

REPUBLIC OF SOUTH AFRICA

LAND SURVEY BILL

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

(MINISTER FOR AGRICULTURE AND LAND AFFAIRS)

[B 83B—96]

REPUBLIEK VAN SUID-AFRIKA

GRONDOPMETINGSWETS- ONTWERP

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

(MINISTER VIR LANDBOU EN GRONDSAKE)

[W 83B—96]

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BILL

To regulate the survey of land in the Republic; and to provide for matters connected therewith.

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

Definitions

1. In this Act, unless the context indicates otherwise—
- (i) “approve”, in relation to the Surveyor-General and to any general plan or diagram, means the signing of a general plan or diagram in order to signify that the requirements of this Act have been complied with in regard to that general plan or diagram; (xi) 5
 - (ii) “Chief Surveyor-General” means the Chief Surveyor-General appointed in terms of section 2; (xiii) 10
 - (iii) “contiguous”, in relation to any land represented in a diagram or being subdivided, includes any land having a common beacon or boundary with that land, or land having a beacon being a common terminal point of a straight boundary line of such land, and with reference to any river boundary of such land, includes any land which may be affected by the acceptance of an agreement referred to in section 33(2)(b); (ii) 15
 - (iv) “deeds registry” means a deeds registry as defined in the Deeds Registries Act, 1937 (Act No. 47 of 1937), and when used in relation to any mining title includes the Mining Titles Office; (xx) 20
 - (v) “Department” means the Department of Land Affairs; (iv) 20
 - (vi) “diagram” means a document containing geometrical, numerical and verbal representations of a piece of land, line, feature or area forming the basis for registration of a real right and which has been signed by a person recognised under any law then in force as a land surveyor, or which has been approved or certified by a Surveyor-General and includes a diagram or copy thereof prepared in a Surveyor-General’s office and approved or certified as such, or a document which has at any time, prior to the commencement of this Act, been accepted as a diagram in a deeds registry or Surveyor-General’s office in the Republic or in any such office situated in any area which became part of the Republic at the commencement of the Constitution; (v) 25 30
 - (vii) “Director-General: means the Director-General of the Department; (vii) 30
 - (viii) “erf” means any piece of land registered as an erf, lot, plot or stand in a deeds registry, and includes a stand or lot forming part of a piece of land laid out as, but not proclaimed, a township, or a portion of such erf, stand or lot; (x) 35
 - (ix) “general plan” means a plan which, representing the relative positions and dimensions of two or more pieces of land, has been signed by a person recognised under any law then in force as a land surveyor, or which has been approved or certified as a general plan by a Surveyor-General and includes a general plan or a copy thereof prepared in a Surveyor-General’s office and approved or certified as such or a general plan which has, prior to the commencement of this Act, been lodged for registration in a deeds registry or 40

- Surveyor-General's office in the Republic or any area which became part of the Republic at the commencement of the Constitution; (iii)
- (x) "land surveyor" means a person registered as a professional land surveyor in terms of the Professional and Technical Surveyors' Act, 1984 (Act No. 40 of 1984), and whose name is entered in the register referred to in section 7(4)(a) of that Act; (xiv)
 - (xi) "local authority" means a local government body referred to in section 1 of the Local Government Transition Act, 1993 (Act No. 209 of 1993); (xviii)
 - (xii) "Minister" means the Minister for Agriculture and Land Affairs; (xvi)
 - (xiii) "owner", in relation to land, means the person registered in a deeds registry as the owner of such land, and includes—
 - (a) the liquidator of a company or close corporation or the representative recognised by law of any owner who has died, become insolvent, assigned his or her estate, is a minor or of unsound mind or is otherwise under disability, provided that such liquidator or representative acts within the power conferred on him or her by law;
 - (b) the person in whom the ownership of the land is vested by statute, and the allottee of land held under provisional title and in process of alienation by the State;
 - (c) the lessee of land held under a lease for a period of 99 years registered in a deeds registry, and in the Province of KwaZulu-Natal a lease of land from the State for a period of 99 years; or
 - (d) for the purposes of sections 19, 22, 23, 24, 25, 29, 31, 33, 34 and 36, the holder of a right to minerals in respect of such land; (ix)
 - (xiv) "prescribed" means prescribed under this Act; (xxvi)
 - (xv) "public place" includes any street, road, thoroughfare, sanitary passage, square or open space shown on a general plan of a township or settlement, filed in any deeds registry or Surveyor-General's office, and all land (other than erven shown on the general plan) the control whereof is vested, to the entire exclusion of the owner, in a local authority or to which the owners of erven in the township have a common right, and for purposes of this definition "settlement" means a group of pieces of land or of subdivisions 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 inclusion in one property register; (xvii)
 - (xvi) "reference mark" means a survey mark of permanent construction placed in a township to form one of a system of such marks for the purpose of basing the survey or resurvey of the pieces of land in the township thereon or connecting such survey or resurvey thereto; (xxv)
 - (xvii) "Registrar" means a registrar of deeds appointed under the Deeds Registries Act, 1937 (Act No. 47 of 1937), and, when used in relation to—
 - (a) any deeds registry means the registrar in charge of that deeds registry; and
 - (b) 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; (xxi)

corner points or other objects: Provided that the land surveyor shall not be compelled to be present or to participate when any such beacons, corner points or other objects which were previously connected to or based upon reference marks or trigonometrical stations are inspected by an assistant; and

- (b) adequate control by the land surveyor when beacons are placed and surveyed by an assistant; (xxiii) 5
- (xxii) “Surveyor-General”, in relation to any land or any general plan or diagram thereof, or in relation to any matter in connection with any land, means the Surveyor-General of the Surveyor-General’s office established in terms of section 4 of the province in which that land is situate or such general plan or diagram is registered or registrable; (xv) 10
- (xxiii) “the court” means the provincial or local division of the Supreme Court having jurisdiction or any judge thereof; (vi)
- (xxiv) “this Act” includes the regulations made under this Act; (xii) 15
- (xxv) “township” means a group of pieces of land, or of subdivisions of a piece of land, which are combined with public places and are used mainly for residential, industrial, business or similar purposes, or are intended to be so used; (viii)
- (xxvi) “trigonometrical station” means any survey station, including a town survey mark, erected by or under direction of the Chief Surveyor-General and for which he or she has published, or intends to publish, official co-ordinate values, and includes such other stations as may be prescribed. (xxiv) 20

Appointment, powers and functions of Chief Surveyor-General

2. (1) The Minister shall, subject to section 50 and the Public Service Act, 1994 (Proclamation No. 103 of 1994), appoint an officer, who shall be a land surveyor, to be styled the Chief Surveyor-General. 25

(2) The Chief Surveyor-General shall, subject to the directions of the Minister, exercise the powers and perform the duties conferred upon or assigned to the Chief Surveyor-General by this Act or any other law. 30

Duties of Chief Surveyor-General

3. (1) The Chief Surveyor-General shall be in charge of such geodetic, topographical and cadastral surveying and land information services in the Republic as the Minister may direct and, subject to this Act, shall—

- (a) promote and control all matters connected with those surveys and services; 35
- (b) conduct such trigonometrical, topographical, geodetic and other relevant survey operations as may be required;
- (c) take charge of and preserve the records of all surveys and operations which do not form part of the records of an office of a Surveyor-General and which were carried out before the commencement of this Act or under this section; 40
- (d) prepare, compile and amend such maps and other documents as may be required;
- (e) supervise and control the survey and diagrammatic representation of land for purposes of registration in a deeds registry; and
- (f) regulate the procedure in each Surveyor-General’s office and determine the manner in which this Act shall be carried out. 45

(2) Any land surveyor employed in the office of the Chief Surveyor-General may, if authorised thereto by the Chief Surveyor-General, perform any specified act or task which may be performed in terms of this Act or any other law by the Chief Surveyor-General. 50

Establishment of offices of Surveyors-General for provinces

4. (1) The Minister may, by notice in the *Gazette*, establish a Surveyor-General's office for any province or any provinces jointly, give a name to that office, and determine the seat thereof.

(2) The Minister may, in the execution of subsection (1), abolish any Surveyor-General's office or incorporate it with any other such office, and may for this purpose make any administrative or other arrangements as he or she may deem necessary.

(3) The Minister may, by notice in the *Gazette*, amend or withdraw a notice referred to in subsection (1).

Appointment of Surveyor-General

5. In respect of each Surveyor-General's office referred to in section 4, the Minister shall, after consultation with the Chief Surveyor-General, and subject to section 50 and the Public Service Act, 1994 (Proclamation No. 103 of 1994), appoint an officer who

Delegation of powers

7. The Minister may delegate or assign any power or duty conferred or imposed upon him or her by or under this Act, except the powers referred to in sections 2, 4 and 5, and the proviso to section 33(1)(a) to any officer of the Department.

Fees of office

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8. (1) The Director-General may, by notice in the *Gazette*, prescribe the fees to be charged in respect of any act or matter required or permitted to be performed or dealt with in or in connection with the offices of the Chief Surveyor-General and the Surveyors-General.

