

THE SUB-DIVISION OF LAND ACT

*Date of commencement: 22nd February, 1957*

*An Act to consolidate and amend the law relating to the sub-division of land in Swaziland.*

*Short title.*

1. This Act may be cited as the Sub-division of Land Act, 1957.

*Interpretation.*

2. In this Act, unless the context otherwise requires —

“board” means the Natural Resources Board established under the Natural Resources Act, No. 71 of 1951;

“irrigation scheme” means any scheme certified as such by the Minister;

“lease” means a lease for a period of ten years or more;

“Minister” means the Minister for Natural Resources

“sub-division” means any sub-division of land whether for the purposes of sale, lease or otherwise, and

“sub-divide” shall have a like meaning.

*Consent of board for sub-division.*

3. Except as hereinafter provided no person shall sub-divide any land without the consent of the board.

*Approval of plans and land transfer subject to Act.*

4. The Surveyor-General shall not approve the diagram nor shall the Registrar of Deeds effect the registration of the transfer or lease of any land which has been sub-divided contrary to the provisions of this Act.

*Evidence of authority to sub-divide.*

5. A certificate under the hand of the Minister that the board has consented to any subdivision, or he is satisfied that the consent of the board is in terms of section 7(1)(vi) and (vii) is not required, shall for the purpose of this Act be conclusive evidence of such consent or of such consent not being required.

*Application of Act to gifts by testamentary disposition.*

6. This Act shall apply to any gift of land by way of testamentary disposition:

Provided that if the necessary permission to give effect to a sub-division in terms of a testamentary disposition is refused, the property shall be regarded as having been left to the persons affected in undivided shares.

*When consent of Board not required.*

7. (1) Notwithstanding section 2, the consent of the board shall not be required in respect of —

- (i) any Crown land or any land registered in the name of the Government;
- (ii) any stand, erf, lot or other land in any proclaimed township or urban area in respect of which provision for the control of sub-division already exists;
- (iii) any land sub-divided for the sole use of the owner or occupier thereof, during such time as the sub-divided area is not sold or leased;

Provided that the Surveyor-General shall not approve the diagram of any such sub-division;

- (iv) any sub-division which is in accordance with a diagram lodged with the Surveyor-General for approval before the date of promulgation of this Act;
- (v) Repealed K.O-I-C. 13/1973
- (vi) any sub-division exceeding 4,283 hectares in extent in pursuance of a valid deed of sale entered into before the date of promulgation of this Act;
- (vii) any sub-division of any land commanded by an irrigation scheme, approved by the Minister, into portions each of which is more than 42,827 hectares in extent:

Provided that if the land which it is desired to sub-divide consists partly of land commanded by such an irrigation scheme and partly of land not so commanded, then —

- (a) if any sub-division includes any land of an area exceeding 42,827 hectares so commanded, no consent shall be necessary;
- (b) if any sub-division includes any land of an area of 42,827 hectares or less so commanded, consent shall be necessary unless the whole area of the sub-division exceeds 85,653 hectares;
- (viii) the sub-division of any land into a private township the establishment of which has been approved by the Minister in terms of the Private Townships Act, No. 17 of 1961, and the alteration of the lay out of any such township.

Amended P 18/1961; P 58/1961

(2) For the purposes of subsection 1(vii) the Minister shall not approve of any irrigation scheme which provides for less than a rate of one cusec of water per 42,827 hectares of land.

*How applications are to be submitted.*

8. (1) Every application to sub-divide any land shall be lodged in writing in triplicate with the secretary of the board and shall be accompanied by a plan in triplicate drawn to scale showing the boundaries of the whole property which is to be sub-divided as well as the area and boundaries of the proposed sub-division and the location of irrigation scheme canals, if any.

(2) Such application shall also state the purpose for which the sub-divided area is to be used.

*Consideration of applications.*

9. (1) An applicant shall be permitted to give evidence or call witnesses to give evidence before the board in support of his application provided he has notified the secretary of the board in writing of his wish to do so when forwarding his application.

(2) The secretary of the board shall notify any applicant, who has given notice in terms of sub-section (1) of his desire to adduce evidence of the time and place the application will be considered.

(3) The board shall have the power to subpoena any person as a witness to give evidence before it and the applicant may cross-examine any such witness.

(4) Any evidence taken by the board shall be given on oath (which oath the person presiding is hereby authorised to administer) and shall be filed for record.

(5) Within three months of receiving any application complete in all necessary detail the board shall if —

- (i) the application is granted or refused, inform the applicant in writing of its decision and in the case of a refusal include therein its reasons for refusal;
- (ii) the application is granted, inform the Minister in writing who shall forthwith issue a certificate in terms of section 5

(6) If the board fails within three months to convey its decision either to the applicant, the Minister, the applicant may, on production of proof to the satisfaction of the Minister that the requirements of section 8 have been complied with, apply to the Minister for a certificate consenting to the sub-division, and the Minister may grant such certificate

*Appeal.*

10. (1) Any person whose application has been refused by the board shall have the right to appeal against the decision to the Minister whose decision shall be final:

(2) Notice of such appeal shall be lodged with the secretary of the board within twenty-one days of the date of the board's decision and shall set forth fully the reasons for appeal.

(3) The secretary of the board shall within seven days of lodging with him of notice of such appeal forward to the Permanent Secretary for Agriculture such notice together with the record of any evidence which may have been heard by the board and the board's reasons for refusal.

(4) In prosecuting his appeal the applicant shall have the right to produce evidence that the decision of the board was unreasonable.

(5) In all cases of appeal the Minister may —

- (i) confirm the decision of the board,
- (ii) alter or reverse the decision of the board if in his opinion such decision was unreasonable;
- (iii) require the board or the applicant to submit further information;
- (iv) permit the applicant or cause any other person, under subpoena, to give evidence or to produce any document or information as he may require; or
- (v) refer the application back to the board for the taking of further evidence or further information generally or in respect of any particular matter.

(6) No costs of appeal shall be allowable against the board.

(7) Any evidence taken by the Minister shall be given on oath (which oath the Minister is hereby authorised to administer) and shall be filed of record.

*Questions of law referred to High Court.*

11. (1) If any question of law arises touching a decision of the board, the board or the applicant may refer the question for the decision of the High Court.

(2) The board or the applicant, as the case may be, shall, in such event, state the question in the form of a special case for the opinion of the High Court and transmit it to the Registrar thereof.

(3) The question so stated shall be answered by the High Court or by a judge thereof after hearing the parties concerned.

*Penalty.*

12. Any person who —

- (i) sub-divides any land in contravention of this Act; or
- (ii) occupies, in pursuance of any contract of sale or lease entered into by such person, any land sub-divided in contravention of this Act; or
- (iii) wilfully gives false evidence on oath;

shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred emalangeneni or to imprisonment not exceeding one year or both, and in the case of a continuing contravention of the provisions of paragraph (ii) to a fine not exceeding ten emalangeneni for every day during which the contravention is continued.

*Rules.*

13. The Minister may make rules for regulating the procedure of the board, for the consideration of applications, and for proceedings on appeal.