

(1 October 1967 – 31 October 1969)

[This version applied as from **1 October 1967**, i.e. the date of commencement of the Mining Titles Registration Act 16 of 1967- **to – 31 October 1969**, the day before commencement of the Deeds Registries Amendment Act 61 of 1969]

## DEEDS REGISTRIES ACT 47 OF 1937

*Government Notice 800 in Government Gazette 2443, dated 26 May 1937. Commencement date: 1 September 1937 [Proc. No. 136, Gazette No. 2457, dated 30 July 1937].*

### as amended by:

*Deeds Registries Amendment Act 15 of 1953 - Government Notice 1757 in Government Gazette 5120, dated 14 August 1953. Commencement date: 14 August 1953.*

*Matrimonial Affairs Act 37 of 1953 - Government Notice 2333 in Government Gazette 5170, dated 28 October 1953. Commencement date: 28 October 1953.*

*General Law Amendment Act 50 of 1956 - Government Notice 1109 in Government Gazette 5703, dated 22 June 1956. Commencement date: 22 June 1956.*

*Deeds Registries Amendment Act 43 of 1957 - Government Notice 886 in Government Gazette 5887, dated 14 June 1957. Commencement date: 19 July 1957 [Proc. 205, Gazette No. 5912, dated 19 July 1957].*

*Deeds Registries Amendment Act 43 of 1962 - Government Notice 701 in Government Gazette 236, dated 4 May 1962. Commencement date: 4 May 1962.*

*General Law Amendment Act 80 of 1964 - Government Notice 914 in Government Gazette 829, dated 24 June 1964. Commencement date: 24 June 1964, unless otherwise indicated.*

*Deeds Registries Amendment Act 87 of 1965 - Government Notice 958 in Government Gazette 1163, dated 30 June 1965. Commencement date: 6 August 1965 [Proc. 174, Gazette No. 1197, dated 6 August 1965].*

*Mining Titles Registration Act 16 of 1967 - Government Notice 269 in Government Gazette 1670, dated 1 March 1967. Commencement date: On the date of commencement of the Mining Rights Act, 1967, viz. 1 October 1967 [Proc. 237, Gazette No. 1850, dated 22 September 1967].*

### *Publisher's note:*

*The Act has been amended by section 38 of Act 43 of 1962 by the substitution for the words "Crown" and "Crown land" wherever they occur therein of the words "State" and "State land" respectively.*

Prepared by:

In partnership with:

## ACT

**To consolidate and amend the laws in force in the Union relating to the registration of deeds.**

BE IT ENACTED by the King's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa as follows:-

### CHAPTER I ADMINISTRATION

1. Deeds registries
2. Appointment of registrar and assistant registrar of deeds.
3. Duties of registrar.
4. Powers of registrar
5. Transactions affecting land in areas served by different deeds registries.
6. Registered deeds not to be cancelled except upon an order of Court
7. Inspection of records and supply of information
8. ....
9. Regulations board
10. Regulations

### CHAPTER II REGISTRATION

11. Prescribed registers
12. Temporary continuation of existing registers
13. When registration takes place
14. Deeds to follow sequence of their relative causes.
15. Preparation of deeds by conveyancer.
16. How real rights shall be transferred.
17. Special provisions relating to women

### CHAPTER III REGISTRATION OF LAND

18. Manner of dealing with State land
19. ....
20. Form and manner of execution of deeds of transfer
21. Transfer from joint estate
22. Transfer of two or more pieces of land by one deed
23. Transfer of undivided shares in land by one deed

Prepared by:

In partnership with:

- 23bis. Transfer of shares in properties to more than one transferee in one deed.
- 24. Special provisions relating to transfer of undivided shares
- 24bis. Transfer from firm or partnership.
- 25. Transfer to unascertained children
- 26. Deeds of partition transfer
- 27. Requisites where share in land partitioned is mortgaged
- 28. Requisites where share in land partitioned is subject to other rights
- 29. Effect of compliance with sections 27 and 28.
- 30. Partition of land subject to *fidei commissum*
- 31. Transfer of expropriated land or land vested by statute
- 32. Registration of expropriated servitudes or servitudes vested by statute
- 33. Registration of title by other than the ordinary procedure
- 34. Certificate of registered title of undivided share
- 35. Certificate of registered title of aggregate share.
- 36. Certificate of registered title of one or more properties held under one deed.
- 37. Conditions governing the issue of certificates of registered title
- 38. Certificate of registered title taking place of lost or destroyed deed.
- 39. Certificate of registered title to correct error in registration.
- 40. Certificate of consolidated or amended title of two or more pieces of land.
- 41. Certificate of amended title of one piece of land.
- 42. Certificate of uniform title
- 43. Certificate of registered title of portion of a piece of land
- 44. Rectification of title by endorsement.
- 45. Transfer or cession by means of endorsement.
- 45bis. Endorsement of deeds where marriage dissolved by divorce

#### **CHAPTER IV.**

- 46. Requirements in the case of sub-division of land into lots or erven.
- 47. Transfer of township or portion thereof.
- 48. Special provisions affecting mortgaged land in Rand townships registration area.
- 49. Special provisions regarding townships in the Transvaal.

#### **CHAPTER V.**

##### **BONDS.**

- 50. Execution of bonds.
- 51. Requirements in case of bonds intended to secure future debts.
- 52. Cession of bond to secure future advances.
- 53. Exclusion of general clause in mortgage bonds.
- 54. No bond to be passed in favour of an agent.

Prepared by:

In partnership with:

55. Requirements in case of bonds passed by or in favour of two or more persons
56. Transfer of hypothecated immovable property
57. Substitution of debtor in respect of a bond
58. Returns by master in connection with insolvent estates and further provisions relative to insolvent estates.
59. Endorsement of bond after sale in execution
60. Consent of bond holder to registration of merger of rights of mortgagor
61. Registration of notarial bonds.
62. Where notarial bond is to be registered.

## **CHAPTER VI. RIGHTS IN IMMOVABLE PROPERTY.**

63. Restriction on registration of rights in immovable property.
64. Certificates of registered real rights.
65. Registration of notarial deed creating personal servitude
66. Restriction on registration of personal servitudes
67. Reservation of personal servitudes.
68. Registration of lapse of personal servitude
69. Transfer and mortgage of land with personal servitude thereon
- 69*bis*. Joint transactions by fiduciary and fideicommissary.
70. Separation from ownership of rights to minerals
71. Certificates of reservation of rights to minerals
72. Certificate of rights to minerals reserved by State
73. Exclusion of rights to minerals from partition of land.
- 73*bis*. Partition of rights to minerals.
74. Undivided share of rights to minerals.
- 74*bis*. Correction of error in registration of rights to minerals.
75. Creation of praedial servitude by notarial deed.
76. Conditions of registration of praedial servitudes.
77. Registration of leases and sub-leases.
78. Termination of registered lease.
79. Where lease to be registered.
80. Cessions of leases and sub-leases.
81. Hypothecation of leases and sub-leases.
82. Notarial bonds hypothecating leases or sub-leases.
83. Hypothecation of and settlement lease after exercise of option of purpose
84. Registration of prospecting contracts
85. Cancellation of registration on expiry of prospecting contract or failure to renew

## **CHAPTER VII**

Prepared by:

In partnership with:

## ANTENUPTIAL CONTRACTS

86. Antenuptial contracts to be registered
87. Manner and time of registration of antenuptial contracts
88. Postnuptial execution of antenuptial agreement
89. ....

## CHAPTER VIII. MISCELLANEOUS.

90. Cancellation of registration on lapse of certain registered rights
91. Transfer and cession not to be passed as security
92. Taxes and transfer duty to be paid before transfer of land
93. Registration of change of name.
94. Women witnesses of deeds.
95. Attestation of powers of attorney executed in the Union,
96. Execution of deeds by prospective owners.
97. Notice to registrar of application to court.
98. Substituted copy of lost deed supersedes original which must be surrendered on recovery
99. Exemption from liability for acts or omissions in deeds registry.
100. Formal defects
101. Special provisions relating to Vryburg deeds registry
102. Definitions
103. Repeal of laws.
104. Short title and commencement of Act.

### First Schedule. - LAWS REPEALED.

### Second Schedule.

## CHAPTER I ADMINISTRATION

### 1. Deeds registries

- (1) There shall be deeds registries at Cape Town, Kingwilliamstown, Kimberley, Vryburg, Pietermaritzburg, Pretoria and Bloemfontein, each to serve its respective area as defined in the Second Schedule to this Act. The Rand townships registration office at Johannesburg, shall also be a deeds registry, but only in connection with the registration of documents relating to immovable property in any township in the area served thereby as defined in the said Schedule.

- (2) In every deeds registry in the Union existing at the commencement of this Act there shall be carried out to completion as if this Act had not been passed all matters which immediately prior to such commencement were pending in that registry, and each registry mentioned in sub-section (1) shall be a continuation of the deeds registry existing at the commencement of this Act in the area served thereby.
- (3) The Governor-General may from time to time, upon the authority of resolutions passed by both Houses of Parliament, alter by proclamation in the *Gazette* any area, defined in the Second Schedule to this Act as the area served by any deeds registry.

## 2. Appointment of registrar and assistant registrar of deeds.

- (1) Subject to the laws governing the public service there shall be appointed-
  - (a) a chief registrar of deeds, who shall as such be the chairman and executive officer of the deeds registries regulations board mentioned in section *nine*, who shall, subject to the directions of the Minister, exercise such supervision over all the deeds registries as may be necessary in order to bring about uniformity in their practice and procedure, and who shall also hold office as one of the registrars of deeds mentioned in paragraph (b);
  - (b) in respect of each deeds registry, a registrar of deeds or a registrar of Rand townships, as the case may be, who shall be in charge of the deeds registry in respect of which he has been appointed;
  - (c) for each deeds registry, one or more deputy registrars of deeds or one or more assistant registrars of deeds or Rand townships, as the case may be, or one or more deputy registrars of deeds and one or more assistant registrars of deeds, who shall respectively have the power, subject to the regulations, to do any act or thing which may lawfully be done under this Act or any other law by a registrar of deeds, or by the Rand townships registrar, as the case may be.

*(Section 2(1) amended by section 1 of Act 43 of 1957)*

*(Section 2(1) substituted by section 1(a) of Act 43 of 1962)*

*(Section 2(1) substituted by section 1(a) of Act 87 of 1965)*

(1)*bis* .....

*(Section 2(1)*bis* inserted by section 1 of Act 43 of 1957)*

*(Section 2(1)*bis* effectively deleted by section 1(b) of Act 87 of 1965)*

- (2) No person shall be appointed as registrar, deputy registrar or assistant registrar of deeds after the commencement of the Deeds Registries Amendment Act, 1957, unless he has passed the Public Service Law Examination or an examination deemed by the Public Service Commission to be equivalent thereto and has served in the administrative division of the public service in one or more

deeds registries or in the deeds registry established by the Deeds Registry Proclamation, 1939 (Proclamation No. 37 of 1939), of the Administrator of South-West Africa, or in one or more deeds registries established under this Act and in the lastmentioned deeds registry for a period of not less than seven years: Provided that this sub-section shall not apply with reference to the appointment as registrar of deeds of any person who held office as registrar of deeds in terms of the said proclamation or as an assistant registrar of deeds at the commencement of the said Act or with reference to the appointment of the Rand townships registrar or assistant Rand townships registrar.

*(Section 2(2) deleted by section 1(b) of Act 43 of 1962)*

*(Section 2(2) substituted for section 2(1)bis by section 1(b) of Act 87 of 1965)*

- (3) Every person holding, at the commencement of this Act, the office of registrar or assistant registrar of deeds or Rand townships registrar, or assistant Rand townships registrar, shall be deemed to have been appointed under this section.
- (4) Every registrar appointed under or referred to in this section is hereinafter referred to as the registrar.
- (5) Each registrar shall have a seal of office which shall be affixed to all deeds executed or attested by him and to all copies of deeds issued by him to serve in lieu of the original deeds.

### **3. Duties of registrar.**

- (1) The registrar shall, subject to the provisions of this Act-
  - (a) take charge of and, except as provided in sub-section (2), preserve all records which were prior to the commencement of this Act, or may become after such commencement, records of any deeds registry in respect of which he has been appointed: Provided that the registrar may destroy or otherwise dispose of any record as prescribed which has been cancelled in terms of this sub-section;
  - (b) examine all deeds or other documents submitted to him for execution or registration, and after examination reject any such deed or other document the execution or registration of which is not permitted by this Act or by any other law, or to the execution or registration of which any other valid objection exists: Provided that such deed or document need not be examined in its entirety before being rejected;
  - (c) register grants or leases of land lawfully issued by the Government or grants issued by any other competent authority, and register amendments, renewals and cancellations of such leases, and releases of any part of the property leased;
  - (d) attest or execute and register deeds of transfer of land, and execute and register certificates of title to land;

Prepared by:

In partnership with:

- (e) attest and register mortgage bonds;
- (j) register cessions (including cessions made as security) of registered mortgage bonds, and register cancellations of such cessions if made as security;
- (g) register cancellations of registered mortgage bonds, releases of any part of the property hypothecated thereby or of all such property if the debt is further secured by a collateral bond, releases of any joint debtor or of any surety in respect of any such bond, the substitution of another person for a debtor in respect of any such bond, reductions of cover in respect of any such bond intended to secure future debts, and part payments of the capital amount due in respect of any such bond other than a bond intended to secure future debts;
- (h) register waivers of preference in respect of registered mortgage bonds and notarial bonds with regard to the whole or any part of the property hypothecated thereby in favour of other such bonds whether registered or about to be registered;
- (i) register waivers of preference in respect of registered real rights in land, in favour of mortgage bonds, whether registered or about to be registered;
- (j) register notarial bonds, and cancellations and cessions thereof (including cessions made as security) and cancellations of such cessions if made as security;
- (j)bis register releases of any part of the property hypothecated by any registered notarial bond or of all such property if the debt is further secured by a collateral bond, releases of any joint debtor or of any surety in respect of any such bond, reductions of cover in respect of any such bond intended to secure future debts, and part payments in respect of the capital amount due in respect of any such bond other than a bond intended to secure future debts;
- (k) register ante-nuptial contracts, and register such notarial deeds of donation (including a donation to be held in trust), and such other notarial deeds having reference to persons and property within the area served by the registry in question as are required or permitted by law to be registered;
- (l) register grants or leases lawfully issued by the Government, of rights to minerals;
- (m) register notarial cessions, leases or sub-leases of rights to minerals and notarial variations of such cessions, leases or sub-leases, notarial cessions of such registered leases or sub-leases, notarial cancellations of such leases or sub-leases, certificates of registration of such rights, and reservations of such rights made in grants or transfers of land, and notarial variations of such reservations;



- (n) register on the title deeds of the land and of the rights to minerals affected, and in the relative registers, the issue of mynpachtbrievens;
- (o) register any servitude, whether personal or praedial, and record the modification or extinction of any registered servitude;
- (p) register notarial leases, sub-leases, and cessions of leases or of sub-leases, of land, and notarial cessions of underhand leases or sub-leases of land, which have been registered prior to the commencement of this Act, and notarial amendments of such leases and sub-leases, and notarial renewals and notarial cancellations of such leases and sub-leases and notarial releases of any part of the property leased;
- (q) register notarial prospecting contracts and notarial cessions thereof and cancellations of such contracts;
- (r) register any real right, not specifically referred to in this sub-section, and any cession, modification or extinction of any such registered right;
- (s) register against any registered mortgage or notarial bond any agreement entered into by the mortgagor and the holder of that bond, whereby any terms of that bond have been varied;
- (t) register general plans of erven or of sub-divisions of land, open registers of the erven or sub-divisions of land shown on such general plans, and record in such registers the conditions upon which the erven or sub-divisions have been laid out or established;
- (u) register powers of attorney whereby the agents named therein are authorized to act generally for the principals granting such powers, or to carry out a series of acts or transactions registrable in a deeds registry, and register copies of such powers registered in another deeds registry, which have been certified by the registrar thereof, or which have been issued for the purpose of being acted upon in a deeds registry by a Master or registrar of the Supreme Court of South Africa or a registrar of mining titles or a mining commissioner in his capacity as a registration officer;
- (v) make, in connection with the registration of any deed or other document, or in compliance with the requirements of any law, such endorsements on any registered deed or other document as may be necessary to give effect to such registration or to the objects of such law;
- (w) record all notices, returns, statements, or orders of court lodged with him in terms of any law;

- (x) remove from his records, with the approval of the Master and after the lapse of ten years from the date of entry in such records, any entry made therein, whether before or after the commencement of this Act, in pursuance of the transmission to him of a notice of liquidation or an order of liquidation or sequestration or in pursuance of the lodging with him by the Master of a return under section ten of the Administration of Estates Act, 1965;
- (y) keep the registers prescribed under this Act and any other law, and make such entries therein as are necessary for the purpose of carrying out the provisions of this Act or such other law and of maintaining an efficient system of registration calculated to afford security of title and ready reference to any registered deed;

and generally the registrar shall discharge all such duties as by law may be required to be discharged by a registrar of deeds or as are necessary to give effect to the provisions of this Act: Provided that nothing in this Act contained shall be construed as imposing upon the Rand townships registrar the duty of registering any deed or other document which he would not have registered if this Act had not been passed.

(2)

- (a) If the registrar concerned is satisfied that any record referred to in paragraph (a) of sub-section (1) has become so dilapidated or has deteriorated to such an extent that it requires urgent restoration for the preservation thereof, he may transfer such record to the Director of Archives for restoration and preservation.
- (b) The Director of Archives shall-
  - (i) forthwith furnish the registrar concerned with so many photographic copies of any record received for restoration and preservation as the registrar may require;
  - (ii) as soon as any record has been restored for preservation, furnish the registrar concerned with so many photographic copies thereof as the registrar may require;
  - (iii) preserve any record restored under this sub-section in the archives depot at the seat of the provincial administration within the territorial limits of which the deeds registry in question is situate.
- (c) Any photographic copy (certified by the Director of Archives or any person designated by him for the purpose) of any record furnished under this sub-section by the Director of Archives to a registrar of deeds shall, for the purposes of a deeds registry, be deemed to be the original record.