(2) Any notice referred to in subsection (1), or any amendment or rescission thereof, shall come into effect 30 days after it has been published in the *Gazette*, or at such later date as the Director-General may determine. 10

Survey regulations board

9. (1) A survey regulations board (in this section and in section 10 referred to as “the board”) is hereby established consisting of— 15

- (a) the Chief Surveyor-General, who shall be the chairperson of the board;
- (b) three land surveyors appointed by the Minister, who shall be officers in the service of the State; and
- (c) three land surveyors nominated by the South African Council for Professional and Technical Surveyors established by section 2 of the Professional and Technical Surveyors’ Act, 1984 (Act No. 40 of 1984). 20

(2) For every member of the board appointed in terms of subsection (1)(b) or nominated in terms of subsection (1)(c), there shall be an alternate member appointed or nominated, as the case may be, in the same manner as the member referred to, and any alternate member so appointed or nominated shall act in the place of the member in respect of whom he or she has been appointed or nominated as alternate member, during the absence of that member or during his or her inability to act as a member of the board. 25

(3) If the South African Council for Professional and Technical Surveyors fails to nominate—

- (a) a member for the purposes of subsection (1)(c); or 30
- (b) an alternate member referred to in subsection (2),

the Minister shall appoint a land surveyor as a member or alternate member, and any member or alternate member so appointed shall be deemed to have been nominated in terms of subsection (1)(c) or (2), as the case may be.

(4) (a) A member of the board referred to in subsection (1)(b) shall hold office for the term determined by the Minister, but the Minister may at any time remove that member from office on grounds of misbehaviour, incapacity or incompetence. 35

(b) A member of the board referred to in subsection (1)(c) shall hold office for a term determined by the South African Council for Professional and Technical Surveyors but not exceeding two years, but that Council may, at any time remove that member from office on grounds of misbehaviour, incapacity or incompetence. 40

(c) A member of the board whose term of office has expired, may be reappointed.

(5) Should a member of the board die or vacate office before the expiration of his or her term of office, the Minister or the South African Council for Professional and Technical Surveyors, as the case may be, may appoint a person to fill the vacancy for the unexpired part of the term for which the member was appointed or nominated. 45

(6) The first meeting of the board shall be convened by the Director-General.

(7) The board shall meet not less than once in every two years at such times and places as the Chief Surveyor-General may determine.

(8) Whenever the Chief Surveyor-General is absent from or unable to preside at any meeting, the members present shall elect one out of their number to preside at that meeting, and the person who is so elected shall for the purposes of that meeting have the same powers and duties as those of the Chief Surveyor-General. 50

(9) The quorum for a meeting of the board shall be the majority of its members.

(10) The decision of the majority of the members present at any meeting shall constitute a decision of the board, and in the event of an equality of votes the chairperson shall have a casting vote in addition to his or her deliberative vote.

(11) A member of the board who is not in the full-time service of the State shall receive in respect of his or her services such allowances as the Minister with the concurrence of the Minister of Finance may determine. 5

Regulations

10. (1) The board established by section 9 may make regulations regarding—

- (a) the manner in which surveys shall be performed, and the manner and form in which the records of those surveys shall be prepared and lodged with the Surveyor-General; 10
- (b) the degree of accuracy to be obtained and the limit of error to be allowed in surveys and resurveys of land and for surveys of reference and other permanent marks;
- (c) the diagrams and general plans required in connection with the registration of any land in a deeds registry, the manner of preparing those diagrams and general plans, the information to be recorded thereon, and the number of the diagrams and general plans to be supplied; 15
- (d) the form and dimensions of beacons, reference marks and trigonometrical stations, the manner of marking them for identification, and the manner of their construction, erection, protection, maintenance and repair; 20
- (e) the procedure to be followed in obtaining agreement regarding beacons and boundaries and in arbitration proceedings under this Act and the powers and duties of arbitrators appointed under this Act;
- (f) the manner and circumstances in which cadastral surveys of land shall be based upon or connected to trigonometrical stations and reference marks; 25
- (g) the manner of resurveying any block of land for the purpose of readjusting the boundaries and establishing the beacons thereof, and the manner of recovering the costs of those resurveys;
- (h) the steps to be taken by a Surveyor-General to test the accuracy or correctness of surveys of which the results are recorded on diagrams or general plans which have been, or are intended to be, registered in a deeds registry, and in the event of those surveys being inaccurate or incorrect, to cause correct diagrams and general plans to be framed and the relevant title deeds to be amended; 30 35
- (i) the steps to be taken by a land surveyor, a Surveyor-General and a Registrar in order to rectify an incorrect diagram or general plan;
- (j) the testing of measuring instruments to be used in the survey of land;
- (k) the unit of measure to be used in surveys or on general plans and diagrams;
- (l) the conditions on which copies of plans and other documents may be issued by the Surveyor-General for judicial, informational or other purposes; 40
- (m) the manner in which any notice contemplated in this Act shall be served or published,

and in general, any matter relating to the surveying and mapping of land and the rendering of land information services, and for achieving the objects of this Act. 45

(2) The board may by regulation prescribe the circumstances in which the Chief Surveyor-General or a Surveyor-General may authorise a departure from a regulation made in terms of subsection (1)(a), (b), (c), (f) and (h) when compliance with any such regulation is found to be impossible or impracticable.

(3) The board may amend or rescind any regulation made by it. 50

(4) (a) If the need occurs to make, amend or rescind a regulation and it is not expedient to call a meeting of the board, the Chief Surveyor-General may, with the

concurrence of not less than 80% of the members of the board, make, amend or rescind the regulation.

(b) A regulation contemplated in paragraph (a)—

- (i) shall be submitted to the board at its next meeting for ratification, and if ratified shall be deemed to be a regulation of the board; and
- (ii) ceases to exist if not so ratified, but everything purported to have been done in terms of that regulation shall be deemed to have been done as if the regulation had been ratified.

(5) No regulation or any amendment or rescission thereof shall come into operation until one month after it has been published in the *Gazette*.

Duties of land surveyor

11. A land surveyor shall—

- (a) carry out every survey undertaken by him or her in accordance with this Act, and in a manner that will ensure accurate results;
- (b) be responsible to the Surveyor-General for the correctness of every survey carried out by him or her or under his or her supervision, and of every general plan or diagram which bears his or her signature;
- (c) deposit with the Surveyor-General for the purpose of being examined and permanently filed in that Surveyor-General's office such records as may be prescribed in respect of any survey carried out by him or her for the purpose of, or in connection with, any registration of land in a deeds registry, and in respect of any general plan or diagram prepared as a result of that survey, and in respect of any survey carried out by him or her for the replacement of a beacon; and
- (d) correct without delay, when required by the Surveyor-General, any error in any survey carried out by that land surveyor or in respect of any work related thereto due to failure to comply with this Act and take such steps as may be necessary to ensure the correction of any diagram, general plan and title deed based on the incorrect survey and to adjust the position of any beacon which he or she has placed in accordance with the incorrect survey.

Improper conduct of land surveyor

12. (1) A land surveyor shall be guilty of improper conduct if he or she—

- (a) signs, except as provided in section 16 or in the prescribed circumstances, a general plan or diagram of any piece of land in respect of which he or she has not carried out or supervised the whole of the survey and field operations, and carefully examined and satisfied himself or herself of the correctness of any entries which may have been made by any other person in any field book, and of the calculations, working plans or other records in connection therewith;
- (b) signs a defective general plan or diagram knowing it to be defective;
- (c) performs, through negligence or incompetence, defective surveys or surveys to which adequate checks have not been applied;
- (d) makes any entry in a field book or other document, which purports to have been derived from actual observation or measurements in the field when it was not so derived;
- (e) supplies erroneous information to the Surveyor-General in connection with any survey, boundaries or beacons of land, knowing it to be erroneous; or
- (f) contravenes any provision of this Act or fails to comply therewith.

(2) The Chief Surveyor-General may, in respect of any land surveyor referred to in subsection (1)—

- (a) refer any complaint or allegation of improper conduct to the South African

Limitation of liability

13. The State, a Surveyor-General or an official who is employed in an office of a Surveyor-General shall not be liable for any damages suffered by any person in consequence of an act or omission by a Surveyor-General or such official in the course of the application of this Act: Provided that if a court finds that such act or omission was due to negligence or bad faith the State shall be liable for such damages. 5

No registration of land without approved diagram or general plan

14. No general plan or diagram of any piece of land shall be accepted in any deeds registry in connection with any registration therein of that land, unless the general plan or diagram has been approved by the Surveyor-General: Provided that, in the event of a general plan having been prepared in terms of any law which regulates the establishment of townships, the Surveyor-General may, at the request of the land surveyor who has signed the general plan, approve it provisionally, and that provisionally approved general plan may be accepted in a deeds registry for the registration of registrable acts in respect of erven indicated thereon, if a certificate has been submitted to the Registrar in which the responsible land surveyor declares that the beacons of the erf or erven to be registered have been placed in positions that correspond with the data appearing on the provisionally approved general plan, and that he or she will submit the final general plan to the Surveyor-General for approval within the prescribed period: Provided further that the land surveyor shall, simultaneously with the submission of the certificate to the Registrar, submit a copy thereof to the Surveyor-General. 10
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Manner of preparing diagram and general plan

15. Every general plan or diagram lodged for the approval of the Surveyor-General shall be prepared in accordance with this Act, and the numerical and other data recorded thereon shall be within the prescribed limits of consistency: Provided that the Surveyor-General may approve a diagram or general plan prepared before the commencement of this Act in accordance with any law or usage in force at the time of preparation. 25

Diagram and general plan must be signed by land surveyor

16. No general plan or diagram shall be approved by the Surveyor-General unless it is prepared under the direction of and signed by a land surveyor: Provided that in exceptional circumstances the Surveyor-General may approve a general plan or diagram framed at his or her direction from general plans, diagrams or survey records filed in his or her office or registered in a deeds registry, without the signature thereon of the land surveyor who signed those general plans, diagrams or survey records. 30
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No approval of diagram of portion of unsurveyed land

17. No diagram of any portion of an unsurveyed piece of land registered in a deeds registry shall be approved by the Surveyor-General unless a survey has been made of the whole of that piece of land and a new title deed has been registered or the old title deed has been endorsed on the basis of that survey. 40

Original survey of land to which title has been issued

18. (1) Any land surveyor carrying out a survey of any piece of land to which a title deed has been issued but of which a diagram has not previously been registered, shall lodge with the Surveyor-General for examination and filing of record in the Surveyor-General's office the prescribed diagram and survey records and shall cause the beacons and boundaries to be accepted by agreement as contemplated in section 29. 45

(2) Subject to subsection (4), when the Surveyor-General is satisfied as to the correctness of the diagram and the survey records and the agreement to beacons and boundaries he or she shall approve the diagram.

