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PRESIDENT'S OFFICE

KANTOOR VAN DIE PRESIDENT

No. 849.

22 May 1996

No. 849.

22 Mei 1996

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

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

28 of 1996: Communal Property Associations Act, 1996.

No. 28 van 1996: Wet op Verenigings vir Gemeenskaplike Eiendom, 1996.

ACT

To enable communities to form juristic persons, to be known as communal property associations in order to acquire, hold and manage property on a basis agreed to by members of a community in terms of a written constitution; and to provide for matters connected therewith.

(English text signed by the President.)
(Assented to 15 May 1996.)

WHEREAS it is desirable that disadvantaged communities should be able to establish appropriate legal institutions through which they may acquire, hold and manage property in common;

AND WHEREAS it is necessary to ensure that such institutions are established and managed in a manner which is non-discriminatory, equitable and democratic and that such institutions be accountable to their members;

AND WHEREAS it is necessary to ensure that members of such institutions are protected against abuse of power by other members;

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

Definitions

1. In this Act, unless the context indicates otherwise—

- (i) "association" means a communal property association which is registered or qualifies for registration in terms of section 8; (xv) 5
- (ii) "authorised officer" means a person designated as such by the Director-General; (iii)
- (iii) "committee" means a committee elected by the members of an association to manage the affairs of that association; (viii) 10
- (iv) "community" means a group of persons, which wishes to have its rights to or in particular property determined by shared rules under a written constitution and which wishes or is required to form an association as contemplated in section 2; (iv)
- (v) "constitution" means a constitution adopted in terms of section 7 by an association; (vi) 15
- (vi) "Director-General" means the Director-General: Land Affairs; (i)
- (vii) "holding of property in common" means the acquisition, holding and management of property by an association on behalf of its members, in accordance with the terms of a constitution; (v) 20
- (viii) "interim committee" means an interim committee referred to in section 5(2)(e); (xiv)
- (ix) "members" means the members of an association or the members of a community, as the case may be, including members who comply with the provisions of paragraph (i) of item 5 of the Schedule, and for the purposes of sections 12, 13 and 14, shall mean those members whose names appear on a list contemplated in the said item 5; (ix) 25
- (x) "Minister" means the Minister of Land Affairs; (x)
- (xi) "prescribed" means prescribed by regulation; (xvi)
- (xii) "property" includes movable and immovable property and any right or interest in and to movable or immovable property or any part thereof; (ii) 30
- (xiii) "provisional association" means a provisional communal property association registered under section 5; (xvii)
- (xiv) "register" means the register contemplated in section 8(3)(b); (xi)

- (xv) "Registration Officer" means an officer of the Department of Land Affairs appointed by the Director-General as Registration Officer; (xii)
- (xvi) "similar entity" means a trust, association of persons or company registered in terms of section 21 of the Companies Act, 1973 (Act No. 61 of 1973); (xiii)
- (xvii) "this Act" includes any regulations made in terms of this Act. (vii) 5

Application of Act

2. (1) The provisions of this Act shall apply to a community—
- (a) which by order of the Land Claims Court is entitled to restitution under the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994), where that Court has ordered restitution on condition that an association be formed in accordance with the provisions of this Act; 10
 - (b) entitled to or receiving property or other assistance from the State in terms of an agreement or in terms of any law, on condition that an association be formed in accordance with the provisions of this Act;
 - (c) approved by the Minister in terms of subsection (2), and to which any property has been donated, sold or otherwise disposed of by any other person on condition that an association be formed in accordance with the provisions of this Act; 15
 - (d) approved by the Minister in terms of subsection (2), and which is a group acquiring land or acquiring rights to land and which wishes to form an association in accordance with the provisions of this Act. 20
- (2) The Minister may, with due regard to the objects of this Act, approve a community contemplated in paragraph (c) or (d) of subsection (1) for the purposes of this Act if he or she is satisfied that the community is disadvantaged and that it is in the public interest that such approval be given, having regard to the nature and current use of the land. 25
- (3) The Minister may on application by a similar entity, and having had due regard to the objects of this Act and the public interest, by notice in the *Gazette*, and subject to such qualifications or conditions as he or she may determine, make the provisions of section 8, 9, 10, 11, 12, 14 or 16, or any subsection thereof, applicable to such entity.
- (4) For the purposes of subsection (3), any reference to an association shall be deemed to be a reference to the entity in question. 30
- (5) Where a community has, prior to the commencement of this Act, established a similar entity through a democratic process, the Director-General may, if such community wishes to establish an association contemplated in this Act, exempt such community from such provisions of section 6, 7 or 8 as may place an unnecessary burden on the community, having regard to the procedure that was followed by the community in establishing such entity. 35

