

CHAPTER 32:08
IMMOVABLE PROPERTY
(REMOVAL OF RESTRICTIONS)

ARRANGEMENT OF SECTIONS

SECTION

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Act 27, 1967,
Act 37, 1969,
Act 70, 1970,
Act 17, 1982.

An Act to provide for removal of restrictive covenants and conditions affecting the use of immovable property and to make provision incidental thereto.

[Date of Commencement: 22nd September, 1967]

1. Short title

This Act may be cited as the Immovable Property (Removal of Restrictions) Act.

2. Alteration, suspension or removal of conditions of title

(1) The owner of any immovable property or any person authorized to act on his behalf in the matter may apply to the Registrar of Deeds for the alteration, suspension, or removal of any condition or covenant registered against the title affecting the use or occupation of the property.

(2) Such application shall-

- (a) be in writing;
- (b) contain the name and address of the applicant, and, if he is not the owner, details of the authority by virtue of which he is entitled to make the application;
- (c) be accompanied by the title deed of the property;

- (a) be accompanied by proof to the satisfaction of the Registrar of Deeds that notice of the application and of the proposed alteration, suspension, or removal has been given to the owners of the properties abutting on that to which the application relates.

(3) On receipt of an application in terms of subsection (1) the Registrar of Deeds shall-

- (a) at the expense of the applicant publish a notice in the *Gazette* setting out the full particulars of the proposed alteration, suspension, or removal and calling upon any person who has any objection to lodge his objection in writing with him not later than a specified date, which shall be at least 30 days from the date of the publication in the *Gazette*;

(b) transmit a copy of the notice to-

- (i) the Town and Country Planning Board established under section 5 of the Town and Country Planning Act;
- (ii) the local authority within whose area the property is situated;
- (iii) the township owner, if any, concerned;
- (iv) the Director of Surveys and Lands; and
- (v) any other person who, in the opinion of Registrar of Deeds, may have an interest in the matter.

(4) A copy of any objection which is received timeously by the Registrar of Deeds shall be served by him on the applicant.

(5) If no objection is received within the time specified in the notice, or if the applicant is willing to modify his application to meet the objection, the Registrar of Deeds shall as soon as possible consider the application and shall recommend to the Minister whether the application should be refused or granted and, if granted, whether or not the approval should be conditional:

Provided that any modification of an application which is capable of prejudicing the interests of any person whose views in the matter have not been communicated to the Registrar of Deeds shall be re-advertised in the manner prescribed in subsection (3) and the matter shall proceed thereafter as if the application as modified were a new application.

(6) In any case where the provisions of subsection (5) are not applicable or in any case where the terms of any proposed modification to an application are in dispute the Registrar of Deeds shall refer the matter to the High Court for decision.

3. Powers and duties of the Minister

(1) On receipt of the recommendations of the Registrar of Deeds in terms of section 2(5) the Minister may-

- (a) refuse the application; or
- (b) by order in the *Gazette* alter, suspend or remove any condition or covenant either permanently or for such period as may be specified by him or subject to such conditions as may be specified in that order.

(2) Any person who is dissatisfied with a decision of the Minister under this section may appeal to the High Court within 14 days of the notification to him of the Minister's refusal of the application or of the publication of the Minister's order in the *Gazette*.

(3) If no appeal is lodged, or if an appeal is abandoned, the Minister shall, where he has made any order, transmit a copy of his order and the title deed to the Registrar of Deeds who shall endorse the title deed and the registry duplicate thereof accordingly.

4. Powers and duties of the High Court

(1) The High Court shall have power where a matter is referred to it in terms of section 2(6) to-

- (a) refuse the application; or
- (b) alter, suspend or remove any condition or covenant either permanently or for such period as may be specified by it or subject to such conditions as may be specified in that order,

and may further, where any objector alleges that he possesses an interest or right in law in or to the property in respect of which the application is made and that the proposed alteration, suspension or removal will cause him loss or damage, summarily inquire into the matter and, where any application is granted in whole or in part, make such award in the matter, including the award of compensation to the objector by the applicant, as it thinks just.

