

REPUBLIC OF SOUTH AFRICA

DEEDS REGISTRIES AMENDMENT BILL

(As amended by the Portfolio Committee on Land Affairs (National Assembly))

(MINISTER FOR AGRICULTURE AND LAND AFFAIRS)

[B 102B—98]

REPUBLIEK VAN SUID-AFRIKA

WYSIGINGSWETSONTWERP OP REGISTRASIE VAN AKTES

(Soos gewysig deur die Portefeuljekomitee oor Grondsake (Nasionale Vergadering))

(MINISTER VIR LANDBOU EN GRONDSAKE)

[W 102B—98]

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- “(1B) The Minister may authorise any **[officer in the public service]** person to act temporarily, and either generally or in a particular matter, as assistant registrar of deeds in respect of any deeds registry **[in addition]** additional to any assistant registrar or acting assistant registrar of **[such]** the deeds registry concerned. Such a person must have proven appropriate expertise or the capacity to acquire, within a reasonable time, the ability required to perform the functions of that office, regard being had to the time available and the nature and extent of those functions and the responsibilities of that office.”; and 5
- (c) by the substitution for subsection (2) of the following subsection: 10
- “(2) No person shall be appointed as chief registrar, registrar, deputy registrar or assistant registrar of deeds after the commencement of section 2 of the Deeds Registries Amendment Act, 1984 (Act No. 62 of 1984), unless he or she has passed the **[diploma iuris examination or an]** final examination for the Diploma *Iuris*, or for any other diploma or a degree, **[deemed]** recognized by the Minister for the Public Service and Administration to be equivalent thereto, and has **[served in the administrative division of the public service in one or more deeds registries for a period of not less than seven years: Provided that this subsection shall not apply with reference to the authorization of any officer under subsection (1A) or (1B) to act as contemplated in the relevant subsection]** proven appropriate expertise or the capacity to acquire, within a reasonable time, the ability required to perform the functions of that office, regard being had to the time available and the nature and extent of those functions and the responsibilities of that office.”. 15 20 25

Substitution of section 15 of Act 47 of 1937, as substituted by Proclamation R.9 of 1997

2. The following section is hereby substituted for section 15 of the principal Act:

“Preparation of deeds by conveyancer 30

15. **[Save as is]** Except in so far as may be otherwise provided in any other law, no deed of transfer, mortgage bond or certificate of title or **[registration of any kind]** any certificate of registration of whatever nature, mentioned in this Act, shall be attested, executed or registered by a registrar unless it has been prepared by a conveyancer.”. 35

Amendment of section 16 of Act 47 of 1937, as substituted by section 7 of Act 87 of 1965 and amended by section 7 of Act 27 of 1982 and section 4 of Act 62 of 1984

3. Section 16 of the principal Act is hereby amended in the Afrikaans text by the substitution for the word “eiendom” where it occurs for the first time, of the word “eiendomsreg”. 40

Amendment of section 18 of Act 47 of 1937, as amended by section 6 of Act 3 of 1972, section 8 of Act 27 of 1982 and section 10 of Act 14 of 1993

4. Section 18 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection: 45
- “(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]** , except where otherwise provided in this Act or the regulations, or unless the land is represented on a general

- plan, the deed of grant must have a diagram of the land annexed thereto.”;
- (b) in the Afrikaans text of subsection (2), by the substitution for the word “eiendom” of the word “eiendomsreg”; and
- (c) in the Afrikaans text of subsections (4) and (5), by the substitution for the word “eiendom” of the word “eiendomsreg”.

Substitution of section 21 of Act 47 of 1937, as amended by section 10 of Act 43 of 1957

5. The following section is hereby substituted for section 21 of the principal Act:

“Transfer or cession from joint estate 10

21. In any deed of transfer or cession lodged in a deeds registry and relating to land or rights to minerals which [is an asset] are assets in a joint estate, the surviving spouse shall be joined in his or her personal capacity with the executor of the estate of the deceased spouse except—

- (a) where the executor is [only] dealing only with the share of the deceased spouse; or 15
- (b) where the land [has] or rights to minerals have 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 20
- (d) where such transfer or cession is in favour of the surviving spouse; or
- (e) where [the surviving spouse has signed as executor] the power of attorney to pass such transfer or cession, has been signed by the surviving spouse in the capacity of executor.”.

