

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 uneven numbered pages as the other language is printed on even numbered pages.



STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

As 'n Nuusblad by die Poskantoor Geregistreer

Registered at the Post Office as a Newspaper

Verkoopprijs • Selling price
(AVB uitgesluit/GST excluded)

Plaaslik **50c** Local
Buitelands 70c Other countries
Posvry • Post free

Vol. 277

KAAPSTAD, 13 JULIE 1988

No. 11403

CAPE TOWN, 13 JULY 1988

KANTOOR VAN DIE STAATSPRESIDENT

STATE PRESIDENT'S OFFICE

No. 1386.

13 Julie 1988

No. 1386.

13 July 1988

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:—

—o. 81 van 1988: Wet op die Omsetting van Sekere Regte in Huurpag, 1988.

No. 81 of 1988: Conversion of Certain Rights to Leasehold Act, 1988.

ACT

To provide for the conversion of certain occupational rights in development areas to leasehold and for matters connected therewith.

*(Afrikaans text signed by the State President.)
(Assented to 6 July 1988.)*

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

Definitions

1. In this Act, unless the context otherwise indicates—

- 5 (i) "Administrator", in relation to any matter referred to in this Act, means the Administrator-in-executive committee of the province in which that matter is to be dealt with; (i)
- (ii) "affected site" means a site which is or purports to be occupied by virtue of a site permit, a certificate, a trading site permit, or a permit issued by the
10 local authority concerned conferring upon the holder thereof rights which in the opinion of the secretary concerned are similar to the rights which are held by the holder of a site permit, certificate or trading site permit; (v)
- (iii) "certificate" means a certificate of occupation issued under regulation 8 (1) of Chapter 2 of the regulations; (xvii)
- 15 (iv) "competent person" means a competent person as defined in section 1 of the principal Act; (iii)
- (v) "development area" means an area designated or deemed to be set apart as a development area under section 33 of the principal Act; (x)
- (vi) "local authority" means a local authority established under the Black Local
20 Authorities Act, 1982 (Act No. 102 of 1982), and includes an Administrator or public authority referred to in section 3 or 5 of the Abolition of Development Bodies Act, 1986 (Act No. 75 of 1986); (xiii)
- (vii) "prescribed" means prescribed by regulation under section 9; (xviii)
- (viii) "principal Act" means the Black Communities Development Act, 1984
25 (Act No. 4 of 1984); (ix)
- (ix) "publish" means publish once in the appropriate *Official Gazette* and once a week in each of two consecutive weeks in a newspaper circulating in the area concerned; (ii)
- (x) "registrar" means a registrar as defined in section 102 of the Deeds
30 Registries Act, 1937 (Act No. 47 of 1937); (xiv)
- (xi) "right of leasehold" means a right of leasehold as defined in section 1 of the principal Act, and "leasehold" has a corresponding meaning; (xv)
- (xii) "secretary" means the provincial secretary of any province; (xvi)
- (xiii) "site" means a leasehold site as defined in section 1 of the principal Act,
35 and includes premises referred to in section 52 (5) of that Act; (xi)
- (xiv) "site permit" means a permit issued under regulation 6 (1) of Chapter 2 of the regulations; (xii)

CONVERSION OF CERTAIN RIGHTS TO LEASEHOLD ACT, 1988

Act No. 81, 1988

- (xv) "the regulations" means the regulations referred to in the Schedule; (iv)
 (xvi) "this Act" includes the regulations made under section 9; (viii)
 (xvii) "trading site" means a site set apart under the regulations for allotment to
 5 a trader for trading, business or professional purposes, the building upon
 which site has been erected or acquired by the holder of the trading site
 permit in respect of the site; (vi)
 (xviii) "trading site permit" means a permit issued by a local authority allowing
 the person named therein to occupy a trading site. (vii)

Inquiry as to rights of leasehold

10 2. (1) Any secretary shall conduct an inquiry in the prescribed manner in respect
 of affected sites within development areas situated within his province, in order to
 determine who shall be declared to have been granted a right of leasehold with
 regard to such sites.

