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# STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

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REPUBLIC OF SOUTH AFRICA

# GOVERNMENT GAZETTE

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KANTOOR VAN DIE EERSTE MINISTER

OFFICE OF THE PRIME MINISTER

No. 449.

17 Maart 1982.

No. 449.

17 March 1982.

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

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

No. 27 van 1982: Wysigingswet op Registrasie van Aktes, 1982.

No. 27 of 1982: Deeds Registries Amendment Act, 1982.

## GENERAL EXPLANATORY NOTE:

- [**                    **]**     Words in bold type in square brackets indicate omissions from existing enactments.
- \_\_\_\_\_                    Words underlined with solid line indicate insertions in existing enactments.

# ACT

To amend the Deeds Registries Act, 1937, so as to alter the name of the Rand Townships registration office to the deeds registry at Johannesburg, and to extend the registration functions of that registry; to further regulate the registrability of variations of the terms of bonds; to empower the Minister of Community Development to approve of regulations before promulgation thereof; to provide for the proof of certain facts in connection with registrations by means of certain certificates; to extend registration of transfer of ownership to the State by endorsement, to cases of expropriation; to grant to magistrates' courts certain powers in respect of the form and manner of execution of deeds of transfer; to provide for the issuing of certificates of registered title in respect of land which under the Sectional Titles Act, 1971, reverts to the land register; to regulate anew the functions of a registrar of deeds in the registration of transfers whereby substitution of debtors in respect of bonds takes place; to bring the requirements in connection with the registration under certain circumstances of personal servitudes into accordance with the requirements obtaining under similar circumstances in respect of the registration of praedial servitudes; to further regulate the issuing of certain certificates of mineral rights; to regulate anew the registration of certain changes of names; to delete certain obsolete provisions regarding certain matters; to redefine certain expressions; and to alter certain official designations; to repeal certain provisions of the General Law Amendment Act, 1975; and to provide for incidental matters.

*(English text signed by the State President.)*  
*(Assented to 25 February 1982.)*

**BE IT ENACTED** by the State President and the House of Assembly of the Republic of South Africa, as follows:—

1. Section 1 of the Deeds Registries Act, 1937 (hereinafter referred to as the principal Act), is hereby amended by the  
 5 substitution for subsection (1) of the following subsection:
- “**(1) (a)** There shall be deeds registries at Cape Town, Kingwilliamstown, Kimberley, Vryburg, Pietermaritzburg, Pretoria, Johannesburg, Bloemfontein and Windhoek, each to serve its respective area as defined in the  
 10 Second Schedule.
- (b)** The **[Rand Townships]** registration office at Johannesburg, established under section 53 of the Townships Amendment Act, 1908 (Act No. 34 of 1908), of the Transvaal, shall **[continue to exist notwithstanding the repeal of that section by section 10 of the Deeds Registries Amendment Act, 1969, and shall also]** be a  
 15
- Amendment of section 1 of Act 47 of 1937, as amended by section 1 of Act 61 of 1969 and section 1 of Act 3 of 1972.

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deeds registry, but only in connection with the registration of documents relating to immovable property in any township in the area served **[thereby as defined in the said Schedule]** by that registration office and the documents referred to in paragraphs (j), (j)bis and (k) of subsection (1) of section 3, and the registration of other documents relating to the aforementioned documents and which is authorized by this Act.”

## 2. Section 2 of the principal Act is hereby amended—

(a) by the substitution for paragraphs (b) and (c) of subsection (1) of the following paragraphs, respectively:

“(b) in respect of each registry, a registrar of deeds,

who shall be in charge of the deeds registry in respect of which he has been appointed;

(c) for a deeds registry, if necessary, one or more deputy registrars of deeds or one or more assistant registrars of deeds, or one or more deputy registrars of deeds and one or more assistant registrars of deeds, who shall respectively have the power, subject to the regulations, to perform any act which may lawfully be done under this Act or any other law by a registrar.”;

(b) by the substitution for subsections (1A), (1B), (1C), (2) and (3) of the following subsections respectively:

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

(1B) The Minister may authorize any officer in the public service to act temporarily, and either generally or in a particular matter, as assistant registrar of deeds **[or of Rand townships, as the case may be,]** in respect of any deeds registry in addition to any assistant registrar or acting assistant registrar of such registry.

(1C) The Minister may delegate any power conferred on him by this section, to the **[Secretary or a Deputy Secretary of Justice]** Director-General: Community Development or a Deputy Director-General in the Department of Community Development.