(3) Upon approving the diagram the Surveyor-General shall inform the Registrar of the approval and thereafter no registration of a deed of transfer of the land represented by that diagram, or of any portion thereof or share therein, shall be effected in a deeds registry until an endorsement has been made on the title deed of that land in terms of the applicable provisions of the Deeds Registries Act, 1937 (Act No. 47 of 1937).

(4) The Surveyor-General may, unless otherwise directed by a court order, refuse to approve a diagram of any piece of land referred to in subsection (1) if he or she has reasonable grounds for believing that any area not owned by the owner of that piece of land has been included within the boundaries thereof as defined in that diagram or that payment of any rates or taxes has been or will be evaded by any registration in a deeds registry based upon that diagram.

Original survey of land to which no title has been issued

19. (1) Whenever a land surveyor carries out a survey under the direction of the Surveyor-General of any piece of land to which no title deed has been issued and which is not represented on any diagram registered in a deeds registry or filed in a Surveyor-General's office, the Surveyor-General shall, before approving a diagram of the land, publish a notice in the prescribed manner stating that copies of the diagram of that land are available for inspection at the office of the magistrate of the district in which the land is situate and at the Surveyor-General's office.

(2) The notice referred to in subsection (1) shall also state that if no objection by an owner of land contiguous to the land represented on the diagram is received within 60 days from the first publication of the notice, that diagram will be approved by the Surveyor-General.

(3) The Surveyor-General may dispense with the publication of the notice referred to in subsection (1) if no contiguous owner's rights would be adversely affected.

(4) If within the period referred to in subsection (2) any owner of land contiguous to the land represented by that diagram lodges with the Surveyor-General an objection to the diagram or to any beacon or boundary adopted in the survey of that land, and any dispute arising from the objection cannot be settled by agreement of the parties thereto, section 29(5) and (8) shall with the necessary changes apply.

Division surveys

20. (1) Whenever the owner of a surveyed piece of land desires to subdivide that land and to effect separate registration of one or more portions of the land in a deeds registry, each of the portions to be so registered shall be surveyed and a diagram thereof shall be submitted for examination to the Surveyor-General, who shall approve every such diagram if it has been prepared in accordance with this Act: Provided that—

(a) if it is desired to effect separate registration of the remaining extent of such piece of land it shall not be compulsory to so submit a diagram of the remaining extent; and

(b)

divided filed in his or her office, and may define on the copy of the diagram filed in the deeds registry and on the copy belonging to the owner of the remaining extent, the geometrical figure representing that portion and deduct its numerical extent: Provided that, where prescribed, the definition and deduction may be made on a general plan instead of on a diagram. 5

(3) Section 24(1) and (2) shall with the necessary changes apply in respect of the beacons and boundaries of any portion of land surveyed in terms of this section.

Diagram of exact fraction of land

21. Whenever a surveyed piece of land which is held in shares is subdivided for the purpose of dividing it between the owners, the Surveyor-General may withhold his or her approval of a diagram purporting to represent an exact fraction of the total area of that piece of land until he or she is satisfied that the total area has been ascertained by a resurvey of the whole of the piece of land. 10

Land represented by incorrect diagram

22. The Surveyor-General may, if the diagram of any piece of land entirely fails to represent that land or misrepresents it to such an extent that damage or loss might result to any person who acquires or may acquire any interest therein, give notice of that fact to the Registrar and to the owner thereof, after which no further registration of that piece of land or of any portion thereof or of any share therein may be effected in a deeds registry until a new diagram thereof has been approved, and the title deed thereof has been endorsed in accordance with the new diagram as prescribed by the Deeds Registries Act, 1937 (Act No. 47 of 1937), and if the Surveyor-General is unaware of the address of the owner of the piece of land, a publication of a notice in the prescribed manner shall be deemed to be sufficient notice to the owner for the purpose of this section. 15 20 25

Rectification of overlap of diagrams

23. (1) If the figure of the diagram of a piece of land (in this section referred to as the “overlapping diagram”) overlaps the figure of the diagram of another piece of land and the Surveyor-General deems it necessary to rectify the anomaly, he or she shall give notice of the overlap to the Registrar and in the prescribed manner to the owner of the land represented on the overlapping diagram and thereafter no further registration of that land or any portion thereof or share therein may be effected in a deeds registry until the Surveyor-General, after receipt of such data as he or she may require from the owner for the purpose, has rectified the overlapping diagram. 30

(2) The Surveyor-General shall publish the notice referred to in subsection (1) in the prescribed manner, if the address of the owner is unknown. 35

(3) Section 36 shall with the necessary changes apply in regard to the alteration of the title deed in respect of the overlapping diagram.

Replacing existing diagram by new diagram after resurvey

24. (1) Whenever it is alleged by the owner, or whenever it appears from a resurvey, that the diagram of any land registered in a deeds registry (in this section referred to as the “existing diagram”) does not correctly represent any beacon, boundary or the area of that land, the Surveyor-General may approve a new diagram prepared in accordance with a resurvey of that land. 40

(2) Section 29 shall with the necessary changes apply in regard to any resurvey, but it shall not be necessary to comply therewith in respect of any beacon or boundary if— 45

- (a) the numerical data relating to that beacon or boundary, as derived from the resurvey, do not differ beyond the prescribed limits from the corresponding data recorded on the existing diagram and upon which any registration has been based, and the Surveyor-General is satisfied that the resurvey has not been less accurately performed than the previous survey and that the position 50

of the beacon or boundary adopted in both surveys is substantially the same;
or

- (b) notwithstanding any difference beyond the prescribed limits, documentary evidence is produced which is sufficient to prove that the position of the beacon or boundary is correct: 5

Provided that nothing contained in this subsection shall be construed as preventing an owner from complying with section 29 in respect of any beacon or boundary which he or she may wish to have lawfully established in terms of section 35.

(3) Upon approving the new diagram the Surveyor-General shall endorse the existing diagram as having been replaced by the new diagram and shall inform the Registrar, and thereafter no registration of the land represented by the new diagram, or of any portion thereof or of any share therein, shall be effected in a deeds registry until an endorsement has been made on the relevant title deed in accordance with the Deeds Registries Act, 1937 (Act No. 47 of 1937). 10

(4) If it appears from the resurvey that an existing diagram is correct, the Surveyor-General shall endorse thereon a certificate that the land represented by that diagram has been resurveyed and that the existing diagram has been found to be correct, and thereupon the beacons and boundaries of that piece of land shall be deemed to have been lawfully established in accordance with section 35. 15

(5) This section shall also apply to adjoining land represented on two or more existing diagrams and resurveyed for the purpose of obtaining a certificate of consolidated title to that land. 20

Resurvey of block of land other than township

25. (1) The Minister may order that a section or block of land (excluding land referred to in sections 26, 27, 28 and 37) be resurveyed under the direction of the Surveyor-General whenever— 25

- (a) the owners of not less than one half of the section or block of land, consisting of more than one registered piece of land, apply to the Minister for a resurvey of that section or block; and
(b) the Surveyor-General reports that the boundaries of the several pieces of land constituting that section or block are confusing and need readjustment. 30

(2) No beacons or boundaries which have become lawfully established in accordance with section 35 shall be affected by any resurvey or any other act performed under this section.

(3) If in the course of a resurvey ordered under this section a dispute arises as to the boundaries of any piece of land, the Surveyor-General may in the prescribed manner give written notice to every party to that dispute that he or she proposes to appoint an arbitrator for the purposes of settling the dispute. 35

(4) Any party referred to in subsection (3) may, if he or she was in South Africa on the date when the notice was served upon him or her, within 30 days, or if he or she was not in South Africa upon that date, within 60 days after that date, institute an action in the court to settle that dispute or, if the State is one of the parties to the dispute, proceed to arbitration in respect thereof: Provided that should no person institute any such action or arbitration proceedings within those periods the Surveyor-General may appoint an arbitrator to settle the dispute. 40 45

(5) The costs of any resurvey ordered under this section shall be defrayed from the National Revenue Fund, established by section 185 of the Constitution, but the Minister may thereafter recover those costs from the owner of each piece of land in accordance with a schedule framed by the Surveyor-General, apportioning the costs among all the owners. 50

(6) Upon payment by the owner of any piece of land of all costs due by him or her in respect of a resurvey ordered under this section, the Surveyor-General shall cancel the existing diagram of that piece of land and shall issue that owner with a new diagram.