(2) Before the commencement of such inquiry the secretary shall, after satisfying
 15 himself as to the identity of the affected site and of the person appearing from the
 records of the local authority concerned to be the occupier of that site, and, in respect
 of premises referred to in section 52 (5) of the principal Act, is in possession of
 an aerial photograph or plan of the premises concerned, certified as provided in
 section 52 (5) (a) of that Act, publish a notice indicating that such inquiry is to be
 20 conducted.

(3) For the purposes of the declaration under subsection (1) the secretary may—

- (a) give effect to any agreement or transaction in relation to the rights of a
 holder contemplated in subsection (4) (b) in respect of the site concerned,
 between such holder and any other person;
 25 (b) give effect to any such agreement or transaction, or to any settlement or
 testamentary disposition in respect of such rights, entered into or made
 before the death of the last such holder;
 (c) consider any intestate heir of the last such holder to have been granted a
 right of leasehold in respect of the site concerned;
 30 (d) give effect to any court order or sale in execution in relation to the site
 concerned,

notwithstanding that such agreement, transaction, settlement, testamentary dis-
 position or intestate succession could not by virtue only of the provisions of the
 regulations have been entered into or made or was entered into or made without the
 35 approval of any person whose approval would have been required under the
 regulations, and notwithstanding that the site permit, certificate or trading site
 permit concerned had lapsed upon the death of such holder: Provided that no person
 who is not a competent person shall be declared under section 4 to have been granted
 a right of leasehold.

40 (4) At the conclusion of the inquiry and after having considered any relevant claim
 or objection, the secretary shall, if he is satisfied that the person concerned—

- (a) is a competent person; and
 (b) is, subject to the provisions of subsection (3), in respect of the site
 concerned—
 45 (i) the holder of a site permit, certificate or trading site permit; or
 (ii) the holder of rights which in the opinion of the secretary are similar to
 the rights of the holder of a site permit, certificate or trading site
 permit,

determine whom he intends to declare to have been granted a right of leasehold in
 50 respect of the site concerned.

(5) Whenever he has made a determination as contemplated in subsection (4), the
 secretary shall publish a notice stating—

- (a) the prescribed particulars of such determination;
 (b) whether or not that determination concerns the person identified as the
 55 occupier of the site as contemplated in subsection (2);
 (c) that that determination shall be subject to appeal to the Administrator
 concerned in the prescribed manner; and

CONVERSION OF CERTAIN RIGHTS TO LEASEHOLD ACT, 1988

Act No. 81, 1988

- (d) that, subject to any decision of the Administrator concerned on appeal, the person concerned shall be declared to have been granted a right of leasehold in respect of the site concerned.

Appeals

5 3. (1) Any person who considers himself aggrieved by any determination contemplated in section 2 (4) may, within such period and in such manner as may be prescribed, appeal against that determination to the Administrator concerned, who may, after investigation of the appeal and with due regard to the provisions of section 2 (3) and (4), confirm, set aside or vary the determination or make such other
10 determination as in his opinion should have been made.

(2) Any person who feels aggrieved by a decision of the Administrator under subsection (1), may within a period of 30 days from the date upon which he has been informed of the Administrator's decision, appeal to a competent court against that decision by lodging with the registrar of that court a notice of appeal setting out
15 full his grounds of appeal.

(3) Any person who appeals in terms of subsection (2) shall, when lodging such notice of appeal, deposit with the registrar concerned an amount of R200 as security for the costs of the appeal and shall on the same day deliver or send to the secretary a copy of the notice of appeal.

20 (4) The secretary shall, within a period of 30 days from the date upon which he has received the notice of appeal referred to in subsection (2), send to the registrar referred to in that subsection in respect of the enquiry concerned—

(a) the documentary evidence admitted at the enquiry;

25 (b) a statement of the decision of the Administrator and the reasons for such decision;

(c) any observations which the Administrator may wish to make.