Seal of Communal Property Associations

3. There shall be a seal of Communal Property Associations and judicial cognizance may be taken of the impression of such seal. 40

Exemption from liability

4. No act or omission of whatever nature by the Director-General, Registration Officer or any officer or other person performing functions under the authority of the Director-General or Registration Officer, as the case may be, in terms of this Act, shall subject the Director-General, the Registration Officer, or any such officer or person to any liability for any loss or damage sustained by any person as a result of any such act or omission, unless such act or omission was in bad faith or constituted gross negligence. 45

Registration of provisional association

5. (1) A community may apply to the Director-General for the registration of a provisional communal property association. 50

- (2) An application for registration in terms of subsection (1) shall contain—
- (a) the intended name of the provisional association;
 - (b) information demonstrating that the community is a community as contemplated in section 2;
 - (c) a clear identification of any land or right to land or other right which may be acquired by the provisional association; 5
 - (d) a list of names and, where readily available, identity numbers of the intended members of the provisional association: Provided that where it is not reasonably possible to provide the names of all the intended members concerned, the application shall contain— 10
 - (i) principles for the identification of other persons entitled to be members of the provisional association; and
 - (ii) a procedure for resolving disputes regarding the right of other persons to be members of the provisional association;
 - (e) a list of the names of the interim committee democratically elected to represent the provisional association during the period prior to registration as an association; 15
 - (f) an undertaking signed by the members of the interim committee that, pending the adoption of the final constitution by the members of the provisional association in terms of section 7 and the registration thereof in terms of section 8, the provisional association will comply with the principles as stated in section 9; 20
 - (g) any other information reasonably required by the Director-General relating to the right to occupy and use land and the settlement of the community on such land. 25
- (3) If the Director-General is satisfied that the provisional association qualifies for registration under this Act, he or she shall refer the application and his or her written consent to the Registration Officer, who shall register the provisional association in the prescribed manner, allocate a registration number and issue a provisional communal property association certificate to such provisional association. 30
- (4) Upon registration of a provisional association—
- (a) the provisional association may acquire a right to occupy and use land for a period of 12 months from the date of registration of the provisional association: Provided that the Director-General may extend the period of 12 months for a further period of 12 months only if he or she extends the period referred to in subsection (5) for a further period of 12 months; 35
 - (b) the provisional association shall not, until the registration of an association in terms of this Act, in any way alienate such right in land;
 - (c) the provisional association shall be a juristic person with the capacity to sue or be sued. 40
- (5) If any provisional association fails to adopt a constitution within 12 months from the date of registration of a provisional association, the Minister may approve a draft constitution prepared by the Director-General for such provisional association, and cause the provisional association to be registered as an association in terms of this Act: Provided that the Director-General may extend the period of 12 months for a further period of 12 months if there is good cause for him or her to do so. 45

Drafting of constitution

6. (1) A community wishing to procure the registration of an association under this Act may apply to the Director-General for assistance in the preparation of a draft constitution. 50
- (2) The Director-General shall, after receiving an application in terms of subsection (1), designate any officer in the Department of Land Affairs or any other person to provide the community with such assistance as may be required and available for the preparation of a draft constitution.
- (3) A community may submit a draft constitution to the Director-General for consideration. 55

(4) The Director-General may suggest amendments to such draft constitution in order to make it comply with the provisions of section 9, and shall notify the community of the reasons for such suggestions.