(7) The Surveyor-General shall not approve a general plan representing pieces of land based upon a resurvey under this section until a copy thereof has been available for inspection during a period of six weeks at his or her office and at the office of the magistrate of the district within which that land is situate and until the Surveyor-General has published, in the prescribed manner, a notice stating his or her intention to approve that general plan and calling upon persons interested who object to the approval, to lodge an objection with the Surveyor-General: Provided that the Surveyor-General may approve any such general plan without the notice if each owner of any land affected by 55 60

the resurvey has agreed in writing to the general plan or to the beacons and boundaries adopted in the resurvey, or if the resurvey is in accordance with a judgment or award under subsection (4).

(8) If within four weeks from the date of the last publication of the notice no objection under subsection (7) has been lodged by any person other than a person who was a party to an action or arbitration proceedings under subsection (4), the Surveyor-General may approve the general plan and upon approval he or she shall, by notice in the relevant *Provincial Gazette*, declare that the general plan has been approved. 5

(9) If within the period of four weeks any objection under subsection (7) has been lodged, the proviso to section 27(3), and section 29(5), shall with the necessary changes apply. 10

Resurvey of townships

26. (1) If the recognised boundaries of the pieces of land which compose a township do not conform with the boundaries represented on their respective separate diagrams or the general plan, the Minister may cause the township, or any part thereof to be resurveyed and a superseding general plan thereof to be prepared in accordance with the resurvey: Provided that the resurvey of any township or part thereof falling within the area of jurisdiction of a local authority shall be carried out only after written application for the resurvey has been made to the Minister by that authority. 15

(2) Before any local authority applies to the Minister for a resurvey of any township or part thereof falling within its jurisdiction it shall, in consultation with the Surveyor-General, publish a notice in the prescribed manner of the intended application, and also post the notice outside its office: Provided that should no local authority have been established for the township, or if there is a local authority which is not by law empowered to incur expenditure for that purpose, the Surveyor-General shall, before any resurvey is commenced, cause a notice of the intended resurvey to be published as aforesaid, and have the notice posted outside the office of the magistrate of the district in which the township is situate. 20 25

(3) A resurvey under this section shall be based on reference marks erected in terms of section 40: Provided that any reference marks erected before the commencement of this Act and conforming with the requirements of that section shall be deemed to have been erected in terms of that section. 30

(4) A resurvey under this section shall be carried out and the superseding general plan shall be prepared under the direction of the Surveyor-General by a land surveyor appointed by the Surveyor-General: Provided that where the township falls within the area of jurisdiction of a local authority, that local authority may, subject to the concurrence of the Surveyor-General, appoint the land surveyor. 35

(5) No beacon or boundary which has become lawfully established in accordance with section 35 shall be affected by any resurvey or other act performed under this section. 40

(6) (a) (i) All costs of and incidental to the resurvey shall (except in respect of State land) be borne by the local authority of the resurveyed township and, notwithstanding anything contained in any other law, that local authority may levy a special rate payable by the registered owners of land within the resurveyed area in proportion to the value of the land (including non-ratable land other than State land) held in ownership by each in order to cover the costs of and incidental to the resurvey of any portion thereof. 45

(ii) The costs of and incidental to the resurvey which shall be payable by the State in respect of State land shall be determined by the Minister, after consultation with the local authority concerned.

(iii) For purposes of paragraph (a)(i) "the value of the land" means the valuation of that land appearing in the valuation roll used for rating purposes by the local authority 50

concerned, or in the absence of such valuation, a valuation approved by the Minister after consultation with the local authority.

(b) If no local authority has been established for the township, or if a local authority is not by law empowered to incur expenditure for the purpose, the owners of land (including the State) in the resurveyed area shall bear the costs of and incidental to the resurvey in accordance with a schedule prepared by the Surveyor-General, apportioning the costs among all the owners. 5

(c) Before the resurvey is commenced the owners, other than the State, shall deposit with the Minister an amount sufficient to cover their proportionate share of the costs, and if their share of the actual costs is less than the amount deposited, the difference shall be refunded to them, and if that share is in excess of the amount deposited, the Minister may recover the difference from them by action in the court. 10

Approval of superseding general plan

27. (1) The Surveyor-General may not approve a superseding general plan of a township, or of a defined portion thereof resurveyed under section 26, until— 15

(a) notice of the Surveyor-General's intention to approve the superseding general plan has been published in the prescribed manner calling upon persons interested to lodge in writing at his or her office any objection they may have to the approval thereof; and

(b) copies of the superseding general plan have been made available for inspection during a period of six weeks at the Surveyor-General's office and at the office of the local authority within whose jurisdiction the area resurveyed is situate or, if there is no local authority, at the office of the magistrate of the district in which that area is situate. 20

(2) The Surveyor-General may approve the superseding general plan if within four weeks from the date of the last publication of the said notice no objection has been lodged, and upon approval shall by notice in the relevant *Provincial Gazette* declare that the plan has been approved. 25

(3) Section 29 shall with the necessary changes apply if within the period of four weeks any objection to the superseding general plan has been lodged: Provided that the Surveyor-General may approve and make use of any superseding general plan of such portions of the area resurveyed as are not affected by the objection, and generally may take any steps in regard to those portions as if no objection had been lodged. 30

(4) The approval of a superseding general plan of an area resurveyed under section 26 shall thereby cancel every preceding general plan or part thereof or any diagram representing that area and the Surveyor-General shall thereupon endorse the preceding general plans or diagrams accordingly. 35

Registration of pieces of land on superseding general plan

28. Upon approving a superseding general plan under section 27, the Surveyor-General shall furnish the Registrar with a list of all pieces of land shown on the superseding general plan, and thereafter no registration or any other act affecting the registration of any such piece of land or portion thereof or share therein, shall be effected until the Registrar has made those alterations, amendments or endorsements to or on the relevant title deeds and registers in his or her deeds registry as may be necessary. 40

Resolution of boundary disputes

29. (1) Whenever doubt or dispute has arisen in regard to any beacon or boundary of a piece of land, the diagram or general plan of which is registered in a deeds registry, and the position of the beacon or boundary has been determined by survey, any owner may, or the Surveyor-General may under the prescribed circumstances, in writing request that the position of the beacon or boundary be accepted by agreement between the owners concerned, and that request shall be accompanied by a notice setting out in full the provisions of this section. 45 50

(2) For the purpose of an acceptance contemplated in subsection (1), there shall be lodged with the Surveyor-General for approval a document, as far as practicable in

accordance with the form contained in Schedule I to this Act (in this section referred to as the “agreement”) specifying the beacons and boundaries concerned, and signed by—

- (a) the owner of such land or his or her duly authorised agent;
- (b) every owner of land contiguous thereto or his or her duly authorized agent;
- (c) holders of real rights, other than a right to minerals, in the piece of land or in land contiguous thereto whose rights would be adversely affected by the position of the beacons or boundaries adopted; and
- (d) two competent witnesses to each signature being persons above the age of 14 years, one of whom may be the land surveyor performing the survey:

Provided that—

- (i) in respect of any beacon or boundary which is only common to that piece of land and to land outside the Republic, no agreement is necessary;
- (ii) in respect of that piece of land, or any contiguous land, or any rights to minerals in that piece of land, or any other real rights which are held by two or more owners or holders in shares, it shall be sufficient if the agreement is signed by the owners or holders of not less than three-fourths of the shares in the piece of land or the rights, as the case may be;
- (iii) in respect of any beacon or boundary which is not also a beacon or boundary demarcating an area in respect of which a right to minerals is held, the agreement need not be signed by the owner of that right; and
- (iv) it shall not be necessary for a contiguous owner to sign the agreement if the Surveyor-General is satisfied that no prejudice will result to that owner from the acceptance of the agreement.

(3) Should any person referred to in subsection (2)(b) and (c) fail to sign the agreement within a period of two weeks from the date upon which he or she was requested to sign the agreement, the owner or the Surveyor-General, as the case may be, shall serve upon that person a notice in writing informing that person that if he or she fails, within a further period of one month from the date of service of that notice, to lodge with the Surveyor-General an objection to the boundaries or beacons of that piece of land as set out in the agreement, he or she shall be deemed to have agreed to the boundaries and beacons.

(4) Subject to subsection (8), the Surveyor-General shall approve the agreement if it complies with the requirements of this Act and no objection to any beacon or boundary adopted in the survey or resurvey of such land has been lodged by any of the persons referred to in subsection (2)(b) and (c) within the prescribed period.

(5) (a) If any person requested to sign the agreement in terms of subsection (2)(b) and (c) has failed to sign the agreement, and has, within the prescribed period, lodged with the Surveyor-General, an objection to any beacon or boundary specified in the agreement, the Surveyor-General may in the prescribed manner serve a notice on every person affected by the objection to undertake, in the prescribed manner, to accept the award of an arbitrator or arbitrators as binding upon all matters in dispute in connection with that beacon or boundary and in regard to the costs of and incidental to the arbitration.

(b) If every person affected by the objection (in the case of joint owners or holders contemplated in subsection (2)(ii), the owners or holders of not less than three-fourths of the shares in that land) have so undertaken, the Surveyor-General shall after consultation with those persons appoint one or more impartial arbitrators to determine the matter and costs in the prescribed manner.