(5) An appeal in terms of subsection (2) shall be prosecuted as if it were an appeal from a judgment of a magistrate's court in a civil matter, and all rules applicable to the hearing of such appeal shall *mutatis mutandis* apply to an appeal under this
30 section.

(6) The court hearing an appeal under this section may confirm or set aside the decision or make such other determination as in its opinion should have been made by the Administrator.

35 (7) The registrar shall without delay furnish the secretary with a copy of the order of court.

Granting of leasehold

4. (1) The secretary concerned shall upon the expiry of the period specified for appeal under section 3 (1) or, in the case of such appeal, on the confirmation, variation or substitution of the determination referred to in section 2 (4), in the
40 prescribed manner declare the person concerned to have been granted a right of leasehold in respect of the affected site concerned under section 52 (1) of the principal Act, whereupon that person shall be deemed for all purposes to have been granted a right of leasehold under the said section 52 (1).

(2) The provisions of section 52 (4) of the principal Act shall not apply in respect
45 of any leasehold contemplated in subsection (1) of this section.

Registration of leasehold

5. (1) Whenever he has made a declaration in terms of section 4 (1), the secretary shall lodge such declaration and every deed and other document necessary for the registration of the right of leasehold concerned with the registrar concerned, who
50 shall—

(a) for the purposes of registration, accept that the particulars contained in the declaration are correct; and

55 (b) without the production of any particulars or certificate referred to in section 53 (4) or 66 (1) (n) (ivA), respectively, of the principal Act, register the right of leasehold in favour of the person mentioned in the declaration.

(2) If the occupier of a site is not the holder of the right of leasehold in respect of it, the secretary shall not act in terms of subsection (1) unless he is satisfied that the amount of any *bona fide* improvements on the site that have been effected by that

CONVERSION OF CERTAIN RIGHTS TO LEASEHOLD ACT, 1988

Act No. 81, 1988

occupier has been assessed in the prescribed manner and paid to that occupier, or that security to the satisfaction of the secretary has been furnished for the payment of that amount.

(3) Sections 10 (1) (q) and 16A of the Deeds Registries Act, 1937 (Act No. 47 of 1937), shall apply in respect of the said right of leasehold as if it were a right of leasehold referred to in those sections.

(4) The secretary shall for the purposes of the registration of the right of leasehold be deemed to be the duly authorized representative of the local authority concerned.

Certain persons to be lessees

10 6. (1) The holder—

(a) of a residential permit or hostel permit referred to in the regulations, or of a permit issued by a local authority allowing the person mentioned therein to occupy a site set apart under those regulations for allotment to a trader for trading, business or professional purposes, the building upon which site
15 is leased to that holder by the local authority, shall from the commencement of this Act;

(b) of a site permit, certificate or trading site permit or of rights referred to in section 2 (4) (b) (ii) who has not prior to a date to be determined by the Administrator concerned with regard to the development area concerned
20 or part thereof (which date shall not be earlier than the date upon which the secretary concerned has completed the inquiry contemplated in section 2 (1) to the satisfaction of the Administrator) become the holder of a right of leasehold, shall from such date; or

(c) of a site permit, certificate or trading site permit or of rights referred to in section 2 (4) (b) (ii) in respect of a site in an area defined in a proclamation
25 under section 2 (2) of the principal Act, shall from the commencement of this Act, or if such a proclamation is issued after the commencement of this Act, from the date of such proclamation,

and subject to the provisions of subsection (2), be the lessee, and the local authority
30 concerned shall be the lessor, of the site or accommodation concerned: Provided that nothing in this subsection contained shall be construed as derogating from any right that the holder of a site permit, certificate, trading site permit or rights contemplated in section 2 (4) (b) (ii) might have acquired by virtue of the provisions of the regulations.

35 (2) Subject to any by-laws relating to letting that may apply to the site or accommodation concerned, a lease contemplated in subsection (1)—

(a) may be terminated by the lessee on three months' written notice;
(b) shall be subject to the payment of rental by the lessee to the lessor in an
40 amount equal to the amount paid by the lessee immediately before the commencement of this Act in respect of the site or accommodation concerned unless such amount is varied by agreement.