(2) Where appeal is made to the High Court under section 3(2), the High Court may vary, set aside, amend or confirm the order or decision of the Minister.

(3) For the purpose of any proceedings before the High Court under this Act, the applicant, any objector and the Registrar of Deeds shall be deemed to be parties:

Provided that no order as to costs may be made against the Registrar of Deeds.

(4) Where the court makes any order which has the effect of altering any condition or covenant or of confirming or amending or varying an order of the Minister, the Registrar of the High Court shall transmit a copy of the order of the court and the title deed together with the Minister's order, if any, to the Registrar of Deeds who shall endorse the title deed and the registry duplicate thereof accordingly.

5. Changes of form of title by mutual consent

As often as by mutual consent of the owner of any land and the President it becomes necessary to make or effect any change in the form of the title deed to any land held under

grant from the State, such change may be effected by the surrender by the owner of the then existing title deeds and the issue of a new title deed to such owner to take the place of such as is surrendered:

Provided that if such land has been hypothecated or if any real rights in such land (other than the right of ownership) and registered against the title subsist, the written consent of the holders of the mortgage bonds and of the holders of the aforesaid rights shall be produced for the substitution of the new form of grant in the place of that surrendered.

6. Cancellation of title deeds upon surrender of land

As often as the owner of any land held under grant from the State consents and agrees to surrender or abandon such land, either in exchange for other land, or for any other cause, then, upon delivery up of the title deeds thereof, the Minister may authorize the Registrar of Deeds to cancel such deeds.

7. Entries in books of Registrar of Deeds

(1) Upon any change being made in the form of any title by consent, as provided for by section 5, or upon any land being surrendered or abandoned in the manner provided in section 6 all necessary entries in the books of the Director of Surveys and Lands and Registrar of Deeds respectively, shall be made.

(2) The Registrar of Deeds shall make the usual necessary note or entry of the mortgage or right upon the title of any land, which is mortgaged or subject to any registrable real right (other than ownership), issued in pursuance of the provisions of section 5, and thereupon the right of hypothecation of the bond holder and any such real right shall subsist in respect of such land.

(3) Upon any land being surrendered or abandoned as aforesaid, then, upon the necessary record being made in the books of the Registrar of Deeds, it shall revert to and become re-invested in the State, as if it had not been previously granted or alienated.

8. Certain prohibitions and restrictions to be void

(1) Any provision in any deed, will, codicil, covenant or agreement, whether registered against the title deeds of any property or not, which purports to prohibit or restrict the occupation or use of any immovable property by reference to colour, race or ethnic or national origins, or which has that effect, shall be void.

(2) Any provision in any deed, will, codicil, covenant or agreement, whether registered against the title deeds of any property or not, which purports to restrict the disposal by sale, lease, assignment or otherwise of any interest in immovable property to any person by reference to his colour, race, or ethnic or national origins, or which has that effect, shall be void.

(3) Where any reservation or restriction of any right of use or development registered against the title deeds of, or however effected on, any immovable property is inconsistent with any provision of the Town and Country Planning Act, the Water Act or the Building Control Act

to which such immovable property is subject, such reservation or restriction shall, in so far as it is inconsistent with any provision of any of the Acts mentioned, be void.

(4) The invalidity in terms of this section of any provision in any deed, will, codicil, covenant or agreement shall not affect the validity of the remaining parts of the deed, will, codicil, covenant or agreement if, in the circumstances, the remainder is reasonably capable of enforcement; but shall operate in respect of all deeds, wills, codicils, covenants or agreements executed or entered into before or after the commencement of this Act insofar as they relate to immovable property situated in Botswana.

9. Saving of the common law rights of applicant

Nothing in this Act shall affect in any way the jurisdiction which any court may have under any law, including the common law to alter, suspend, remove, or declare void or unenforceable any conditions or covenant registered against the title of any immovable property.

10. Rules of court

The Chief Justice may make rules of court for the regulation of proceedings and appeals in the High Court under this Act and for charging of fees payable in connection therewith.