



Republic of Namibia
Annotated Statutes

REGULATIONS

REGULATIONS MADE IN TERMS OF

Communal Land Reform Act 5 of 2002
section 45

Regulations relating to Occupational Land Rights

Government Notice 278 of 2016

(GG 6177)

came into force on date of publication: 24 November 2016

ARRANGEMENT OF REGULATIONS

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Definitions

1. In these regulations, a word or an expression to which a meaning has been assigned in the Act has that meaning, and unless the context otherwise indicates -

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“Ministry” means the ministry administering land affairs; and

“the Act” means the Communal Land Reform Act, 2002 (Act No. 5 of 2002).

Application for occupational land rights

2. (1) An application for an occupational land right is made in the form of Form E as set out in Annexure 1 to the communal land board and must be made in triplicate.

(2) All the information required in Form E must be furnished fully in that form or be attached to the form.

(3) Before the granting of an occupational land right, the board must display for a period of at least seven days on a notice board at its offices, a notice -

- (a) stating the -
 - (i) name of the applicant;
 - (ii) approximate size of the land applied for;
 - (iii) geographic location of the land applied for; and
 - (iv) land use for the occupational land right applied for; and
- (b) inviting interested parties to lodge with the communal land board within a period of seven days any objections regarding the application.

(4) A board may cause the information contained in the notice referred to in subregulation (3) to be published in a newspaper circulating in its region or to be broadcasted on a radio station broadcasting in its region.

Determination of amount payable in respect of occupational land right and improvements

3. (1) An amount payable in respect of an occupational land right and improvements, if any, on a portion of land as contemplated in section 36C of the Act, is determined by the board with regard to the -

- (a) particular use or purpose for which the right is required;
- (b) value of the improvement, if any, on the portion of land;
- (c) size of the portion of land in respect of which the right has been granted; and
- (d) period for which the right of occupational land right has been granted.

(2) A board may in the determination of the amount referred to in subregulation (1) use the services of valuers.

- (3) For purposes of this regulation “valuator” means -

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- (a) an estate agent registered as that under the Estate Agents Act, 1976 (Act No. 112 of 1976);
- (b) a quantity surveyor or architect, registered as that under the Architects' and Quantity Surveyors' Act, 1979 (Act No. 13 of 1979); or
- (c) a person appointed by the Minister in writing for that purpose.

Conditions applicable to occupational land rights

4. (1) The following conditions apply to an occupational land right -
- (a) the holder of an occupational land right or a person in his or her employment may not use the land for a purpose -
 - (i) other than that for which its occupation is authorised without the prior written approval of the board;
 - (ii) in contravention of the Liquor Act, 1998 (Act No. 6 of 1998) or any regulations made in terms of that Act; or
 - (iii) in contravention of a law relating to the cultivation, possession, disposal of or dealing in dependence-producing drugs;
 - (b) the Minister or a person duly authorised by him or her in writing may at a reasonable time enter in and inspect the land and any buildings for the purpose of ensuring compliance by the holder with a regulation or condition, or to determine or re-determine the boundaries of the land;
 - (c) the holder of an occupational land right must preserve and maintain beacons by which the land is demarcated and is liable for the cost of repairing or rebuilding a similar beacon which has become dilapidated or damaged, and for replacing a similar beacon which has been demolished, lost or misplaced, in such position as the board directs;
 - (d) roads or thoroughfares which exists on or over the land may not be closed or otherwise obstructed to prevent free passage of persons, animals or traffic, unless that closure or obstruction is authorised by a competent authority;
 - (e) the board may cancel an occupational land right if -
 - (i) the right was granted in error;
 - (ii) an occupational land right was obtained by fraud or misrepresentation;
 - (iii) the institution or an authentic representative withdraws in writing or shows the intention to have the right cancelled;
 - (iv) that institution ceases to exist;
 - (v) the holder of that right -

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- (aa) fails to comply with any of the conditions subject to which that right was granted; or
- (bb) fails to pay two consecutive instalments referred to in section 36C(1)(c) of the Act in respect of the land;
- (cc) defaults in paying an amount in respect of the periodical rental payable as determined by valuers, within 30 days after having been given a written demand for the payment by the board;

[The word “or” should appear at the end of subparagraph (bb) instead of subparagraph (aa).]