(2) No person shall be appointed as registrar, deputy registrar or assistant registrar of deeds after the commencement of the Deeds Registries Amendment Act, **[1957] 1982, [or as registrar, deputy registrar or assistant registrar of Rand townships after the commencement of section 2 of the Deeds Registries Amendment Act, 1969,]** unless he has passed the Public Service Law Examination or an examination deemed by the **[Public Service]** Commission for Administration to be equivalent thereto and has served in the administrative division of the public service in one or more deeds registries or in the deeds registry established by the Deeds Registry Proclamation, 1939 (Proclamation No. 37 of 1939), of the Administrator of South-West Africa, **[or in one or more deeds registries established**

Amendment of section 2 of Act 47 of 1937, as amended by section 1 of Act 43 of 1957, section 1 of Act 43 of 1962, section 1 of Act 87 of 1965, section 2 of Act 61 of 1969, section 2 of Act 3 of 1972 and section 7 of Act 62 of 1973.

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under this Act and in the last-mentioned deeds registry] for a period of not less than seven years; Provided that this subsection shall not apply with reference to [—

- 5 (a) the appointment as registrar of deeds of any person who held office as registrar of deeds in terms of the said proclamation or as an assistant registrar of deeds at the commencement of the said Deeds Registries Amendment Act, 1957; or
- 10 (b) the appointment as registrar or deputy registrar of Rand townships of any person who held office as assistant registrar of Rand townships at the commencement of the said section 2; or
- 15 (c) the authorization of any officer under subsection (1A) or (1B) to act as contemplated in the relevant subsection.

(3) Every person holding, at the commencement of **[this Act]** the Deeds Registries Amendment Act, 1982, the office of registrar or assistant registrar or deputy registrar of deeds, or of Rand townships registrar or assistant Rand townships registrar or deputy Rand townships registrar, shall be deemed to have been appointed under this section as registrar, assistant registrar or deputy registrar of deeds, as the case may be.”

3. Section 3 of the principal Act is hereby amended by the substitution for paragraph (s) of subsection (1) of the following paragraph:

- 30 “(s) register against any registered mortgage or notarial bond any agreement entered into by the mortgagor and the holder of that bond, whereby any terms of that bond, with the exception of terms relating to the relevant cause of debt, the mortgaged security or the amount of the debt secured by the bond, have been varied;”

Amendment of section 3 of Act 47 of 1937, as substituted by section 2 of Act 87 of 1965 and amended by section 1 of Act 41 of 1977, section 1 of Act 92 of 1978 and section 1 of Act 44 of 1980.

4. (1) Section 9 of the principal Act is hereby amended—

- 35 (a) by the substitution for paragraph (b) of subsection (2) of the following paragraph:

“(b) one shall be an officer in the head office of the Department of **[Justice]** Community Development; and”; and

- 40 (b) by the substitution for subsections (9) and (10) of the following subsections, respectively:

45 “(9) No regulation made by the board shall take effect unless it has been approved by the **[State President]** Minister and has been published in the *Gazette* at least one month before the date specified in the relevant notice as the date of commencement thereof.

- 50 (10) The provisions of section 17 of the Interpretation Act, 1957 (Act No. 33 of 1957), shall apply *mutatis mutandis* with reference to regulations approved by the **[State President]** Minister and published in the *Gazette* under subsection (9).”

(2) Anything done by the State President under subsections (9) and (10) of section 9 of the principal Act prior to the substitution thereof by subsection (1) (b) of this section, shall be deemed to have been done by the Minister of Community Development.

Amendment of section 9 of Act 47 of 1937, as substituted by section 9 of Act 57 of 1975.

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5. Section 10 of the principal Act is hereby amended by the deletion of subsections (5) and (6).

Amendment of section 10 of Act 47 of 1937, as amended by section 5 of Act 43 of 1962, section 4 of Act 87 of 1965, section 4 of Act 3 of 1972 and section 2 of Act 92 of 1978.

6. The following section is hereby inserted in the principal Act after section 15:

Insertion of section 15A in Act 47 of 1937.

5 "Proof of certain facts in connection with deeds and documents by means of certain certificates.

10 15A. (1) A conveyancer who prepares a deed or other document for the purposes of registration or filing in a deeds registry, and who signs a prescribed certificate on such deed or document, accepts by virtue of such signing the responsibility, to the extent prescribed by regulation for the purposes of this section, for the accuracy of those facts mentioned in such deed or document or which are relevant in connection with the registration or filing thereof, which are prescribed by regulation.