Amendment of section 40 of Act 47 of 1937, as amended by section 18 of Act 43 of 1957 and section 16 of Act 43 of 1962 25

6. Section 40(1) of the principal Act is hereby amended—

- (a) in the portion preceding paragraph (a), by the substitution for the expression “Land Survey Act, 1927” of the expression “Land Survey Act, 1997”;
- (b) by the deletion of the word “and” at the end of paragraph (d); 30
- (c) by the substitution for paragraph (e) of the following paragraph:
“(e) [situate] situated in the same administrative district; and”;
- (d) by the addition after paragraph (e) of the following paragraph:
“(f) situated in the same province,”; and
- (e) by the substitution for the portion following paragraph (f), of the following: 35
“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, provided the requirements of this section are met: Provided that if the diagram was approved before the commencement of the Deeds Registries Amendment Act, 1998, the requirement contained in paragraph (f) shall be disregarded.”. 40

Insertion of section 46B in Act 47 of 1937

7. The following section is hereby inserted in the principal Act after section 46A:

“Section 46 applies mutatis mutandis to land otherwise subdivided 45

46B. The provisions of section 46 do not preclude the registration of a general plan and opening of a register in respect of any land other than land subdivided into lots or erven, and the provisions of that section shall *mutatis mutandis* apply to such land.”.

Substitution of section 67 of Act 47 of 1937

8. The following section is hereby substituted for section 67 of the principal Act:

“Reservation of personal servitudes

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

Amendment of section 72 of Act 47 of 1937, as amended by section 33 of Act 43 of 1957, section 30 of Act 43 of 1962 and section 10 of Act 3 of 1972

9. Section 72 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Whenever the Minister [of Agriculture] to whom the responsibility for immovable property belonging to the State has been entrusted, deems it necessary that rights to minerals be separated from the ownership of State land or land granted or transferred subject to a reservation of rights to minerals in favour of the State, he or she may apply in writing to the registrar for the issue in favour of the Government of a certificate in respect of [such] the rights to minerals [as may be set forth] that are specified in the application, and the registrar shall thereupon issue such a certificate in the form prescribed by regulation and endorse on the title deed of the land in question that such rights and the ownership of the land have been so separated.”.

Amendment of section 102 of Act 47 of 1937, as amended by section 12 of Act 3 of 1972, section 22 of Act 27 of 1982, section 9 of Act 62 of 1984, section 4 of Act 75 of 1987, section 7 of Act 3 of 1988, section 6 of Act 24 of 1989, section 32 of Act 113 of 1991, section 22 of Act 14 of 1993, section 68 of Act 67 of 1995, section 9 of Act 11 of 1996 and Proclamation R.9 of 1997

10. Section 102 of the principal Act is hereby amended by the substitution for the definition of “court” of the following definition:

“ ‘court’ or ‘the court’ means the [provincial or local division of the Supreme] High Court having jurisdiction [or], and includes any judge thereof;”.

“Diagram” in Afrikaans text of Land Survey Act, 1997, to be regarded and treated as “kaart” for purposes of Act 47 of 1937

11. A document which is a “diagram” as defined in the Afrikaans text of section 1 of the Land Survey Act, 1997 (Act No. 8 of 1997), must be regarded and treated for the purposes of the principal Act as a “kaart” as defined in the Afrikaans text of section 102 of the principal Act.

Short title

12. This Act will be called the Deeds Registries Amendment Act, 1998.

MEMORANDUM ON THE OBJECTS OF THE DEEDS REGISTRIES AMENDMENT BILL, 1998

SUMMARY

1. The Deeds Registries Amendment Bill, 1998 (“the Bill”), proposes amendments to the Deeds Registries Act, 1937 (Act No. 47 of 1937 — “the Act”), which, broadly stated, are aimed at the simplification of the registration process in the deeds registries (“deeds offices”) in certain circumstances, or effecting amendments of a technical or consequential nature.