*(Section 3 amended by section 14 of Act 50 of 1956)*

*(Section 3 amended by section 2 of Act 43 of 1957)*

Prepared by:

In partnership with:

*(Section 3 amended by section 2 of Act 43 of 1962)*

*(Section 3 substituted by section 2 of Act 87 of 1965)*

#### 4. Powers of registrar

(1) Each registrar shall have power-

(a) to require the production of proof upon affidavit or otherwise of any fact necessary to be established in connection with any matter or thing sought to be performed or effected in his registry;

(b) whenever it is in his opinion necessary or desirable to rectify in any deed or other document, registered or filed in his registry, an error in the name or the description of any person or property mentioned therein or in the conditions affecting any such property, to rectify the error: Provided that-

(i) every person appearing from the deed or other document to be interested in the rectification, has consented thereto in writing;

(ii) if any such person refuse to consent thereto the rectification may be made on the authority of an order of Court;

(iii) if the error is common to two or more deeds or other documents, including any register in his registry, the error shall be rectified in all those deeds or other documents;

(iv) no such rectification shall be made if it would have the effect of transferring any right;

(v) .....

*(Section 4(1)(b)(v) deleted by section 3 of Act 43 of 1957)*

*(Section 4(1)(b) amended by section 3 of Act 43 of 1957)*

(c) to issue, under conditions prescribed by regulation, certified copies of deeds or other documents registered or filed in his registry;

(d) if in his opinion any deed or other document submitted to him has become illegible or unserviceable, to require that a certified copy thereof be obtained to take its place.

(2) Each registrar shall perform, in case of dispute, all the functions of a taxing officer of the court in relation to fees charged by conveyancers and notaries public for performing any acts which are required or permitted under this Act to be performed by conveyancers or notaries public in connection

Prepared by:

In partnership with:

with deeds executed, registered or filed or intended to be executed, registered or filed in It deeds registry or in relation to fees charged by other legal practitioners in connection with the preliminary work necessary for the purpose of any such deed.

## 5. Transactions affecting land in areas served by different deeds registries.

If it is sought to register transactions affecting separate pieces of land situate within the areas served by different deeds registries, the registrars concerned may, subject to the provisions of any regulations, by mutual arrangement, effect such registration in such manner as may be found expedient.

## 6. Registered deeds not to be cancelled except upon an order of Court

- (1) Save as is otherwise provided in this Act or in any other law no registered deed of grant, deed of transfer, certificate of title or other deed conferring or conveying title to land, or any real right in land other than a mortgage bond, and no cession of all registered bond not made as security, shall be cancelled by a registrar except upon an order of Court.

*(Section 6 renumbered to 6(1) by section 3 of Act 43 of 1962)*

- (2) Upon the cancellation of any deed conferring or conveying title to land or any real right in land other than a mortgage [*sic*] bond as provided for in sub-section (1), the deed under which the land or such real right in land was held immediately prior to the registration of the deed which is cancelled, shall be revived to the extent of such cancellation, and the registrar shall cancel the relevant endorsement thereon evidencing the registration of the cancelled deed.

*(Section 6(2) added by section 3 of Act 43 of 1962)*

## 7. Inspection of records and supply of information

Each registrar shall on conditions prescribed and upon payment of the prescribed fees, permit any member of the public to inspect the public registers and other public records in his registry, other than the index to such registers or records, and to make copies of those records or extracts from those registers and to obtain such other information concerning deeds or other documents registered or filed in the registry as prior to the commencement of this Act could, customarily, be made or obtained: Provided that no such fee shall be payable in respect of any search or inspection made in a deeds registry –

- (a) by a conveyancer or notary public in connection with any deed which he has been instructed to prepare, attest or lodge in such registry; or
- (b) by any land surveyor in connection with any survey which he has been instructed to perform; or

- (c) by any sheriff or messenger of a magistrate's court or his deputy, in connection with the exercise of his duties as such.

*(Section 7 amended by section 4 of Act 43 of 1957)*

*(Section 7 substituted by section 3 of Act 87 of 1965)*

8. ....

*(Section 8 repealed by section 4 of Act 43 of 1962)*

## 9. Regulations board

- (1) There shall be established a deeds registries regulations board (in this section referred to as "the board") with power to make regulations upon the subjects mentioned in section ten.
- (2) The board shall consist of the registrars of deeds at Cape Town, Pretoria, Bloemfontein, Pietermaritzburg and Kingwilliamstown, the Rand townships registrar, the Government Attorney, one member, who shall be appointed by the Minister, of the Survey Regulations Board established under sub-section (1) of section eight of the Land Survey Act, 1927, and six conveyancers of whom one shall be appointed by each of the incorporated law societies in the several provinces of the Union and two by the Minister who shall be recognized country practitioners.
- (3) A member appointed by the Minister shall hold office for such period as the Minister may determine.
- (4) A member appointed by an incorporated law society shall hold office for a period of one year.
- (5) Every vacancy caused by the death or resignation of an appointed member shall be filled by the appointment by the Minister or the society concerned, as the case may be, of another member, and such other member shall hold office for the unexpired portion of the period for which the member whose office has become vacant, had been appointed.
- (6) If any such society fails to make an appointment under sub-section (2) or (5), the Minister may in lieu of such society appoint as a member of the board any conveyancer practicing in the province in which such society is established.
- (7) The board shall meet at such time and place as the Minister may appoint.
- (8) If no Chief Registrar of Deeds has been appointed or if, having been appointed, he is unable to attend any meeting of the board, the Minister shall nominate one of the registrars as chairman of the board, or to act as chairman of such meeting, as the case may be. If the Minister fails so to nominate a registrar, the members present at such meeting shall appoint one of the registrars present to act as chairman of such meeting.

- (9) Seven members of the board shall form a quorum at its meetings, and a decision of the majority of the members present at any meeting shall be the decision of the board: Provided that in the event of an equality of votes at any meeting the chairman shall have a casting vote in addition to his deliberative vote.
- (10) With the Minister's approval the board may make regulations without holding a meeting: Provided that no regulation so made shall be of any force or effect unless agreed to by all the members of the board.
- (11) No regulation or any amendment or repeal thereof made by the board shall take effect unless it has been approved by the Governor-General and published in the *Gazette* at least one month before the date on which it is expressed to take effect.
- (12) Every such regulation, amendment and repeal shall, within fourteen days after it has taken effect, be laid upon the Tables of both Houses of Parliament if Parliament is then in session, or if Parliament is not then in session, within fourteen days after the commencement of its next ensuing session.

## 10. Regulations

- (1) The board established under section *nine* may make regulations prescribing-
  - (a) the procedure to be followed by the said board in carrying out its functions;
  - (b) the fees of office (if any) to be charged in respect of any act, matter or thing required or permitted to be done in or in relation to a deeds registry, including any report made to the court by the registrar in connection with any application or action to which he is not a party;
  - (c) the fees and charges of conveyancers and notaries public in connection with the preparation, passing and registration of deeds or other documents registered or filed or intended for registration or filing in a deeds registry and the fees and charges of any other legal practitioners in connection with the preliminary work required for the purpose of any such deed or other document and the fees and charges in connection with the taxation of any such fees or charges;
  - (d) the manner and form in which and the qualifications of the person by whom any deed or other document required or permitted to be lodged, registered or filed in any deeds registry shall be prepared, lodged executed, registered, filed or delivered and the time within which any deed shall be executed;

*(Section 10(1)(d) amended by section 5(a) of Act 43 of 1962)*
  - (e) the manner and form in which endorsements or entries required by this Act or any other law to be made on registered deeds or other documents or in the registers shall be made thereon or therein;

- (f) the particular documents which, when produced in a deeds registry, shall be attested or witnessed, and the manner in which any such document shall be attested or witnessed;
- (g) the divisions, districts or other areas within the area served by any deeds registry, which shall be adopted in numbering for the purposes of registration, the farms or other pieces of land situate therein;
- (h) the method according to which farms or other pieces of land in any such division, district or other area shall be numbered;
- (i) the manner and form in which erven or portions of erven in townships, locations or similar areas may be registered;
- (j) the manner and form in which information which is required by law to be furnished to a registrar shall be recorded in his deeds registry, the manner and form in which information permitted by law to be furnished by a registrar to the public shall be furnished and the manner and form in which the identity of persons shall be established;
- (k) the conditions upon which conveyancers, land surveyors and other persons may conduct any search in a deeds registry, and the precautions which shall be taken to ensure preservation of the records from damage by improper handling or otherwise;  
*(Section 10(1)(k) amended by section 5 of Act 43 of 1957)*
- (l) the transmission by any registrar of returns of deeds of transfer, deeds of grant, and certificates of title registered in his deeds registry, to any civil commissioner, magistrate or other officer, and the manner and form of, and times for transmitting such returns;
- (m) the conditions under which copies of deeds and other document registered in a deeds registry may be issued for judicial purposes, or purposes of information or in substitution of deeds or other documents which have been lost, destroyed, defaced or damaged and the conditions under which extracts from registers or from any document registered or filed in a deeds registry may be furnished;
- (n) the manner and form in which consent shall be signified to any cancellation, cession, part payment, release or amendment of or other registrable transaction affecting any bond or other document registered in a deeds registry;
- (o) the conditions under which a copy of a power of attorney may be accepted by a registrar in lieu of the original;

- (p) the forms of deeds which shall be used in circumstances not provided for in this Act;
- (q) the description and form of registers (which may be loose-leaf registers or a card index system) to be opened and kept by a registrar, the particulars contained in any registered deed which shall be entered in any specified register, the form in which the particulars required to be entered in any specified register shall be entered therein, the form in which the folios of any specified register shall be fumed, the number of folios to be included in a volume, and the nature and quality of the covers of the volumes;

*(Section 10(1)(q) amended by section 5(b) of Act 43 of 1962)*

- (r) the manner and form in which any records filed in a deeds registry shall be bound; and
- (r)*bis* the records which may be destroyed in terms of the proviso to paragraph (a) of sub-section (1) of section *three*;

*(Section 10(1)(r)*bis* inserted by section 4(a) of Act 87 of 1965)*

- (s) any matter which under this Act is required or permitted to be prescribed.

(2) Different regulations may be made in respect of the several deeds registries and the matters to be dealt with therein.

(3) Any regulations made under paragraph (g), (h) or (q) of sub-section (1) shall come into operation within the areas served by the several deeds registries upon dates to be fixed by the Minister by notice in the *Gazette*.

(4) In making any regulation prescribing the fees and charges of conveyancers in connection with the preparation and passing of deeds the board may prescribe separate fees for the preparation and the passing of deeds in the event of the deeds being prepared by one conveyancer and passed by another.

*(Section 10(4) substituted by section 4(b) of Act 87 of 1965)*

(5) Notwithstanding anything contained in section *one* of Act No. 29 of 1908 and sub-section (1) of section *three* of Act No. 34 of 1908, both of the Transvaal, the State President may, by proclamation in the *Gazette*, declare the whole or any part of the regulations published under Government Notice No. 1498 of 1918, as amended by Government Notice No. 1631 of 1922, to be no longer of force and effect, and thereupon the regulations board may make in lieu of those regulations new regulations in relation to the matters referred to in sub-section (1) of this section.

*(Section 10(5) substituted by section 4(b) of Act 87 of 1965)*



- (6) The regulations published under Government Notice No. 1498 of 1918, as amended as aforesaid shall remain in force, notwithstanding the repeal of the Deeds Registries Act, 1918, until they have been declared to be no longer of force an effect in the manner provided in sub-section (5) of this section.

## **CHAPTER II REGISTRATION**

### ***Registers***

#### **11. Prescribed registers**

- (1) The regulations board shall prescribe such personal property and other registers as may be necessary to carry out the provisions of this Act.
- (2) In addition to such registers as he may be required by any other law to keep, each registrar shall as soon as may be after the commencement of this Act, prepare, open and keep the prescribed registers.
- (3) Any prescribed register in which any debts secured by bonds are entered shall be deemed to be a continuation of the debt registers kept in any registry prior to the commencement of this Act and any entries made therein shall have the same effect in law as they would have had if they had been made in the said debt registers.

#### **12. Temporary continuation of existing registers**

Until such time as any prescribed register has been prepared and opened each registrar shall continue to keep the corresponding register in use in his registry immediately prior to the commencement of the regulations prescribing the description and form of the registers to be opened and kept by a registrar, and to make therein the like entries as were customarily made therein prior to such commencement.

*(Section 12 amended by section 6 of Act 43 of 1962)*

### ***General Provisions***

#### **13. When registration takes place**

- (1) Deeds executed or attested by a registrar shall be deemed to be registered upon the affixing of the registrar's signature thereto, and deeds, documents or powers of attorney lodged for registration shall be deemed to be registered when the deeds registry endorsement in respect of the registration thereof is signed: Provided that no such deed, document or power which is one of a batch of inter-dependent deeds, documents or powers of attorney intended for registration together, shall be deemed to be

registered until all the deeds, documents or powers of attorney or the registration endorsements in respect thereof, as the case may be, have been signed by the registrar.

- (2) If by inadvertence the registrar's signature has not been affixed to a deed executed or attested by him, or to the registration endorsement in respect of the registration of a deed, document or power of attorney lodged for registration, at the time at which the signature should have been affixed in the ordinary course, the registrar may affix his signature thereto when the omission is discovered, and the deed, document or power of attorney shall thereupon be deemed to have been registered at the time aforesaid.
- (3) All endorsements or entries made on deeds, documents or powers of attorney or in registers, in connection with the registration of any deed, document or power of attorney, shall be deemed to have been effected simultaneously with the affixing of the signature of the registrar thereto in respect of deeds executed or attested by a registrar or with the signing of his registration endorsement in respect of deeds, documents or powers of attorney lodged for registration, although in fact they may have been made subsequent thereto.
- (4) Any deed, document or endorsement which under this section is required to be signed by a registrar, may, if the registrar is not available to sign such deed, document or endorsement, be signed by the successor in office of the registrar or by any person acting in the place of the registrar, whereupon any reference in sub-section (1) or (3) to the signature of the registrar shall be deemed to include a reference to the signature of such successor or person acting as registrar, as the case may be.

*(Section 13(4) added by section 5 of Act 87 of 1965)*

*(Section 13 substituted by section 6 of Act 43 of 1957)*

#### **14. Deeds to follow sequence of their relative causes.**

- (1) Save as otherwise provided in this Act or in any other law or as directed by the court-
  - (a) transfers of land and cessions of real rights therein shall follow the sequence of the successive transactions in pursuance of which they are made, and if made in pursuance of testamentary disposition or intestate succession they shall follow the sequence in which the right to ownership or other real right in the land accrued to the persons successively becoming vested with such right;
  - (b) it shall not be lawful to depart from any such sequence in recording in any deeds registry any change in the ownership in such land or of such real right: Provided that-

- (i) if the property has passed in terms of a will or through intestate succession from a deceased person to his descendants, and one or other of these descendants has died a minor and intestate and no executor has been appointed in his estate, transfer or cession of the property which has vested in that descendant may be passed by the executor in the estate of the deceased person direct to the heirs ab intestato of the descendant;
- (ii) if the registrar is satisfied that the value of the immovable property which has vested in any heir or legatee in terms of a will or through intestate succession would be equalled or exceeded by the costs involved in transferring or ceding it to the heir or legatee, and the heir or legatee has sold the property, transfer or cession thereof may, with the consent in writing of the heir or legatee, be passed by the executor in the estate of the deceased person direct to the purchaser;
- (iii) if in the administration of the estate of a deceased person any redistribution of the whole or any portion of the assets in such estate takes place among the heirs and legatees (including ascertained fidei-commissary heirs and legatees) of the deceased, or between such heirs and legatees and the surviving spouse, the executor or administrator of such estate may transfer the land or cede the real rights therein direct to the persons entitled thereto in terms of such redistribution;
- (iv) in a redistribution mentioned in proviso (iii) it shall be lawful to introduce movable property not forming part of the estate for the purpose of equalizing the division;
- (v) the provisions of proviso (iii) shall apply *mutatis mutandis* with reference to a redistribution of assets of the joint estate of spouses who were married in community of property and have been divorced or judicially separated, and with reference to a redistribution of assets of a partnership on dissolution of the partnership;
- (vi) if a fiduciary interest in land or in a real right terminates before transfer of the land or cession of the real right has been registered in favour of the fiduciary, it shall be competent to transfer the land or cede the real right direct to the fidei-commissary;
- (vii) if the right of any person to claim transfer of such land or cession of such real right from any other person has been vested in any third person in terms of any judgment or order of any court (including a magistrate's court and a court of a Bantu Affairs Commissioner), or in terms of a sale in execution held pursuant to any such judgment or order, transfer of such land or cession of such real right may be passed direct to such third person by the person against whom such right was exercisable.

*(Section 14(1)(b) amended by section 7 of Act 43 of 1957)*

*(Section 14(1)(b) amended by section 7 of Act 43 of 1962)*

*(Section 14(1)(b) substituted by section 6 of Act 87 of 1965)*

Prepared by:

In partnership with:

- (2) In any transfer or cession in terms of any proviso to paragraph (b) of sub-section (1) there shall be paid the transfer duty and death duties which would have been payable had the property concerned been transferred or ceded to each person successively becoming entitled thereto.

**15. Preparation of deeds by conveyancer.**

Save as is otherwise provided in any other law, no deed of transfer, bond or certificate of title or registration of any kind in this Act shall be attested, executed or registered by a registrar unless it has been prepared by a conveyancer practising within the province within which his registry is situated. Such conveyancer, whether or not he practises at the seat of the may recover the fees and charges to which he may be in accordance with any regulation made under section ten.

**16. How real rights shall be transferred.**

Save as otherwise provided in this Act or in any other law the ownership of land may be conveyed from one person to another only by means of a deed of transfer executed or attested by the registrar, and other real rights in land may be conveyed from one person to another only by means of a deed of cession attested by a notary public and registered by the registrar: Provided that notarial attestation shall not be necessary in respect of the conveyance of real rights acquired under a mortgage bond: Provided further that where the State acquires all the land held under any title deed, the registrar shall make such alterations and entries in his registers and such endorsements on such title deed as may be necessary to register transfer to the State of the property so acquired free of charge.

*(Section 16 amended by section 4 of Act 80 of 1964 with effect from 1 September 1937)*

*(Section 16 substituted by section 7 of Act 87 of 1965)*

**17. Special provisions relating to women**

- (1) All deeds executed or attested by a registrar, or attested by a notary public and required to be registered in a deeds registry, and made by or on behalf of or in favour of women, shall in each case disclose the full name and status of the woman concerned, whether unmarried, married, widowed, or divorced, as the case may be. If the woman is married the full name of her husband shall also be disclosed, and if the marriage is governed by the law in force in the Union or any part thereof or in the Territory of South-West Africa it shall be stated whether the marriage was contracted with or without community of property. If the marriage is governed by the law of any other country it shall be stated that the marriage is governed by the law of that country.

