

Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages.



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KANTOOR VAN DIE STAATSPRESIDENT

STATE PRESIDENT'S OFFICE

No. 1445.

29 Junie 1990

No. 1445.

29 June 1990

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. 70 van 1990: Wysigingswet op Behuisingsontwikkelingskemas vir Afgetrede Persone, 1990.

No. 70 of 1990: Housing Development Schemes for Retired Persons Amendment Act, 1990.

HOUSING DEVELOPMENT SCHEMES FOR RETIRED PERSONS
AMENDMENT ACT, 1990

Act No. 70, 1990

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 Housing Development Schemes for Retired Persons Act, 1988, so as to define right of occupation; to make further provision concerning the contents of a contract in terms of which a housing interest is alienated to a retired person; to provide that land subject to a right of occupation may only in certain circumstances be alienated; to provide that a developer may not alienate a right of occupation in relation to a housing interest which originated after a certain date unless the title deed of the land concerned has been endorsed to the effect that the land forms the subject of a housing development scheme; to provide for exemption from the operation of the provisions of the said Act; to extend the powers of the Minister to make regulations; and to increase certain fines; and to provide for incidental matters.

(English text signed by the State President.)
(Assented to 21 June 1990.)

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

Amendment of section 1 of Act 65 of 1988, as amended by section 1 of Act 20 of 1989

1. Section 1 of the Housing Development Schemes for Retired Persons Act, 1988 (hereinafter referred to as the principal Act), is hereby amended by the insertion after the definition of "retired person" of the following definition:

"right of occupation" means the right of a purchaser of a housing interest—

- (a) which is subject to the payment of a fixed or determinable sum of money by way of a loan or otherwise, payable in one amount or in instalments, in addition to or in lieu of a levy, and whether or not such a sum of money is in whole or in part refundable to the purchaser or any other person or to the estate of the purchaser or of such other person; and
- (b) which confers the power to occupy a unit in a housing development scheme for the duration of the lifetime of the purchaser or, subject to section 7, any other person mentioned in the contract in terms of which the housing interest is acquired, but without conferring the power to claim transfer of the ownership of the unit to which the housing interest relates;"

Amendment of section 4 of Act 65 of 1988

2. Section 4 of the principal Act is hereby amended—
- (a) by the insertion after paragraph (d) of subsection (1) of the following paragraph:

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- “(dA) a statement as to whether the title deed of the land has been endorsed as referred to in section 4C;” and
- (b) by the insertion after paragraph (h) of subsection (1) of the following paragraph:
- 5 “(hA) in the case of a housing interest consisting of a right of occupation, the amount, if any, of the consideration payable by the purchaser which will be applied by the seller in reduction of the outstanding balance owing by the mortgagor in terms of the mortgage bond;”.

Insertion of sections 4A, 4B and 4C in Act 65 of 1988

- 10 3. The following sections are hereby inserted in the principal Act after section 4:

“Right of occupation shall confer same right as registered lease

- 15 4A. The holder of a right of occupation shall for the purposes of any law have the same rights as those conferred on a lessee in terms of a lease as contemplated in section 1 (2) of the Formalities in respect of Leases of Land Act, 1969 (Act No. 18 of 1969), registered against the title deed of the leased land, and such rights shall rank in priority over any other right whether or not such other right has been registered or endorsed against the title deed and irrespective of the time when such other right was registered or endorsed.

20 **Alienation of land subject to right of occupation**

- 25 4B. (1) Unless at least 75 per cent of the holders of rights of occupation in a housing development scheme consent thereto the land concerned may not be alienated free from such rights: Provided that the holders of the rights of occupation shall in the case of such an alienation have preferent claims in respect of the proceeds of the sale of the land, which claims shall, notwithstanding the provisions of any other law—

- 30 (a) rank in priority over the claim of any mortgagee; and
(b) be equal to the amount paid in terms of paragraph (a) of the definition of right of occupation.

(2) Any alienation taking place without the consent of the holders as contemplated in subsection (1) shall be null and void.

Alienation of right of occupation shall be subject to endorsement against title deed

- 35 4C. (1) (a) No developer shall alienate a right of occupation in relation to a housing interest which originated as from the commencement of the Housing Development Schemes for Retired Persons Amendment Act, 1990, or enter into an agreement having such effect or purporting to have such effect, unless the title deed of the land concerned to which such right relates, has, with the consent of the owner of that land and, if the land is encumbered by a mortgage bond, the consent of the mortgagee, or, in the case of a participation bond, the consent of the nominee company concerned as contemplated in the Participation Bonds Act, 1981 (Act No. 55 of 1981), in whose favour the bond is registered, been endorsed by a registrar as defined in section 102 of the Deeds Registration Act, 1937 (Act No. 47 of 1937), to the effect that such land is subject to a housing development scheme.