(c) If any person affected by the objection fails so to undertake, the Surveyor-General shall in the prescribed manner serve a notice on the objector informing him or her that within the prescribed period from the date of the objection he or she may—

- (i) institute an action in the court to determine the matter; or
- (ii) if the State is one of the parties affected by the objection, proceed to arbitration in terms of the Arbitration Act, 1965 (Act No. 2 of 1965),

and should he or she fail to institute such action or proceed to such arbitration, he or she shall be deemed to have agreed to the beacons or boundaries specified in the agreement.

(6) Subsections (1) to (5) apply also in the case of—

- (a) a beacon which is erected to replace a beacon which has been destroyed or disturbed;
- (b) a curvilinear boundary which is ill-defined or unsatisfactory and in respect of which the owners have agreed upon its substitution by a boundary of another character; and
- (c) a curvilinear boundary where different opinions arise as to the correct position on the ground and the position of such boundary has been determined by survey.

(7) The Surveyor-General shall cause appropriate endorsements to be made on all affected diagrams and general plans upon the approval of the agreement.

(8) The Surveyor-General may, unless otherwise directed by a court, refuse to approve an agreement contemplated in this section if he or she has reasonable grounds for believing that any area which is not the property of the owner of a piece of land has been included within the boundaries as specified in the agreement or that payment of any rates or taxes has been or will be evaded by any registration in a deeds registry based upon the agreement.

Rules for arbitrators

30. In deciding which are the correct beacons or boundaries common to two or more contiguous pieces of land an arbitrator appointed under this Act shall take into consideration the particular circumstances of each specific case, but shall generally be guided by the following principles, namely—

- (a) that the original beacons of a piece of land, as erected or adopted at the original survey thereof (if surveyed) shall be deemed to define the true boundaries of that land as granted or transferred, notwithstanding that those beacons do not correspond to the original diagram or general plan or may not include the extent of land which the title deed of that piece of land purports to convey;
- (b) that if well-ascertained beacons have, for an uninterrupted period of not less than 30 years, been recognised by the parties to the dispute or their predecessors in title as the correct beacons, those beacons shall be taken to be the original beacons: Provided that land which is clearly not included, nor intended to be included, in the title deed of a piece of land may not be included in a new diagram of that piece of land, notwithstanding that it may have been used or occupied for the period of prescription by the owner of that piece of land or his or her predecessors in title to the exclusion of others;
- (c) that, if any land included within the original beacons and boundaries of a grant of a piece of land has afterwards been included within the beacons and boundaries of a later grant of a piece of land, the rights to the overlap conferred by the older grant shall, subject to paragraph (b), prevail; and
- (d) that, if any land has an imaginary curvilinear boundary at a stated distance

(2) Any judgment or award referred to in subsection (1) shall determine in what proportion the costs of any survey for the purpose of framing that diagram, or causing that endorsement, or otherwise giving effect to the judgment or award, shall be borne by the owners of any land affected thereby.

(3) The Surveyor-General shall furnish the Registrar with a description of any land in respect of which an endorsement on the existing title is required in terms of subsection (1) and thereafter no registration of that land or any portion thereof or any share therein shall be effected in a deeds registry until the endorsement has been made.

Survey of water feature or line parallel thereto defining boundary of State land

32. If the high-water mark of the sea or a line parallel to it, or the bank of a tidal river, or the edge of a lake or vlei, which is the property of the State, forms the boundary of any land which is to be surveyed for the replacement thereof with a boundary of another character in terms of this Act or in terms of any other law, or for the purpose of the division of that land, notice in writing of the intended survey shall be given to the Surveyor-General at least 20 days before the date of commencement of the survey.

Removal of uncertainty in description of river boundary

33. (1) (a) If a river, other than a tidal river as defined in section 1 of the Sea-shore Act, 1935 (Act No. 21 of 1935), constitutes a boundary of any piece of land, that piece of land shall be deemed to extend to the middle of the river, unless—

- (i) it is stated in clear and unequivocal terms in the title deed or on the original diagram or general plan of that land that a particular bank of the river constitutes that boundary;
- (ii) it is stated in clear and unequivocal terms in the title deed or on the original diagram or general plan of land contiguous to the first-mentioned land and separated therefrom by the river, that the entire river bed forms part of the contiguous land;
- (iii) the inclusion of any part of the river bed in that land would cause that boundary to fall beyond the territorial limits of the grantor as they existed at the time when the grant of that land was made; or
- (iv) the Surveyor-General is in possession of information indicating that the inclusion of any part of the river bed in that land would be invalid:

Provided that in the case of the Orange and Vaal Rivers the middle of the river shall not be deemed to be the boundary until the Surveyor-General, in consultation with the Chief Surveyor-General and the Minister, has certified that no evidence has been adduced whereby any presumption that that piece of land extends to the middle of the river may be rebutted.

(b) The Surveyor-General shall endorse the diagram or general plan of a piece of land of which the relevant boundary is deemed to be the middle of the river in terms of paragraph (a) to the effect that the middle of the river is the boundary on the written application of the owner.

(c) If the Surveyor-General is satisfied that on the grounds of paragraph (a)(i), (ii), (iii) or (iv) any bank of a river constitutes the boundary of a piece of land, he or she may, on the written application of the owner of that piece of land, endorse the diagram or general plan of that piece of land to the effect that that bank is the boundary.

(d) If a diagram representing a piece of land or any subdivision thereof, in respect of which the presumption contained in paragraph (a) is applicable, is submitted for approval and the Surveyor-General deems it necessary that the said diagram be, prior to its approval, endorsed in terms of paragraph (b), he or she shall call upon the owner of that piece of land, or subdivision thereof, to submit a written application as contemplated in paragraph (b) and shall upon receipt of the application endorse that diagram in terms of that paragraph.

(2) (a) If the Surveyor-General is of the opinion that the river boundary of an existing subdivision of a piece of land coincides with a part or the whole of the river boundary

of that piece of land as originally granted, he or she may, notwithstanding evidence to the contrary, give effect to the terms of an agreement lodged with him or her in terms of paragraph (b) in respect of that subdivision.

(b) The owner of a subdivision to which paragraph (a) relates may lodge with the Surveyor-General an agreement as far as practicable in accordance with the Form set out in Schedule I to this Act setting out in clear terms, as prescribed, that the middle of the river is acknowledged as being the river boundary of that subdivision.

(c) Section 34(2), (3), (4), (5) and (6) shall with the necessary changes apply in respect of the agreement contemplated in paragraph (a).

(3) For the purpose of this section “river” includes a watercourse, stream, spruit, donga or similar natural feature, whether the flow of water in it is of a perennial nature or not, and which is indicated as a boundary of a piece of land on a diagram or general plan filed in the office of the Surveyor-General or in the deeds registry, or which is described as the boundary of a piece of land in a title deed registered in the deeds registry.

Removal of uncertainty in description of curvilinear boundary other than a river boundary

34. (1) Whenever the particular part of a physical feature (excluding a river) constituting a curvilinear boundary of any piece of land is not described in writing and in unequivocal terms in the title deed or on the original diagram or general plan of that land, and—

- (a) the owner is desirous of having any uncertainty or ambiguity regarding the description of that boundary removed; or
- (b) a diagram representing the whole of that piece of land or any subdivision thereof which abuts on that physical feature has been submitted for approval and the Surveyor-General deems it necessary that the uncertainty or ambiguity be removed prior to the approval of the diagram and has called upon the owner to take steps to that end,

the owner shall lodge with the Surveyor-General a document as far as practicable in accordance with the Form set out in Schedule I to this Act, in this section referred to as the “agreement”, setting out in clear terms, as prescribed, which part of that feature is acknowledged as being the boundary of that piece of land.

(2) The agreement shall be independent of any determination by survey of the position on the ground of that curvilinear boundary and shall be signed by—

- (a) the owner of the land or his or her duly authorised agent;
- (b) every owner of land contiguous thereto and separated therefrom either wholly or in part by that physical feature or his or her duly authorised agent: Provided

Surveyor-General an objection to the terms of the agreement, the matter shall be laid before a commission constituted in terms of paragraph (b) for a description of the boundary in question: Provided that if the State is an objector or affected by the objection, the matter shall be settled by arbitration in terms of the Arbitration Act, 1965 (Act No. 2 of 1965).

(b) The commission referred to in paragraph (a) shall consist of an officer of the Department appointed in writing by the Director-General, the Surveyor-General (who shall be chairperson and who shall have a deliberative vote and, in the event of an equality of votes, also a casting vote), the Registrar of the deeds registry in which the land is registered, and one other member appointed by the Surveyor-General after consultation with the objector.

(c) The commission shall enquire into the case and shall furnish a description of the boundary in question according to the finding arrived at by the majority of the members after due consideration of all the documentary evidence available from the Surveyor-General's and the deeds registry records and such other evidence, whether documentary or oral, as the commission may have deemed necessary.

(d) The owners or the holders of any real right affected by the agreement shall be

(3) Nothing in this section contained shall be deemed to prevent the acquisition by prescription of any right to or interest in land.

Correction of registered diagram

36. The Surveyor-General may correct any error in the numerical data, figure or wording of a diagram registered in a deeds registry: Provided that if the correction affects the extent or designation of the land represented by the diagram, the Surveyor-General shall notify the Registrar of the correction, and that Registrar shall thereupon amend the relevant title deed and registers in his or her deeds registry in accordance with the corrected diagram and before effecting any further registration of that land or any portion thereof or share therein shall likewise amend the relevant duplicate title deed belonging to the owner of that land.

