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No. 19517

OFFICE OF THE PRESIDENT

No. 1538.

27 November 1998

It is hereby notified that the President has assented to the following Act which is hereby published for general information:—

No. 103 of 1998: Alienation of Land Amendment Act, 1998.

KANTOOR VAN DIE PRESIDENT

— — — —

No. 1538.

27 November 1998

Hierby word bekendgemaak dat die President sy goedkeuring gegee het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 103 van 1998: Wysigingswet op Vervreemding van Grond. 1998.

Act No. 103, 1998

ALIENATION OF LAND AMENDMENT ACT, 1998

GENERAL EXPLANATORY NOTE:

Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the President.)
(Assented to 19 November 1998.)

ACT

To amend the Alienation of Land Act, 1981, so as to confer on a purchaser or prospective purchaser of land the right to revoke an offer to purchase or to terminate a deed of alienation in certain circumstances; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:-

Amendment of section 1 of Act 68 of 1981, as amended by section 1 of Act 51 of 1983 and sections 68 and 69 of Act 67 of 1995

1. Section 1 of the Alienation of Land Act, 1981 (hereinafter referred to as the principal Act), is hereby amended—

(a) by the insertion immediately before the definition of “alienate” of the following definition:

“ ‘agricultural land’ in paragraph (d)(ii) of the definition of ‘land’ means any land used or intended to be used mainly for commercial farming operations;”
and

(hi) by the addition to the definition of “land” of the following paragraph:

“(d) in section 29A—

(i) includes—

(aa) land, whether or not registrable, used or intended to be used mainly for residential purposes;

(bb) any housing interest as defined in section 1 of the Housing Development Schemes for Retired Persons Act, 1988 (Act No. 65 of 1988), and any proposed housing interest;

(cc) any share in a share block company as defined in section 1 of the Share Blocks Control Act, 1980 (Act No. 59 of 1980), and any proposed share, which confers on the holder of such share the right to occupy land owned or leased by the share block company and which is used or intended to be used mainly for residential purposes;

(dd) any unit as defined in section 1 of the Sectional Titles Act, 1986 (Act No. 95 of 1986), and includes any proposed unit;

(ii) excludes agricultural land;”.

Amendment of section 2 of Act 68 of 1981

2. Section 2 of the principal Act is hereby amended by the insertion after subsection (2) of the following subsection:

“(2A) The deed of alienation shall contain the right of a purchaser or prospective purchaser to revoke the offer or terminate the deed of alienation in terms of section 29A.”.

Insertion of section 29A in Act 68 of 1981

3. The following section is hereby inserted in the principal Act after section 29:

“Purchaser’s right to revoke offer or terminate deed of alienation

29A. (1) Subject to subsection (5), a purchaser or prospective purchaser of land may within five days after signature by him or her, or by his or her agent acting on his or her written authority, of-

- (u) an offer to purchase land; or
 - (b) a deed of alienation in respect of land,
- revoke the offer or terminate the deed of alienation, as the case may be, by written notice delivered to the seller or his or her agent within that period.

(2) The period of five days contemplated in subsection (1) shall be calculated with the exclusion of the day upon which the offer was made or the deed of alienation was entered into, as the case may be, and of any Saturday, Sunday or public holiday.

(3) The written notice contemplated in subsection (1) shall be effective only if it-

- (u) is signed by the purchaser or his or her agent acting on his or her written authority;
- (b) identifies the offer or deed of alienation that is being revoked or terminated, as the case may be; and
- (c) is unconditional.

(4) Where an offer is revoked or deed of alienation is terminated as contemplated in subsection (1), every person who received any amount from the purchaser or prospective purchaser in respect of the offer or deed of alienation, as the case may be, shall refund the full amount of such payment to the purchaser within 10 days of the date on which the notice referred to in subsection (1) was delivered to the seller or his or her agent.

(5) Subsection (1) shall not apply if—

- (a) the purchase price of the land, or the price offered for the land by the prospective purchaser contemplated in that subsection, exceeds R250 000 or such higher amount as the Minister may prescribe in order to counter the effect of inflation;
- (b) the purchaser or prospective purchaser contemplated in that subsection is a trust or a person other than a natural person;
- (c) the purchaser or agent contemplated in that subsection has purchased the land at a publicly advertised auction;
- (d) the seller and purchaser contemplated in that subsection have previously entered into a deed of alienation of the same land on substantially the same terms;
- (e) the purchaser or prospective purchaser contemplated in that subsection has reserved the right in terms of the deed of alienation or offer, as the case may be, to nominate or appoint another person to take over the rights and obligations of the purchaser as stipulated in the offer or deed of alienation in question;
- (f) the purchaser contemplated in that subsection purchases the land by the exercise of an option which was open for exercise for a period of at least five days calculated *mutatis mutandis* in the manner prescribed in subsection (2).

(6) No person shall be entitled to any remuneration payable in respect of an offer or deed of alienation which the purchaser or prospective purchaser

has revoked or terminated. as the case may be, pursuant to the provisions of subsection (1) and no such person or agent shall be entitled to claim damages from any person following such revocation of the offer or termination of the deed of alienation by the purchaser or prospective purchaser.

(7) (a) Any provision in any document or in any agreement or undertaking entered into by the purchaser or prospective purchaser, in writing or verbally, whereby a penalty or fee is directly or indirectly imposed or levied on the purchaser or prospective purchaser should he or she exercise the rights contained in this section, shall be void.

(b) Any waiver by a purchaser or prospective purchaser of the rights conferred upon him or her in terms of this section shall be void.

(8) A purchaser or prospective purchaser who signs an offer to purchase land or a deed of alienation in respect of land (hereinafter referred to as the later transaction) within five days (calculated in accordance with subsection (2)) after having signed an offer or a deed of alienation in respect of other land (hereinafter referred to as the earlier transaction) and before he or she has exercised his or her right as contemplated in subsection (1) in respect of the earlier transaction, shall-

(u) on signature of the later transaction be deemed to have exercised his or her right in terms of subsection (1) to revoke or terminate the earlier transaction; and

(b) forthwith after signature of the later transaction in writing notify the seller of the earlier transaction of the revocation or termination, as the case may be, of that transaction.

(9) (a) Any person who wilfully or negligently fails to comply with the provisions of subsection (8)(b), shall be guilty of an offence and upon conviction liable to a fine, or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(b) The provisions of paragraph (a) shall not in any way detract from any civil remedy which a seller may have against a purchaser who failed to comply with the provisions of subsection (8)(b).

(10) Subsections (8) and (9) shall not apply to a purchaser or prospective purchaser who *bona fide* intends to purchase both the land to which the earlier transaction and the land to which the later transaction referred to in subsection (8) relate.“.

Short title

4. This Act shall be called the Alienation of Land Amendment Act, 1998.