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50 (b) For the purposes of paragraph (a) it shall be deemed that a right of occupation in relation to a housing interest originates as soon as a developer alienates the first right of occupation in a housing development scheme.

- 55 (2) The provisions of subsection (1) do not preclude any developer who is not compelled to comply with the provisions of that subsection, to apply to the registrar concerned that the title deed of land in respect of which he has alienated a right of occupation in relation to a housing interest, be endorsed to the effect that such land is subject to a housing development scheme.

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5 (3) The registrar concerned shall, on receipt of an application in the form prescribed by regulation after consultation with the chief registrar of deeds, make such endorsements as he may deem necessary so as to give effect to the provisions of subsections (1) and (2), and no office fee or other charge shall be payable to the registrar in respect of such endorsement.

10 (4) Any person contravening the provisions of subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding R20 000 or to imprisonment for a period not exceeding five years or to both that fine and that imprisonment.”

Amendment of section 6 of Act 65 of 1988

4. Section 6 of the principal Act is hereby amended—

- 15 (a) by the deletion of the word “and” at the end of paragraph (a) of subsection (1);
- (b) by the substitution for paragraph (b) of subsection (1) of the following paragraph:
 “(b) a copy of that certificate and a copy of the contract have been furnished to the purchaser concerned; and;”
- 20 (c) by the addition to subsection (1) of the following paragraph:
 “(c) in the case where a housing interest includes a right of occupation, a practitioner has issued a certificate that the title deed of the land to which the right of occupation relates, has been endorsed as contemplated in section 4C, in so far as endorsement is required by that section, and a copy of that certificate has been furnished to the purchaser concerned.”;
- 25 (d) by the substitution in subsection (2) for the expression “R10 000” of the expression “R20 000”; and
- (e) by the substitution for subsections (3) and (4) of the following subsections, respectively:
- 30 “(3) Subsection (1) shall not apply to the receipt of any amount—
- (a) which the purchaser by virtue of a contract entrusts to a practitioner or an estate agent in his capacity as such, to be kept, for the benefit of the developer, in the trust account of the practitioner or estate agent until the **[certificate referred to in] provisions of subsection (1) [has] have been [issued and a copy thereof has been furnished to the purchaser] complied with; or**
- 35 (b) which by virtue of a contract is paid to the developer if, before such payment, the purchaser was furnished with an irrevocable and unconditional guarantee by a banking institution registered otherwise than provisionally under the Banks Act, 1965 (Act No. 23 of 1965), a mutual building society registered otherwise than provisionally under the Mutual Building Societies Act, 1965 (Act No. 24 of 1965), a building society registered otherwise than provisionally under the Building Societies Act, 1986 (Act No. 82 of 1986), or a registered insurer as defined in section 1 of the Insurance Act, 1943 (Act No. 27 of 1943), in terms of which the banking institution, mutual building society, building society or insurer undertakes to repay the said amount to the purchaser, if the **[certificate referred to in] provisions of subsection (1) [is] are not [issued and furnished to the purchaser within the period contemplated in section 4 (1) (m)] being complied with.**
- 40 (4) If, in the circumstances contemplated in subsection (3), the developer becomes an insolvent before the **[certificate referred to in] provisions of subsection (1) [is issued] have been complied with**, any amount kept in a trust account in terms of paragraph (a) of subsection (3) or the repayment of which was guaranteed in terms of paragraph (b) of that subsection, shall immediately become payable to the purchaser concerned by the practitioner, estate agent, banking institution, mutual building society, building society or insurer concerned.”
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Insertion of section 10 in Act 65 of 1988

5. The following section is hereby inserted after section 9 of the principal Act:

“Exemption from operation of provisions of Act

5 **10. The Minister may, by notice in the *Gazette* or by written notice sent**
by post or handed over, and subject to such conditions as he may
determine, exempt any person, including any company or other juristic
person or class of such persons, either generally or under such circum-
stances as may be specified in the notice and either indefinitely or for
such period as may be so specified, from the operation of any or all of the
10 provisions of this Act.”.

Amendment of section 11 of Act 65 of 1988

6. Section 11 of the principal Act is hereby amended—

(a) by the substitution for paragraph (d) of subsection (1) of the following
paragraph:

15 “(d) regulating advertising in connection with any housing development
scheme on such conditions as the Minister may determine, or prohibit
such advertising;”;

(b) by the addition to subsection (1) of the following paragraph:

20 “(i) prescribing the formalities for an application for an endorsement in
terms of section 4C, the persons by whom such application may be
prepared and the fees payable in respect of such application.”; and

(c) by the substitution in subsection (2) for the expression “R6 000” of the
expression “R12 000”.

Short title

25 7. This Act shall be called the Housing Development Schemes for Retired Persons
Amendment Act, 1990.