- (vi) the board is satisfied that the land is no longer used for the purpose for which it has been granted; or
- (vii) the holder of an occupational land right has been convicted of an offence of treason or sedition;
- (f) the Minister may cancel an occupational land right granted in respect of land for agricultural purposes in accordance with section 27 of the Act; and
- (g) any business for the purpose of which an occupational land right is granted must be personally conducted by the holder of an occupational land right, or in the case of company or a close corporation, by a director or a member, unless the board or Minister has in writing approved that any other person may so conduct the business.

(2) If a board has determined that the portion of land in respect of which an occupational land right has been granted, must be surveyed, that board may determine the manner in which the survey must be conducted that must be done in the particular case.

Registration and certificate of occupational land right

5. (1) The board must keep a register, referred to in section 36D(1)(a) of the Act, in respect of allocated occupational land rights which are ratified by the board and enter the following particulars in respect of each occupational land right into the register the -

[There should be a comma or some other punctuation preceding the word “the” at the end of the introductory phrase.]

- (a) particulars of the institution or representative to whom the right is granted;
- (b) land use for the occupational land right granted;
- (c) geographical location of the portion of land in respect of which the occupational land right has been granted;
- (d) size in square metres or hectares of the portion of land in respect of which an occupational land right is granted;
- (e) period for which an occupational land right has been granted;

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- (f) name of communal area and the region in which the land is situated; and
- (g) particulars of every mortgage bond, servitude or similar right registered over land in terms of the Deeds Registries Act, 2015 (Act No. 14 of 2015), or any other law;

(2) A certificate of registration of an occupational land right must be in the form and manner as determined by the Minister and the original certificate must be issued to the holder at the time of the registration of occupational land right.

Application for recognition of right referred to in section 36F of Act and for granting of occupational land right under Act

6. (1) Every application in terms of section 36F of the Act for the recognition of an occupation land right, where applicable, for authorisation, must be made in form of Form E as set out in Annexure 1 and submitted in triplicate.

(2) All information in Form E must be furnished fully in that form or be attached to the form.

(3) The consent of the Traditional Authority referred to in section 36A(6) of the Act should contain information relating to -

- (a) whether or not the application is supported by the Traditional Authority; and
- (b) any other information which the Traditional Authority wish to bring to the attention of the board.

(4) Before the recognition and granting of occupational land right referred to in subregulation (1), the board must display for a period of at least seven days on a notice board at its offices a notice -

- (a) stating the -
 - (i) name of the applicant;
 - (ii) approximate size of the land in respect of which the recognition of the right is applied for;
 - (iii) geographical location of the land in respect of which the recognition of the right is applied for; and
 - (iv) land use to be recognised over the right granted, and
- (b) inviting interested parties to lodge with the board within a period of seven days any objections regarding the application.

(5) The board may cause the information contained in the notice referred to in subregulation (3) to be published in a newspaper circulating in its region or to be broadcasted on a radio station broadcasting in its region.

(6) If an application referred to in subregulation (1) has been granted, the board must issue the applicant a certificate and enter the particulars in the register.

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Hearing regarding application for occupational land right referred to in section 36F of Act

7. (1) If the board in terms of section 36F(10) of the Act determines that a hearing referred to in that section must be held, the secretary of the board must in writing inform the applicant -

- (a) the reason for the holding of the hearing;
- (b) of the date, time and place of the hearing;
- (c) to bring at the hearing any documentary evidence or to lead verbal evidence in support of his or her claim; and
- (d) to ensure that any witness he or she intends to call in support of his or her claim is present at the hearing.

(2) At the hearing the chairperson of the board -

- (a) must give particulars of any conflicting claims in relation to the land or the reason why the claim of the applicant is doubted; and
- (b) may produce any documentary evidence or call witnesses to testify on any matter relevant to the subject matter of the hearing.

(3) The applicant may -

- (a) interrogate any person who has given verbal evidence or who has submitted documentary evidence as referred to subregulation (2)(b); and
- (b) give and lead evidence, including documentary evidence, in support of his or her claim or in rebuttal of any document or evidence referred to in paragraph (a).

(4) The Chairperson of the board must administer an oath or affirmation to a witness appearing before the board.