*(Section 17(1) amended by section 1 of Act 15 of 1953)*

- (2) A woman married out of community of property 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 on other grounds deemed by the registrar to be unnecessary.

- (3) Immovable property, bonds or other real rights section shall not be transferred or ceded to, or registered in the name of a woman married in community of property, save where such property, bonds or real rights are by law or by a condition of a bequest or donation excluded from the community or where such property is a holding as defined in section *one* of the Land Settlement Act, 1956 (Act No. 21 of 1956).

*(Section 17(3) amended by section 8(a) of Act 43 of 1957)*

*(Section 17(3) substituted by section 8 of Act 43 of 1962)*

- (4) If immovable property not excluded from the community has at the commencement of this Act been in the name of a woman married in community of property which still subsists, her husband to whom she is so married may, unless she has been authorized by an order of court to deal therewith and subject to the provisions of sub-section (1) of section *one* of the Matrimonial Affairs Act, 1953, alone deal with such property.

*(Section 17(4) amended by section 1(5) of Act 37 of 1953)*

- (5) If immovable property has been acquired by one or other of two spouses married in community of property in such a manner that the said property would on transfer or cession thereof become part of the joint estate, and the community has been dissolved by the death of one of the spouses before the property is transferred or ceded, the property shall be transferred or ceded to the joint estate of the spouses, pending liquidation thereof, and shall subject to the provisions of any disposition affecting the property, be deemed to be the joint property of the surviving spouse and of the estate of the deceased spouse.

- (6) When immovable property or a bond is registered in the name of-

- (a) a woman who has married since the registration was effected; or
- (b) a woman who at the date of the registration was married out of community of property or whose marriage was at that date governed by the law of any country other than the Union or the territory of South-West Africa, and who has since been widowed or divorced,

it shall be competent for the registrar on written application by such woman (assisted where necessary by her husband) and on production of the relevant deed and of proof to his satisfaction of the change in her status, to record such change on such deed and in the registers: Provided that where there are two or more interdependent deeds, all such deeds shall be produced for endorsement.

*(Section 17(6) added by section 8(b) of Act 43 of 1957)*

### CHAPTER III

Prepared by:

In partnership with:

## REGISTRATION OF LAND

### *Transfer of Land*

#### **18. Manner of dealing with State land**

- (1) The ownership of unalienated State land may be transferred from the State only by a deed of grant issued under proper authority and, save as hereinafter provided, having a diagram of the land annexed thereto.
- (2) The ownership of land alienated from and reacquired by the State may be transferred from the State either by deed of grant or by deed of transfer issued or executed, as the case may be, under proper authority, but in either case the deed of grant or transfer shall contain a reference to the title deed by which the State held the land and to the title deed to which the diagram of the land is annexed and shall set forth the conditions upon which the land is alienated and the rights to the land reserved by the State on this alienation.
- (3) If any piece of unalienated State land has been surveyed and is represented on a diagram the registrar concerned shall, upon written application by the Minister, accompanied by the diagram of the land in duplicate, enter particulars of the land in the appropriate registers and execute in the prescribed form and in accordance with the diagram, a certificate of registered State title thereof prepared by a conveyancer.
- (4) Transfer of the ownership of land held by the State under certificate of registered State title shall be effected by deed of grant issued under proper authority, but it shall not be necessary to annex a diagram of the land thereto: Provided that the grant shall contain a reference to the certificate and to the diagram annexed to the certificate.
- (5) No deed (other than a deed of grant conveying ownership) purporting to create or deal with or dispose of any real right in any piece of unalienated State land shall be capable of registration until a certificate of registered State title has been executed in respect of that piece of land.

#### **19. ....**

*(Section 19 repealed by section 9 of Act 43 of 1957)*

#### **20. Form and manner of execution of deeds of transfer**

Deeds of transfer shall be prepared in the forms prescribed by law or by regulation, and, save as in this Act or any other law provided or as ordered by the court in respect of deeds of transfer executed by the registrar, shall be executed in the presence of the registrar by the owner of the land described

therein, or by a conveyancer authorized by power of attorney to act on behalf of the owner, and shall be attested by the registrar.

## 21. Transfer from joint estate

In any transfer lodged in a deeds registry relating to land which is an asset in a joint estate, the surviving spouse shall be joined in his personal capacity with the executor of the estate of the deceased spouse except-

- (a) where the executor is only dealing with the share of the deceased spouse; or
- (b) where the land has been sold to pay the debts of the joint estate; or
- (c) where there has been a massing of the joint estate and the surviving spouse has adiated; or  
*(Section 21(c) amended by section 10 of Act 43 of 1957)*
- (d) where such transfer is in favour of the surviving spouse; or  
*(Section 21(d) added by section 10 of Act 43 of 1957)*
- (e) where the surviving spouse has signed as executor, the power of attorney to pass such transfer.  
*(Section 21(e) added by section 10 of Act 43 of 1957)*

## 22. Transfer of two or more pieces of land by one deed

- (1) Two or more persons each owning a different piece of land may not transfer those pieces of land to one or more persons by the same deed of transfer, unless such transfer is authorized by the provisions of a law or by an order of court.
- (2) Two or more pieces of land may by one deed be transferred by one person or by two or more persons holding such pieces of land in undivided shares, to one person or to two or more persons acquiring such pieces of land in undivided shares: Provided that each piece of land is described in a separate paragraph.
- (3) Two or more portions of a piece of land may by one deed be transferred by one person or by two or more persons holding the whole of such piece of land in undivided shares to one person or to two or more persons acquiring such portions in undivided shares: Provided that each portion is described in a separate paragraph in which reference is made to the diagram of that portion. The diagrams of all such portions shall be annexed to the deed.

## 23. Transfer of undivided shares in land by one deed

Prepared by:

In partnership with:

- (1) Land held by one person may be transferred by one deed from that person to two or more other persons in undivided shares.
- (2) Land held by two or more persons in undivided shares may be transferred by one deed from those persons to any other person, or to two or more other persons in undivided shares.

**23bis. Transfer of shares in properties to more than one transferee in one deed.**

Undivided shares in more than one piece of land may not be transferred to more than one transferee in the same deed if the shares appropriated to anyone transferee are not the same in respect of each piece of land.

*(Section 23bis inserted by section 8 of Act 87 of 1965)*

**24. Special provisions relating to transfer of undivided shares**

- (1) No transfer of an undivided share in land which is intended or calculated to represent or purports to represent a defined portion of land shall be capable of being registered.
- (2) If a piece of land is owned by two or more persons in undivided shares and one or more of such persons acquires the share or shares of the remaining owner or owners in a defined portion of that piece of land, all the owners jointly, including the owner or owner acquiring the share or shares, may transfer such portion to the person or persons acquiring it.

**24bis. Transfer from firm or partnership.**

- (1) If land or a real right registered in the name of a firm or partnership is acquired by any member or partner of such firm or partnership in his individual capacity, transfer or cession thereof shall be given by all the members or partners constituting such firm or partnership: Provided that in any other case land or real rights owned by a firm or partnership may be dealt with by such firm or partnership as provided in the regulations.
- (2) If on dissolution of a firm or partnership any land or real right owned by such firm or partnership is awarded to all the members or partners, the registrar shall on written application signed by all the members or partners constituting such firm or partnership, accompanied by proof of dissolution and such other documents as may be required or prescribed, endorse on the title deed of the land or real right that such land or real right vests in the individuals therein named, and thereupon such persons shall be entitled to deal therewith as if they had taken formal transfer or cession in their names of their shares in such land or real right.
- (3) If the land or real right referred to in sub-section (2) is hypothecated under a registered mortgage bond, the endorsement contemplated in the said sub-section shall not be made unless such bond is

Prepared by:

In partnership with:



cancelled or the holder thereof consents in writing (in duplicate) to the substitution of the individual members or partners as debtors under the bond: Provided that such substitution shall not be allowed unless –

- (i) the individual members or partners apply in writing to be substituted, jointly and severally, as debtors under the bond; such application to be in duplicate and witnessed; and
- (ii) the individual members or partners are competent to mortgage the land; and
- (iii) where applicable, the individual members or partners renounce in the said application the exception *de duobus vel pluribus reis debendi*; and
- (iv) where the member or partner is a woman, she renounces in the said application any special legal exceptions which she would otherwise be entitled to raise.

*(Section 24bis(3) added by section 9 of Act 87 of 1965)*

*(Section 24bis inserted by section 9 of Act 43 of 1962)*

## **25. Transfer to unascertained children**

- (1) If land or a real right or a bond is donated or bequeathed to the children born or to be born of any person or of any marriage, or is otherwise acquired on behalf of such children, transfer of the land or cession of the real right or bond on behalf of such children may be passed in the case of children born or to be born of a person, to that person in trust for such children, and in the case of children born or to be born of a marriage, to the person who would be the guardian of those children during their minority, in trust for such children.

*(Section 25(1) substituted by section 10(a) of Act 43 of 1962)*

- (2) If land or a real right or a bond is donated to the children born or to be born of any person or of any marriage, the person to whom transfer or cession may be passed in terms of sub-section (1), may for the purposes of such transfer or cession, accept the donation.

*(Section 25(2) amended by section 10(b) of Act 43 of 1962)*

- (3) When the identity of all such children has been established the registrar shall make an endorsement on the title deed or bond setting out their names, whereupon the title deed or bond shall be deemed to be to and in favour of such children in the same manner as if the transfer or cession had originally been passed to them by name notwithstanding the provisions of sub-section (3) of section *seventeen*.

*(Section 25(3) amended by section 10(c) of Act 43 of 1962)*

## **26. Deeds of partition transfer**

Prepared by:

In partnership with:

(1) If two or more persons who own in undivided shares the whole of any piece or pieces of land, have agreed to partition that land, the registrar shall, on production to him of a power of attorney by such persons authorizing the passing of deeds of partition transfer of such land in accordance with the agreement of partition, which agreement shall be embodied in the power of attorney or annexed thereto, and on compliance with the further provisions of this section, attest deeds of partition transfer which shall be as nearly as practicable in the prescribed form, conveying to the respective owners the land or shares therein awarded to them under the said agreement.

(1)*bis* Any agreement of partition referred to in sub-section (1) may exclude from partition any rights to minerals in the land to be partitioned: Provided that if the share or shares owned by any of the parties to a partition appear from the title deeds of the said land to be subject to a reservation or cession or exclusion of any rights to minerals, then the agreement of partition shall exclude from partition all rights to minerals in the land to be partitioned and the partition transfers shall not be attested unless the rights to minerals are so excluded.

*(Section 26(1)bis inserted by section 11 of Act 43 of 1962)*

(2) In the power of attorney or agreement of partition referred to in sub-section (1) there shall be described-

- (a) the land to be partitioned;
- (b) the share or shares registered in the name of each joint owner;
- (c) the land or share therein awarded to each of the owners;
- (d) the conditions (if any) affecting any land or share therein so awarded; and
- (e) the consideration (if any) given for the purpose of equalizing the partition.

(3) There shall also be produced to the registrar the title deeds of the land to be partitioned and the necessary diagrams: Provided that no new diagram need be produced in respect of the whole or the remaining extent of any one of the pieces of land to be partitioned.

(4) Subject to the provisions of this section, the provisions of sections twenty, twenty-one, twenty-two and twenty-three shall *mutatis mutandis* apply in respect of deeds of partition transfer.

(5) Any deed of partition transfer attested under sub-section (1) shall in respect of the land therein described take the place of the deed or deeds by which it was previously held, but the partition transfer shall not vary or affect the conditions of tenure of the said land or any other conditions affecting the said land generally, save in so far as such last-mentioned conditions may be varied, defined or limited by the agreement of partition or the consents of interested parties.

- (6) The provisions of this section shall *mutatis mutandis* apply to a partition of land ordered by the court or determined by an award of arbitrators.
- (7) The provisions of this section shall also apply to partitions of land registered in different deeds registries.

*(Section 26(7) added by section 11 of Act 43 of 1957)*

*(Section 26(7) substituted by section 10 of Act 87 of 1965)*

## **27. Requisites where share in land partitioned is mortgaged**

- (1) If the share or shares owned by any of the parties to a partition is mortgaged, the partition transfers shall not be attested unless the bond is produced to the registrar together with the written consent of the legal holder of the bond, to the partition and to the substitution of the land awarded on partition to the mortgagor for the share or shares mortgaged.
- (2) In registering the transfer the registrar shall-
  - (a) endorse on the bond that the land awarded to the mortgagor has been substituted for the share or shares mortgaged;
  - (b) make an entry of the substitution in the registers; and
  - (c) endorse on the transfer that the land described therein is, in accordance with this section, mortgaged by the bond.
- (3) If only a fraction of the share or shares owned by any of the parties to a partition is mortgaged, the substitution referred to in this section shall only take place in respect of the fraction so mortgaged, if from the agreement of partition or from other evidence it appears that a defined portion or share therein has been separately awarded in respect of such mortgaged fraction.
- (4) Where more than one property is partitioned by the same partition and the whole of anyone or more of the properties affected is awarded to an owner, such property or properties may be substituted under that owner's bond, if the bond is over his share in all the properties partitioned.

*(Section 27(4) added by section 12 of Act 43 of 1957)*

## **28. Requisites where share in land partitioned is subject to other rights**

- (1) If the share or shares owned by any of the parties to a partition appear from the title deeds of the land partitioned to be subject to a lease, personal servitude or other real right (excluding any rights to minerals), the written consent of the holder thereof to the partition and allocation of the lease,

Prepared by:

In partnership with:

servitude or such other real right, together with the deed, if any, by which the lease, servitude or real right is held, shall be produced to the registrar.

*(Section 28(1) amended by section 12(a) of Act 43 of 1962)*

- (2) The land described in the deeds of partition transfer shall be made subject to the lease, servitude or real right to the same extent as the share or shares for which it is substituted, and the deed, if any, by which the lease, servitude or real right is held, shall be endorsed by the registrar in the same manner as the bond mentioned in section *twenty-seven*.
- (3) If there exists any bond by which the lease, servitude or real right is itself mortgaged, that bond shall also be produced to the registrar, together with the written consent of the legal holder thereof to the partition and allocation of the lease, servitude or such other real right, and the registrar shall make the endorsements and entries mentioned in section *twenty-seven* on the bond, the deeds concerned and in the registers.

*(Section 28(3) amended by section 12(b) of Act 43 of 1962)*

## **29. Effect of compliance with sections 27 and 28.**

Upon completion of the endorsements and entries mentioned in sections twenty-seven and twenty-eight the land described in the deeds of partition transfer, and the lease, personal servitude or real right (if any) shall be deemed to be as fully and effectually mortgaged as if they had been hypothecated by the bond at the time of its execution and the said land shall be deemed to be as fully and effectually encumbered by the said lease, personal servitude or real right as if it had been encumbered thereby at the time of the registration thereof.

## **30. Partition of land subject to *fidei commissum***

- (1) Any piece of land the whole or any share of which is subject to a *fidei commissum* may, where partition has not been prohibited, be partitioned with the written consent of the *fidei commissary* heirs or successors if they are ascertained and are majors and otherwise competent; if they are ascertained but any of them are minors, the consent of the Master shall be produced in respect of the minors; if they are ascertained but any of them have been declared insolvent, or if they are under curatorship or otherwise under disability the consent of their trustees or curators or other legal representatives shall be produced on their behalf; if they are not ascertained or if they cannot be found, proof shall be produced to the satisfaction of the registrar that the land awarded in the agreement of partition to the owner of any share subject to the *fidei commissum* is an equivalent of that share.
- (2) The land so awarded shall in the deed of partition transfer be made subject to the *fidei commissum* in the same manner as the corresponding share was in its title deed made subject thereto before partition.

**31. Transfer of expropriated land or land vested by statute**

- (1) Whenever any land has, under the authority of any law, been expropriated by, and whenever the ownership of any land has by statute been vested in, the State, any public or local authority or any corporate body or any association of persons, the registrar shall, upon lodgment with him of a deed of transfer in the prescribed form prepared by a conveyancer in favour of the transferee, execute the same, and if the land is hypothecated, he shall note the fact of such transfer against the entry of the bond in the register in which such entry has been made: Provided that no such transfer shall prejudice any claim to compensation which any owner or other person may have in respect of the change of ownership of such land.
- (2) The transferee shall produce the title deeds of such land to the registrar together with the aforesaid deed of transfer, and the registrar shall thereupon note the transfer on such title deeds. Failing the production of such title deeds, the transferee shall produce to the registrar an order of court referred to in sub-section (3) or an affidavit to the satisfaction of the registrar that he has been unable to obtain possession of the title deeds.
- (3) The owner of such land shall, upon demand, hand over his title deeds to the transferee and if he fails to do so, the transferee may apply to court for an order directing the owner to do so, and authorizing the registrar to execute the aforesaid deed of transfer without the production of the said title deeds, if the owner should fail to comply with such order.
- (4)
  - (a) The registrar shall not execute the said deed of transfer unless a certificate has been furnished to him by the transferee referred to in sub-section (1), to the effect that the provisions of any law in connection with the change of ownership in the land in consequence of expropriation or vesting, have been complied with.
  - (b) The said deed of transfer shall be registered subject to all existing conditions affecting the land in question which have not been expropriated or vested in the transferee.
- (5) No deed by the expropriating authority purporting to transfer such land or to create or deal with any real right therein shall be registered in a deeds registry until transfer thereof has been passed in accordance with sub-section (1).
- (6)
  - (a) Immediately after any land has been expropriated the expropriating authority shall lodge with the registrar a certified copy of the notice of expropriation and two copies of the relevant expropriation plan of the land in question and the registrar shall cause a note of the expropriation to be made in his registers and endorsed on the office copy of the title deed, and if at any time the original of the title deed is lodged in his registry for any purpose, he shall cause

a similar note to be endorsed thereon and a copy of the expropriation plan to be annexed thereto; Provided that the aforementioned expropriation plans shall be dispensed with where the whole of a piece of land has been expropriated.

- (b) The existence of any endorsement referred to in paragraph (a), shall not debar the registered owner of the land in question from transferring or otherwise dealing with that land and upon registration of a transfer deed in favour of the transferee in pursuance of the expropriation, any such endorsement shall lapse: Provided that where the entire extent of a piece of land recognized as a separate entity in a deeds registry has been expropriated, the registered owner of the said land shall be debarred from transferring it or otherwise dealing therewith except to effect registration of a transfer deed in favour of the transferee in pursuance of the expropriation.
- (7) Where any land has been expropriated and formal transfer of such land to the transferee has not been effected, the registrar shall, on written application by the transferee and the owner, cancel any endorsement made in connection with the expropriation in his registers or on the title deed of the land, and thereupon the land so expropriated shall vest in such owner.
- (8) The provisions of sub-sections (6) and (7) shall not affect the provisions of section *eleven* of the Railway Expropriation Act, 1955 (Act No. 37 of 1955).

