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STATE PRESIDENT'S OFFICE

KANTOOR VAN DIE STAATSPRESIDENT

No. 2173. 30 September 1987

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

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

— No. 75 of 1987: Deeds Registries Amendment Act, 1987.

No. 75 van 1987: Wysigingswet op Registrasie van Aktes, 1987.

Act No. 75, 1987

DEEDS REGISTRIES AMENDMENT ACT, 1987

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 provide that certain acts of transfer, cession or registration with regard to property or rights which form part of a joint estate shall not be deemed to be certain acts of division or increase of undivided shares; to provide that women who are married in terms of marriages the legal consequences of which are governed by the law of any other country, be assisted by their spouses in the execution of certain deeds and documents; to further regulate the endorsements on deeds where marriages are dissolved by divorce, or joint estates are divided; to regulate the issuing of certificates of real rights in cases where rights pertaining to claim and stand licence moneys are reserved; and to amend the definitions of "owner" and "Minister"; and to provide for incidental matters.

(English text signed by the State President.)
(Assented to 22 September 1987.)

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

Amendment of section 17 of Act 47 of 1937, as substituted by section 29 of Act 88 of 1984.

1. Section 17 of the Deeds Registries Act, 1937 (hereinafter referred to as the principal Act), is hereby amended—

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

“(1) From the commencement of the **[Matrimonial Property Act, 1984]** Deeds Registries Amendment Act, 1987, immovable property, real rights in immovable property and notarial **[deeds]** bonds which would upon transfer, cession or registration thereof form part of a joint estate shall be registered in the name of the husband and the wife, **[excluding agricultural land as defined in the Subdivision of Agricultural Land Act, 1970 (Act No. 70 of 1970),]** unless that transfer, cession or registration takes place only in the name of a partnership, and the husband or wife is involved therein only in the capacity of partner in that partnership.”;

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

“(5) A transfer, cession or registration referred to in subsection (1) in the name of a husband and wife, shall not be deemed—

(a) in a case where agricultural land referred to in section 3 of the Subdivision of Agricultural Land Act, 1970 (Act No. 70 of 1970), is concerned, to consti-

tute an act to which a provision of the said section 3 is applicable; and
 (b) in a case where a right to any mineral or minerals with regard to land referred to in section 2 (1) of the Mineral Laws Supplementary Act, 1975 (Act No. 10 of 1975), is concerned, to constitute an act to which a provision of the said section 2 (1) is applicable.”; and

(c) by the substitution for subsection (6) of the following subsection: 10

“(6) A woman married out of community of property, or married in terms of a marriage the legal consequences of which are governed by the law of any other country, shall be assisted by her husband in executing any deed or other document required or permitted to be registered in any deeds registry or required or permitted to be produced in connection with any such deed or document, unless the marital power has been excluded or unless the assistance of the husband is in terms of this Act or on other grounds deemed by the registrar to be unnecessary.”. 20

Substitution of section 45bis of Act 47 of 1937, as inserted by section 21 of Act 43 of 1957 and amended by section 20 of Act 43 of 1962.

2. The following section is hereby substituted for section 45bis of the principal Act:

“Endorsement of deeds on divorce, division of joint estate, or change of matrimonial property system.

45bis. (1) If immovable property or a lease under any law relating to land settlement or a bond is registered in a deeds registry in the name of one of two spouses or in the name of both such spouses who—

(a) were married in community of property but have been divorced, and the person in whose name such property, lease or bond is registered or, where such property, lease or bond is registered in the name of both spouses, one of them has lawfully acquired the share of his former spouse in the property, lease or bond; or

(b) are or were married in community of property, and a court has made an order, or has made an order and given an authorization, under section 20 or 21 (1) of the Matrimonial Property Act, 1984 (Act No. 88 of 1984), as the case may be, in terms of which the property, lease or bond is awarded to the person in whose name it is registered or, where the property, lease or bond is registered in the name of both spouses, to one of them.

the registrar may, on written application by that person, accompanied by such documents as the registrar deems necessary, endorse on the title deeds of the property or on the lease or the bond that such person is entitled to deal with such property, lease or bond, and thereupon such person shall be entitled to deal therewith as if he had taken formal transfer or cession into his name of the share of the former spouse or his spouse, as the case may be, in the property, lease or bond.

(2) If immovable property referred to in subsection (1) is hypothecated under a registered mortgage bond, the provisions of subsections (2), (3) and (4) of section 45 shall *mutatis mutandis* apply.

(3) The reference in subsection (2) to a bond shall include a charge in favour of the Land and Agricultural Bank of South Africa or any Department of State.”.

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Amendment of section 64 of Act 47 of 1937, as amended by section 25 of Act 87 of 1965.

3. Section 64 of the principal Act is hereby amended by the insertion after subsection (2)*bis* of the following subsection:

- “(2)*ter* (a) If any person who is the holder of, or who is entitled to, the right to receive the claim and stand licence moneys or rents, or any part thereof, accruing under any law relating to mining to the owner of land referred to in subsection (2)*bis*, and which was reserved before the commencement of this Act in respect of such land on which a township or settlement has before or after the commencement of this Act been established, applies therefor to the registrar in writing, the registrar may, notwithstanding the provisions of subsection (1), issue to such person a certificate of real rights in the prescribed form in respect of such rights without the production of the title deed of each erf or other piece of land in any such township or settlement which is subject to the reservation of such real rights. 5
- (b) Upon the issue of such certificate the registrar shall cause an appropriate note to be made in the relevant township or settlement registers, and thereupon each erf or other piece of land which is subject to the original reservation of real rights, shall be deemed to be subject to such certificate.” 10 15 20

Amendment of section 102 of Act 47 of 1937, as amended by section 12 of Act 3 of 1972, section 22 of Act 27 of 1982 and section 9 of Act 62 of 1984.

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

- (a) by the substitution for the definition of “Minister” of the following definition:
 “‘Minister’ means the Minister of **[Community Development] Public Works;**”; and
- (b) by the substitution for the definition of “owner” of the following definition: 30
 “‘owner’ means, in relation to **[immovable property, means]**—
- (a) **immovable property, subject to [paragraph] paragraphs (b) and (c),** the person registered as the owner or holder thereof and includes the trustee in 35 an insolvent estate, a liquidator or trustee elected or appointed under the Agricultural Credit Act, 1966 (Act No. 28 of 1966), the liquidator of a company which is an owner and the representative recognized by law of any owner who has died or who 40 is a minor or of unsound mind or is otherwise under disability, provided such trustee, liquidator or legal representative is acting within the authority conferred on him by law; **[and]**
- (b) **immovable property, where a right of leasehold in respect of such property has been granted to any person and registered in his name, such person and, where such a right of leasehold has been registered in the name of both spouses in a marriage in community of property, the husband; and** 45 50
- (c) **immovable property, real rights in immovable property and notarial bonds—**
- (i) which are registered under section 17 (1) in the name of both spouses in a marriage in community of property entered into before 1 55 November 1984 and to which the provisions of Chapter III of the Matrimonial Property Act, 1984 (Act No. 88 of 1984), are not applicable, the husband;
- (ii) which are registered under section 17 (1) in the name of both spouses in a marriage in community of property entered into after 31 60 October 1984, or in such a marriage entered into before 1 November 1984 and in respect of which Chapter III of the Matrimonial Property Act, 1984, applies, either one of the 65

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spouses acting with the written consent, attested by two competent witnesses, of the other spouse; and

- (iii) which are registered in the name of only one spouse and which form part of the joint estate of both spouses in a marriage in community of property entered into after 31 October 1984, or in such a marriage entered into before 1 November 1984 and in respect of which Chapter III of the Matrimonial Property Act, 1984, applies, either one of the spouses acting with the written consent, attested by two competent witnesses, of the other spouse.”

Short title.

5. This Act shall be called the Deeds Registries Amendment Act, 1987. 15