Alteration or cancellation of general plan

37. (1) (a) Any general plan which is filed in a Surveyor-General's office or is registered in a deeds registry may be altered or amended by the Surveyor-General for the purposes of rectifying errors in the numerical data, figure or wording: Provided that if the correction affects the extent or designation of erven, the Surveyor-General and the Registrar shall act in the prescribed manner.

(b) The Surveyor-General may, in order to make a correction contemplated in paragraph (a), require that a land surveyor submit in the prescribed manner a correction sheet of the whole or part of the general plan for examination and approval.

(2) Any general plan referred to in subsection (1) which represents the subdivision of land in accordance with or under any other law, or which represents a township established prior to the existence of any laws relating to the establishment of townships, may, with the consent of the Premier concerned, or by an order of the court, and subject to such conditions as the Premier or the court may deem necessary, be altered, amended or partially or totally cancelled by the Surveyor-General: Provided that where the alteration, amendment or partial or total cancellation affects a public place, the Surveyor-General, prior to such alteration, amendment or partial or total cancellation, shall be advised by the Premier that the provisions of the laws relating to the permanent closing of any public place or part thereof have been complied with.

(3) The Premier may, in respect of any alteration, amendment or partial or total cancellation of a general plan, contemplated in subsection (2), delegate his or her powers to an officer in the service of the provincial administration or to a local authority, and the local authority may, with the concurrence of the Premier, further delegate the delegated powers to an officer in the service of that local authority.

(4) When a general plan is altered, amended or partially or totally cancelled in terms of this section the Surveyor-General shall inform the Registrar, who shall make the necessary alterations, amendments or endorsements to or on the relevant title deeds and registers in his or her deeds registry.

Diagram for consolidated title

38. (1) The Surveyor-General may approve a diagram which has been compiled, without any resurvey, from two or more diagrams representing several pieces of land and which has been prepared for the purpose of obtaining a consolidated title thereto.

(2) The Registrar shall notify the Surveyor-General of the issue of a certificate of consolidated title whereupon the Surveyor-General—

(a) shall cancel the copies of the various diagrams concerned which are filed in his or her office and the deeds registry and which form the component parts comprised in the said certificate; and

(b) if requested by the owner, may cancel any copy belonging to that owner.

Manner of erecting beacons for survey purposes

39. (1) Any beacon erected for the purpose or in consequence of any survey or resurvey of land in terms of this Act or any repealed law shall be substantially and durably constructed under the supervision of, and in the position determined by, a land surveyor. 5

(2) The materials of which beacons shall be comprised and the manner in which they shall be erected shall be as prescribed.

Reference marks

40. (1) In the survey of new townships or extensions of townships or the subdivision of an erf, reference marks shall be erected and surveyed as prescribed, so that the positions of the corner points of all pieces of land shown on the general plan may be determined accurately. 10

(2) The owner of any property damaged by the placing of a reference mark shall be entitled to compensation for the damage.

Maintenance and re-erection of beacons 15

41. (1) Every owner of land shall maintain in proper order and repair in accordance with the regulations any beacon defining a corner point of that land, whether the beacon was erected for the purpose of or in connection with a survey or resurvey of that land in terms of this Act or any repealed law, or for the purpose of or in connection with the survey or resurvey of any land contiguous thereto. 20

(2) Any person who, for the purpose of carrying out any work which he or she may lawfully perform, desires to remove or disturb any beacon erected in connection with the survey of land, shall appoint a land surveyor personally to effect or supervise the removal or disturbance and subsequent replacement of that beacon in accordance with the regulations. 25

(3) If any beacon as contemplated in subsection (1) has not been maintained properly or has been removed or obliterated, the Surveyor-General may serve a notice as prescribed upon the owner of every piece of land of which that beacon forms a corner, calling upon the owner to restore the beacon to the prescribed condition or to re-erect it in the prescribed manner, as the case may be: Provided that the re-erection of any such removed or obliterated beacon shall be carried out by a land surveyor: Provided further that this subsection shall not apply to beacons which were moved prior to the commencement of the Land Survey Act, 1927 (Act No. 9 of 1927). 30

(4) If any beacon is not restored or re-erected within six weeks of the date upon which any notice referred to in subsection (3) was so served, the Surveyor-General may cause that beacon to be so restored or re-erected by a land surveyor, but the Surveyor-General may, at the request of an owner, extend the period of six weeks. 35

(5) The owners of all pieces of land referred to in subsection (3) shall be liable in equal shares for the costs of the restoration or re-erection of the beacon and the Surveyor-General may recover a share from every owner of all costs incurred under subsection (4): Provided that if any owner or the employee or agent of that owner damaged, removed or obliterated the beacon the entire cost of the restoration or re-erection of the beacon shall be borne by that owner. 40

(6) If the Surveyor-General, having served a notice under subsection (3) on the owner of land, is satisfied that any person who acquires an interest in that land may suffer damage or loss as a result of the removal or disturbance of a beacon, he or she shall convey that fact to the Registrar and to the owner of that land, and thereafter no further registration of that land or of any portion thereof or a share therein shall be effected in a deeds registry until the Surveyor-General has notified the Registrar that the beacon has been restored or re-erected by a land surveyor. 45 50

Town survey marks

42. (1) If the Chief Surveyor-General is satisfied that town survey marks should be officially erected in any area or part of an area under the jurisdiction of a local authority, to enable the positions of the corner points of all pieces of land therein to be accurately

determined, he or she may order the erection and survey of such town survey marks as provided in this section.

(2) The erection and survey of the town survey marks shall for all purposes be deemed to be part of and in continuation of the trigonometrical survey operations referred to in section 3: Provided that a local authority may at its own cost erect the town survey marks in positions approved by the Chief Surveyor-General.

(3) When the town survey marks have been erected and surveyed the Chief Surveyor-General shall give notice of this fact to the Surveyor-General and the local authority concerned, and shall furnish each of them with the official co-ordinates and a plan showing the positions of those town survey marks, and shall cause a notice to be published in one issue of the *Gazette* stating that town survey marks have been officially erected in terms of this section and that as from a specified date, which shall not be earlier than a date one month after the date of the publication of the notice, a land surveyor, in surveying or subdividing land or in replacing a beacon in the vicinity, shall base the survey on town survey marks as prescribed.

(4) (a) A local authority shall within its area of jurisdiction be responsible for the maintenance to the satisfaction of the Chief Surveyor-General, of any town survey marks erected in terms of this section, and should the local authority fail to maintain any town survey mark the Chief Surveyor-General may undertake any necessary work at the expense of that local authority.

(b) A local authority established after the commencement of this Act shall by the mere fact be responsible for the maintenance of the town survey marks which were erected within its area of jurisdiction before its establishment.

Protection of trigonometrical stations

43. (1) Except with the consent of the Chief Surveyor-General, no person shall place any fence-post, fence-anchor or any other erection or make any excavation within one metre of any trigonometrical station, excluding a town survey mark.

(2) The Minister may require that a servitude in favour of the State protecting a trigonometrical station, and ensuring an unobstructed view to and from any other trigonometrical station, be granted by the owner of any land upon or near which any trigonometrical station is situate, and cause that servitude to be registered against the title deed of that land: Provided that the costs of the registration of that servitude and any reasonable compensation for any depreciation in the value of the servient tenement by reason of the creation of the servitude shall be paid out of the National Revenue Fund established by section 185 of the Constitution.

Offences and compensation for damages sustained thereby

44. (1) Any person who—

(a) alters, moves, disturbs or wilfully damages or destroys any beacon, bench-mark, reference mark or trigonometrical station intended to be permanent and erected for the purpose of or in connection with any survey operations, whether such beacon, mark or trigonometrical station is upon his or her land or not;

(b) erects any beacon except under the supervision of a land surveyor, whether his or her intention is to alter the boundary line of any piece of land or to cause deception as to that boundary line or not,

shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months, or to both the fine and imprisonment.

(2) The removal or disturbance of any beacon, mark or trigonometrical station referred to in subsection (1) for the purpose of erecting another beacon, mark or trigonometrical station in its place shall not constitute a lawful excuse under this section unless a land surveyor personally supervises that removal or disturbance and the erection of that other beacon, mark or trigonometrical station.

(3) For the purpose of awarding compensation in respect of any damage caused by an offence, any beacon in connection with which the offence was committed shall be

deemed to be the property of the person upon whose land or upon a boundary of whose land that beacon was situate, and any bench-mark, reference mark or trigonometrical station in connection with which the offence was committed shall be deemed to be the property of the Chief Surveyor-General.

Power of entry upon land 5

45. (1) The Chief Surveyor-General, a Surveyor-General, any person generally or specially deputed in writing by such officer, or a land surveyor may, for the purpose of performing any functions in terms of this Act or any other law—

- (a) enter upon any land with such assistants, personnel, vehicles, equipment and instruments as are necessary for or incidental to the performance of those duties; 10
- (b) place or erect any permanent beacon, bench-mark, reference mark or trigonometrical station, or any temporary flag, signal or other working point upon that land;
- (c) make use of any natural material upon which no work has been expended and, except within a township, of any water, whether conserved or not, found upon or in that land; 15
- (d) cut any vegetation growing wild in the vicinity of any beacon, mark, trigonometrical station or working point for the purpose of enabling observations to be made thereto or therefrom; 20
- (e) with the permission of the owner or occupier, enter at all reasonable hours any building or enclosed place.