*(Section 31 amended by section 13 of Act 43 of 1957)*

*(Section 31 amended by section 13 of Act 43 of 1962)*

*(Section 31 substituted by section 11 of Act 87 of 1965)*

### **32. Registration of expropriated servitudes or servitudes vested by statute**

- (1) Whenever any right of servitude or right to minerals over any land has under the authority of any law been expropriated by, or has by statute been vested in the State, any public or local authority or any corporate body or any association of persons, the owner of the land or right to minerals shall on demand of the holder of such right sign or authorize the signature of a notarial deed evidencing such servitude or right to minerals and hand over to such holder the title deeds of the land or right to minerals.
- (2) If the owner of the land or right to minerals fails to comply with the provisions of sub-section (1), the nominee of the holder of the right of servitude or right to minerals shall appear before a notary and execute the said deed.
- (3) On production of the prescribed number of copies of the said deed duly executed and of the title deeds or of an affidavit to the satisfaction of the registrar that the holder of the right of servitude or right to minerals has been unable to obtain possession of the title deeds, the registrar shall register the deed, and if the land is hypothecated, shall note the fact of such registration against the entry of the

bond in the register in which such entry has been made: Provided that no such registration shall prejudice any claim to compensation which any owner or other person may have in respect of the expropriation or vesting of such servitude or right to minerals.

- (4) The registrar shall not register the said deed unless a certificate has been furnished to him by the cessionary to the effect that all notices prescribed by or under any law in connection with the expropriation of such servitude or right to minerals have been served upon the person entitled to such notices, and if it appears from the said certificate that such servitude or right to minerals has been expropriated subject to any existing conditions, the deed shall be registered subject to those conditions.
- (5) Immediately after any right of servitude over any land or right to minerals therein has been expropriated, the expropriating authority shall lodge with the registrar a certified copy of the notice of expropriation and two copies of the relevant diagram of the servitude in question, or where the right to minerals in only a portion of the land has been expropriated, two copies of the relevant diagram of such portion, and the registrar shall cause a note of the expropriation to be made in his registers and endorsed on the office copy of the title deed of the land which is subject to the servitude or the title under which the right to minerals in question is held, as the case may be, and if at any time the original of the title deed or of such title is lodged in his registry for any purpose, he shall cause a similar note to be endorsed thereon and a copy of the diagram to be annexed thereto.
- (6) The provisions of sub-section (5) shall not affect the provisions of section *eleven* of the Railway Expropriation Act, 1955 (Act No. 37 of 1955).

*(Section 32 amended by section 14 of Act 43 of 1957)*

*(Section 32 amended by section 14 of Act 43 of 1962)*

*(Section 32 substituted by section 12 of Act 87 of 1965)*

### **33. Registration of title by other than the ordinary procedure**

- (1) Any person who has acquired in any manner, other than by expropriation, the right to the ownership of immovable property registered in the name of any other person and who is unable to procure registration thereof in his name in the usual manner and according to the sequence of the successive transactions or successions in pursuance of which the right to the ownership of such property has devolved upon him, may apply to the court by petition for an order authorizing the registration in his name of such property.
- (2) If rates, duly levied by any competent local authority in respect of unoccupied immovable property, have not been paid for a period of five years, the local authority with the consent of the Administrator and after publication and service of the notices prescribed in the relevant Ordinances, may apply to the court by petition for an order authorizing the attachment and sale of such property and registration



of transfer to the purchaser in the prescribed form and giving directions as to the disposal of the purchase price.

- (3) Every petition to the court under the provisions of this section shall be lodged with the registrar of the said court and the allegations contained in such petition shall be supported by sworn declarations and all available documentary evidence which the applicant may be able to adduce.
- (4) Every such petition shall be laid before one of the judges in chambers, who shall make such order thereon as to him shall seem fit, and any such judge may order that any matter arising upon any such petition shall be argued before and determined by the full court.
- (5) The court considering any petition for registration of title, may, if such court shall deem it expedient to do so, grant a rule *nisi* setting forth the description of the immovable property mentioned in such petition, and calling upon all persons claiming to have any right or title to such property to appear and establish their claims to the same upon a day to be named in the rule, and may give directions as to the mode of service or publication of such rule.
- (6) Upon the return day of any such rule granted as aforesaid, and no cause being shown to the contrary, the court may order the registrar of deeds to register the property mentioned in such order as the property of the person therein named, subject to such terms and conditions as may be therein mentioned.
- (7) In case any person should appear to show cause against any rule nisi granted as aforesaid, the court may, if it shall see fit to do so, and without the issue of any summons, require any issue of fact to be tried upon pleadings or make such order as will determine the matter in controversy.
- (8) Subject to the terms of any order made under this section any deed of transfer passed in pursuance of such order shall be passed subject to every condition, servitude, bond or other encumbrance to which, according to the records of the deeds registry, the property to which the application relates, is subject, and the registrar shall, in connection with such condition, servitude, bond or other encumbrance, make the usual and proper entries and endorsements upon or in respect of such deed of transfer in his registry, before such deed is delivered to the applicant.
- (9) The registration of immovable property in the name of any person in pursuance of an order made under this section shall have the effect of vesting such person with a title to such property which shall be liable to be annulled, limited or altered on every ground on which the title of such person to such property would have been liable to be annulled, limited or altered if such property had been transferred to such person in the ordinary course.
- (10) If in pursuance of any order made under this section the registrar of deeds registers any property in the name of any person, such person shall be liable to pay such taxes, duties and fees of office in



respect of such registration as he would have been liable to pay if such property had been transferred to him in the usual manner directly from the last registered owner thereof, but shall not be liable to pay any tax, duty, quitrent or interest thereon which such owner or any intermediate holder of the right to such property may have become liable to pay, unless he shall by agreement have bound himself to pay such tax, duty, quitrent or interest, or unless the delay in obtaining the registration in his name was due to the neglect or default of himself or his agent: Provided that any person who has become liable to pay any tax, duty, quitrent or interest in respect of any property shall continue to be so liable notwithstanding that such property has, in pursuance of an order made under this section, been registered in the name of another person.

- (11) Upon production to the registrar of deeds of any order made under this section and of a certificate by the proper officer as to the payment of the transfer duty, if any, which the person named in the order is liable to pay, and on compliance with any other requirements which have under this Act to be complied with, the registrar shall register such property in accordance with the said order, by executing a deed of transfer thereof in the prescribed form in favour of the person named in the order: Provided that it shall not be necessary to produce the title deed of the property or a certified copy thereof, if an affidavit by the transferee is produced that he has been unable to obtain possession of such title deed.

*(Section 33(11) substituted by section 13 of Act 87 of 1965)*

- (12) The provisions of this section shall be in addition to and not in substitution for the provisions of any other law.

*(Section 33(12) amended by section 15 of Act 43 of 1957)*

*(Section 33 substituted by section 15 of Act 43 of 1962)*

### **Substituted Title Deeds.**

#### **34. Certificate of registered title of undivided share**

- (1) Any person who is the joint owner of a piece of land the whole of or shares in which is or are held by such person and others under one title deed, may, subject to the provisions of section *thirty-seven*, obtain a certificate of registered title of his undivided share in such land, and no transfer of a fraction only of his undivided share or hypothecation or lease of the whole or any fraction of his undivided share in the land shall be registered in a deeds registry unless a certificate of registered title of such undivided share is produced to the registrar: Provided that all the joint owners so holding under one title deed may together transfer an undivided share in the land or a fraction of the share held under such deed or hypothecate or effect the registration of a lease of the whole of such land or share without the production of such a certificate: Provided further that such a certificate shall not be necessary where a joint owner disposes of the whole of his share by deeds of transfer to be registered simultaneously.

*(Section 34(1) substituted by section 14 of Act 87 of 1965)*

- (2) If the title deed under which land or shares therein is held in joint ownership is lost or destroyed any joint owner may, upon compliance with the prescribed requirements, obtain a certificate of registered title in respect of his share in the land without obtaining a certified copy of the deed which has been lost or destroyed.
- (3) The provisions of sub-sections (1) and (2) shall apply also where two or more pieces of land or shares therein are held in joint ownership by the same title deed: Provided that all the pieces of land or the shares therein shall be included in the certificate of registered title and shall be described in separate paragraphs.

**35. Certificate of registered title of aggregate share.**

Any person who is, by virtue of more than one title deed, the owner of undivided shares in one or more than one piece of land may, subject to the provisions of section *thirty-seven*, obtain a certificate of registered title in respect of his aggregate share in the land: Provided that if there are two or more pieces of land the several pieces of land or shares therein shall be described in separate paragraphs.

**36. Certificate of registered title of one or more properties held under one deed.**

Any person who holds two or more pieces of land, or undivided shares therein, by one title deed may, subject to the provisions of section *thirty-seven*, obtain a certificate of registered title in respect of one or more of such pieces of land or of the undivided share or shares held by him therein: Provided that at least one of the pieces of land or the share therein held by such deed remains held thereby.

**37. Conditions governing the issue of certificates of registered title**

- (1) A certificate of registered title mentioned in section *thirty-four*, *thirty-five* or *thirty-six* may be obtained upon written application by the owner to the registrar accompanied, save as provided in sub-section (2) of section *thirty-four*, by the title deed of the land and shall be as nearly as practicable in the prescribed form.
- (2) If the property concerned is subject to a registered mortgage bond, that bond shall be produced to the registrar by the holder thereof, upon the request and at the expense of the applicant for the certificate of registered title.

*(Section 37(2) substituted by section 16(a) of Act 43 of 1957)*

- (3) Before issuing any such certificate the shall cause to be made upon the title deed or deeds in question and the registry duplicates thereof or in the case provided in subsection (2) of section *thirty-four*, upon the registry duplicate only, and upon the mortgage bond (if any) an endorsement that a certificate of

registered title has, in accordance with the appropriate section of this Act, been substituted for the said title deed or deeds in respect of the property in question. The registrar shall further make entries in the registers of the issue of the certificate and shall, if the property is mortgaged, endorse that fact upon the certificate.

*(Section 37(3) amended by section 16(b) of Act 43 of 1957)*

- (4) Any such certificate when issued shall in respect of the property described therein take the place of the title deed or deeds by which such property was previously held and the issue of the certificate shall not in any manner affect any right or obligation in connection with such property.

### **38. Certificate of registered title taking place of lost or destroyed deed.**

- (1) If the title deed of any land has been lost or destroyed and the registry duplicate of such title deed has also been lost or destroyed, the registrar shall, on written application by the owner of the land, accompanied by a diagram of the land, if no diagram thereof is filed in the registry or in the office of the surveyor-general concerned, execute a certificate of registered title in respect of such land in accordance with the diagram of the land.
- (2) Before issuing the certificate the registrar shall, at the expense of the applicant, publish in the prescribed form notice of intention to issue the certificate in two consecutive ordinary issues of the *Gazette* and in two consecutive issues of a newspaper printed in the division, district or county in which the land is situate, or if there is no such newspaper then in any newspaper circulating in such division, district or county.
- (3) A draft of the proposed certificate and a copy of the diagram, if any, accompanying the application, shall be open for inspection in the registry free of charge by any interested person, for a period of six weeks after the date of the first publication of the notice in the *Gazette*, during which period any person interested may object to the issue of the certificate.
- (4) Any person who has lodged with the registrar an objection to the issue of the certificate may, in default of any arrangement between him and the applicant, apply to the court within one month after the last day upon which an objection may be lodged, for an order prohibiting the registrar from issuing the certificate, and the court may make such order on the application as it may deem fit.
- (5) A certificate of registered title issued under this section shall be as nearly as practicable in the prescribed form and shall take the place of the lost or destroyed title deed and shall embody or refer to every condition, servitude, bond, lease or other encumbrance which according to the records of the registry was embodied or referred to in the lost or destroyed title deed or in any endorsement thereon.

### **39. Certificate of registered title to correct error in registration.**

Prepared by:

In partnership with:

- (1) If by reason of an error the same land has been registered in the names of different persons, the registrar may, upon transfer of the land being given to one of them by the other or others, issue to the person to whom transfer is so given a certificate of registered title of the land held by him under the various title deeds.
- (2) Any person who is the registered owner of any one or more defined portions of land under a registered deed reflecting conditions or servitudes which have lapsed by merger duly noted or which have been cancelled, may apply for the issue to him of a certificate of registered title in respect of such land free of such conditions or servitudes.

*(Section 39(2) inserted by section 17 of Act 43 of 1957)*

- (3) The certificate of registered title referred to in sub-section (2) shall be in the form prescribed and shall supersede the title under which the land was previously held.

*(Section 39(3) inserted by section 17 of Act 43 of 1957)*

- (4) The provisions of section *thirty-seven* shall *mutatis mutandis* apply in respect of the issue of such certificate.

*(Section 39(2) renumbered to 39(4) by section 17 of Act 43 of 1957)*

#### **40. Certificate of consolidated or amended title of two or more pieces of land.**

- (1) If a diagram has been framed and approved under the provisions of the Land Survey Act, 1927, and such diagram represents two or more pieces of land which are -

*(Words preceding section 40(1)(a) amended by section 18(a) of Act 43 of 1957)*

- (a) contiguous to each other;
- (b) owned by the same person or by two or more persons in the same undivided shares in each such piece of land;
- (c) .....

*(Section 40(1)(c) deleted by section 18(b) of Act 43 of 1957)*

- (d) registered in the same property register; and
- (e) situate in the same administrative district,

*(Section 40(1)(e) amended by section 16 of Act 43 of 1962)*

the title deed or deeds of the said pieces of land may on compliance with the requirements of this section be superseded by a certificate of consolidated title issued by the registrar in the prescribed form.

(2) .....

*(Section 40(2) deleted by section 18(c) of Act 43 of 1957)*

(3) Every such certificate shall be in accordance with the new diagram and shall be issued on written application by the owner or owners of the pieces of land in question accompanied by the title deed or deeds thereof and any bond thereon, together with the written consent of the holder of the bond.

*(Section 40(3) substituted by section 18(d) of Act 43 of 1957)*

(4) In registering the certificate, the registrar shall endorse on the title deed or deeds that they have, in respect of the land described in the certificate, been superseded by the certificate, and on the certificate that the land therein described or the share thereof referred to in such endorsement, is mortgaged by such bond and shall make such endorsements on the bond and such entries in the registers as shall clearly indicate that the land is now owned by virtue of the certificate and that the land or such share thereof is subject to such bond.

*(Section 40(4) substituted by section 18(e) of Act 43 of 1957)*

(5)

(a) If a portion only of the land represented on the new diagram is mortgaged, a certificate may not be issued unless the bond is cancelled: Provided that on the written application of the owner and with the consent of the mortgagee, all the land included in the new diagram may be substituted for the land originally mortgaged under the bond.

(b) If different portions of the land represented on the new diagram are mortgaged under different bonds, the certificate may not be issued unless the bonds are cancelled.

*(Section 40(5) substituted by section 18(f) of Act 43 of 1957)*

(6)

(a) If portion only of the said land is subject to any registered deed of lease or other registered deed other than a bond, whereby any real right in the land is held by any other person, the certificate shall not be issued unless a diagram of such portion is already annexed to the said registered deed, or, if no such diagram is so annexed, unless a diagram in duplicate (or triplicate if required by the registrar) of such portion is produced: Provided that it shall not be necessary to produce: a diagram of such portion if the diagram of the consolidated land shows that portion by dotted lines or in such other way as to identify it.

*(Section 40(6)(a) amended by section 18(g) of Act 43 of 1957)*

(b) The said diagram shall be annexed to the registered deed aforesaid and the registry duplicate thereof, and shall be mentioned in any endorsement made on or reference made in the certificate concerning such registered deed.

(7) .....

Prepared by:

In partnership with:

*(Section 40(7) deleted by section 18(h) of Act 43 of 1957)*

- (8) No diagram representing a combination of portions of two or more pieces of land shall be accepted in a deeds registry for purposes of transfer until a certificate of consolidated title has been issued for the land represented on such diagram.

*(Section 40(8) amended by section 18(i) of Act 43 of 1957)*

- (9) More than one combination of portions of two or more pieces of land, each of which combinations is represented on a separate diagram, may be included in one certificate of consolidated title: Provided that each combination is described in a separate paragraph therein.

*(Section 40(9) amended by section 18(i) of Act 43 of 1957)*

#### **41. Certificate of amended title of one piece of land.**

- (1) A certificate of amended title in the prescribed form may also be issued by the registrar in respect of any one piece of land where rectification of title is required in consequence of a survey or re-survey of such land as provided in the Land Survey Act, 1927.

- (2) Every such certificate shall be in accordance with the new diagram and shall be issued on written application by the owner or owners of the land in question, accompanied by the title deed or title deeds thereof, together with any bond thereon and the written consent of the holder of any such bond.

*(Section 41(2) substituted by section 15(a) of Act 87 of 1965)*

- (3) In registering the certificate the registrar shall endorse on the title deed or title deeds of the land in question that the title deed has or the title deeds have been superseded by the certificate, and on the certificate that the land therein described or the share thereof referred to in such endorsement, is mortgaged by such bond, and shall make such endorsements on the bond and such entries in the registers as shall clearly indicate that the land is now owned by virtue of such certificate and that the land or such share thereof is subject to such bond.

*(Section 41(3) added by section 15(b) of Act 87 of 1965)*

- (4) The provisions of paragraph (a) of sub-section (5) and of sub-section (6) of section *forty* shall *mutatis mutandis* apply in respect of such certificate.

*(Section 41(4) added by section 15(b) of Act 87 of 1965)*

#### **42. Certificate of uniform title**

- (1) If the owner of two or more pieces of land which are-

- (a) contiguous to each other;

- (b) situate in the same administrative district;  
*(Section 42(1)(b) amended by section 17 of Act 43 of 1962)*
- (c) registered in the same property register; and
- (d) held on different conditions of tenure, or subject to different rights reserved in favour of the State,

desires to consolidate his title in respect of those pieces of land on uniform conditions of tenure or subject to the reservation of uniform rights in favour of the State, the title deeds of the said pieces of land may, with the written consent of the Minister and on compliance with the provisions of this section, be superseded by a certificate of uniform title issued by the registrar, in the prescribed form, subject to such uniform conditions of tenure or to the reservation of such uniform rights in favour of the State, as are set forth in such written consent.