(5) The chairperson and other members of the board may put questions to a person giving evidence.

(6) After all evidence has been given, the applicant must be afforded the opportunity to address the board on the evidence and whether or not the application must be granted.

(7) On conclusion of the hearing, the board must make a decision in accordance with section 36F(10)(a) and (b) of the Act, which must be -

- (a) reduced to writing;
- (b) signed by the chairperson of the board; and
- (c) made known at the hearing.

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(8) The board may at any time adjourn any hearing to be resumed at the date, time and place as the board may determine or as the secretary of the board may by registered post communicate to all parties.

Deed of occupational land right

8. If -

- (a) an occupational land right has been granted to an applicant for a period exceeding 10 years and above 100 hectares, that applicant must in respect of that right, enter into a deed of occupational land right with the board or Minister;
- (b) The Minister and the board may determine the manner and form of deed of occupational land right to be entered into with the applicant.

[Regulation 8 is reproduced as it appears in the *Government Gazette*, but there is some error as paragraph (b) does not fit with the introductory phrase at the beginning of regulation 8.]

Applications by foreign nationals for authorisation to apply for customary or leasehold land rights

9. (1) An application by a foreign national for authorisation to apply for a customary land right or leasehold land right must be made in the form of Form F to the Minister as set out in Annexure 2 and must be made in triplicate.

(2) All information required in Form F must be furnished fully or be attached thereto.

(3) Upon receiving the authorisation of the Minister, the applicant may submit an application in terms section 22 or section 33 of the Act.

Prescribed fees

10. (1) Fees payable for applications, certificates and appeals are as prescribed in terms of section 45 of the Act and regulation 37 of the regulations made in terms of the Communal Land Reform Act, 2002 (Act No. 5 of 2002) published under Government Notice No. 37 of 01 March 2003.

[The subregulation number (1) must be in error as there are no additional subregulations in regulation 10. The regulations cross-referenced are contained in GN 37/2003 (GG 2926), as amended.]

Appeal procedures

11. (1) Any one aggrieved by the decision of the communal land board on the granting of an occupational land right may appeal as prescribed in terms of regulation 25 of the Regulations made in terms of the Communal Land Reform Act, 2002 (Act No. 5 of 2002) published under Government Notice No. 37 of 1 March 2003.

[The subregulation number (1) must be in error as there are no additional subregulations in regulation 11. The regulations cross-referenced are contained in GN 37/2003 (GG 2926), as amended.]

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ANNEXURES

To view content without printing, scroll down.

To print at full scale (A4), double-click the icon below.



GN 278/2017
Annexure 1 - Form E



GN 278/2017
Annexure 2 - Form F

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ANNEXURE 1

FORM E



**Republic of Namibia
Ministry of Land Reform**

| |
|---|
| FOR OFFICIAL USE |
| <i>UPI Number:</i> |
| <i>Legal Entity Number</i> |
| <i>Boundaries marked on tiles</i> |
| |
| <i>and/or GPS forms/book</i> |
| |
| <i>Certificate Number:</i> |

APPLICATION FORM FOR LAND RIGHTS IN COMMUNAL AREAS REFERRED TO IN SECTIONS 36A to 36G , READ WITH SECTION 35, 45 AND REGULATION 7 OF THE COMMUNAL LAND REFORM ACT, 2002 (ACT NO. 5 of 2002)

APPLICATION FOR GRANT OF AN OCCUPATIONAL LAND RIGHT

To:

- The Chairperson Office Stamp
[For Occupational Land Right for the provision of public services, Recognition of existing right to occupy communal land OR Occupational Land Right for agricultural purposes in designated areas]
Communal Land Board
of

OR

- The Minister Office Stamp
[For Occupational Land Right for agricultural purposes on land outside designated areas]
Private Bag 13343
Windhoek

1. Application Type

I/We hereby apply for a Tick the appropriate section*

- Occupational land right for the provision of public services
- Recognition of existing right to occupy communal land to provide public services
- Occupational land right for the provision of public services via agricultural land use *

* Occupational land right for agricultural purposes can only be granted on land which is situated within a designated area referred to in section 36A, subsection (3) or according to subsection (4), COMMUNAL LAND REFORM AMENDMENT ACT, 2013