(2) The Chief Surveyor-General, a Surveyor-General, any person authorised by such officer, or a land surveyor shall, before exercising any power referred to in subsection (1), give reasonable notice to the owner or occupier of the land concerned of the intention to exercise the power, except when that power is exercised in carrying out any provision of section 26. 25

(3) As little damage and inconvenience as possible shall be caused by the exercise of any of the powers referred to in subsection (1), and the owner or occupier concerned shall be entitled to compensation for any damage caused to or in any building or enclosed place, and for any unreasonable damage caused to any other property belonging to that owner or occupier. 30

(4) Any person who prevents, obstructs or impedes the exercise of any of the powers referred to in subsection (1), or who moves, obscures or destroys any temporary flag, signal or other working point placed on land in connection with any surveying operations before the completion of those operations, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding three months. 35

Notice to Surveyor-General of application to court

46. Before any application is made to a court for an order affecting the performance of any act in a Surveyor-General's office, the applicant shall give notice in writing to the Surveyor-General concerned at least 21 days before the hearing of the application, and the Surveyor-General may submit to the court such report thereon as he or she may deem desirable. 40

Act binding on State 45

47. This Act shall be binding on the State in so far as any land surveyed or resurveyed or dealt with thereunder is unalienated State land or land which has been alienated and subsequently reacquired by the State, and the Surveyor-General shall, for the purposes of this Act, be deemed to be the owner of that land.

Repeal of laws of former entities, and transitional provisions 50

48. (1) Subject to this section and section 50—

- (a) the laws mentioned in Schedule II, in force in those parts of the Republic which formerly constituted the national territories of the entities known as

Transkei, Bophuthatswana, Venda, Ciskei, Gazankulu, KaNgwane, KwaNdebele, KwaZulu, Lebowa and QwaQwa, are hereby repealed; and

(b) any other law in force in the mentioned parts of the Republic is hereby repealed to the extent that such law is inconsistent with the Land Survey Act, 1927 (Act No. 9 of 1927), or deals with any matter dealt with by that Act. 5

(2) The Land Survey Act, 1927 (Act No. 9 of 1927), shall apply throughout the Republic.

(3) Any office of a Surveyor-General which was established under a law referred to in subsection (1) shall be deemed to be an office of a Surveyor-General established under section 3 of the Land Survey Act, 1927. 10

(4) Subsections (1), (2) and (3) shall be deemed to have come into operation on 6 July 1995.

Amendment of Act 40 of 1984, repeal of laws, and transitional provisions

49. (1) The Professional and Technical Surveyors' Act, 1984 (Act No. 40 of 1984), is hereby amended to the extent indicated in Schedule III. 15

(2) Any law in force in those parts of the Republic which formerly constituted the national territories of the entities known as Transkei, Bophuthatswana, Venda, Ciskei, Gazankulu, KaNgwane, KwaNdebele, KwaZulu, Lebowa and QwaQwa, is hereby repealed to the extent that such law is inconsistent with the Professional and Technical Surveyors' Act, 1984, or deals with any matter dealt with by that Act. 20

(3) Subject to this section and section 50(1), the Professional and Technical Surveyors' Act, 1984, shall apply throughout the Republic.

(4) Subsections (1), (2) and (3) shall be deemed to have come into operation on 6 July 1995.

Repeal of laws of the Republic, and transitional provisions 25

50. (1) The laws mentioned in Schedule IV are hereby repealed to the extent indicated in the third column of that Schedule.

(2) The person who holds office as the Chief Surveyor-General immediately prior to the commencement of this Act shall be deemed to have been appointed as such under section 2 of this Act. 30

(3) Any office of a Surveyor-General which was established or deemed to be established under section 3 of the Land Survey Act, 1927 (Act No. 9 of 1927), shall be deemed to be an office of a Surveyor-General established under section 4 of this Act.

(4) Every person who holds office as a Surveyor-General immediately prior to the commencement of this Act shall be deemed to have been appointed as such under section 5 of this Act. 35

(5) Any office fees prescribed under section 9 of the Land Survey Act, 1927, shall be deemed to have been prescribed under section 8 of this Act.

(6) The survey regulations board established by section 6 of the Land Survey Act, 1927, as it existed immediately prior to the commencement of this Act shall cease to exist on the day immediately preceding the date of the first meeting of the survey regulations board established by section 9 of this Act. 40

(7) Any regulation made under a provision of the Land Survey Act, 1927, shall be deemed to have been made under the corresponding provision of this Act, and shall remain in force for a period of six months after the first meeting of the survey regulations board established by section 9 of this Act or until it is amended, repealed or substituted by the survey regulations board, whichever occurs the first. 45

Short title

51. This Act shall be called the Land Survey Act, 1996.

SCHEDULE I

(Sections 29(2), 33(2)(b) and 34(1))

FORM

AGREEMENT AS TO BEACONS AND BOUNDARIES

We, the undersigned [see note (a)],

- 1
..... owner of
[See note (b)]
- 2
..... owner of
- 3
..... owner of
- 4
..... owner of
- 5
..... owner of

declare that, having been afforded the opportunity of having the beacons and boundaries common to our properties pointed out to us, we agree and consent to their positions as represented on the figure appearing on page of this Agreement and we consent to any necessary diagram(s) being prepared in accordance with those beacons and boundaries.

Date	Signature [See notes (c) and (d)]	Beacons and boundaries indicated on figure on page and hereby agreed to [See note (e)]	Witnesses to signatures [See note (f)]
			1. 2.
			1. 2.
			1. 2.
			1. 2.
			1. 2.

CERTIFICATE OF LAND SURVEYOR

1. I hereby certify that the beacons mentioned in this Agreement comply with the Land Survey Act, 1996, and the regulations issued thereunder, and are as described above.

2. I further certify that, to the best of my knowledge, the boundaries have not by agreement between the parties concerned been changed so as to effect a transfer of any land otherwise than in accordance with law. [See sections 18(4) and 29(8) of the Land Survey Act, 1996]

Dated at on this the day of 19....

.....
Name of land surveyor

.....
Signature of land surveyor

Notes:—

(a) Names in full (these should be clearly written in capital letters).

- (b) Names of contiguous properties.
- (c) Only one signature to be written in each compartment.
- (d) Signatures on behalf of estates, companies, municipalities or similar bodies must be duly authenticated by attachment of letters of administration, certified copies of resolutions of boards or councils or other similar documents. Signatures on powers of attorney must be accompanied by the actual powers or certified copies. Original documents will be returned after being noted hereon by the Surveyor-General.
- (e) The land surveyor may provide explanatory information by means of insets to the figure to assist signatories.
- (f) Two witnesses are required to each signature.

The page containing the figure referred to in the Agreement must be headed:

Figure representing land under survey and common beacons and boundaries of contiguous properties

and at the foot the following note must be made:

Note: This page must be signed by the land surveyor performing the survey, and the beacons and boundaries must be designated on the figure so as to correspond with the beacons and boundaries agreed to on page of this Agreement.

SCHEDULE II

(Section 48(1)(a))

No. and year of law	Short title
TRANSKEI	
Act No. 19 of 1978	Land Survey Act, 1978
BOPHUTHATSWANA	
Act No. 9 of 1927	Land Survey Act, 1927
Act No. 20 of 1978	Surveyor-General Act, 1978
VENDA	
Act No. 9 of 1927	Land Survey Act, 1927
CISKEI	
Act No. 22 of 1988	Land Survey Act, 1988
GAZANKULU	
Act No. 9 of 1927	Land Survey Act, 1927
KANGWANE	
Act No. 9 of 1927	Land Survey Act, 1927
KWANDEBELE	
Act No. 9 of 1927	Land Survey Act, 1927
Act No. 11 of 1988	Land Survey Amendment Act, 1988
Act No. 4 of 1992	Land Survey Amendment Act, 1992
KWAZULU	
Act No. 9 of 1927	Land Survey Act, 1927
Act No. 17 of 1989	Land Survey Amendment Act, 1989
LEBOWA	
Act No. 9 of 1927	Land Survey Act, 1927
QWAQWA	
Act No. 9 of 1927	Land Survey Act, 1927
Act No. 9 of 1988	Land Survey Amendment Act, 1988

GENERAL EXPLANATORY NOTE:

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

SCHEDULE III
*(Section 49(1))***AMENDMENT OF ACT 40 OF 1984****Amendment of section 1 of Act 40 of 1984, as amended by section 1 of Act 37 of 1986, section 1 of Act 66 of 1987 and section 1 of Act 34 of 1993**

1. Section 1 of the Professional and Technical Surveyors' Act, 1984, is hereby amended—

- (a) by the substitution for the definition of “professional land surveyor” of the following definition:
 “ ‘professional land surveyor’ means a person registered as a professional surveyor in terms of section 20(2) or deemed to be registered as such in terms of subsection (5) or (6) of the said section and whose name is entered in the register for professional land surveyors referred to in section 7(4)(a);” and
- (b) by the substitution for the definition of “professional surveyor” of the following definition:
 “ ‘professional surveyor’ means a person registered as such in terms of section 20(2) or deemed to be registered as such in terms of subsection (5) or (6) of the said section;”.