- (2) The provisions of sub-sections (3) to (6) inclusive of section *forty* shall *mutatis mutandis* apply in respect of such certificate.
- (3) The Minister may agree with the owner as to the aforesaid uniform conditions of tenure or uniform rights in favour of the State, and may consent to the issue of a, certificate of uniform title.
- (4) If the said land is subject to any bond or if the said land or any portion thereof is subject to any registered deed of lease or other registered deed whereby any real right in the land is held by any other person, there shall be produced to the registrar the written consent, of the holder of any such bond, lease or right to the issue of the certificate of uniform title and to the uniform conditions of tenure or uniform rights in favour of the State, which may have been agreed upon.
- (5) The provisions of this section shall *mutatis mutandis* apply in respect of land comprising portions which are held on different conditions of tenure or subject to different rights reserved in favour of the State, and the title to which has been consolidated prior to the commencement of this Act.

#### **43. Certificate of registered title of portion of a piece of land**

- (1) If a defined portion of a piece of land has been registered title of surveyed and a diagram thereof has been approved by the surveyor-general concerned, the registrar may on written application by the owner of the land accompanied by the diagram of such portion, the title deed of the land, any bond thereon and the written consent of the holder of any such bond, issue a certificate of registered title in respect of such portion, as nearly as practicable in the prescribed form.

*(Section 43(1) amended by section 19(a) of Act 43 of 1957)*

- (2) In registering the certificate the registrar shall endorse on the title deed that it has been superseded by the certificate in respect of the land described in the certificate, and on the certificate that the land described therein is mortgaged by the bond, and shall make such endorsements on the bond and such entries in the registers as shall clearly indicate that the land is now owned by virtue of the certificate and is subject to such bond.

*(Section 43(2) amended by section 19(b) of Act 43 of 1957)*

- (3) The provisions of this section shall also apply where two or more defined portions of a piece of land have been surveyed and the diagrams thereof approved: Provided that each of such portions shall be described in a separate paragraph in the certificate.

- (4) No defined portion of a piece of land shall be mortgaged until the owner thereof has obtained a certificate of registered title in respect of such portion in accordance with the provisions of this section.

(5)

- (a) Save in the case of a transfer of a whole erf, no owner of a township or settlement in whose title deed the individual erven are not separately described, shall deal separately in any way with an individual erf in such township or settlement or any portion thereof or share therein until he has obtained a certificate of registered title of such erf in the prescribed form.

- (b) The provisions of this sub-section shall not apply in respect of State land.

*(Section 43(5) added by section 19(c) of Act 43 of 1957)*

### ***Change of title by endorsement.***

#### **44. Rectification of title by endorsement.**

- (1) If rectification of title is required in respect of any one piece of land in consequence of a survey or re-survey of such land or of the correction of any error in the diagram thereof under the Land Survey Act, 1927, the registrar may, on written application by the owner of the land accompanied by the title deed and the new or the corrected diagram thereof, any bond thereon and any registered deed of lease or other registered deed whereby any real right therein is held by any other person and the written consent of the holder of such bond, lease or right, endorse on the aforesaid deeds in the prescribed form a description of the land according to the new or corrected diagram, which description shall supersede the description already appearing in the aforesaid deeds.

*(Section 44(1) amended by section 18 of Act 43 of 1962)*

- (2) If a new diagram is produced the registrar shall in making the said endorsement substitute the new diagram for the old one in the manner prescribed.



- (3) The provisions of sub-sections (1) and (2) shall *mutatis mutandis* apply in respect of a deed of cession or certificate of rights to minerals when the surveyor-general has approved a new or corrected diagram in consequence of a surveyor re-survey of the land over which such rights operate or for the purpose of correcting any error in the diagram thereof in terms of the Land Survey Act, 1927 (Act No.9 of 1927).

*(Section 44(3) added by section 16 of Act 87 of 1965)*

**45. Transfer or cession by means of endorsement.**

- (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 the survivor of two spouses who were married in community of property or in the name of the joint estate of such spouses and such survivor has lawfully acquired the share of the deceased spouse in the property lease or bond, the registrar shall on written application by the executor in the estate of the deceased spouse and by such survivor save where such survivor has signed as executor, accompanied by such other documents as may be prescribed, endorse on the title deeds of the property or on the deed of lease or on the bond that the survivor is entitled to deal with such property lease or bond, and thereupon such survivor shall be entitled to deal therewith as if he had taken formal transfer or cession into his own name of the share of the deceased spouse in the property lease or bond.

*(Section 45(1) amended by section 20(a) of Act 43 of 1957)*

*(Section 45(1) amended by section 19(a) of Act 43 of 1962)*

- (2) If the immovable property mentioned in sub-section (1) is hypothecated under a registered mortgage bond the endorsement provided for in the said sub-section shall not be made unless-

(a) such bond is cancelled; or

(a)*bis* the said property or the share of the deceased spouse therein is released from the bond; or

*(Section 45(2)(a)bis inserted by section 19(b) of Act 43 of 1962)*

(b) the estate of the deceased spouse is released from liability under the bond and the survivor assumes full liability for all the indebtedness of the joint estate thereunder; or

*(Section 45(2)(b) substituted by section 20(b) of Act 43 of 1957)*

*(Section 45(2)(b) amended by section 19(c) of Act 43 of 1962)*

(c) the said bond has been passed by the survivor alone and a written consent (which shall be in duplicate, in the prescribed form and signed by the survivor and the legal holder of the bond) to the release of the estate of the deceased spouse from liability under the bond and to the substitution of the survivor as sole debtor in respect thereof, is produced to the registrar together with the bond.

- (3) The registrar shall, in any case of release and substitution in terms of paragraph (c) of sub-section (2), when he endorses on the title deeds of the property that the survivor is entitled to deal therewith-
- (a) make in the appropriate register an entry setting forth that the estate of the deceased spouse is released from liability in respect of the obligation secured by the bond and that the survivor has become sole debtor in respect of the bond;
  - (b) annex one duplicate of the written consent referred to in the said paragraph to the bond and file the other with the registry duplicate of the bond; and
  - (c) endorse on the bond that the estate of the deceased spouse is released from liability in respect of the obligation secured thereby and that the survivor has become sole debtor in respect of the bond.
- (4) As from the date of the endorsement on the title deeds of the property in terms of sub-section (1), the estate of the deceased spouse shall be absolved from any obligation secured by the bond and the survivor shall become sole debtor in respect thereof in the same manner as if he had passed the bond at that date.
- (5) Any reference in this section to a bond shall include a charge in favour of the Land and Agricultural Bank of South Africa or any Department of State.

*(Section 45(5) added by section 19(d) of Act 43 of 1962)*

#### **45bis. Endorsement of deeds where marriage dissolved by divorce**

- (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 who were married in community of property but have been divorced, and the person in whose name such property, lease or bond is registered has lawfully acquired the share of his former spouse in the property, lease or bond, 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 in the property, lease or bond.
- (2) If any immovable property referred to in sub-section (1) is hypothecated under a registered mortgage bond, the provisions of sub-sections (2), (3) and (4) of section *forty-five* shall *mutatis mutandis* apply.
- (3) The reference in sub-section (2) to a bond shall include a charge in favour of the Land and Agricultural Bank of South Africa or any Department of State.

*(Section 45bis(3) added by section 20 of Act 43 of 1962)*

Prepared by:

In partnership with:

*(Section 45bis inserted by section 21 of Act 43 of 1957)*

## CHAPTER IV.

### ***Townships and Settlements.***

#### **46. Requirements in the case of sub-division of land into lots or erven.**

- (1) If land has been sub-divided into lots or erven shown on a general plan, the owner of the land sub-divided shall furnish a copy of the general plan to the registrar, who shall, subject to compliance with the requirements of this section and of any other law, register the plan and open a register in which all registrable transactions affecting the respective lots or erven shown on the plan shall be registered.
- (2) For the purposes of registration of such a general plan the title deed of the land which has been sub-divided shall be produced to the registrar together with the diagram thereof and any mortgage bond endorsed on the title deed and the mortgagee's consent to the endorsement of such bond to the effect that it attaches to the land described in the plan.

*(Section 46(2) amended by section 22(a) of Act 43 of 1957)*

- (3) If the land sub-divided as shown on the general plan forms the whole of any registered piece of land held by the title deed, the registrar shall make upon the title deed and the registry duplicate thereof an endorsement in the prescribed form indicating that the land has been laid out as a township or settlement, as the case may be, in accordance with the plan, and that the lots or erven shown on the plan are to be registered in the relative register.
- (4) If the land sub-divided as shown on the general plan forms a portion only of any registered piece of land held by the title deed the registrar shall, on written application by the owner of the land, issue a certificate of township or settlement title in his favour in respect of the said portion as nearly as practicable in the prescribed form and in accordance with a diagram thereof.
- (5) If the land sub-divided as shown on the general plan comprises the whole or portions of two or more registered pieces of land, the registrar may require the owner to obtain a certificate of consolidated title of the land so sub-divided. The registrar shall make on such certificate the endorsement mentioned in sub-section (3).

*(Section 46(5) amended by section 22(b) of Act 43 of 1957)*

- (6) The provisions of section *forty-three* and of sub-sections (3) to (6) inclusive of section *forty* shall respectively and *mutatis mutandis* apply in respect of the certificates of township or settlement title mentioned in sub-section (4), and the certificates of consolidated title mentioned in sub-section (5).

*(Section 46(6) amended by section 22(b) of Act 43 of 1957)*

Prepared by:

In partnership with:

- (7) Where a general plan has been registered in terms of sub-section (1), it shall not be necessary, where a whole erf is transferred, to produce a diagram thereof: Provided that where a diagram has not been produced, a reference shall be made to the general plan in the relevant deed of transfer: Provided further that the provisions of this subsection shall apply only with reference to general plans lodged for registration on or after the date of commencement of the Deeds Registries Amendment Act, 1965.

*(Section 46(7) added by section 17 of Act 87 of 1965)*

#### **47. Transfer of township or portion thereof.**

The owner of land in respect of which a register has been opened under section *forty-six* may transfer, by one deed, the whole or any portion of such land or a share in the whole of such land: Provided that-

- (a) if a portion only of the land is sought to be transferred-
- (i) the transfer shall be passed in accordance with a diagram (to be annexed to such deed) from which shall be excluded all erven on the land represented thereon which have already been transferred, and on which the total area of such transferred erven shall be indicated;
  - (ii) the boundaries of such portion shall coincide with one or more of the lines of division shown on the general plan and shall not intersect any of the erven shown thereon;
- (b) if the remainder of the land is sought to be transferred or mortgaged or otherwise dealt with there shall be produced to the registrar a certificate of remainder signed by the surveyor-general; and

*(Section 47(b) amended by section 21 of Act 43 of 1962)*

- (c) the deed of transfer shall disclose that the land conveyed thereby has been laid out as a township or is a portion of land so laid out, that such land remains subject to the provisions of the law relating to townships, and, if any public place or portion thereof in such township forms part of the land transferred, that the rights of owners of erven and of other persons to such public place are not affected by such transfer.

#### **48. Special provisions affecting mortgaged land in Rand townships registration area.**

If any land situate in the area served by the Rand townships registration office at Johannesburg has been sub-divided into lots or erven shown on a general plan, which has, in terms of section *forty-six* been furnished to the Rand townships registrar, and if that land is mortgaged together with other land registered in the deeds registry at Pretoria but not in the Rand townships registration office, every

transaction affecting the bond shall be registered in both the deeds registry at Pretoria and the Rand townships registration office.

**49. Special provisions regarding townships in the Transvaal.**

- (1) If any area of land in the province of the Transvaal constitutes by reason of its situation a portion of an existing township, the Administrator may, by proclamation in the official *Gazette* of that Province, extend the boundaries of that township to include such area, and thereupon such area of land shall be deemed to be and shall be registered as an erf in that township.
- (2) If that township is situate in the area served by the Rand townships registration office at Johannesburg, the registrar at Pretoria shall furnish the Rand townships registrar with certified copies of the title to the land to be included in such township and of all deeds affecting it, and the Rand Townships registrar shall thereupon enter the same in the appropriate registers.

**CHAPTER V.**

**BONDS.**

***General Provisions.***

**50. Execution of bonds.**

- (1) A mortgage bond shall be executed in the presence of the registrar by the owner of the immovable property therein described or by a conveyancer duly authorized by such owner by power of attorney, and shall be attested by the registrar.
- (2) A mortgage bond or notarial bond may be registered to secure an existing debt or a future debt or both existing and future debts.
- (3) Mortgage bonds or notarial bonds intended to secure loans for building purposes shall be deemed to be bonds to secure existing debts.
- (4) If in a mortgage bond or notarial bond purporting to secure a future debt the amount of an existing debt is mentioned, such existing debt shall be deemed to be secured as part of the maximum amount intended to be secured by such bond.
- (5) Save as authorized by any other law or by order of the Court, debts or obligations to more than one creditor arising from different causes may not be secured by one mortgage bond or notarial bond.

*(Section 50 substituted by section 18 of Act 87 of 1965)*

**51. Requirements in case of bonds intended to secure future debts.**

Prepared by:

In partnership with:

- (1) Except where passed, in Natal or the Orange Free State, on the authority of a power of attorney granted prior to the commencement of the Deeds Registries Act, 1918, or, in the Transvaal, on the authority of a power of attorney granted prior to the commencement of the Registration of Deeds and Titles Act, 1909 (Act No. 25 of 1909) of the Transvaal, which power of attorney has in either case been duly registered in terms of sub-section (2) of section *fifty* of the first-mentioned Act, no mortgage bond or notarial bond attested or registered after the commencement of this Act shall be of any force or effect for the purpose of giving preference or priority in respect of any debt incurred after the registration of such bond, unless –
  - (a) it is expressly stipulated in the bond that the bond is intended to secure future debts generally or some particular future debt described therein; and
  - (b) a sum is fixed in the bond as an amount beyond which future debts shall not be secured by the bond.
- (2) If a mortgage bond or notarial bond purports to secure payment by the mortgagor of the costs of preserving and realizing the security or of fire insurance premiums, cost of notice or bank exchange, such costs and charges shall not be deemed to be future debts within the meaning of sub-section (1).

*(Section 51 substituted by section 19 of Act 87 of 1965)*

## **52. Cession of bond to secure future advances.**

A cession of a mortgage bond or notarial bond passed to secure future advances may be registered and the registration of such a cession shall not affect the provisions of the bond relating to future advances up to the amount stated in such bond or the amount as reduced.

*(Section 52 substituted by section 23 of Act 43 of 1957)*

*(Section 52 amended by section 22 of Act 43 of 1962)*

*(Section 52 substituted by section 20 of Act 87 of 1965)*

## **53. Exclusion of general clause in mortgage bonds.**

- (1) Save as provided in any other law the registrar shall not attest any mortgage bond which purports to bind movable property or which contains the clause, commonly known as the general clause, purporting to bind generally all the immovable or movable property of the debtor or both and shall not register any notarial bond which purports to bind immovable property.
- (2) No mortgage bond shall be passed by two or more mortgagors unless it purports to bind immovable property of each mortgagor: Provided that notwithstanding the provisions of sub-section (1) of section *fifty*, land held subject to a condition that, on the happening of a certain event, such land shall revert to a person named in such condition, may be mortgaged by the owner thereof and such person by

means of a bond passed by them jointly and severally, or may be mortgaged by the owner of such land with the consent of such person.

*(Section 53(2) amended by section 24 of Act 43 of 1957)*

**54. No bond to be passed in favour of an agent.**

No mortgage bond or notarial bond shall be passed in favour of any person as the agent of a principal.

*(Section 54 substituted by section 21 of Act 87 of 1965)*

**55. Requirements in case of bonds passed by or in favour of two or more persons.**

- (1) If a mortgage bond or notarial bond is passed by two or more mortgagors, no release from the bond-
- (a) of any mortgagor and his property, or of a portion of the property of any mortgagor may be registered without the written consent of the other mortgagor or mortgagors; or
  - (b) of all the property of any mortgagor may be registered unless such mortgagor is also released.

(1)*bis* If a mortgage bond or notarial bond is passed by two or more mortgagors, no waiver of preference by the mortgagee in favour of a further mortgage bond or notarial bond over the property of one of the mortgagors may be registered without the written consent of the other mortgagor or mortgagors.

- (2) No mortgage bond or notarial bond may be passed in favour of two or more persons in which it is stipulated that the share of one holder shall rank prior in order of preference to the share of another, nor may any transaction be registered which would have the effect of giving preference to one share in such bond over another share.

*(Section 55 amended by section 25 of Act 43 of 1957)*

*(Section 55 amended by section 23 of Act 43 of 1962)*

*(Section 55 substituted by section 22 of Act 87 of 1965)*

***Rights of Mortgagees***

**56. Transfer of hypothecated immovable property**

- (1) No transfer of mortgaged land shall be attested or executed by the registrar, and no cession of a mortgaged lease of immovable property, or of any mortgaged real right in land, shall be registered until the bond has been cancelled or the land, lease, or right has been released from the operation of the bond with the consent in writing of the holder thereof or unless, in the case of any such mortgage bond which has been lost or destroyed, the registrar has on application by the registered holder thereof, cancelled the entry in his register in respect of such bond: Provided that no such cancellation or release shall be necessary if the transfer or cession is made-

*(Words preceding section 56(1)(a) amended by section 26 of Act 43 of 1957)*

- (a) in execution of the judgment of any court (including a magistrate's court and a court of a Bantu Affairs Commissioner) by the competent officer; or

*(Section 56(1)(a) substituted by section 23 of Act 87 of 1965)*

- (b) by the trustee of an insolvent estate, an executor administering and distributing an estate under sub-section (3) of section *forty-eight* of the Administration of Estates Act, 1913, the liquidator of a company which is unable to pay its debts and which is being wound up by or under the supervision of the court or a liquidator or trustee elected or appointed under the Farmers' Assistance Act, 1935; or

- (c) in any other circumstances in this Act or in any other law specially provided or as ordered by the court.

- (2) A consent to the release from the operation of a bond of all the property mortgaged thereunder shall, except where the debt secured by such bond is further secured by a collateral bond, be deemed to be a consent to the cancellation of that bond.