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2. Applicant Details

Nature of Applicant

Juridical entity:

- Ministry Agency Office Church Other Institution

Nature of public service:

- Government Project Project of a State-owned enterprise
 Health facility Educational, social or sport facility
 Church facility Non-profit organisation facility
 Community project Other:

Please attach brief description of public service in a separate sheet

2.1. I/We (Representative)

- (a) First Name(s):
- (b) Surname:
- (c) Maiden Name:
- (d) ID/ (date of birth) :
- (e) Sex: Female Male
- (f) Nationality:

Please provide certified copies of identity documents

2.2 Juridical entity / institution

- (a) State the name of the entity:
- (b) Provide a brief description of the entity/ institution
-
-
-

Juridical entity/ institution: please attach relevant documents (e.g. registration certificate).

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3. Residential and Postal address

- (a) Residential Address:
(b) Postal Address (c) Cell Phone Number:
(d) Other Contact Details (e) Email Address:

4. Description of Land Right and Land Parcel ⁴

- (a) Has the traditional authority consented to an occupational land right?
 Yes No

If yes, please attach proof of consent by Traditional Authority

- (b) Date of consent by Traditional Authority
- (c) Traditional Authority:
- (d) Traditional Administrative Area / District:
- (e) Village:
- (f) Constituency:
- (g) Current land use: Residential Crop Farming Both Other:
If other – description:
- (h) Land use applied for: public service facility agricultural purpose
- (i) Is the respective Land Parcel located in a:
Conservancy¹? Yes No *If Yes provide name:*
- Community Forest²? Yes No *If Yes provide name:*
- Designated Area³? Yes No *If Yes provide name:*
- (j) Envisaged duration of Occupational Land Right: Years⁴

¹ Conservancy, in terms of section 24A of the Nature Conservation ordinance, 1975.

² Community Forest, in terms of section 15 of the Forest Act, 2001

³ Designated area, in terms of section 36A of the Communal Land Reform Amendment Act, 2013

⁴ If land is surveyed according to section 1 of Land Survey Act 1993 and the term of the occupational land right is for a period of 10 Years or more, occupational land right must be registered according to Deeds Registries Act, 1937

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5. Additional holders of Land Rights on parcel

To the best of your knowledge, does any other person hold any land right in respect of the portion of land?

Yes No

If yes, please attach proof of consent by Traditional Authority

Details of other Registered /Consented Right Holder⁵

(a) First Name:

(b) Surname:

(c) Identity Number:

(d) Cell Phone Number:

(e) Email Address:

(f) Residential Address:

(g) Postal Address:

(h) What type(s) of Land Rights are held?

Customary Lease Other:

(i) Has the holder agreed to relinquish his or her right in respect of the portion of land?

Yes No

If Yes, please attach any relevant documentation

(j) Is any compensation payable in this regard? Yes No

(k) Have suitable arrangements been made for the resettlement of the holder on alternative land?

Yes No Not Applicable

If Yes, please attach any relevant documentation

⁵ If more than one additional right holder, please attach a list of additional holders

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6. Fences⁶

- (a) Are there any existing fences? Yes No
- (b) Do you want to retain the whole or any part of the existing fence?
 Yes No
- (c) Do you want to erect a new fence(s)? Yes No

If yes to any of the above, please fill out Form D (not required for fences around homesteads, cattle pens, water troughs or crop fields).

7. Additional Occupational Land Rights held by the Applicant

Do you hold an existing occupational land right in respect of any other portion of land granted under this Act, or do you occupy any communal land under a right referred to in section 35 (1) of the Act?

- Yes No

If Yes, please complete the section below

Details of additional occupational land rights

- (a) (Approximate) size of land:
- (b) Region:
- (c) Traditional Authority allocating the land rights:
- (d) Traditional Administrative Area / District:
- (e) Village:
- (f) Constituency:
- (g) Land Use:
- (h) What type(s) of Land Rights are held?
 Lease Occupational Land Right Other

Please attach any relevant documents

⁶ According to Regulations made in Terms of the Communal land Reform Act, 2002, Section 26 and 27 (3)

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8. Declaration

The application fee of N\$ has been paid, for which receipt No:
dated was issued.