Secretary's powers of investigation

7. (1) For the purposes of the application of this Act a secretary may, after due notice, at all reasonable times enter such premises where any record, book or
45 document which relates to or is suspected to relate to matters dealt with in this Act by any local authority, is kept, and may examine or make copies of or extracts from any such record, book or document and require from any person who has control over such record, book or document an explanation of any entry in any such record, book or document.

50 (2) Any person who hinders or obstructs a secretary in the performance of his functions in terms of subsection (1), or who refuses or fails to comply to the best of his ability with such requirement made by a secretary, shall be guilty of an offence and liable on conviction to a fine not exceeding R500 or to imprisonment for a period not exceeding six months.

CONVERSION OF CERTAIN RIGHTS TO LEASEHOLD ACT, 1988

Act No. 81, 1988

Limitation of liability

8. No person, including the State, shall be liable in respect of anything done in good faith in the exercise or performance of a power or duty conferred or imposed by or under this Act.

5 Regulations

9. An Administrator may in relation to his province make regulations as to—
- (a) any matter which in terms of this Act is required or permitted to be prescribed;
 - 10 (b) the form of any notice or document relating to a matter referred to in this Act;
 - (c) the manner of hearing of any appeal referred to in section 3;
 - (d) the procedure to be followed in the service of any document or notice under this Act; and
 - 15 (e) in general, any other matter which he considers necessary or expedient to prescribe in order that the purposes of this Act may be achieved.

Delegation of powers

10. (1) An Administrator may delegate any power conferred upon him by or under this Act, other than the power under section 9 to make regulations, to an officer in the provincial administration concerned.
- 20 (2) The secretary may, with the approval of the Administrator, delegate any power conferred upon him by or under this Act to an officer in his provincial administration or to any person appointed by him under the authority of this subsection for the purpose.
- 25 (3) A delegation under subsection (1) or (2) shall not prevent the exercise of the relevant power by the Administrator or the secretary himself, as the case may be.

Retention of rights

11. (1) The holder of a site permit, certificate, trading site permit or rights contemplated in section 2 (4) (b) (ii) shall, notwithstanding the repeal of the regulations by this Act but subject to the provisions of any other law, and until a right
30 of leasehold in respect of the site concerned has been registered or until he has become a lessee under section 6 (1) (c), as the case may be, have the same rights that he would have had in respect of that site in terms of the regulations as if they were not repealed by this Act.
- (2) Nothing in this Act contained shall be construed as prohibiting any person
35 from acquiring of his own accord a right of leasehold or ownership in respect of a site.
- (3) Any *bona fide* act purporting to have been done in terms of the regulations in an area where those regulations did not apply, shall be deemed to have been validly done.

40 Repeal of certain Government Notices

12. Notwithstanding the provisions of section 66 (3) of the principal Act, the Government Notices set out in the Schedule are hereby repealed.

Short title and commencement

13. This Act shall be called the Conversion of Certain Rights to Leasehold Act, 45 1988, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

CONVERSION OF CERTAIN RIGHTS TO LEASEHOLD ACT, 1988

Act No. 81, 1988

Schedule

GOVERNMENT NOTICES REPEALED (SECTION 12)