#### **57. Substitution of debtor in respect of a bond**

- (1) If the owner (in this section referred to as the transferor) of land which is hypothecated under a registered mortgage bond other than a mortgage bond to secure the obligations of a surety (not being a person referred to in paragraph (b) of sub-section (1) of section *fifty-six*) transfers to another person the whole of the land hypothecated thereunder, and has not reserved any real right in such land, the registrar may, notwithstanding the provisions of sub-section (1) of the said section, register the transfer and substitute the transferee for the transferor as debtor in respect of the bond: Provided that there is produced to him, in duplicate, the written consent in the prescribed form of the holder of the bond and the transferee to the substitution of the transferee for the transferor as the debtor in respect of the bond for the amount of the debt disclosed therein or for a lesser amount.

*(Section 57(1) amended by section 27(a) of Act 43 of 1957)*

*(Section 57(1) amended by section 24(a) and (b) of Act 43 of 1962)*

- (2) In registering the transfer the registrar shall-

- (a) make, in the appropriate register -

*(Words preceding section 57(2)(a) amended by section 24(c) of Act 43 of 1962)*

- (i) an entry setting forth that the debt of the transferor secured by the bond is cancelled; and
- (ii) an entry setting forth that the transferee has become the debtor in respect of the bond;



- (b) annex one duplicate of the written consent referred to in sub-section (1) to the bond and file the other with the registry duplicate thereof;
  - (c) endorse upon the bond in the prescribed form
    - (i) the name of the transferee;
    - (ii) the date and number of the transfer;
    - (iii) a reference to the said written consent; and
    - (iv) that the transferee has been substituted for the transferor as debtor in respect of the bond; and
  - (d) make on the transfer deed an endorsement of mortgage containing the date and number of the bond and the amount due in terms thereof.
- (3) As from the date of the transfer deed the transferor shall be absolved from any obligation secured by the bond and the transferee shall be substituted for him as the debtor in respect of such bond and shall be bound by the terms thereof in the same manner as if he had himself passed the bond and had renounced therein the benefit of all relevant exceptions.
- (4) The provisions of this section shall not apply if the mortgaged land is to be transferred-
- (a) to a person who would not himself be competent to mortgage it; or
  - (b) to two or more persons, unless they take transfer of the land in undivided shares and renounce, in the written consent referred to in sub-section (1) the exception *de duobus vel pluribus reis debendi*; or
  - (c) to a woman, unless she renounces, in the said written consent, any special legal exceptions which she would otherwise be entitled to raise.
- (Section 57(4)(c) amended by section 27(b) of Act 43 of 1957)*
- (5) The provisions of sub-sections (1) to (4), inclusive, shall *mutatis mutandis* apply in respect of immovable property other than land which is hypothecated under a registered mortgage bond.
- (Section 57(5) added by section 27(c) of Act 43 of 1957)*

**58. Returns by master in connection with insolvent estates and further provisions relative to insolvent estates.**

Prepared by:

In partnership with:

- (1) If it appears from the liquidation account of any estate which has been sequestrated or from the vouchers relating thereto that a payment has been made to any creditor on account of a registered bond, the Master shall notify the payment to the registrar who shall thereupon write off the amount thereof in the appropriate register, on the registry duplicate of the bond and also if possible on the original bond. The holder of the bond shall deliver the bond to the Master, who shall forward it to the registrar in order that the amount paid may be written off thereon.
- (2) Except in cases where an insolvent has been rehabilitated in pursuance of a composition made by him with his creditors, the Master shall from time to time transmit to the registrar a return specifying-
  - (a) the name and address of every person who has been rehabilitated after the sequestration of his estate; and
  - (b) the immovable property and registered bonds appearing in the schedules lodged with the Master by or on behalf of such person or in the liquidation account of his estate;

and upon receipt of that return the registrar shall, in accordance therewith, cancel in the appropriate registers all bonds registered therein against the property of the said person prior to the sequestration of his estate and endorse the registry duplicates and, if possible, also the bonds themselves as cancelled. The holders of such bonds shall when requested to do so by the Master, deliver the bonds to him, and the Master shall forward them to the registrar for cancellation.

- (3) If any of the immovable property mentioned in the return has not yet been transferred by the trustee, the registrar shall further note on the registry duplicate of the title deed of such property and in the appropriate registers that such property has in terms of the law relating to insolvency vested in the trustee.
- (4) Immovable property which has vested in a trustee in accordance with the provisions of the law relating to insolvency and which has not in terms of that law been re-vested in the insolvent may, whether before or after rehabilitation of the insolvent, be transferred only by the trustee, and may not after such rehabilitation be transferred, mortgaged or otherwise dealt with by the insolvent until it has been transferred to him by the trustee: Provided that if after rehabilitation, the trustee has been discharged or there is no trustee in existence, the Master shall, if satisfied that the rehabilitated insolvent is entitled to the property, give him transfer thereof in such manner as may be prescribed.
- (5) If by virtue of the provisions of the law relating to insolvency an insolvent has been re-invested with the ownership of any property, such property may not be transferred, mortgaged or otherwise dealt with by the insolvent until an endorsement, in the manner prescribed, that the property has been restored to him, has been made by the registrar on the title deed of the property.

- (6) Nothing in this section contained shall be construed as modifying any provision of the law relating to insolvency.
- (7) The provisions of this section shall apply *mutatis mutandis* in respect of-
- (a) estates administered and distributed under section *forty-eight* of the Administration of Estates Act, 1913;
  - (b) companies which are unable to pay their debts and are liquidated or wound up by or under the supervision of the court under the law relating to companies; and
  - (c) assets of an applicant under the Farmers' Assistance Act, 1935, which are administered by a liquidator or trustee who has received from the Master a certificate mentioned in section *seventeen* of the said Act.

#### **59. Endorsement of bond after sale in execution**

Whenever any mortgaged immovable property has been sold in execution of a judgment of a competent court or under express authority contained in a special law, to satisfy any debt due in respect of a registered bond or otherwise, and the proceeds of the sale have been paid to the legal holder of the bond, the sheriff or deputy sheriff or messenger concerned or the person acting under the authority of such special law shall notify to the registrar how much of the capital sum due in terms of the bond has been paid, and shall transmit the bond to the registrar. The registrar shall thereupon write off the amount so paid in the appropriate registers and on the bond and registry duplicate thereof.

#### **60. Consent of bond holder to registration of merger of rights of mortgagor**

If the holder of a mortgaged lease of land or of mortgaged real rights in land acquires the ownership of that land, or if the holder of a mortgaged lease of real rights in land acquires those rights, or if the owner of mortgaged land which is entitled to rights of servitude over other land, acquires the ownership of that other land, such acquisition of the additional land or rights shall not be registered without the consent in writing of the holder of the bond.

### ***Notarial Bonds.***

#### **61. Registration of notarial bonds.**

- (1) Every notarial bond executed before or after the commencement of this Act shall be registered in a deeds registry within the period of three months after the date of its execution or within such extended period as the court may on application allow.

Prepared by:

In partnership with:

*(Section 61(1) substituted by section 24 of Act 87 of 1965)*

(2) .....

*(Section 61(2) deleted by section 28 of Act 43 of 1957)*

(3) Every notarial bond shall disclose-

- (a) the place at and the date on which it was executed, as well as the place where the notary practises; and
- (b) the place where the debtor resides and the place or places, if any, where he carries on business.

(4) .....

*(Section 61(4) deleted by section 28 of Act 43 of 1957)*

**62. Where notarial bond is to be registered.**

(1) Save as provided in sub-sections (3) and (4), every notarial bond shall be registered in the deeds registry for the area in which the debtor resides and carries on business, or if he resides and carries on business in areas served by different deeds registries, in the deeds registry for the area in which he resides and in every deeds registry serving any area in which he carries on business: Provided that notarial bonds passed in Natal in pursuance of the Notarial Bonds (Natal) Act, 1932 (Act No. 18 of 1932), irrespective of whether the debtor resides or carries on business in Natal, shall be sufficiently registered for the purposes of this Act if registered in the deeds registry at Pietermaritzburg.

*(Section 62(1) amended by section 29 of Act 43 of 1957)*

- (2) Registration of a notarial bond in accordance with the provisions of sub-section (1) shall be effective as registration for the whole Union.
- (3) Registration of a notarial bond in the deeds registry for any area in which the debtor resides or carries on business shall be effective for such area.
- (4) Registration of a notarial bond executed by a company incorporated with limited liability shall, if the bond is registered in the deeds registry for the area in which the registered office of the company is situated at the date of the registration of such bond, be effective as registration for the whole of the Union.
- (5) A notarial bond which is required to be registered in more than one deeds registry shall be registered in the first registry within the period prescribed by sub-section (1) of section *sixty-one*, in the second

registry within an additional period of one month and in each successive registry within a further period of one month.

- (6) For the purpose of registration in the other registries it shall be sufficient if the original bond registered in the first registry is produced together with a further duplicate or grosse or a copy thereof certified by a notary public for filing in the registry concerned: Provided that in the event of simultaneous registration in more than one deeds registry being necessary, the registrars in respect of the other registries may each accept one duplicate or grosse or a copy thereof certified by a notary, for registration and for filing as the registry duplicate and on production of the original bond registered in the first registry, shall endorse thereon the facts of registration in such other registries, and similarly record on the registry duplicate facts of registration in other registries.

*(Section 62(6) amended by section 25(a) and (b) of Act 43 of 1962)*

*(Section 62 substituted by section 2 of Act 15 of 1953 and deemed to have come into operation on 1 September 1937)*

## **CHAPTER VI. RIGHTS IN IMMOVABLE PROPERTY.**

### ***General Provisions.***

#### **63. Restriction on registration of rights in immovable property.**

- (1) No deed, or condition in a deed, purporting to create or embodying any personal right and no condition which does not restrict the exercise of any right of ownership in respect of immovable property shall be capable of registration.

*(Section 63(1) amended by section 26(a) of Act 43 of 1962)*

- (2) .....

*(Section 63(2) deleted by section 26(b) of Act 43 of 1962)*

#### **64. Certificates of registered real rights.**

- (1) Any person who either before or after the commencement of this Act has transferred land subject to the reservation of any real right in his favour (other than a right to minerals) may on application in writing to the registrar accompanied by the title deed of the land obtain a certificate of registration of that real right as nearly as practicable in the prescribed form.
- (2) Such person shall not separately mortgage or otherwise deal with such right or transfer a share thereof (if transferable) unless he has obtained such certificate in the manner aforesaid.

(2)*bis* Any person who transfers land or on whose land a township or settlement is established subject to a reservation in his favour of 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 such land, shall simultaneously with the passing of transfer or the opening in the deeds registry of a register in respect of such township or settlement, as the case may be, take out in the prescribed form a certificate of registered real rights in respect of the right so reserved; where the register has been opened, such certificate may be taken out in respect of the remainder of the township or settlement upon a certificate from the Surveyor-General as to the remainder.

*(Section 64(2)bis inserted by section 25 of Act 87 of 1965)*

(3) The provisions of sub-sections (2) to (4) inclusive of section *thirty-seven* shall *mutatis mutandis* apply in respect of such certificate.

### ***Personal Servitudes.***

#### **65. Registration of notarial deed creating personal servitude**

(1) Save as provided in any other law, a personal servitude may be created by means of a deed executed by the owner of the land encumbered thereby and the person in whose favour it is created, and attested by a notary public: Provided that in the case of a servitude in favour of the public or of all or some of the owners or occupiers of erven or lots in a township or settlement, the registrar may, if in his opinion it is impracticable to require such deed to be executed by the persons in whose favour the servitude is created, register such deed notwithstanding the fact that it has not been executed by such persons: Provided further that where it is desired to register a road or thoroughfare in favour of the public at the same time as the registration of a subdivision which it serves, it shall in like manner and without the registration of a notarial deed be permissible to register it in the deed relating to the subdivision and also to endorse the deed of the remainder accordingly: Provided further that conditions which restrict the exercise of any right of ownership in immovable property may be included in any deed of transfer of such immovable property tendered for registration if such conditions are capable of being enforced by some person who is mentioned in, or, if not mentioned therein, is ascertainable from the said deed of transfer or from other evidence and such person, if determinable, has signified acceptance of such right.

*(Section 65(1) amended by section 30(a) and (b) of Act 43 of 1957)*

*(Section 65(1) substituted by section 27 of Act 43 of 1962)*

(2) Such deed shall contain a sufficient description of the land encumbered by the servitude and shall mention the title deed of such land.

(3) For the registration of such a deed, the title deed of the land and, if the land is mortgaged, the bond and the consent in writing of the legal holder thereof to the registration of the servitude free of the bond, shall be produced.

*(Section 65(3) substituted by section 30(c) of Act 43 of 1957)*

**66. Restriction on registration of personal servitudes**

No personal servitude of *usufruct*, *ursus* or *habitatio* purporting to extend beyond the lifetime of the person in whose favour it is created shall be registered, nor may a transfer or cession of such personal servitude to any person other than the owner of the land encumbered thereby, be registered.

**67. Reservation of personal servitudes.**

A personal servitude may be reserved by condition in a deed of transfer of land, if the reservation is in favour of the transferor, or in favour of the transferor and his spouse or the survivor of them, if they are married in community of property, or in favour of the surviving spouse if transfer is passed from the joint estate of spouses who were married in community of property.

**68. Registration of lapse of personal servitude**

- (1) If for any reason a personal servitude has lapsed, the registrar shall, on written application by or on behalf of the owner of the land encumbered thereby, accompanied by proof of the lapse of the servitude, the title deed of the land and, if available, the title deed, if any, of the servitude (which title deed the holder of the servitude shall on demand hand over to the owner of such land) note on the title deed of the land and of the servitude, if the title deed of the servitude has been produced, that the servitude has lapsed.
- (2) Cancellation of the registration of a personal servitude in pursuance of an agreement between the owner of the land encumbered and the holder of the servitude shall be effected by notarial deed: Provided that no such deed shall be registered if the servitude is mortgaged, unless the mortgagee consents in writing to the cancellation of the bond or the release of the, servitude from its operation.

**69. Transfer and mortgage of land with personal servitude thereon**

- (1) If the owner of land subject to a personal servitude and the holder of that servitude have disposed of the land or any portion thereof together with the rights of servitude to another person, they may together give transfer thereof to the person acquiring it.
- (2) The transfer deed shall describe the transferors as the owner of the land and holder of the servitude respectively, but no mention of the servitude shall be made in the description of the land therein.
- (3) The owner of land subject to a personal servitude and the holder of that servitude may together mortgage the land to the full extent of their respective rights therein.

- (4) The owner of the land and the holder of the servitude may either of them as principal debtor mortgage the land or the servitude respectively and the other of them may in the same bond mortgage the servitude or the land as surety.

**69bis. Joint transactions by fiduciary and fideicommissary.**

- (1) If the owner of land subject to a *fideicommissum* and the fideicommissary, if the latter is competent so to do, have disposed of the land or any portion thereof, together with the fideicommissary rights, to any other person, they may together give transfer thereof to that person.
- (2) The transfer deed shall describe the transferors as the owner of the land and the holder of the fideicommissary right respectively, but no mention of the fideicommissary right shall be made in the description of the land therein.
- (3) The owner of land subject to a *fideicommissum* and the fideicommissary, if the latter is competent so to do, may together mortgage the land to the full extent of their respective rights therein.

*(Section 69bis inserted by section 31 of Act 43 of 1957)*

***Rights to Minerals.***

**70. Separation from ownership of rights to minerals**

- (1) Rights to minerals may be separated from the ownership of land by reservation under section *seventy-one* or *seventy-two* in a condition contained in a transfer of such land or by exclusion from a partition of such land in terms of section *seventy-three* or by cession of those rights by the owner of the land to another person.
- (2) Such separation from the ownership may take place in respect of a portion of a registered piece of land, or of a share in the whole or a portion of a registered piece of land, and may be in respect of all minerals generally, or of a particular mineral or minerals,
- (3) When a deed of transfer of land exclusive of rights to minerals is lodged in terms of section *thirty-one*, and the rights to minerals are held by the registered owner of the land under the title to the land, there shall be also lodged for registration a certificate of mineral rights in the prescribed form, and the provisions of sub-sections (4) and (5) of section *seventy-one* shall *mutatis mutandis* apply.

*(Section 70(3) added by section 32 of Act 43 of 1957)*

- (4) Notwithstanding anything to the contrary contained in any other law, whenever rights to minerals have been separated from the ownership of land, such rights to minerals and the land shall thereafter each be held under separate title even though the holder of the rights to minerals be also the owner of the land.



*(Section 70(4) added by section 32 of Act 43 of 1957)*

*(Section 70(4) amended by section 28(a) of Act 43 of 1962)*

- (5) Notwithstanding anything to the contrary contained in this Act or any other law, any person may at any time obtain a certificate of rights to minerals in respect of all rights to minerals held by him under the same title as that by which he is the registered owner of the land.

*(Section 70(5) added by section 28(b) of Act 43 of 1962)*

- (6) The certificate of rights to minerals referred to in sub-section (5) shall be issued in the prescribed form, by the registrar, upon the written application of the owner accompanied by the title deed under which the rights to minerals are held, together with any mortgage bond or other deed to which the aforesaid rights are subject, and the consent of the holder thereof, and the registrar shall make such endorsements on the relevant deeds as may be necessary to give effect to the issue of such certificate.

*(Section 70(6) added by section 28(b) of Act 43 of 1962)*

## **71. Certificates of reservation of rights to minerals**

- (1) Any person who transfers land subject to a reservation in his favour of rights to minerals thereon, or on whose land a township or settlement is established subject to such reservation, shall simultaneously with the passing of transfer or the opening of a register in a deeds registry for such township or settlement, as the case may be, take out a certificate of rights to minerals in the prescribed form in respect of the rights so reserved; where the register has been opened, a certificate may be taken out in respect of the remainder of the township or settlement upon a certificate from the surveyor-general as to the remainder.

(2)

- (a) Upon the written application to the registrar of any person who has, before the commencement of this Act, transferred land subject to a reservation in his favour of rights to minerals thereon and who is the holder of such rights, the registrar shall, on production of the title deed under which that land is held, issue to such person a certificate of rights to minerals in the prescribed form in respect of the rights so reserved.

- (b) The holder of the title deed shall upon the demand and at the expense of the applicant produce the title deed to the registrar.

(2)*bis*

- (a) Notwithstanding the provisions of paragraph (a) of sub-section (2), upon the written application to the registrar of any person who is the holder of or who is entitled to the rights to minerals reserved before the commencement of this Act in respect of any land on which a township or settlement has before or after the commencement of this Act been established, the registrar

may issue to such person a certificate of rights to minerals in the prescribed form in respect of such rights without the production of the title deed of each erf, lot or other piece of land in any such township or settlement which is subject to such reservation of rights to minerals.