Please attach original receipt or proof of payment

I hereby declare that the information submitted in this form is true and correct.

Signature of Applicant
(Or representative ⁷)

Place

Date

9. Application Ratified by the Communal Land Board (for official purpose only)

Name of CLB Chairperson:

Signature:

Date ratified and stamp:

⁷ The representative must be an authorized person or someone with a power of attorney

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ANNEXURE 2

FORM F



**Republic of Namibia
Ministry of Land Reform**

FOR OFFICIAL USE

Authorisation Granted / Not Granted

Type of Application Authorised

Traditional Authority

Communal Land Board

Minister's Signature:

Date

APPLICATION FORM FOR AUTHOURISATION OF FOREIGN NATIONALS IN
TERMS OF SECTION 17B (1) AND (2) AND REGULATION 11 OF THE
COMMUNAL LAND REFORM ACT, 2002 (ACT NO. 5 OF 2002)

**APPLICATION FOR AUTHOURISATION TO APPLY CUSTOMARY OR LEASHEOLD
LAND RIGHT**

- The Minister Office Stamp
[For Authorisation to apply for customary or leasehold land right]
 Private Bag 13343
 Windhoek

1. Application Type

I/ We hereby apply for authorisation to apply for: Tick the appropriate section*

Customary land right

Leasehold land Right

2. Applicant Details

Nature of Applicant

Individual / Natural Person Group / Family Juridical Entity

Married Couple Other, Description

Please provide certified copies of identity documents and proof of marriage (if applicable)

2.1. I/We (Representative)

(a) First Name(s) (self):

(b) Surname (self):

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- (d) Traditional Administrative Area / District:
- (e) Village
- (f) Constituency:.....
- (g) Current land use: Residential Crop Farming Both Other
If other – Description
- (h) Land use applied for: Residential / Subsistence Farming Agricultural purpose
 Other, Description
- (i) Is the respective Land Parcel located in a:
Conservancy¹ Yes No *If Yes provide name:*
- Community Forest² Yes No *If Yes provide name:*
- Designated Area ³ Yes No *If Yes provide name:*
- (j) Envisaged duration of Leasehold Land Right:Years⁴

Please provide a brief motivation of your application reduced in writing

¹ Conservancy, in terms of section 24A of the Nature Conservation ordinance, 1975.
² Community Forest, in terms of section 15 of the Forest Act, 2001
³ Designated area, in terms of section 30 (2) and 36A Communal Land Reform Act, 2002 as amended in Act No.13 of 2013

4. Details of Land Rights held by other Register / Consented Right Holder

To the best of your knowledge, does any other person hold any land right in respect of the portion of land?

- Yes No

If Yes, please complete the following section

- (a) First Name:
- (b) Surname:
- (c) Identity Number:
- (d) Cell Phone Number:
- (e) Residential Address:
- (f) Postal Address:
- (g) What type(s) of Land Rights are held?
 Customary Leasehold Other:

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(h) Has the holder agreed to relinquish his or her right in respect of the portion of land?

Yes No

If Yes, please attach any relevant documentation

(i) Is any compensation payable in this regard? Yes No

(j) Have suitable arrangements been made for the resettlement of the holder on alternative land?

Yes No Not Applicable

If Yes, please attach relevant documentation

⁵ If more than one additional right holder, please attach a list of additional holders

5. Details of Other Land Rights held by the Applicant

(a) What type(s) of Land Rights are held?

Leasehold Occupational Land Right Customary

(b) (Approximate) size of land:

(c) Region:

(d) Traditional Authority allocating the land rights:

(e) Traditional Administrative Area / District:

(f) Village:

(g) Constituency:

(h) Land Use:

Please attach relevant documents

⁶ According to Regulations made in Terms of the Communal land Reform Act, 2002, Section 26 and 27 (3)

6. Declaration

The application fee of N\$ has been paid, for which receipt No:
dated was issued.

Please attach original receipt or proof of payment

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I hereby declare that the information submitted in this form is true and correct.

Signature of Applicant
(Or representative ⁷)

Place

Date

⁷ The representative must be an authorised person or someone with a power of attorney

⁸ Attach all relevant documentation substantiating your legitimate stay in Namibia