15 (2) The provisions of subsection (1) shall apply *mutatis mutandis* to any person other than a conveyancer, who is prescribed by regulation, and who has in accordance with the regulations prepared a deed or other document prescribed by regulation for registration or filing in a deeds registry.

20 (3) A registrar shall accept, during the course of his examination of a deed or other document in accordance with the provisions of this Act, that the facts referred to in subsection (1) in connection with the registration or filing of a deed or other document in respect of which a certificate referred to in subsection (1) or (2) has been signed, have for the purposes of such examination been conclusively proved: Provided that the foregoing provisions of this subsection shall not derogate from the obligation of a registrar to give effect to any order of court or any other notification recorded in the deeds registry in terms of this Act or any other legal provision, and which affects the registration or filing of such deed or other document."

25 30 35

7. Section 16 of the principal Act is hereby amended by the substitution for the second proviso of the following proviso:

Amendment of section 16 of Act 47 of 1937, as substituted by section 7 of Act 87 of 1965.

40 "Provided further that where the State acquires all the land held under any title deed, whether by way of expropriation or otherwise, the registrar shall make such alterations and entries in his registers and such endorsements on such title deed as may be necessary to register transfer to the State of the property so acquired free of charge, and that the provisions of subsections (2) and (4) (a) of section 31 of this Act shall apply *mutatis mutandis* in respect of such a transfer by endorsement pursuant to the expropriation of the land by the State."

45

8. Section 18 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

Amendment of section 18 of Act 47 of 1937, as amended by section 6 of Act 3 of 1972.

50 "(3) If any piece of unalienated State land has been surveyed and is represented on a diagram the registrar concerned shall, upon written application by the Minis-

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ter of **[Agriculture] Community Development** or an officer of the State authorized by him, or, in the case of the Territory, by the Administrator of the Territory, accompanied by the diagram of the land in duplicate, enter particulars of the land in the appropriate registers and execute in the prescribed form and in accordance with the diagram, a certificate of registered State title thereof prepared by a conveyancer.”.

9. The following section is hereby substituted for section 20 of the principal Act:

Substitution of section 20 of Act 47 of 1937.

“Form and manner of execution of deeds of transfer.”

20. Deeds of transfer shall be prepared in the forms prescribed by law or by regulation, and, save as in this Act or any other law provided or as ordered by the court, including a court with the necessary jurisdiction established in terms of the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944), in respect of deeds of transfer executed by the registrar, shall be executed in the presence of the registrar by the owner of the land described therein, or by a conveyancer authorized by power of attorney to act on behalf of the owner, and shall be attested by the registrar.”.

10. Section 31 of the principal Act is hereby amended—

Amendment of section 31 of Act 47 of 1937, as substituted by section 11 of Act 87 of 1965, and amended by section 3 of Act 61 of 1969 and section 95 of Act 63 of 1975.

(a) by the addition to subsection (1) of the following proviso:

“Provided further that no such deed of transfer shall be registered in favour of the State if transfer of the land has already been registered in favour of the State by an endorsement as contemplated in the second proviso to section 16.”; and

(b) by the substitution for subsection (5) of the following subsection:

“(5) No deed by the expropriating authority purporting to transfer such land or to create or deal with any real right therein shall be registered in a deeds registry until transfer thereof has been passed in accordance with subsection (1), or the relevant title deed has been endorsed in favour of the State as contemplated in the second proviso to section 16.”.

11. Section 41 of the principal Act is hereby repealed.

Repeal of section 41 of Act 47 of 1937, as amended by section 15 of Act 87 of 1965.

12. Section 42 of the principal Act is hereby amended by the substitution for the expression “Minister of Agriculture” in subsections (1) and (3) of the expression “Minister of Community Development”.

Amendment of section 42 of Act 47 of 1937, as amended by section 17 of Act 43 of 1962 and section 7 of Act 3 of 1972.

13. The following section is hereby inserted in the principal Act after section 43:

Insertion of section 43A in Act 47 of 1937.

“Certificate of registered title in respect of land”

**43A. (1) In the event of land reverting to the land register under the provisions of the Sectional Titles Act, 1971 (Act No. 66 of 1971), without revival of**

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5 previously held under registered sectional title. the developer's title deed in terms of the said Act, the registrar shall issue a certificate of registered title in the prescribed form in respect of such land in substitution of the certificates of registered sectional titles under which the land was held prior to such reversion: Provided that where the land which reverts to the land register forms a portion only of the land previously registered in the land register, a diagram thereof shall be annexed to the certificate of registered title.