Amendment of section 20 of Act 40 of 1984, as substituted by section 11 of Act 34 of 1993 and amended by section 13 of Act 170 of 1993

2. Section 20 of the Professional and Technical Surveyors' Act, 1984, is hereby amended by the addition of the following subsection:

- “(6) (a) A land surveyor registered under a law repealed by section 48 of the Land Survey Act, 1996, may continue to practise as a professional land surveyor if, prior to 31 December 1997, he or she gives notice to the council of his or her registration under such repealed law.
- (b) On receipt of a notice referred to in paragraph (a) the council shall, subject to section 24(1), cause the name of the land surveyor concerned to be entered in the appropriate register.
- (c) Any person whose name has been entered in terms of paragraph (b)—
- (i) shall be deemed to have been registered as a professional surveyor in terms of this section; and
- (ii) shall for the rest of the financial year in which his or her name was so entered, be exempted from the payment of the annual fee contemplated in subsection (3).
- (d) No entry contemplated in paragraph (b) shall be made after 31 December 1997.”.

SCHEDULE IV**(Section 50(1))**

No. and year of law	Short title	Extent of repeal
Act No. 9 of 1927	Land Survey Act, 1927	The whole
Act No. 14 of 1941	Land Survey Amendment Act, 1941	The whole
Act No. 82 of 1959	Universities Amendment Act, 1959	Section 10
Act No. 52 of 1962	Land Survey Amendment Act, 1962	The whole
Act No. 64 of 1970	Land Survey Amendment Act, 1970	The whole
Act No. 52 of 1971	Land Survey Amendment Act, 1971	The whole
Act No. 71 of 1972	Land Survey Amendment Act, 1972	The whole, except section 17
Act No. 23 of 1977	Land Survey Amendment Act, 1977	The whole
Act No. 26 of 1981	Land Survey Amendment Act, 1981	The whole, except section 11
Act No. 40 of 1984	Professional and Technical Surveyors' Act, 1984	The Schedule in so far as it relates to the Land Survey Act, 1927 (Act No. 9 of 1927)
Act No. 97 of 1986	Transfer of Powers and Duties of the State President Act, 1986	Section 4, and Schedule 1 in so far as it relates to the Land Survey Act, 1927 (Act No. 9 of 1927)
Act No. 76 of 1990	Land Survey Amendment Act, 1990	The whole
Act No. 113 of 1991	Less Formal Township Establishment Act, 1991	The Schedule in so far as it relates to the Land Survey Act, 1927 (Act No. 9 of 1927)
Act No. 89 of 1993	Regional and Land Affairs General Amendment Act, 1993	Sections 1, 2 and 3
Act No. 170 of 1993	Regional and Land Affairs Second General Amendment Act, 1993	Section 1

MEMORANDUM ON THE OBJECTS OF THE LAND SURVEY BILL, 1996

1. After nearly seventy years of revision and material amendment of the Land Survey Act, 1927 (Act No. 9 of 1927), hereinafter called “the Act”, it has become unwieldy and difficult to follow. Moreover it contains ambiguities that lead to difficulties in interpretation. In the proposed Land Survey Bill, 1996, hereinafter called “the Bill”, it is proposed that existing problems and obsolete provisions contained in the Act be removed. Generally speaking, the Bill provides for a land survey dispensation that fulfils the present needs. Some of the problems that are experienced with the Act, as well as proposals contained in the Bill, are mentioned hereunder.

2.1 Section 16 of the Act provides for owners of adjoining properties to formally agree to the beacons and boundaries of the land under survey. Similar procedures are prescribed elsewhere in the Act for cases involving the replacement of beacons (sections 22 and 28), ambiguous curvilinear boundaries (section 31*bis*) and division surveys (section 24). Section 18*bis* of the Act, providing for the endorsement of diagrams when the correct positions of beacons or boundaries have been determined and agreed upon, was inserted in 1941 to compel contiguous owners to consent or object to a beacon or boundary to avoid any risk of adopting a doubtful beacon or boundary. The interpretation of section 18*bis* has always been in doubt, as it is not clear whether the section applies generally, or only in the particular circumstances where the beacon in question will be represented on a new diagram. The resolution of boundary disputes is considered to be one of the prime objectives of the Act, and so a separate section has been inserted specifically dealing with this matter, and has been recast (in clause 29) to remove the ambiguities.

2.2 Many old land grants describe a boundary as extending up to a line at a fixed distance from, say, the high-water mark of the sea. It is clearly untenable that the on-shore boundary should move as the seaward feature accretes or erodes. It is now proposed in clause 30(*d*) that in the case of arbitration an arbitrator be guided by the principle that a curvilinear boundary at a stated distance from an ambulatory physical feature shall not be subject to change if the feature shifts.

2.3 When the Act was passed the diagram of a piece of land was the only registrable instrument quoted in a deed and so general plans, showing the positions of several adjoining pieces of land, all had their supporting sets of diagrams. Since 1962, when the Act was substantially amended, transfers could take place directly off a general plan, thus affording it the same legal status as a diagram. The Act has separate Chapters dealing specifically with division surveys (for minor subdivisions of land) and with townships (for the subdivision of large blocks of land) to accommodate this distinction between diagrams and general plans. Now that this distinction has fallen away the various sections may be arranged in a more logical sequence. Further, Chapter V in the Act (*Resurvey of Townships*) had never been amended and still provided for framing of diagrams for each erf on the general plan, as well as for the steps to be taken by the Surveyor-General and Registrar of Deeds to ensure that survey fees are paid before any registration of a piece of land in a resurveyed township takes place. Cases are now becoming evident of old townships, surveyed in the last century and to which quitrent titles were granted, which blocks of lands were subsequently subdivided for which diagrams were framed on an *ad hoc* basis off the general plans. Over the years some of the internal boundaries have become confusing and there are also encroachments onto the surrounding commonage and streets. The local authorities now want to remedy the situation and seek recourse under Chapter V, which would save the expense of multiple subdivisions and consolidations. In line with Government policy to make land rights available as efficiently and economically as possible, it is proposed in clause 28 of the Bill that general plan diagrams for these resurveyed townships be dispensed with, and that the responsibility for collecting survey fees be placed with the local authority, without reference to the Surveyor-General or Registrar.

2.4 The Bill recognises that increasing use is being made of technical surveyors and, provided that these persons are registered under the Professional and Technical Surveyors' Act, 1984 (Act No. 40 of 1984), it is proposed that the restrictive insistence

on personal supervision by the professional land surveyor during the placing of beacons contained in the Act be done away with (see clause 1(xxi)). Similarly, it is proposed in the Bill (clause 6(2)) that certain duties in the Surveyors-General's offices may be delegated to technical staff who are not registered as land surveyors.

2.5 Section 36 of the Act, which calls upon anyone desiring to remove a beacon firstly to apply to the Surveyor-General, is now prescribed as a matter left to the land surveyor and his client (see clause 41 of the Bill).

2.6 There was no provision for urban trigonometrical stations when the Act was first published to serve a largely rural South Africa. Since that date town survey marks have been introduced as an extension of the National Trigonometrical Survey into most of the towns and cities of our country, but were referred to confusingly as "reference marks". The Bill makes a clear distinction between reference marks which are placed by land surveyors, (clause 40), and town survey marks which are fixed by the Chief Surveyor-General, (clause 42).

2.7 Clause 48 of the Bill seeks to repeal all laws relating to land surveying applicable in the territories of the former Republics of Transkei, Bophuthatswana, Venda and Ciskei and the former self-governing territories, as well as to provide for certain transitional provisions. Although a similar provision is contained in Proclamation No. 66 of 1995, which was made under section 3 of the Land Administration Act, 1995 (Act No. 2 of 1995), the validity of that section (and therefore the Proclamation also) is questioned. In the case *The Executive Council of the Western Cape Legislature and Others v The President of the Republic of South Africa and Others* 1995 (10) BCLR 1289 (CC) a similar provision which empowered the President to repeal laws by means of proclamation was declared to be invalid by the Constitutional Court by reason of its inconsistency with the Constitution. It can therefore be argued that the said section 3 is likewise invalid. To put matters beyond any doubt it is now proposed in clause 48 that, as from a date prior to the publication of Proclamation No. 66 of 1995, the relevant laws be repealed.

2.8 Proclamation No. 66 of 1995 also contains a transitional provision providing that a land surveyor registered under a law repealed by the Proclamation may continue to practise as a professional land surveyor if he or she gives notice of the registration to the South African Council for Professional and Technical Surveyors. For the same reasons as stated in paragraph 2.7, it is necessary to re-enact the transitional provision (see clause 49 of the Bill).

2.9 Other provisions contained in the Bill are mostly of a technical nature and are consequential to the proposed provisions discussed above.

3.1 A draft of the Bill was submitted to all professional land surveyors, and was published for general information and for comments in the *Government Gazette*. Twenty-nine bodies and interested parties furnished comments including all the surveyors' institutes, several practising land surveyors and the following—

- The Chamber of Mines of South Africa
- The Council of South African Bankers
- The Chief Registrar of Deeds
- The KwaZulu-Natal Municipal Association
- The Simon's Town Municipality
- The South African Council for Architects
- The United Municipal Executive of South Africa
- The South African Council for Professional and Technical Surveyors
- The Federation of Institutes of Professional Land Surveyors of South Africa

3.2 The comments were analysed, adopted as appropriate and taken up in a revised draft Bill presented to a meeting representing the organised land survey profession on 15 August 1995. This meeting, which comprised the Survey Regulations Board established under the Act and the presidents of the various Institutes of Professional Land Surveyors, accepted the second draft with minor amendments, which is substantially the Bill as now proposed. All the material comments of the non-surveying commentators listed have been addressed.