Adoption of constitution

7. (1) When a community or a provisional association wishes to adopt a constitution it shall notify the Director-General accordingly and shall convene a meeting or meetings in such manner as may be prescribed for the adoption of constitutions. 5

(2) An authorised officer shall attend the meeting or meetings contemplated in subsection (1), to take minutes of the proceedings, to witness the adoption of the constitution and to prepare a report setting out his or her observations in relation to— 10

- (a) whether the notice of the meeting was effective in ensuring the presence of members of the community at the meeting;
- (b) the number of members of the community present at the meeting or validly represented at the meeting, and whether the various interest groups in the community were represented at such meeting; 15
- (c) the number of members of the community who voted in favour of and the number who voted against the adoption of the constitution or any specific provisions thereof;
- (d) whether the interests of any person or group of persons are likely to be adversely affected as a result of the adoption of the constitution; 20
- (e) the views of any dissenting persons; and
- (f) any other matter which the Minister may prescribe or which may be relevant to the exercise of the Director-General's discretion.

(3) The community or provisional association shall, as soon as practicable after the adoption of the constitution, submit it together with the prescribed information to the Director-General. 25

(4) Any person claiming to have been excluded from participation in the process of preparation and adoption of the constitution or claiming that the process was not fair may lodge a complaint with the Director-General, who may, if he or she is satisfied on reasonable grounds that the complaint is material, refuse to cause the association to be registered until the issue has been resolved to the satisfaction of the Director-General. 30

Registration of associations

8. (1) The Director-General shall consider an application for registration of an association together with any prescribed information, the report referred to in section 7(2) and the constitution adopted by the association. 35

(2) An association shall qualify for registration if—

- (a) the provisions of this Act apply to the community concerned;
- (b) the association has as its main object the holding of property in common;
- (c) the constitution adopted by it complies with the principles set out in section 9;
- (d) the constitution adopted by it deals with the matters referred to in the Schedule; 40
- (e) the meeting or meetings referred to in section 7 were attended by a substantial number of the members of the community; and
- (f) the resolution to adopt the draft constitution was supported by the majority of the members of the community present or represented at the meeting or meetings; 45

Provided that the Director-General may cause an association to be registered if he or she is satisfied that—

- (i) there has been substantial compliance with the provisions of paragraphs (a) to (f) of this subsection; 50
- (ii) the constitution reflects the view of the majority of the members of the association; and

- (iii) the constitution has been adopted through a process which was substantially fair and inclusive.
- (3) (a) If the Director-General is satisfied that the association qualifies for registration he or she shall refer the application, constitution and his or her own written consent, to the Registration Officer, who shall register the association in the prescribed manner, allocate a registration number, and issue a certificate of registration. 5
- (b) The Registration Officer shall keep a register of registered provisional associations, associations and similar entities to which the provisions of this Act have been made applicable in terms of section 2(3).
- (c) On request and on payment of the prescribed fee the Registration Officer shall provide members of the public with information contained in the register and with a copy of the constitution of any registered association or similar entity. 10
- (4) If the Director-General is not satisfied that the association qualifies for registration he or she shall notify the community of the steps to be taken to procure the registration of the association. 15
- (5) The Director-General may assist a community to deal with any issue which is to be addressed in order to procure the registration of the association.
- (6) Upon the registration of an association—
- (a) the association shall be established as a juristic person, with the capacity to sue and be sued; 20
- (b) the association may acquire rights and incur obligations in its own name in accordance with its constitution;
- (c) the association may, subject to the provisions of its constitution—
- (i) acquire and dispose of immovable property and real rights therein; and
- (ii) encumber such immovable property or real rights by mortgage, servitude, or lease or in any other manner; 25
- (d) the association shall have perpetual succession regardless of changes in its membership;
- (e) the constitution shall be a legally binding agreement between the association and its members and shall be deemed to be a matter of public knowledge; and 30
- (f) in the case of an application by a provisional association, the provisional association shall be deregistered and its assets transferred to the association.
- (7) A person appointed to a committee of an association shall stand in a fiduciary relationship to the members of the association.
- (8) The Minister may, on application made to him or her in the prescribed manner, determine, on such conditions as he or she may lay down, that the laws governing the establishment of townships and, in the case of agricultural land as defined in the Subdivision of Agricultural Land Act, 1970 (Act No. 70 of 1970), the provisions of that Act, shall not apply in respect of land registered in the name of an association. 35
- (9) An association registered under this Act shall reflect on all correspondence and contracts the fact that it is so registered, and its registration number. 40
- (10) No amendment of a constitution of an association registered under this Act shall be valid or binding until it has been accepted by the Director-General in writing and lodged with the Registration Officer.
- (11) The provisions of sections 6 and 7 and subsections (1) to (5) of this section, shall apply *mutatis mutandis* with regard to any proposed amendment of the constitution of an association registered under this Act: Provided that the Director-General shall waive compliance with the provisions of section 7 if he or she is satisfied that the amendment was adopted in terms of the constitution, that the nature of the amendment is such that compliance with those provisions is not necessary, and that the amendment does not have a material adverse effect on the rights of members. 50

Principles to be accommodated in constitutions

9. (1) The constitution of an association shall be consistent with the following general principles:

- (a) Fair and inclusive decision-making processes, in that— 55

- (i) all members are afforded a fair opportunity to participate in the decision-making processes of the association;
- (ii) any decision to amend the constitution or dissolve the association, or to dispose of or to encumber the property of the association, requires an inclusive decision-making process; and 5
- (iii) the membership of any person may only be terminated on reasonable grounds by the association after the matter has been considered at a fair hearing at which the member was given an opportunity to present his or her case;
- (b) equality of membership, in that— 10
- (i) there is no discrimination against any prospective or existing member of the community, directly or indirectly, and, without derogating from the generality of this provision, on one or more of the following grounds, namely race, gender, sex, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture or language: Provided that a constitution may reflect the rules of a community with regard to the age at which a member may attend and vote at meetings of the association and the age at which a member may receive an allocation of land rights; 15
- (ii) where different classes of membership are created— 20
- (aa) the basis for differentiation is compatible with the overriding principle of equality;
- (bb) and a community already occupies land, different classes shall not lead to different rights to land or resources among those members of the community who occupy the land, where no such differentiation 25 existed previously; and
- (cc) all members within a class of membership have equal rights;
- (c) democratic processes, in that all members have the right—
- (i) to receive adequate notice of all general meetings of the association;
- (ii) to attend, speak at and participate in the voting at any general meeting; 30
- (iii) to receive copies of minutes or to have other reasonable access to records of decisions taken at general meetings;
- (iv) to inspect and make copies of the financial statements and records of the association; and
- (v) to have access to a copy of the constitution; 35
- (d) fair access to the property of the association, in that—
- (i) the association shall manage property owned, controlled or held by it for the benefit of the members in a participatory and non-discriminatory manner;
- (ii) a member may not be excluded from access to or use of any part of the association's property which has been allocated for such member's 40 exclusive or the communal use except in accordance with the procedures set out in the constitution; and
- (iii) the association may not sell or encumber the property of the association, or any substantial part of it, without the consent of a majority of the members present at a general meeting of the association; 45
- (e) accountability and transparency, in that—
- (i) accountability by the committee or committees to the members of the association is promoted;
- (ii) the financial records of the association are subject to an annual 50 independent verification, as approved by the Director-General;
- (iii) all the cash of the association shall be deposited in an account opened in the name of the association with a bank registered in terms of the Banks Act, 1990 (Act No. 94 of 1990), or a mutual bank registered in terms of the Mutual Banks Act, 1993 (Act No. 124 of 1993), or with the Post 55 Office Savings Bank contemplated in section 52 of the Post Office Act,

- 1958 (Act No. 44 of 1958), or such other institution as may be approved by the Director-General;
- (iv) the association may not purchase or acquire for consideration shares other than shares which are listed on a licensed stock exchange as defined in the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985);
- (v) there shall be effective financial management and recording of the transactions of the association;
- (vi) the committee members shall have fiduciary responsibilities in relation to the association and its members, and shall exercise their powers in the best interests of all the members of the association, without any advantage to themselves in comparison with other members who are similarly placed.

(2) The constitution of an association shall be interpreted in a manner which is consistent with the spirit and objects of the principles referred to in subsection (1).

Information, conciliation and other assistance

10. (1) The Director-General may have forms, pamphlets and other documents prepared and distributed in order to promote the achievement of the objects of this Act.

(2) The Director-General may, of his or her own accord or at the request of a community, an association, a provisional association or any member thereof, appoint a conciliator acceptable to the parties to a dispute to assist in resolving any issues for the purpose of the preparation or adoption of a constitution or to resolve a dispute between an association or provisional association and its members or between members or committee members: Provided that if the parties to the dispute do not reach agreement on the person to be appointed, the Director-General may appoint a person who has adequate experience or knowledge in conciliating community disputes.

(3) A conciliator appointed in terms of subsection (2) shall attempt to resolve the dispute—

- (a) by mediating the dispute;
- (b) by fact-finding relevant to the resolution of the dispute;
- (c) by making a recommendation to the parties to the dispute;
- (d) in any other manner that he or she considers appropriate.

(4) The conciliator shall report to the Director-General and the parties on the result of his or her conciliation and make recommendations in relation thereto.

(5) All discussions taking place and all disclosures and submissions made during the conciliation process shall be privileged, unless the parties agree to the contrary.

(6) The Director-General may from time to time appoint persons or organisations acceptable to a community and with relevant knowledge or expertise to provide assistance and support to such community for the purposes of section 6.

(7) Any person contemplated in subsection (2) or (6) who is not in the full-time service of the State may from moneys appropriated by Parliament for this purpose, be paid such remuneration and allowances in respect of the services rendered as may be determined by the Minister in consultation with the Minister of Finance.

(8) The Minister may, in consultation with the Minister of Finance institute other programmes for the provision of assistance to communities or associations or provisional associations for the purposes of this Act.

Monitoring and inspection

11. (1) An association or provisional association registered under this Act shall, at the prescribed times, furnish prescribed documents and information to the Director-General in order to enable him or her to monitor compliance with the provisions of the relevant constitution and this Act.

(2) The Director-General may undertake an inspection of the affairs of an association or provisional association.

(3) The Director-General may, for the purposes of this section—

- (a) inspect and remove for copying any records, reports and other documents relating to the affairs of an association or provisional association;
- (b) subpoena persons who may have relevant information or documentation in respect of the affairs of an association or provisional association to appear

before him or her to provide information or documentation in relation to the affairs of the association or provisional association, if the attendance of such persons cannot reasonably be procured otherwise.

(4) A subpoena issued in terms of subsection (3)(b) shall be served in accordance with the manner prescribed for the service of subpoena in terms of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944). 5

(5) Any person who is duly subpoenaed in terms of subsection (3)(b) and who fails, without lawful excuse, to appear or to provide the required information or documentation, shall be guilty of an offence and liable to the punishment provided in the said Magistrates' Courts Act, 1944, for failure to comply with a subpoena issued in terms of that Act. 10

(6) If a dispute arises within an association or provisional association the Director-General may, of his or her own accord, or at the request of a member of the association or provisional association—

- (a) undertake an enquiry into the activities of the association or provisional association, in which event he or she shall take reasonable steps to ensure that interested parties are made aware of the enquiry and of its outcome; 15
- (b) advise the association or provisional association and the members of their respective rights and obligations;
- (c) make a conciliator contemplated in section 10(2) available to assist in the resolution of the dispute; 20
- (d) require the members to conduct an election for a new committee, if the integrity, impartiality or effectiveness of the committee or any member of the committee is in question;
- (e) initiate proceedings contemplated in section 13; or 25
- (f) take such other reasonable measures as he or she considers appropriate in the circumstances. 30

(7) When acting in terms of subsection (6) the Director-General shall be guided by the aim of resolving the dispute in accordance with the provisions of the constitution of the association. 30

(8) The identity of a member making a request in terms of subsection (6) or the fact that a request has been made by a member need not be disclosed if there are reasonable grounds for believing that such member may be victimised.

(9) If the membership of a member has been terminated, the association or provisional association shall inform the Director-General and provide the Director-General with the prescribed information relating to the termination. 35

Approval for certain transactions

12. (1) An association may not dispose of or encumber or conclude any prescribed transaction in respect of the whole or any part of the immovable property of the association, or any real rights in respect thereof, without the consent of the majority of members present at a general meeting of members. 40

(2) Such consent may be given in respect of a series of transactions, without identifying each individual transaction.

(3) Any disposal, mortgage, encumbrance or prescribed transaction in contravention of subsection (1) shall be voidable. 45

(4) A member who alleges that an association has concluded a transaction contrary to the provisions of subsection (1) may request the Director-General to assist him or her in challenging the validity of such transaction.

(5) The Director-General may, if he or she considers it desirable having regard to the nature and seriousness of the allegation, make a conciliator contemplated in section 10(2) available to assist in the resolution of the dispute. 50

(6) The Director-General shall, at the request of an association, appoint an authorised officer to attend a general meeting of an association and to take such other steps as may be necessary in order to certify that a transaction referred to in subsection (1) has been duly approved at a general meeting and is in accordance with the constitution of the association. 55

Administration, liquidation and deregistration

13. (1) A division of the Supreme Court or a Magistrate's Court having jurisdiction in respect of the area in which the property of the association is situated or the area in which the land which may be acquired by a provisional association is situated, may, on application made by the Director-General, an association or provisional association or any member thereof, or any other interested person, place the association or provisional association under the administration of the Director-General or grant a liquidation order in respect of an association or provisional association, where the association, or provisional association, because of insolvency or maladministration or for any other cause is unwilling or unable to pay its debts or is unable to meet its obligations, or where it would otherwise be just and equitable in the circumstances.

(2) The Director-General shall, pursuant to an administration order referred to in subsection (1), have such powers to manage the affairs of the association or provisional association as the Court, subject to the provisions of this Act, may determine.

(3) The Director-General may, upon written application by an association or provisional association, cause such an association or provisional association to be deregistered, if he or she is satisfied that—

- (a) a resolution in favour of deregistration was adopted at a meeting attended by a substantial number of the members of the association or provisional association;
- (b) the resolution was adopted by a majority of members present or represented at the meeting; and
- (c) all relevant matters which reasonably have to be addressed prior to deregistration, including the way in which the assets and liabilities of the association or provisional association will be dealt with, have been addressed.

(4) Where the Court orders the liquidation of an association or provisional association, it shall make such order as to the distribution of the assets of the association or provisional association as it deems just and equitable, having considered any recommendations which the Director-General may make in this regard.

(5) The Minister may prescribe the procedure to be followed in an application contemplated in subsection (1), and set out the powers and duties of the Director-General, the Registration Officer, the association, members and interested parties in those situations.

Offences

14. (1) A person shall be guilty of an offence if he or she—

- (a) in breach of the provisions of a constitution grants or purports to grant to any person rights in respect of the property of an association or access to such property;
- (b) acts in breach of the fiduciary relationship contemplated in section 8(7);
- (c) abuses any power or authority vested in him or her by the members of the association or provisional association by doing any thing or refraining from doing any thing or threatening to do or refrain from doing any thing, in such a manner that the benefits or rights of a member are prejudiced or threatened;
- (d) incites or attempts to incite any person to commit the offence contemplated in paragraph (c);
- (e) grants or purports to grant to any person other than a member of that provisional association any right in respect of the rights of a provisional association referred to in section 5(4)(a).

(2) The Director-General shall, if so requested by the committee or the association—

- (a) take the necessary steps to establish to his or her satisfaction whether the membership of a person has been duly terminated in terms of the constitution; and
- (b) if he or she is satisfied that the membership of the person concerned has been so terminated, issue a certificate to that effect.

(3) In a prosecution under section 1 of the Trespass Act, 1959 (Act No. 6 of 1959), and in any proceedings for the eviction of any person from property owned, controlled or

managed by an association, a certificate issued by the Director-General in terms of subsection (2) shall be *prima facie* proof of the correctness of the contents thereof.

(4) Any person convicted of a contravention of subsection (1) shall be liable to a fine or to imprisonment for a period not exceeding ten years or to both such fine and imprisonment.

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Delegation of powers and assignment of duties by Director-General

15. (1) The Director-General may—

(a) delegate to any officer of the Department of Land Affairs or, with the prior approval of the Premier of the province concerned, to any officer in the service of that provincial government, any power conferred upon him or her by or under this Act, either generally or in a particular case;

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(b) authorise any such officer to perform any duty assigned to him or her by or under this Act except the duty referred to in section 6(2).

(2) Any delegation under this section shall not prevent the exercise of the relevant power by the Director-General himself or herself, and the Director-General shall be entitled to rescind, review or withdraw any decision or action taken by any person to whom he or she has delegated any power.

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Appeals

16. Any person aggrieved by a decision of the Director-General may in the prescribed manner appeal to the Minister, who may uphold the appeal in whole or in part and rescind or vary the decision, or dismiss the appeal.

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Annual report by Director-General

17. The Director-General shall in every calendar year submit to the Minister a report concerning associations and provisional associations and the extent to which the objects of this Act are being achieved, and the Minister shall table the report in Parliament.

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Regulations

18. (1) The Minister may make regulations intended to give effect to the implementation of this Act.

(2) Any regulation made under subsection (1) may in respect of any contravention thereof or failure to comply therewith prescribe a penalty of a fine or imprisonment for a period not exceeding five years, or both such fine and imprisonment.

30

Short title

19. This Act shall be called the Communal Property Associations Act, 1996.

SCHEDULE

MATTERS TO BE ADDRESSED IN THE CONSTITUTION OF A COMMUNAL PROPERTY ASSOCIATION

(Section 8(2)(d))

1. Name of the association.
2. Address of the association.
3. Objects of the association, including the identity of the community.
4. Land or property to be owned by the association; if known.
5. Qualifications for membership of the association, including a list of the names and, where readily available, identity numbers of the intended members of the association: Provided that where it is not reasonably possible to provide the names of all the intended members concerned, the constitution shall contain—
 - (i) principles for the identification of other persons entitled to be members of the association; and
 - (ii) a procedure for resolving disputes regarding the right of other persons to be members of the association.
6. Classes of membership (if any) and the rights of members of different classes.
7. The rights of members to the use of the association's property.
8. Whether membership is based on individuals or families; if based on families, how the family is to be represented in the decision-making process of the association.
9. The grounds and procedure for terminating membership, and what happens to the rights and property of the member concerned.
10. The property: The purposes for which it may be used, and the physical division and allocation of the property.
11. Whether members may sell their rights and, if so, to whom.
12. What happens to a member's rights on his or her death.
13. How the committee is to be elected, its terms of office, its powers, the powers of members in relation to decisions made by the committee, the power of members to remove the committee or members of the committee, and payment (if any) of the committee members.
14. How and when the Annual General Meeting is to be called, the quorum or other measure of representativity at an Annual General Meeting, and procedure at an Annual General Meeting.
15. General Meetings: How and when General Meetings are to be called, the quorum or other measure of representativity at a General Meeting, and procedure at a General Meeting.
16. The powers of the association, and any limitations on them.
17. Who is responsible for keeping minutes of meetings, and access to the minutes by members.
18. Financial matters: How the money of the association will be dealt with, who will have the right to make payments on behalf of the association, how and by whom the financial records will be kept, what provision there will be for independent verification of the financial records, distribution and division of profits, responsibility and apportionment of working expenditure, and access to financial information by members.
19. How the constitution may be changed.
20. How the association may be dissolved, and in that event what will happen to the assets of the association.
21. Disciplinary matters, and in particular how corruption, nepotism and offences referred to in section 14 of the Act are to be dealt with.
22. How disputes in the association are to be resolved.