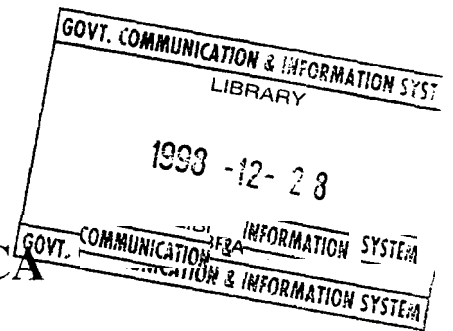




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GOVERNMENT GAZETTE

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OFFICE OF THE PRESIDENT

No. 1396. 2 November 1998

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

No. 93 of 1998: Deeds Registries Amendment Act, 1998

KANTOOR VAN DIE PRESIDENT

No. 1396. 2 November 1998

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

No. 93 van 1998: Wysigingswet op Registrasie van Aktes, 1998.

Act No. 93.1998

DEEDS REGISTRIES AMENDMENT ACT, 1998

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

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

*(English text signed by the President.)
(Assented to 20 October 1998.)*

ACT

To amend the Deeds Registries Act, 1937, in relation to acting appointments as chief registrar, registrar, deputy registrar and assistant registrar of deeds, and the minimum qualifications for holding any such office; in relation to the instances in which deeds of grant by which State land is transferred must have diagrams of the land annexed thereto; to adapt section 21 so as to make its provisions applicable also to cessions of rights to minerals that were assets in a joint estate; in relation to the circumstances in which the title deeds of two or more pieces of land may be superseded by a certificate of consolidated title; to provide for the reservation of a personal servitude in a deed of cession of rights to minerals; in relation to the separation of rights to minerals from the ownership of land at the instance of the State; to effect certain technical amendments; and to provide for incidental matters.

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

Amendment of section 2 of Act 47 of 1937, as amended by section 1 of Act 43 of 1957, section 1 of Act 43 of 1962, section 1 of Act 87 of 1965, section 2 of Act 61 of 1969, section 2 of Act 3 of 1972, section 7 of Act 62 of 1973, section 2 of Act 27 of 1982, section 2 of Act 62 of 1984, section 1 of Act 14 of 1993, section 10 of Act 11 of 1996, Proclamation R.9 of 1997 and section 35 of Act 47 of 1997

1. Section 2 of the Deeds Registries Act, 1937 (hereafter called the principal Act), is hereby amended—

(a) by the substitution for subsection (1A) of the following subsection: 10

“(1A) Whenever the chief registrar of deeds or any registrar, deputy registrar or assistant registrar of deeds [is], because of absence or for any other reason> unable to carry out the functions of **[his] that office**, or whenever such office becomes vacant, the Minister may authorize any officer in **[the public service] a deeds registry or in the office of the chief 15 registrar of deeds** to act in the place of such chief registrar, registrar, deputy registrar or assistant registrar during **[his] the period of such** absence or incapacity, or to act in the vacant office until the vacancy is filled, as the case may be.”:

(b) by the substitution for subsection (1 B) of the following subsection: 20

- “(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, 198-1 (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:

“(1) The ownership of unalienated State land maybe 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 45

ph. 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”. 5

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

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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

(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.”.

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

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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]& 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 kind 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.