*(Section 71(2)bis(a) substituted by section 26 of Act 87 of 1965)*

- (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, lot or other piece of land which is subject to the original reservation of rights to minerals shall be deemed to be subject to such certificate.

*(Section 71(2)bis inserted by section 29 of Act 43 of 1962)*

- (3) Any person who transfers land in the manner described in sub-section (1) or who is an applicant under sub-section (2) shall, if the registrar so requires, lodge with him a diagram showing the area in respect of which the rights to minerals are reserved.

- (4) A certificate of rights to minerals referred to in subsection (1) or (2) shall-

- (a) set forth the rights to minerals to which it relates and any rights ancillary to such rights;

- (b) be signed by the registrar and be registered against the title deeds of the land in respect of which such rights to minerals have been reserved, and when so signed and registered shall be the title to the said rights to minerals.

- (5) If the rights to minerals are subject to a registered mortgage bond, lease or other deed affecting such rights, the said certificate shall not be issued except upon production of the bond, lease or other deed, and the registrar shall, when issuing the certificate, endorse-

- (a) upon the bond, lease or other deed that a certificate of rights to minerals has been substituted for the title under which such rights were formerly held; and

- (b) upon the certificate of rights to minerals that these rights have been hypothecated, leased or otherwise dealt with in accordance with such bond, lease or other deed,

and shall make the necessary entries in the registers; and thereupon the said rights to minerals shall be deemed to be as fully and effectually hypothecated, leased or otherwise dealt with as if they were still held under the former title.

- (6) No rights to minerals reserved before the commencement of this Act and still held under the title deed of the land shall, until a certificate of rights to minerals has been issued in respect thereof, be hypothecated, leased or dealt with otherwise than by way of cession of all such rights.

## **72. Certificate of rights to minerals reserved by State**

- (1) The provisions of section *seventy-one* shall not apply in respect of a grant of land by the State made subject to a reservation of rights to minerals in favour of the State.

*(Section 72 renumbered to 72(1) and amended by section 33(a) of Act 43 of 1957)*

- (2) Whenever the Minister deems it necessary that rights to minerals be separated from the ownership of State land or land granted or transferred subject to a reservation of rights to minerals in favour of the State, he may apply in writing to the registrar for the issue in favour of the Government of a certificate of such rights to minerals as may be set forth in the application, and the registrar shall thereupon issue such a certificate in the form prescribed by regulation and endorse on the title deed of the land in question that such rights and the ownership of the land have been so separated.

*(Section 72(2) added by section 33(b) of Act 43 of 1957)*

*(Section 72(2) amended by section 30 of Act 43 of 1962)*

## **73. Exclusion of rights to minerals from partition of land.**

- (1) If in any partition of land held in joint ownership the agreement of partition excludes from partition any rights to minerals in the land, the partition transfers shall set forth that exclusion.
- (2) If rights to minerals are excluded from partition there shall be lodged with the registrar together with the deeds of partition, a certificate or certificates of rights to minerals in the prescribed form in respect of the rights so excluded and the said deeds of partition shall be made subject to such certificate or certificates and to any other deed under which a share in the rights to minerals is held.

*(Section 73(2) amended by section 31(a) of Act 43 of 1962)*

- (3) The provisions of sub-section (5) of section *seventy-one* shall apply *mutatis mutandis* in respect of certificates of rights to minerals issued in terms of sub-section (2).

*(Section 73(3) added by section 31(b) of Act 43 of 1962)*

## **73bis. Partition of rights to minerals.**

- (1) If two or more persons who own all the rights (including ancillary rights) to minerals in and upon any piece or pieces of land, have agreed to partition such rights, the registrar shall, on production to him of notarial deeds of partition cession in respect of the aforesaid rights, and on compliance with the further provisions of this section, register the deeds of partition cession conveying to the respective owners the rights to minerals or shares therein awarded to them on partition.

- (2) In the deeds of partition cession referred to in sub-section (1) there shall be described-

- (a) the rights to minerals to be partitioned;

Prepared by:

In partnership with:

- (b) the share or shares registered in the name of each joint owner;
  - (c) the rights to minerals or share therein awarded to each of the owners;
  - (d) the conditions (if any) affecting the rights or share therein so awarded; and
  - (e) the consideration (if any) given for the purpose of equalizing the partition.
- (3) There shall also be produced to the registrar the title deeds of the rights to minerals to be partitioned and the necessary diagrams.
- (4) Subject to the provisions of this section, the provisions of sections *twenty-one, twenty-two, twenty-three, twenty-seven, twenty-eight, forty-five* and *forty-five bis* shall *mutatis mutandis* apply in respect of deeds of partition cession.
- (5) Any deed of partition cession registered under sub-section (1) shall in respect of the rights to minerals therein described take the place of the deed or deeds by which they were previously held, but the partition cession shall not vary or affect the conditions affecting the rights to minerals generally, save in so far as such lastmentioned conditions may be varied, defined or limited by the notarial deeds of partition cession.
- (6) The provisions of this section shall apply to the partition of rights to minerals registered in different deeds registries.

*(Section 73bis inserted by section 32 of Act 43 of 1962)*

#### **74. Undivided share of rights to minerals.**

The provisions of sub-section (1) of section *thirty-four* shall *mutatis mutandis* apply in respect of persons who jointly hold a certificate or deed of cession of rights to minerals.

#### **74bis. Correction of error in registration of rights to minerals.**

- (1) If by reason of an error the same rights to minerals have been registered in the names of different persons, the registrar may, upon cession of the rights being given to one of them by the other or others, issue to the person to whom cession is so given a certificate of rights to minerals in the prescribed form in respect of the rights held by him under the various titles.
- (2) The provisions of section *thirty-seven* shall *mutatis mutandis* apply in respect of the issue of such certificate.

*(Section 74bis inserted by section 27 of Act 87 of 1965)*

Prepared by:

In partnership with:

### ***Praedial Servitudes.***

#### **75. Creation of praedial servitude by notarial deed.**

- (1) A praedial servitude in perpetuity or for a limited period may be created by means of a deed executed by the owners of the dominant and servient tenements and attested by a notary public.

*(Section 75(1) amended by section 34(a) of Act 43 of 1957)*

- (2) If the servient tenement is mortgaged or subject to any other real right with which the servitude may conflict the bond or other registered deed by which such right is held shall be produced together with the consent in writing of the legal holder thereof to the registration of the servitude.

- (2)*bis*. If it is sought to cancel a servitude, and the dominant tenement is mortgaged, the bond shall be produced together with the consent in writing of the legal holder thereof to the registration of the cancellation.

*(Section 75(2)*bis* added by section 34(b) of Act 43 of 1957)*

- (3) The provisions of sub-sections (2) and (3) of section *sixty-five* shall *mutatis mutandis* apply in respect of praedial servitudes.

#### **76. Conditions of registration of praedial servitudes.**

- (1) A praedial servitude in perpetuity or for a limited period may be created in a transfer of land only if the servitude is imposed on the land transferred in favour of other land registered in the name of the transferor, or is imposed in favour of the land transferred on other land registered in the name of the transferor: Provided that if-

*(Words preceding section 76(1)(a) amended by section 35(a) of Act 43 of 1957)*

- (a) the land to be transferred is admitted by the person seeking to pass transfer thereof to be subject to unregistered rights of servitude in favour of land registered in a third person's name; and
- (b) the person to whom the transfer is to be passed consents in writing to such servitude being embodied in the transfer; and

*(Section 76(1)(b) substituted by section 28(a) of Act 87 of 1965)*

- (c) such third person appears either in person or by duly authorized agent before the registrar at the time of execution of the transfer and accepts the servitude in favour of his land,

the servitude may be embodied in such transfer. The appearance of such third person as aforesaid and his acceptance of the servitude shall be recited in the deed of transfer and the title deed of the dominant tenement shall be produced for endorsement thereon of the terms of the servitude.

- (1) *bis* If a praedial servitude for a limited period has lapsed, the registrar shall on written application by or on behalf of any owner of the land affected thereby, and on production of the title deeds of the dominant and servient properties, and the title deed, if any, of the servitude (which title deeds the holder of the servitude and the owners of the dominant and servient tenements shall on demand produce), note on the title deeds of the land and the servitude that the servitude has lapsed.

*(Section 76(1)bis inserted by section 33(a) of Act 43 of 1962)*

- (2) If the servitude is imposed on other land in favour of the land to be transferred, and that other land is mortgaged or is subject to any other registered real right with which the servitude may conflict, the consent in writing of the legal holder of the bond or of such other right, to the registration of the servitude shall be produced, together with the bond or other deed evidencing such other right and the title deed of the servient tenement.

- (3) In registering the deed of transfer in which the servitude is embodied the registrar shall endorse the terms of the servitude and the number and date of the transfer on the title deed of the other tenement and if a bond or other deed is produced, as aforesaid, also thereon.

- (4) In the sub-division of land which is entitled to a servitude over other land, it shall be competent for the owner when transferring such sub-division to stipulate in his power of attorney that the exercise of the rights is restricted to the land still held by him, and in that event the transfer of the portion in question shall make no reference to the servitude, nor shall it be necessary to record on the title of the servient tenement that the rights are so restricted.

*(Section 76(4) added by section 35(b) of Act 43 of 1957)*

- (5) .....

*(Section 76(5) added by section 35(b) of Act 43 of 1957)*

*(Section 76(5) substituted by section 33(b) of Act 43 of 1962)*

*(Section 76(5) deleted by section 28(b) of Act 87 of 1965)*

### **Leases.**

#### **77. Registration of leases and sub-leases.**

- (1) Save where provision to the contrary is made in any law, any lease or sub-lease of land or of any rights to minerals in land and any cession of such a lease or sub-lease intended or required to be registered in a deeds registry, shall be executed by the lessor and the lessee or by the lessee and the sub-lessee or by the cedent and the cessionary, as the case may be, and shall be attested by a notary

public: Provided that any such lease shall be registered for the full term thereof, including periods of renewal.

*(Section 77(1) amended by section 34 of Act 43 of 1962)*

- (1)*bis* Whenever a cession of a lease is to be registered in respect of any portion of the land leased, a notarial copy of the lease shall be attached to such cession and after registration such cession with the notarially certified copy of the lease annexed thereto shall be deemed to be the title to the portion of the lease so ceded, and for any subsequent registration in respect thereof it shall be part of the title.

*(Section 77(1)*bis* inserted by section 29 of Act 87 of 1965)*

- (2) If the land or right leased or sub-leased is mortgaged or subject to rights of any other person it shall not be necessary for purposes of registration of the lease or sub-lease or any cession thereof to produce the bond or the other deed whereby such rights are held or the consent of the legal holder thereof.

#### **78. Termination of registered lease.**

- (1) When a registered lease or sub-lease has terminated the registrar shall on written application .by the owner of the land affected thereby, or the holder of the lease, as the case may be, accompanied by proof of the termination of the lease or sub-lease and, in the case of the termination of the lease, by the title deed of the land and if available the deed of lease, or in the case of the termination of the sub-lease, by the deed of lease and if available the deed of sub-lease, note in the case of the termination of the lease, on the title deed of the land and on the deed of lease, if produced, or in the case of the termination of the sub-lease, upon the deed of lease and upon the deed of sub-lease, if produced, that the lease or sub-lease as the case may be, has terminated.
- (2) If the full term, including periods of renewal, of a registered lease or sub-lease has expired no further transactions affecting that lease or sub-lease shall be registered.

#### **79. Where lease to be registered.**

Save where provision to the contrary is made in any law, any lease of immovable property which is registered in the name of the lessor in a deeds registry may be registered in that registry and any sub-lease of any lease so registered may be registered in that registry.

#### **80. Cessions of leases and sub-leases.**

No cession of a lease or sub-lease shall be registered in any deeds registry unless the lease or sub-lease has been registered therein.

#### **81. Hypothecation of leases and sub-leases.**

Prepared by:

In partnership with:

No hypothecation of a lease or sub-lease shall be registered in any deeds registry unless such hypothecation is effected by means of-

- (a) a mortgage bond, if the lease or sub-lease is immovable property; or
- (b) a notarial bond, if the lease or sub-lease is not immovable property.

**82. Notarial bonds hypothecating leases or sub-leases.**

- (1) For the registration of a notarial bond specially hypothecating it registered lease or sub-lease the deed of lease or sub-lease shall be produced to the registrar.

*(Section 82(1) amended by section 35 of Act 43 of 1962)*

- (2) In registering such bond the registrar shall endorse on the deed that the lease or sub-lease has been hypothecated by the bond.
- (3) The provisions of sub-section (1) of section *fifty-six* shall *mutatis mutandis* apply in respect of any lease or sub-lease so hypothecated.

**83. Hypothecation of and settlement lease after exercise of option of purpose**

If any lease entered into under any law relating to land settlement the lessee is given the option to purchase the property leased or any portion thereof, and he has exercised the option, the rights to the property so acquired by the lessee may, if the lease is registered in a deeds registry and is not subject to an existing bond, be hypothecated by a notarial bond.

- (2) The provisions of section *eighty-two* shall *mutatis mutandis* apply in respect of the registration of such a bond.
- (3) If such lease is subject to an existing bond at the date of the exercise of the option the rights acquired by the exercise of such option shall be subject to such bond.

***Prospecting Contracts.***

**84. Registration of prospecting contracts**

- (1) If the prospecting rights granted under a prospecting contract are granted for a defined period with a right of renewal for any further period, registration of the contract shall be effective for that defined period only: Provided that if the holder of prospecting rights so granted under a registered prospecting contract lodges such contract at the deeds registry before the expiration of the said defined period



together with an affidavit in terms of sub-section (2), or within one month after the expiration of the defined period together with the grantor's written consent to such endorsement, the registrar shall endorse upon the register of prospecting contracts and upon the contract and the registry duplicate thereof a statement that the said holder claims to have exercised his right of renewal for the period mentioned in the said affidavit, and the endorsement so made shall, as from the date thereof, be effective notice of the claim to all interested persons, other than the grantor of the prospecting rights, whose written consent to such endorsement has not been produced.

- (2) The affidavit referred to in sub-section (1) shall be made by the holder of the prospecting rights under a registered prospecting contract or by his duly authorized agent, and shall state that the holder has fulfilled all such conditions of the contract as entitled him to a renewal of the contract and that he has duly exercised his right to renew the same.
- (3) If at the time when a prospecting contract is tendered for registration the defined period for which the prospecting rights were granted thereunder has already expired but a further period for which there is a right of renewal has not yet expired, the registrar shall upon the application of the person who was the holder of the prospecting rights under such contract and with the consent in writing of the grantor of those rights, register the contract, and the registration shall then be effective in respect of the period for which it is claimed that the contract has been renewed.
- (4) If a document purporting to be a prospecting contract contains any ambiguity and such document is in the opinion of the registrar liable to be interpreted as constituting a grant or lease of a right to minerals, the registrar may register that document as a prospecting contract if a supplementary document executed by all the parties to the first mentioned document or by their assigns, or affidavits by such parties, explaining the purport and effect of the prospecting contract are lodged at the deeds registry, and such document or every such affidavit shall thereafter be deemed to form part of the prospecting contract to which it relates.
- (5) Where, in the circumstances provided for in this section, a prospecting contract has been duly registered in any deeds registry, no further prospecting contract or contracts shall be registered against the title deed or title deeds of the same property or properties in respect of the same mineral or minerals until such time as the duly registered prospecting contract has lapsed by effluxion of time or has been cancelled in terms of section *eighty-five* or *ninety*.

*(Section 84(5) added by section 36 of Act 43 of 1957)*

- (6) For the purposes of this section the grantor of prospecting rights means the person who from the records in the deeds registry appears to be the holder of the rights to minerals in the land in question.

*(Section 84(5) renumbered to 84(6) by section 36 of Act 43 of 1957)*

## **85. Cancellation of registration on expiry of prospecting contract or failure to renew**

Prepared by:

In partnership with:

- (1) Upon the written request of the grantor of prospecting rights under a prospecting contract -
  - (a) the registration of which has under section *eighty-four* ceased to be of effect; or
  - (b) to the renewal of which no claim has been lodged at the deeds registry, or which, if such a claim has been lodged, has lapsed by effluxion of time,

the registrar shall cancel the entries in the registers relating to the contract and the endorsement of the contract upon the grantor's title deed of the land or the rights to minerals affected by that contract.

- (2) For the purposes of this section the grantor of prospecting rights means the person who from the records in the deeds registry appears to be the holder of the rights to minerals in the land in question.

## CHAPTER VII ANTENUPTIAL CONTRACTS

### 86. Antenuptial contracts to be registered

An antenuptial contract executed before and not registered at the commencement of this Act or executed after the commencement of this Act, shall be registered in the manner and within the time mentioned in section *eighty-seven*, and unless so registered shall be of no force or effect as against any person who is not a party thereto.

### 87. Manner and time of registration of antenuptial contracts

- (1) An antenuptial contract executed in the Republic shall be attested by a notary and shall be registered in a deeds registry within three months after the date of its execution or within such extended period as the court may on application allow.
- (2) An antenuptial contract executed outside the Republic shall be attested by a notary or otherwise be entered into in accordance with the law of the place of its execution, and shall be registered in a deeds registry within six months after the date of its execution or within such extended period as the court may on application allow.
- (3) Registration of an antenuptial contract in any one deeds registry in the manner prescribed in this section shall be effective as registration for the whole Republic: Provided that if any transaction in connection with which evidence of such contract is necessary takes place in a deeds registry other than that in which such contract has been registered, a copy of such contract certified by the registrar of the place of registration or a notary public shall be recorded and filed in such first-mentioned deeds registry.

- (4) For the purposes of this section 'Republic' shall include the Territory of South-West Africa.

*(Section 87 amended by section 3 of Act 15 of 1953)*

*(Section 87 amended by section 37 of Act 43 of 1957)*

*(Section 87 substituted by section 30 of Act 87 of 1965)*

#### **88. Postnuptial execution of antenuptial agreement**

Notwithstanding the provisions of sections *eighty-six* and *eighty-seven* the court may, subject to such conditions as it may deem desirable, authorize postnuptial execution of a notarial contract having the effect of an antenuptial contract, if the terms thereof were agreed upon between the intended spouses before the marriage, and may order the registration, within a specified period, of any contract so executed.