10 (2) The Registrar shall make all the necessary entries in his registers and records, and endorsements on the relevant registered deeds and other documents, in order to give effect to the reversion of the land to the land register in terms of subsection (1)."

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14. Section 51 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

Amendment of section 51 of Act 47 of 1937, as substituted by section 19 of Act 87 of 1965.

20 "(1) [Except where passed, in Natal or the Orange Free State, on the authority of a power of attorney granted prior to the commencement of the Deeds Registries Act, 1918, or, in the Transvaal, on the authority of a power of attorney granted prior to the commencement of the Registration of Deeds and Titles Act, 1909 (Act No. 25 of 1909) of the

25 Transvaal, which power of attorney has in either case been duly registered in terms of subsection (2) of section fifty of the first-mentioned Act,] No mortgage bond or notarial bond attested or registered after the commencement of this Act shall be of any force or effect for the purpose of giving preference or priority in respect of any debt incurred after the registration of such bond, unless—

30 (a) it is expressly stipulated in the bond that the bond is intended to secure future debts generally or some particular future debt described therein; and

35 (b) a sum is fixed in the bond as an amount beyond which future debts shall not be secured by the bond."

15. Section 56 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding the proviso of the following words:

Amendment of section 56 of Act 47 of 1937, as amended by section 26 of Act 43 of 1957, section 23 of Act 87 of 1965 and section 8 of Act 3 of 1972.

40 "No transfer of mortgaged land shall be attested or executed by the registrar, and no cession of a mortgaged lease of immovable property, or of any mortgaged real right in land, shall be registered until the bond has been cancelled or the land, lease, or right has been released from

45 the operation of the bond with the consent in writing of the holder thereof or unless, in the case of any such mortgage bond which has been lost or destroyed, the registrar has on application by the registered holder thereof, cancelled [the entry in his register in respect of] the registry duplicate of

50 such bond:"

16. Section 57 of the principal Act is hereby amended—

Amendment of section 57 of Act 47 of 1937, as amended by section 27 of Act 43 of 1957, section 24 of Act 43 of 1962 and section 7 of Act 92 of 1978.

(a) by the substitution for subsection (2) of the following subsection:

55 "(2) In registering the transfer in terms of subsection (1) the registrar shall—

(a) endorse upon the deed of transfer that the land has been transferred subject to the bond;

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- (b) endorse upon the bond that the transferee has been substituted for the transferor as debtor; and
  - (c) make such consequential entries in the registry records as he may deem necessary.”;
- 5 (b) by the deletion in subsection (4) of the word “or” at the end of paragraph (b); and
- (c) by the deletion of paragraph (c) of subsection (4).

17. The following section is hereby substituted for section 58 of the principal Act:

Substitution of section 58 of Act 47 of 1937, as amended by section 9 of Act 3 of 1972 and section 8 of Act 92 of 1978.

10 “Powers in respect of certain property in insolvent and certain other estates.

15 **58. (1) Immovable property which has vested in a trustee in accordance with the law relating to insolvency and which has not in terms of that law been re-vested in the insolvent may, whether before or after rehabilitation of the insolvent, be transferred only by the trustee, and may not after such rehabilitation be transferred, mortgaged or otherwise dealt with by the insolvent until it has been transferred to him by the trustee: Provided that if after rehabilitation the trustee has been discharged or there is no trustee in existence, the Master shall, if satisfied that the rehabilitated insolvent is entitled to the property, give him transfer thereof in such manner as may be prescribed.**

20 (2) If by virtue of the provisions of the law relating to insolvency an insolvent has been re-vested with the ownership of any property, such property may not be transferred, mortgaged or otherwise dealt with by the insolvent until an endorsement that the property has been restored to him, has been made by the registrar on the title deed of the property.

25 (3) Nothing in this section contained shall be construed as modifying any provision of the law relating to insolvency.

30 (4) The provisions of this section shall apply *mutatis mutandis* in respect of—

- 35 (a) estates administered and distributed under section 34 of the Administration of Estates Act, 1965 (Act No. 66 of 1965);
- 40 (b) companies which are unable to pay their debts and are liquidated and wound up by or under supervision of the court under the Companies Act, 1973 (Act No. 61 of 1973); and
- 45 (c) assets of an applicant referred to in Part III of the Agricultural Credit Act, 1966 (Act No. 28 of 1966), which are administered by a liquidator or trustee who has received from the Master a certificate mentioned in section 29 of the said Act.”.