Subject matter	
Government Notice No. R.1036 of 14 June 1968	Regulations Governing the Control and Supervision of an Urban Black Residential Area and Relevant Matters
Government Notice No. R.1153 of 28 June 1968	Amendment of the Regulations Governing the Control and Supervision of an Urban Black Residential Area and Relevant Matters
Government Notice No. R.1267 of 26 July 1968	Regulations Governing the Control and Supervision of an Urban Black Residential Area and Relevant Matters
Government Notice No. R.1306 of 31 July 1968	Regulations Governing the Control and Supervision of an Urban Black Residential Area and Relevant Matters
Government Notice No. R.1830 of 8 October 1971	Regulations Governing the Control and Supervision of an Urban Black Residential Area and Relevant Matters
Government Notice No. R.2081 of 19 November 1971	Amendment of the Regulations Governing the Control and Supervision of an Urban Black Residential Area and Relevant Matters
Government Notice No. R.2083 of 19 November 1971	Amendment of the Regulations Governing the Control and Supervision of an Urban Black Residential Area and Relevant Matters
Government Notice No. R.891 of 26 May 1972	Amendment of the Regulations Governing the Control and Supervision of an Urban Black Residential Area and Relevant Matters
Government Notice No. R.2486 of 28 December 1973	Regulations Governing the Control and Supervision of an Urban Black Residential Area and Relevant Matters
Government Notice No. R.764 of 7 May 1976	Amendment of the Regulations Governing the Control and Supervision of an Urban Black Residential Area and Relevant Matters
Government Notice No. R.1265 of 23 July 1976	Amendment of the Regulations Governing the Control and Supervision of an Urban Black Residential Area and Relevant Matters
Government Notice No. R.1660 of 26 August 1977	Amendment of the Regulations Governing the Control and Supervision of an Urban Black Residential Area and Relevant Matters
Government Notice No. R.2292 of 4 November 1977	Amendment of the Regulations Governing the Control and Supervision of an Urban Black Residential Area and Relevant Matters
Government Notice No. R.2321 of 11 November 1977	Regulations Governing the Control and Supervision of an Urban Black Residential Area and Relevant Matters
Government Notice No. R.2488 of 2 December 1977	Amendment of the Regulations Governing the Control and Supervision of an Urban Black Residential Area and Relevant Matters
Government Notice No. R.2612 of 30 December 1977	Amendment of the Regulations Governing the Control and Supervision of an Urban Black Residential Area and Relevant Matters
Government Notice No. R.1922 of 22 September 1978	Amendment of the Regulations Governing the Control and Supervision of an Urban Black Residential Area and Relevant Matters
Government Notice No. R.1071 of 25 May 1979	Amendment of the Regulations Governing the Control and Supervision of an Urban Black Residential Area and Relevant Matters
Government Notice No. R.1072 of 25 May 1979	Amendment of the Regulations Governing the Control and Supervision of an Urban Black Residential Area and Relevant Matters
Government Notice No. R.1258 of 15 June 1979	Amendment of the Regulations Governing the Control and Supervision of an Urban Black Residential Area and Relevant Matters
Government Notice No. R.1417 of 29 June 1979	Amendment of the Regulations Governing the Control and Supervision of an Urban Black Residential Area and Relevant Matters
Government Notice No. R.195 of 1 February 1980	Amendment of the Regulations Governing the Control and Supervision of an Urban Black Residential Area and Relevant Matters
Government Notice No. R.1866 of 12 September 1980	Amendment of the Regulations Governing the Control and Supervision of an Urban Black Residential Area and Relevant Matters
Government Notice No. R.1970 of 26 September 1980	Amendment of the Regulations Governing the Control and Supervision of an Urban Black Residential Area and Relevant Matters
Government Notice No. R.1975 of 18 September 1981	Amendment of the Regulations Governing the Control and Supervision of an Urban Black Residential Area and Relevant Matters
Government Notice No. R.133 of 29 January 1982	Amendment of the Regulations Governing the Control and Supervision of an Urban Black Residential Area and Relevant Matters

CONVERSION OF CERTAIN RIGHTS TO LEASEHOLD ACT, 1988

Act No. 81, 1988

Subject matter	
Government Notice No. R.1239 of 25 June 1982	Amendment of the Regulations Governing the Control and Supervision of an Urban Black Residential Area and Relevant Matters
Government Notice No. R.1999 of 17 September 1982	Amendment of the Regulations Governing the Control and Supervision of an Urban Black Residential Area and Relevant Matters
Government Notice No. 2733 of 17 December 1982	Amendment of the Regulations Governing the Control and Supervision of an Urban Black Residential Area and Relevant Matters
