) by the deeds registry at Pretoria, the Province of the Transvaal;
- (g) by the deeds registry at Bloemfontein, the Province of the Orange Free State.

[Paragraph (g) should end with a semi-colon rather than a full stop.]

- (h) by the Rand townships registration office, the area bounded as follows: -
 Beginning at the north-western beacon of the farm Olifantshoek No. 356-JQ; proceeding thence generally eastwards along the boundaries of the following farms so as to include them in this area: the said farm Olifantshoek No. 356-JQ, Rietfontein No. 350-JQ, Roodekrans No. 349-JQ, Boschfontein No. 387-JQ, Boschfontein No. 352-JQ, Modderspruit No. 389-JQ, Doornhoek No. 392-JQ, Nooitgedacht No. 471-JQ, Hartebeestfontein No. 472-JQ, Fouriesrus No. 474-JQ, Hartebeestfontein No. 473-JQ and Bultfontein No. 475-JQ to the north-eastern beacon of the last-named farm; thence generally south-eastwards along the boundaries of the following farms so as to include them in this area: the said farm Bultfontein No. 475-JQ, Hartbeesthoek No. 498-JQ, Diepkloof No. 496-JQ, Tweefontein No. 523-JQ, Elandsdrift No. 527-JQ, Lindley No. 528-JQ, Zwartkop or Rooiwal No. 530-JQ, Bultfontein No. 533-JQ, Nooitgedacht No. 534-JQ, Zandspruit No. 191-IQ, Wilgespruit No. 190-IQ, Boschkop No. 199-IQ, Weltevreden No. 202-IQ, Waterval No. 211-IQ and Roosevelt Park No. 218-IQ to the north-western beacon of Emmarentia Ext. No. 1 Township (General Plan S.G. No. A.7/39); thence north-eastwards along the north-western boundary of the said Emmarentia Ext. No.1 Township to the south-western beacon of Victory Park Estate (Small Holdings) (General Plan S.G: No. A.1430/23); thence generally north-eastwards along the boundaries of the said Victory Park Estate (Small Holdings) so as to include them in this area to the north-western beacon thereof; thence south-eastwards along the north-eastern boundary of the farm Braamfontein No. 53-IR to the westernmost beacon of Melrose Township (General Plan S.G. No. A.616/03); thence south-eastwards, north-eastwards and eastwards along the boundaries of the said Melrose Township so as to include it in this area to the north-eastern beacon thereof; thence south-westwards, south-eastwards and generally southwards along the boundaries of the following so as to include them in this area: Melrose Township (General Plan S.G. No. A.616/03) and Melrose Estate Township (General Plan S.G. No. A.475/30) to the south-eastern beacon of the last-named Township; thence north-eastwards along the boundaries of the following farms so as to include them in this area: Houghton Estate No. 56-IR and Klipfontein No. 58-IR to where the north-western boundary of the last-named farm intersects the south-western boundary of Highlands North Extension Township (General Plan S.G. No. A.2539/35); thence north-westwards, north-eastwards and generally south-eastwards along the boundaries of the said Highlands North Extension Township to the eastern-most beacon thereof; thence north-eastwards

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along the north-western boundary of the farm Klipfontein No. 58-IR to beacon lettered J on General Plan S.G. No. A.1328/39 of Highlands North Ext. No.2 Township; thence northwards and generally north-eastwards along the boundaries of the said Township so as to include it in this area to the north-eastern beacon of the said Highlands North Ext. No.2 Township; thence north-westwards and generally north-eastwards along the boundaries of the following farms so as to include them in this area: Rietfontein No. 61-IR, Rietfontein No. 63-IR, Witkoppie No. 64-IR, Rietpan No. 66-IR, Vlakfontein No. 30-IR, Vlakfontein No. 29-IR, the said farm Vlakfontein No. 30-IR, Petit No. 28-IR, Putfontein No. 26-IR and Knoppiesfontein No. 23-IR to the northern-most beacon of the last-named farm; thence generally south-eastwards and southwards along the boundaries of the following farms so as to include them in this area: the said farm Knoppiesfontein No. 23-IR, Holfontein No. 71-IR, Geigerle No. 238-IR, Grootvaly No. 124-IR and Daggafontein No. 125-IR to the south-western beacon of the last-named farm; thence generally westwards along the boundaries of the following farms so as to include them in this area: the said farm Daggafontein No. 125-IR, Rietfontein No. 128-IR, Witpoortje No. 117-IR, Rondebult No. 136-IR, Rooikop No. 140-IR, Katlehong No. 151-IR, Palmietfontein No. 141-IR, Rietvlei No. 101-IR, Liefde en Vrede No. 104-IR, Rietvlei No. 101-IR, Olifantsvlei No. 327-IQ, Eikenhof No. 323-IQ, Misgund No. 322-IQ, Tok No. 315-IQ, Vlakfontein No. 303-IQ, Fonteine No. 313-IQ, Hartebeestfontein No. 312-IQ, Ontevreden No. 309-IQ, Elandsfontein No. 308-IQ, Waterpan No. 292-IQ, Panvlakte No. 291-IQ, Witkleigat No. 283-IQ and Uitval No. 280-IQ to the south-western corner of the last-named farm; thence generally northwards along the boundaries of the following farms so as to include them in this area: the said farm Uitval No. 280-IQ, Blaauwbank No. 278-IQ and Rietfontein No. 256-IQ to the north-western beacon of the last-named farm; thence generally westwards along the boundaries of the following farms so as to include them in this area: Rykdom No. 276-IQ, Doornfontein No. 50-IQ, De Pan No. 51-IQ and Wildfontein No. 52-IQ to the south-western beacon of the last-named farm; thence northwards, eastwards, northwards and generally north-westwards along the boundaries of the following farms so as to include them in this area: the said farm Wildfontein No. 52-IQ, De Pan No. 51-IQ, Doornfontein No. 50-IQ, Doornfontein No. 47-IQ, Houtkop No. 43-IQ, Vooruitsig No. 48-IQ, Houtkop No. 43-IQ, Platklip No. 40-IQ, Vlakfontein No. 37-IQ, Rietfontein No. 33-IQ, Vogelstruisfontein No. 34-IQ, Syferfontein No. 381-JQ, Leeuwpoort No. 357-JQ and Olifantshoek No. 356-JQ to the north-western beacon of the last-named farm, the place of beginning.

[Paragraph (h) is substituted by Act 61 of 1969 with effect from 1 November 1969.

Section 8(2) of Act 61 of 1969 contains the following transitional provision:

“The Registrar of Deeds, Pretoria, shall furnish certified copies of all title deeds, other deeds and documents which immediately before the commencement of this section [on 1 November 1969] were registered, recorded or filed of record in his office and which relate to any land situated in a township or portion of a township included in the area of the Rand townships registration office as a result of the alteration of that area by subsection (1) [which substituted paragraph (h)], to the Rand townships registrar for the purposes of section 1(1A) of the principal Act, and the last-mentioned Registrar shall enter such copies in his registers or file them of record in his office, as the circumstances may require.”]

- (i) by the deeds registry at Windhoek, Namibia, excluding the Rehoboth Gebiet as described in section 6 of the Rehoboth Self-Government Act, 1976.

[paragraph (i) inserted by Act 3 of 1972 and substituted by Act 93 of 1976]