50 18. Section 59 of the principal Act is hereby repealed.

Repeal of section 59 of Act 47 of 1937.

19. Section 65 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

Amendment of section 65 of Act 47 of 1937, as amended by section 30 of Act 43 of 1957 and section 27 of Act 43 of 1962.

55 “(3) If the land to be encumbered by a personal servitude is mortgaged or subject to any other real right with which the said personal servitude may conflict, the bond or other registered deed by which such right is held shall be produced to the registrar together with a consent in writing of the legal holder of such bond or other right to the registration of the said personal servitude and, in the case

60 of a bond, free from the bond.”.



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20. Section 71 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (2) of the following paragraph:

Amendment of section 71 of Act 47 of 1937, as amended by section 29 of Act 43 of 1962 and section 26 of Act 87 of 1965.

5       “(a) Upon the written application to the registrar of any person who has, before the commencement of this Act, transferred land subject to a reservation in his favour of rights to minerals thereon and who is the holder of such rights, the registrar shall, on production of the title deed under which that land or a portion  
10       thereof is held, issue to such person a certificate of rights to minerals in the prescribed form in respect of the rights so reserved on such land held under such title deed.”

21. (1) Section 93 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

Amendment of section 93 of Act 47 of 1937, as amended by section 38 of Act 43 of 1957 and section 36 of Act 43 of 1962.

15       “(1) If any person or partnership whose name appears in any registered deed or other document has changed his or its name, the registrar shall, upon written application by that person or partnership accompanied by proof of the change of name, and if he is satisfied that no change of legal  
20       personality is implied in such change of name, endorse on the said deed or other document that the name of the person or partnership has been changed to the name stated in the application: Provided that—

25       (a) if it appears from such deed or other document that any other person is affected by such change of name, such other person shall consent in writing to the aforesaid endorsement;  
30       (b) the application shall be accompanied by any other operative deed registered in the same registry in which the applicant's old name appears as a party thereto other than as transferor or cedent; and  
35       (c) a woman who assumes her husband's surname or resumes her former surname shall not be obliged to record such assumption or resumption of surname against any registered deed or other document to enable her to deal with land or a real right in land held by her under such deed or other document.”

(2) The provisions of subsection (1) of section 93 of the principal Act as they existed prior to the substitution of that subsection by subsection (1) of this section shall, notwithstanding such substitution, continue to apply in respect of any application for registration of a change of name referred to in that subsection and which has been lodged with a registrar of  
45       deeds before the coming into operation of this section.

22. Section 102 of the principal Act is hereby amended—

Amendment of section 102 of Act 47 of 1937, as amended by section 12 of Act 3 of 1972.

50       (a) by the substitution in subsection (1) for the definition of “land” of the following definition:  
      “‘land’ includes **[an undivided]** a share in land;”;  
      (b) by the substitution in subsection (1) for the definition of “Minister” of the following definition:  
      “‘Minister’ means the Minister of **[Justice]** Community Development;” and  
55       (c) by the substitution in subsection (1) for the definition of “share” of the following definition:  
      “‘share’ in relation to land and rights to minerals, means undivided share;”

23. Sections 10 and 11 of the General Law Amendment Act, 1975 (Act No. 57 of 1975), and, to the extent that it applies to  
60       those sections, section 51 (2) of the said Act are hereby repealed.

Repeal of certain sections of Act 57 of 1975.

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24. (1) The principal Act is hereby amended by the substitution for the expressions "registrar of Rand Townships" and "Rand Townships registrar", wherever they occur, of the expression "registrar at Johannesburg", and for the expressions "Rand Townships registration office at Johannesburg" and "Rand Townships registration office", wherever they occur, of the expression "deeds registry at Johannesburg".
- (2) A reference in any other law or document to an assistant registrar, deputy registrar or registrar of Rand Townships, or to the Rand Townships registration office, shall be deemed to be a reference to an assistant registrar, a deputy registrar or registrar of deeds of the registration office at Johannesburg, and to the registration office at Johannesburg, respectively, referred to in sections 1 and 2 of the principal Act as amended by sections 1 and 2 of this Act.
25. (1) This Act shall be called the Deeds Registries Amendment Act, 1982, and shall come into operation on a date to be fixed by the State President by proclamation in the *Gazette*.
- (2) Different dates may in terms of subsection (1) be fixed in respect of different provisions of this Act.

Substitution for certain expressions in Act 47 of 1937 and elsewhere, in respect of a certain registration office, of other expressions.

Short title and commencement.