THE BILL

2.1 The amendment to section 2(1) of the Act proposed by clause 1(a) of the Bill, relates to the temporary filling of vacancies in deeds offices. At present, any such vacancy, strictly speaking, may be filled by any officer in the (multidisciplinary) public service. However, in view of the highly specialised duties and functions of the chief registrar of deeds and a registrar, deputy registrar and assistant registrar of deeds, and the formidable responsibilities imposed on them by the Act and more than 200 other laws, it is imperative that, also in the temporary filling of those vacancies, only officers who are employed in deeds offices or the chief registrar’s office qualify for such temporary appointments. The amendment contemplated in clause 1(a), is aimed at effecting such a change. In this way an endeavour is made to ensure that those specialised duties and functions are at all times performed by staff having the required expertise. Clause 1(b) of the Bill contemplates a similar amendment to section 2(1B) of the Act as far as additional appointments of assistant registrars are concerned.

2.2 Section 2(2) of the Act at present provides that no person shall be appointed as chief registrar of deeds, or as registrar, deputy registrar or assistant registrar of deeds, unless he or she has passed certain examinations and has served in a deeds office for a period of at least seven years. This requirement of seven years’ experience in a deeds office is absolute and rigid and precludes other relevant experience being taken into account in making such an appointment, and makes it difficult to promote employment equity practices in the deeds offices. Since this requirement is perceived as an artificial and unnecessary barrier to beneficial employment, clause 1(c) of the Bill proposes to do away therewith and to replace it with the requirement of “proven appropriate expertise”.

2.3 In view of the introduction of the digital imaging system in the Office of the Chief Surveyor-General and the fact that townships situated on unalienated State land are represented on general plans, it should not be a requirement that a diagram must in all instances accompany or be annexed to a deed of grant. The amendment to section 18 of the Act proposed by clause 4 of the Bill is designed to limit the instances in which that requirement must be complied with.

2.4 The amendment to section 21 of the Act proposed by clause 5 of the Bill, seeks to dispense with unnecessary formal requirements that apply at present to the registration of cessions of mineral rights.

2.5 Since the establishment of the nine new provinces, and due to the fact that certain deeds offices operate across provincial boundaries, it became possible to consolidate properties situated in different provinces. This causes legal uncertainty inasmuch as the consolidated property, although a single parcel of land, is then subject to the laws of all the provinces concerned. The purpose of the proposed amendment to section 40 of the Act is to restore the prerequisites for the consolidation of land that were applicable at the time when the jurisdiction of deeds offices followed provincial boundaries, i.e. so that only properties situated in the same province may be consolidated. (See clause 6 of the Bill.)

2.6 If a general plan of land is registered in a deeds office, it is not necessary, for the registration of transfer, that a separate diagram of a piece of land represented on the general plan, be lodged with a registrar: Section 46 of the Act at present provides for the registration of general plans and opening of registers in specific circumstances only. Clause 7 of the Bill proposes the insertion of a new section, section 46B, in the Act so as to provide for additional circumstances where separate diagrams of land parcels will not be required.

2.7 The proposed amendment of section 67 of the Act is aimed at making the provisions of that section applicable to cessions of mineral rights, thereby creating a cost-free procedure for the registration of personal servitudes over mineral rights in certain circumstances. (See clause 8 of the Bill.)

2.8 The matters dealt with by clauses 2, 3, 9, 10 and 11 of the Bill are of a mere technical or consequential nature.

CONSULTATION

3. All registrars of deeds were consulted in connection with the proposed amendment of section 2 of the Act, while the deeds registries regulations board was consulted in connection with the proposed amendment of sections 15, 16, 18, 21, 67, 72 and 102 of the Act and the proposed insertion of section 46B therein. The deeds registries regulations board and the Chief Surveyor-General were consulted about the proposed amendment of section 40 of the Act.

PARLIAMENTARY PROCEDURE

4. The view is held by the State Law Advisers and the Department of Land Affairs that the Bill should be dealt with in accordance with the procedure provided for in section 75 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996 — “the Constitution”), inasmuch as the Bill—

- * is designed to regulate matters relating to deeds registries, which do not fall within any of the functional areas mentioned in Schedule 4 or 5 to the Constitution and, indeed, fall exclusively within the national sphere of government;
- * does not contemplate any amendment to the Constitution nor propose the imposition of any tax, levy or duty; and
- * does not provide for legislation of the nature envisaged in section 76(3)(a) to (e), (4) or (5) of the Constitution.