#### **89. ....**

*(Section 89 repealed by section 15 of Act 50 of 1956)*

### **CHAPTER VIII. MISCELLANEOUS.**

#### **90. Cancellation of registration on lapse of certain registered rights**

- (1) If it is expressly provided in-

- (a) a registered lease of land or rights to minerals; or
- (b) a registered deed creating or evidencing a servitude; or
- (c) a registered prospecting contract,

that it shall lapse upon failure to make regularly any periodical payments mentioned therein, the registrar shall upon written application accompanied by an affidavit by the lessor or grantor of the registered right (as the case may be) that the said periodical payments have not been duly made, cancel the registration of the lease, servitude or contract: Provided that-

- (i) if the address of the lessee or grantee is stated in the registered document, or the address or any change thereof has been notified to the registrar, notice shall be given to such lessee or grantee by the applicant by prepaid registered letter that cancellation of the registration of the document is sought on the ground of failure to make the periodical payments mentioned therein, and that unless written objection to the cancellation specifying the grounds of objection is lodged with the registrar within one month, if the address is in the Union, or within three months or such further period as the registrar may in special circumstances determine, if the address is

Prepared by:

In partnership with:

outside the Union, application will be made to the registrar for cancellation of the registration of the said document;

- (ii) if the address of the lessee or grantee is not stated in the document or has not been notified **10** the registrar as aforesaid, the applicant shall publish the notice aforesaid once in the *Gazette* and twice in a newspaper published in the division or district in which the land in question is situated (or if there be no such newspaper then in any newspaper circulating in such division or district) and in a newspaper (to be indicated by the registrar) circulating in the division or district of the lessee's or grantee's last-known address, which shall be disclosed by the applicant in an affidavit;
- (iii) if any objection is lodged which, in the registrar's opinion, discloses reasonable ground for refusing cancellation of the registration, he shall not cancel it until the objection is withdrawn or falls away or cancellation is ordered by the court;
- (iv) if any of the rights to be cancelled are mortgaged, notice in writing shall be given by the applicant by prepaid registered letter to the mortgagee of the intention to cancel such rights, before the cancellation is effected.

(2) For the purposes of this section the lessor or grantor means-

- (a) in the case of a registered lease of land or a registered deed of servitude, the person who from the records in the deeds registry appears to be the owner of the land concerned; and
- (b) in the case of a registered lease of rights to minerals or a registered prospecting contract, the person who from the records in the deeds registry appears to be the holder of the rights to minerals referred to in such lease or prospecting contract.

## **91. Transfer and cession not to be passed as security**

No transfer of land and no cession of any registered lease or sub-lease or other real right in land except a mortgage made as security for a debt or other obligation shall be attested by any registrar or registered in any deeds registry.

*(Section 91 amended by section 5 of Act 80 of 1964 with effect from 1 September 1937)*

## **92. Taxes and transfer duty to be paid before transfer of land**

- (1) No deed of grant or transfer of land shall be registered unless accompanied by a receipt or certificate of a competent public revenue officer that the taxes, duties, fees and quitrent (if any) payable to the Government or any provincial administration on the property to be granted or transferred have been paid on the settlement or donation has been paid.

Prepared by:

In partnership with:

**93. Registration of change of name.**

(1) If any person or partnership, whose name appears in any registered deed or other document has changed his or its name, the registrar shall, upon written application by that person or partnership, and on production of the consent in writing of every other person interested in such deed or other document or in the rights created, conveyed or evidenced thereby, if he is satisfied that no change of person in law is implied in such change of name, endorse on the said deed or other document that the name of the person or partnership has been changed to the name stated in the application: Provided that-

(a) if the old name appears in another deed or other document registered in the same registry, that deed or other document shall be likewise endorsed, and in either case corresponding entries shall be made in the registers;

(b) the registrar shall, except in the case of a person or partnership whose name has been changed in accordance with the provisions of any law, refuse to make the endorsements until the applicant has published a notice in a form approved of by the registrar of the application once in the *Gazette* and three times in a newspaper approved by him;

*(Section 93(1)(b) amended by section 36 of Act 43 of 1962)*

(c) if any objection, which is in the opinion of the registrar *bona fide* and sufficiently material, is not later than one week after the last publication in the *Gazette* or newspaper, whichever may be the later publication, lodged with the registrar to the endorsement being made, the registrar may refuse to make the endorsement except upon the authority of an order of court, and the court shall have jurisdiction to make such order in the matter as it may deem just.

(2) No change in the name of any immovable property shall be recorded in a deeds registry except if required by the registrar and the Surveyor-General in order to record a new designation as a result of the introduction of a system of land numbering where no such system previously existed.

*(Section 93(2) amended by section 38 of Act 43 of 1957)*

**94. Women witnesses of deeds.**

Any female person who would, if she were a male person, be competent to witness any document intended for registration or filing or production in a deeds registry, shall be competent to witness any such document, and any such document which was witnessed before the commencement of this Act by a female person, shall be as valid as if she had been a male person.

**95. Attestation of powers of attorney executed in the Union.**

Prepared by:

In partnership with:

(1) Any power of attorney executed within the Union shall, if it purports to give authority to pass, cede, amend or cancel a deed capable of being registered or to perform any act proper to be performed in a deeds registry, be attested either by two witnesses above the age of fourteen years, competent to give evidence in any court of law in the Union, or by a magistrate, justice of the peace, commissioner of oaths or notary public, duly described as such: Provided that no person shall be competent to attest any power of attorney under which he is appointed as an agent or derives any benefit.

(2) .....

*(Section 95(2) repealed by section 67 of Act 16 of 1967)*

**96. Execution of deeds by prospective owners.**

If any deed or document required to be executed by the owner of immovable property has been executed by a person who has acquired the right to receive transfer or cession of such property, such deed or document shall, upon the person aforesaid receiving transfer or cession of such property, for the purposes of this Act be deemed to have been executed by the owner of such property.

**97. Notice to registrar of application to court.**

(1) Before any application is made to the court for authority or an order involving the performance of any act in a deeds registry, the applicant shall give the registrar concerned at least seven days' notice before the hearing of such application and such registrar may submit to the court such report thereon as he may deem desirable to make.

*(Section 97 renumbered to 97(1) by section 39 of Act 43 of 1957)*

(2) Subject to notice in terms of sub-section (1) being given to the registrar concerned, any order made by a court having jurisdiction over a person in respect of that person's property or rights to property situate in another province shall be given effect to by the registrar of such other province without the necessity of having such order confirmed by the court of the province in which the property is situate.

*(Section 97(2) added by section 39 of Act 43 of 1957)*

**98. Substituted copy of lost deed supersedes original which must be surrendered on recovery**

(1) If a copy of a registered deed or other document has been issued, in manner prescribed by regulation, in substitution of a deed or other document which has been lost or is believed to have been destroyed, the original deed or other document, if still in existence, shall thereupon become void.

(2) If a deed or other document which has become void as aforesaid, comes into the possession or custody of any person who knows that a copy has been issued in substitution thereof, he shall forthwith deliver or transmit such deed or other document to the registrar concerned.

**99. Exemption from liability for acts or omissions in deeds registry.**

No act or omission of any registrar or of any officer or employed in a deeds registry shall render the Government or such registrar or officer liable for damage sustained by any person in consequence of such act or omission: Provided that, if such act or omission is *mala fide* or if such registrar or officer has not exercised reasonable care and diligence in carrying out his duties in connection with such act or omission, the Government shall be liable for the damage aforesaid: Provided further that the registrar or officer guilty of such act or omission shall be liable to make good any loss or damage resulting therefrom to the Government if such act or omission was *mala fide*.

**100. Formal defects**

No act in connection with any registration in a deeds registry shall be invalidated by any formal defect, whether such defect occurs in any deed passed or registered, or in any document upon the authority of which any such deed has been passed or registered or which is required to be produced in connection with the passing or registration of such deed, unless a substantial injustice has by such act been done which in the opinion of the court cannot be remedied by any order of the court.

**101. Special provisions relating to Vryburg deeds registry**

- (1) The practice prevailing prior to the commencement of the Deed Registries Act, 1918, in the deeds registry at Vryburg of transferring or mortgaging land held under a certificate of ownership issued by the administrator of the territory known as British Bechuanaland prior to its annexation to the Colony of the Cape of Good Hope, and which was declared by that Act to be legal and of effect, shall continue to be legal and of effect. Provided that—
  - (a) the provisions of this Act shall apply in respect of any transfer, partition transfer, certificate of title, mortgage or other deed sought to be registered in respect of any land so held;
  - (b) no transfer of or other form of title to or mortgage of any defined portion of a piece of land so held shall be registered unless the surveyor-general concerned has certified that the boundaries of such piece of land are correctly represented on the diagram thereof;
  - (c) if the surveyor-general is unable to certify as aforesaid the provisions of sections *forty*, *forty-one* and *forty-four* shall *mutatis mutandis* apply, notwithstanding anything to the contrary in any other law contained.
- (2) The provisional registration in the deeds registry at Vryburg of any cession or assignment of rights to unascertained or unsurveyed land, prescribed by Government Notice (British Bechuanaland) of the thirteenth day of November, 1886, shall continue to be of force in respect of land to which a right of

ownership was acquired prior to the annexation of British Bechuanaland to the Colony of the Cape of Good Hope, until such time as a grant of such land has been registered.

## 102. Definitions

In this Act unless inconsistent with the context-

**“conveyancer”** means, in respect of any deeds registry, a person practising as such in the province within which that deeds registry is situate and includes every person who at the commencement of the Deeds Registries Act, 1918, was authorized by law to prepare deeds of transfer and mortgage bonds within such area;

**“court”** or **“the court”** means the provincial or local division of the Supreme Court having jurisdiction or any judge thereof;

**“deeds registry”** means-

- (a) when used in relation to immovable property, the deeds registry which serves the area in which that property is situate;
- (b) when used in relation to any deed or other document, any deeds registry in the Union wherein that deed or other document is registered or registrable;
- (c) when used in relation to a registrar, the deeds registry of which he is in charge, but does not include the mining titles office referred to in section *three* of the Registration of Deeds and Titles Act, 1909 (Act No. 25 of 1909) of the Transvaal;

**“diagram”** means a diagram which has been signed by a person recognized by law as a land surveyor, and which has been approved or certified by a surveyor-general or other officer empowered under any law so to approve or certify a diagram and includes a diagram or a copy thereof prepared in a surveyor-general's office and approved or certified as aforesaid, or a diagram which has at any time prior to the commencement of this Act been accepted for registration in a deeds registry or surveyor-general's office;

**“erf”** means every piece of land registered as an erf, lot, plot or stand in a deeds registry, and includes every defined portion, not intended to be a public place, of a piece of land laid out as a township, whether or not it has been formally recognized, approved or proclaimed as such;

**“general plan”** means a plan which represents the relative positions and dimensions of two or more pieces of land and has been signed by a person recognized by law as a land surveyor, and which has been approved or certified as a general plan by a surveyor-general or other officer empowered under



any law so to approve or certify a general plan, and includes a general plan or copy thereof prepared in a surveyor-general's office and approved or certified as aforesaid, or a general plan which has at any time, prior to the commencement of this Act, been accepted for registration in a deeds registry or surveyor-general's office;

**“immovable property”** includes--

- (a) any registered lease of rights to minerals; and
- (b) any registered lease of land which, when entered into, was for a period of not less than ten years or for the natural life of the lessee or any other person mentioned in the lease, or which is renewable from time to time at the will of the lessee indefinitely or for periods which together with the first period amount in all to not less than ten years;

**“land”** includes an undivided share in land;

**“Master”** means the Master or Assistant Master of any provincial or local division of the Supreme Court and when used in relation to any particular matter means the Master or Assistant Master who has jurisdiction in respect thereof;

**“Minister”** means the Minister of Lands or any other Minister of State to whom the Governor-General may from time to time assign the administration of this Act, or any Minister of State acting in the stead of any such Minister;

**“mortgage bond”** means a bond attested by the registrar specially hypothecating immovable property;

**“notarial bond”** means a bond attested by a notary public hypothecating movable property generally or specially;

**“notarial deed”** means a deed attested by a notary public, and does not include a document a signature to which is merely authenticated by a notary public, or a copy of a document which has been certified as correct by a notary public;

**“notary public”** means, in relation to any deed or other document creating or conveying real rights in land, a person practising as such in the province within which the land is registered; in relation to any other document executed within the Union, a person practising as such in any province; and in relation to any document executed outside the Union, a person practising as such in the place when) the document is executed;

**“owner”** in relation to immovable property means the person registered as the owner or holder thereof and includes the trustee in an insolvent estate, a liquidator or trustee elected or appointed under the Farmers' Assistance Act, 1935, the liquidator of a company which is an owner and the representative recognized by law of any owner who has died or who is a minor or of unsound mind or is otherwise under disability: Provided that such trustee, liquidator or legal representative is acting within the authority conferred on him by law;

**“prescribed”** means prescribed by this Act or any regulation;

**“prospecting contract”** means a notarial deed whereby the owner of land from which the right to minerals has not been excluded, or the registered holder of the right to minerals in land, grants the right to prospect and seek for any mineral or minerals in the land, together with-

- (a) the right to purchase the land or any portion thereof or to purchase the right to any such mineral or minerals; or
- (b) the right to lease any right to any such mineral or minerals;

**“real right”** includes any right which becomes a real right upon registration;

**“registered”** means registered in a deeds registry;

**“registrar”** means a registrar of deeds appointed under this Act, and, when used in relation to any deeds registry means the registrar in charge of that deeds registry; and when used in relation to a document means the registrar in charge of the deeds registry wherein that document is registered or registrable or intended to be used or filed;

**“registry duplicate”** means the counterpart or copy of a deed consisting of more than one copy which is filed or intended to be filed of record in a deeds registry;

**“regulation”** means a regulation made under section *ten*;

**“share”** in relation to land means undivided share;

**“settlement”** means a group of pieces of land or of sub-divisions of a piece of land which are used or intended for use mainly for farming or horticulture, and includes a combination of such groups which is suitable for registration in one register;

**“this Act”** includes the regulations made under section *ten*;

**“township”** includes-

- (a) a group of pieces of land, or of sub-divisions of a piece of land, which are combined with public places and are used mainly for residential, industrial or similar purposes, or are intended to be so used;
- (b) any combination of such groups which is suitable for registration in one register;
- (c) any area of land registered or recognized at the commencement of this Act in a deeds registry as a township if a general plan thereof is filed in that deeds registry or in the office of the surveyor-general concerned; and
- (d) any township established, approved, proclaimed or otherwise recognised as such under any law.

### 103. Repeal of laws.

- (1) The laws specified in the First Schedule to this Act are hereby repealed to the extent set out in the fourth column of that Schedule.
- (2) The Governor-General may, by proclamation in the *Gazette*, repeal any provision-
  - (a) of Proclamation No. 35 of 1902, Ordinance No. 6 of 1902 or Ordinance No. 6 of 1903 of the Transvaal or of any regulation made thereunder, which is, by virtue of section *one* of Act No. 29 of 1908 of the Transvaal, still in force; or
  - (b) of Law No. 15 of 1898 of the Transvaal which is, by virtue of sub-section (1) of section *three* of Act No. 34 of 1908 of the Transvaal, still in force.

### 104. Short title and commencement of Act.

This Act shall be called the Deeds Registries Act, 1937, and shall come into operation on a date to be fixed by the Governor-General by proclamation in the *Gazette*.

#### First Schedule. LAWS REPEALED.

Province.	No. and year of law	Title or subject of law	Extent of repeal.
Cape of Good Hope.	Placaat dated the 22 <sup>nd</sup> day of April, 1793	Regulations for the prevention of confusion in the Debt Registry.	The whole

Prepared by:

In partnership with:

“	Placaat dated the 15 <sup>th</sup> day of May, 1805	Reform of the Debt Registry	So much as is unrepealed
“	Ordinance No. 27 of 1846.	Ordinance for amending the law relative to conventional hypothecations.	So much as is unrepealed
“	Act No. 25 of 1894	Glen Grey Act, 1894	Section <i>seventeen</i> so far as it requires registration of transfer by the registrar of deeds at Cape Town only.
Natal	Law No. 22 of 1863.	To prevent community of goods attaching to certain marriages and to enable the spouses of such marriages to devise their properties.	Sections <i>two</i> and <i>seven</i> so far as they prescribe the payment of a fee of £ 1 for the registration of a contract, and section <i>seven</i> so far as it permits the registration of non-notarial postnuptial and antenuptial contracts.
“	Law No. 14 of 1882.	To amend Law 22 of 1863.	Sections <i>one</i> and <i>two</i> so far as they permit the registration of non-notarial antenuptial contracts
“	Law No. 19 of 1884.	To amend the law and practice of registration.	Sections <i>three</i> , <i>four</i> and <i>eight</i> .
Transvaal	Act No. 25 of 1909.	Registration of Deeds and Titles Act, 1909.	Section <i>fifty-five</i> so far as it relates to the deeds registries in the Transvaal.
Union	Act No. 13 of 1918	Deeds Registries Act, 1918.	The whole.
“	Act No. 15 of 1922.	Deeds Registries Act, 1918, Amendment Act, 1922.	The whole.

### Second Schedule.

The areas served by the several deeds registries shall be :-

- (a) by the Deeds registry at Cape Town, the Province of the Cape of Good Hope, exclusive of the area served by the deeds registries at Kingwilliamstown, Kimberley and Vryburg;
- (b) by the deeds registry at Kingwilliamstown, the territory known as British Kaffraria, defined by Proclamation No. 61 of 1860, as amended by Government Notice No. 26 of 1863, dated 26th September, 1863, but excluding the area within the boundaries of the municipality of Cathcart as defined in Proclamation No. 74 of 1883, dated 16th May. 1883, comprising the divisions of Kingwilliamstown, East London, Komgha, Stutterheim and portions of the divisions of Cathcart and Victoria East;

*(Schedule 2(b) amended by section 40 of Act 43 of 1957)*

Prepared by:

In partnership with:

- (c) by the deeds registry at Kimberley, the divisions of Kimberley, Barkly West, Hay and Herbert, together with that portion of the division of Prieska which is situate to the North of the Orange River;
- (d) by the deeds registry at Vryburg, the divisions of Vryburg, Mafeking, Gordonia, excluding Portions 22 and 205 of the farm Paarden Eiland and Drif Eiland, Kuruman and Taungs;  
*(Schedule 2(d) amended by section 37 of Act 43 of 1962)*
- (e) by the deeds registry at Pietermaritzburg, the Province of Natal;
- (f) by the deeds registry at Pretoria, the Province of the Transvaal;
- (g) by the deeds registry at Bloemfontein, the Province of the Orange Free State.
- (h) by the Rand townships registration office, the mining district of Johannesburg, as defined by Proclamation No. 14 of 1923, dated the 20<sup>th</sup> day of January, 1923.

Prepared by:

In partnership with: