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STAATSKOERANT

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KANTOOR VAN DIE STAATSPRESIDENT

STATE PRESIDENT'S OFFICE

No. 1942.

17 September 1986

No. 1942.

17 September 1986

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

No. 93 van 1986: Wysigingswet op die Landbank, 1986.

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

No. 93 of 1986: Land Bank Amendment Act, 1986.

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 Land Bank Act, 1944, so as to authorize the Minister of Finance to determine the remuneration payable to a member of the Board of the Land and Agricultural Bank of South Africa who presides at a meeting of the board; to make certain adjustments relating to the Bank's remedies against defaulting debtors; and to increase the penalties in the event of the obstruction or hindering of the attachment or sale of any property by the Bank; and to provide for incidental matters.

(Afrikaans text signed by the State President.)
(Assented to 5 September 1986.)

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

1. (1) Section 2 of the Land Bank Act, 1944 (hereinafter referred to as the principal Act), is hereby amended by the insertion in subsection (1) before the definition of "staff" of the following definition:
- "sheriff means a sheriff, deputy sheriff or acting sheriff within the meaning of the Sheriffs Act, 1986;"
- (2) Subsection (1) shall come into operation on the date on which the Sheriffs Act, 1986, comes into operation.
2. Section 7 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:
- "(2) A member of the board (other than the chairman) who presides at any meeting thereof, shall out of the funds of the bank receive, in addition to the salary and allowances mentioned in section 10 [a fee of one guinea], such remuneration as may from time to time be determined by the Minister for each day or part of a day on which he so presides."
3. (1) Section 34 of the principal Act is hereby amended—
- (a) by the substitution for paragraph (e) of subsection (2) of the following paragraph:
- "*(e)* the debtor is deceased and his estate is about to be dealt with in terms of the provisions of section 34 **[(2) or (5)]** of the Administration of Estates Act, 1965 (Act No. 66 of 1965), or has been sequestrated; or";

Amendment of section 2 of Act 13 of 1944, as amended by section 1 of Act 42 of 1951, section 1 of Act 13 of 1953, section 1 of Act 60 of 1957, section 1 of Act 47 of 1959, section 5 of Act 31 of 1969, section 1 of Act 41 of 1972, Proclamation 147 of 1979 and section 1 of Act 89 of 1985.

Amendment of section 7 of Act 13 of 1944, as amended by section 2 of Act 13 of 1953.

Amendment of section 34 of Act 13 of 1944, as substituted by section 3 of Act 52 of 1975 and amended by section 5 of Act 89 of 1985.

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(b) by the substitution for paragraph (b) of subsection (3) of the following paragraph:

5 “(b) after the expiry of seven days after demand for the repayment of the advance has been made by registered letter, addressed to the address of the debtor stated in the form of application for the advance, without recourse to a court of law, require any **[messenger of the court] sheriff** or any other person designated by the board for the purpose, to attach and (whether or not such **[messenger of the court] sheriff** or such other person is a licensed auctioneer) sell by public auction so much of the movable property of the debtor as may be necessary to liquidate the amount owing in respect of the advance, together with interest and costs in respect thereof, or the board may itself sell the property so attached by public tender and on the conditions which it may determine;”;

20 (c) by the substitution for paragraph (c) of subsection (3) of the following paragraph:

25 “(c) if, after the sale of all the available movable property of the debtor in terms of paragraph (b), an amount in respect of the advance and the said interest and costs is still owing, after due notice to mortgagees, and without recourse to a court of law, but subject to the provisions of subsection (4), attach any immovable property of the debtor by written notice thereof by registered letter, addressed to the debtor at the address referred to in paragraph (b), and to the registrar of deeds concerned, who shall cause a note of the attachment to be made in his registers, and the board may in its discretion, but subject to the provisions of subsection (4), and upon such conditions as it may deem to be just, cause to be sold by public auction, through an auctioneer or a sheriff **[or a deputy sheriff]**, whether or not such sheriff **[or deputy sheriff]** is a licensed auctioneer, the said immovable property;”;

40 (d) by the substitution for subsection (9) of the following subsection:

45 “(9) Any person who obstructs or hinders the attachment or sale of any property in terms of subsection (3) shall be guilty of an offence and, on a first conviction, liable to **[on conviction of]** a fine not exceeding two **[hundred] thousand** rand or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment and, on a second or subsequent conviction, liable to a fine not exceeding five thousand rand or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment;”;

50 and

55 (e) by the insertion after subsection (9) of the following subsection:

“(10) Notwithstanding anything to the contrary in any law contained, a magistrate’s court shall have jurisdiction to impose any sentence provided for in subsection (9).”.

60 (2) Subsection (1) (b) and (c) shall come into operation on the date on which the Sheriffs Act, 1986, comes into operation.

4. (1) Section 55 of the principal Act is hereby amended—

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

“(e) the debtor being deceased, his estate is about to be dealt with under the provisions of section 48 (3) of the Administration of Estates Act, 1913 (Act No. 24 of 1913), or section 34 **[(2) or (5)]** of the Admin-

Amendment of section 55 of Act 13 of 1944, as amended by section 11 of Act 46 of 1965, section 11 of Act 5 of 1968,

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istration of Estates Act, 1965 (Act No. 66 of 1965), or has been sequestrated as insolvent; or”;

section 14 of Act 31 of 1969, section 6 of Act 41 of 1972, Proclamation 147 of 1979, section 6 of Act 88 of 1981 and section 6 of Act 89 of 1985.

(b) by the substitution in paragraph (b) of subsection (2) for the words preceding paragraph (i) of the proviso of the following words:

“(b) after demand by registered letter, addressed to the address of the debtor stated in the form of application for the advance, has been made for the repayment of the advance, and, if the land or other security is mortgaged to any person other than the bank, after due notice to the mortgagee, and without recourse to a court of law, attach the whole or any part of the security for the advance by giving written notice thereof by registered letter, to the debtor to the address as stated above and to the registrar of deeds concerned, who shall cause a note of the attachment to be made in his registers, and the board may in its discretion sell by public auction, through an auctioneer or a sheriff **[or his deputy]**, whether or not such sheriff **[or his deputy]** is a licensed auctioneer, the whole or any part of the said security upon such conditions as it may deem just: Provided that—”;

(c) by the substitution for paragraph (ii) of the proviso to paragraph (b) of subsection (2) of the following paragraph:

“(ii) in the circumstances mentioned in subsection (1) (c), (d), (e), (f), (gA), (gB) or (gC), the board may so attach and sell the whole or any part of such security as soon after the debtor’s estate has been finally sequestrated or assigned, or the debtor has been sentenced, or the property has been declared executable or attached or become the subject of a direction under section 37 (1) of the Agricultural Credit Act, 1966, or the debtor’s estate is being dealt with under the provisions of section 48 (3) of the Administration of Estates Act, 1913, or section 34 **[(2) or (5)]** of the Administration of Estates Act, 1965, or a notice has been published with reference to the debtor under section 22 of the Agricultural Credit Act, 1966, or, if such debtor is a company, such company has been placed under judicial management or is being wound up or is being deregistered or, if such debtor is a close corporation, such close corporation is being wound up or is being deregistered, as the board may deem expedient;” and

(d) by the substitution for subsection (3) of the following subsection:

“(3) No property mortgaged to the bank shall be sold by a **[messenger of the court, or]** sheriff, or the trustee of an insolvent estate, or the assignee of an assigned estate, or the executor dealing with the estate of a deceased person under the provisions of section 48 (3) of the Administration of Estates Act, 1913, or section 34 **[(2) or (5)]** of the Administration of Estates Act, 1965, or a liquidator or trustee elected or appointed under section 27 or 28 of the Agricultural Credit Act, 1966, or the judicial manager or the liquidator of a company or close corporation, unless the bank agrees in writing to such sale or has failed to sell such mortgaged property within six months after receipt of a notice from that **[messenger,]** sheriff, trustee of the insolvent estate, assignee, executor, that liquidator or trustee so elected or appointed or that judicial manager or liquidator, as the case may be, to the effect that the property mortgaged has been attached, or that the estate of the debtor has been finally sequestrated or assigned or is being dealt

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with under the aforesaid provisions of the Administration of Estates Act, 1913, or the Administration of Estates Act, 1965, or that a notice with reference to the debtor has been published under section 22 of the Agricultural Credit Act, 1966, or that the company has been placed under judicial management or that the company or close corporation is being wound up or is being deregistered.”

(2) Subsection (1) (b) and (d) shall come into operation on the date on which the Sheriffs Act, 1986, comes into operation.

5. (1) Section 56 of the principal Act is hereby amended by the substitution for paragraph (c) of the following paragraph:

“(c) if the property so realized has been declared executable or has been attached by a sheriff **[or his deputy or a messenger of the court]**, to the sheriff **[or the messenger of the court, as the case may be]**”;

(2) Subsection (1) shall come into operation on the date on which the Sheriffs Act, 1986, comes into operation.

Amendment of section 56 of Act 13 of 1944, as amended by section 25 of Act 47 of 1959, section 5 of Act 35 of 1961, section 12 of Act 5 of 1968, section 15 of Act 31 of 1969, section 7 of Act 41 of 1972, Proclamation 147 of 1979, section 7 of Act 88 of 1981 and section 7 of Act 89 of 1985.

6. (1) The following section is hereby substituted for section 57 of the principal Act:

“Ejection of occupiers of property sold by the bank.

25 57. Whenever under the special powers conferred upon it by this Act or any other law, the board has, without recourse to a court of law, entered upon, taken possession of or sold immovable property, it may, in order to give possession of that property to the purchaser, give written directions to the sheriff of the province in which the property is situate, summarily to eject any person in occupation of that property, who in the opinion of the board is not entitled to occupy the same, and the sheriff is hereby authorized and empowered **[through any deputy-sheriff acting on his behalf,]** to carry out the board’s directions.”

(2) Subsection (1) shall come into operation on the date on which the Sheriffs Act, 1986, comes into operation.

Substitution of section 57 of Act 13 of 1944.

7. This Act shall be called the Land Bank Amendment Act, 1986. Short title.