

Namibia

## Deeds Registries Act, 2015

Act 14 of 2015

Legislation as at 31 December 2015

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# Deeds Registries Act, 2015

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Republic of Namibia  
**Annotated Statutes**

## **Deeds Registries Act, 2015**

### **Act 14 of 2015**

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**Assented to on 11 December 2015**

**Commenced on 23 April 2021 by Deeds Registries Act, 2015: Commencement**

**[This is the version of this document from 31 December 2015  
and includes any amendments published up to 26 April 2024.]**

## **ACT**

**To consolidate and amend the laws relating to the registration of deeds; and to provide for incidental matters.**

BE IT ENACTED as passed by the Parliament, and assented to by the President of the Republic of Namibia as follows:

**[The italicisation of the words “fideicommissum” and “fideicommissary” is inconsistent in the Act. These words have been reproduced here as they appear in the Government Gazette.]**

### **Part 1 – DEFINITIONS**

#### **1. Definitions**

In this Act, unless the context otherwise indicates -

“**conveyancer**” means a person practising as a conveyancer in terms of the Legal Practitioners Act, 1995 (Act [No. 15 of 1995](#));

“**Court**” means the High Court of Namibia established in terms of the High Court Act [No. 16 of 1990](#);

“**deeds registry**” means a deeds registry established in terms of section 2, and includes a deeds sub-registry;

“**deputy registrar**” means a deputy registrar of deeds referred to in section 3(3);

“**diagram**” means a diagram as defined in the Land Survey Act, 1993 (Act [No. 33 of 1993](#));

“**erf**” means a piece of land registered in a deeds registry as an erf, lot, plot or stand, 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 recognised, approved or proclaimed as such;

“**executor**”, includes any representative of a deceased owner recognised by law;

“**general plan**” means a general plan as defined in the Land Survey Act, 1993 (Act [No. 33 of 1993](#));

“**immovable property**” means any land or any building on the land and includes -

- (a) a registered lease of land which, when entered into, was for a period of not less than 10 years or for the natural life of the lessee or of 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 10 years; and
- (b) a registered right of leasehold; “**land**”, includes a share in land;

“**land surveyor**” means a person whose name is entered as a professional land surveyor in the register of practitioners referred to in section 13 of the Professional Land Surveyors’, Technical Surveyors’ and Survey Technicians’ Act, 1993 (Act [No. 32 of 1993](#));

“**lease**”, includes a right of leasehold to be registered under any law;

“**legal practitioner**” means a person who, in terms the Legal Practitioners Act, 1995 (Act [No. 15 of 1995](#)), has been admitted and authorised to practise as a legal practitioner or is deemed to have been so admitted and authorised;

“**Master**” means the Master of the High Court of Namibia, and includes, where applicable, a deputy master, acting Master and acting deputy master;

“**Minister**” means the Minister responsible for land affairs;

“**Ministry**” means the Ministry administering land affairs;

“**mortgage bond**” means a bond attested by the registrar and specially mortgaging immovable property described in the mortgage bond;

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

“**notarial deed**” means a deed attested by a notary public, excluding a document merely authenticated, or a copy of a document certified by a notary public;

“**notary public**” means -

- (a) in relation to any deed or other document executed in Namibia and creating or conveying a real right of land, a person practising as a notary public in terms of the Legal Practitioners Act, 1995 (Act [No. 15 of 1995](#)); and
- (b) in relation to any deed or document referred to in paragraph (a), but executed outside Namibia, a person practising as a notary public in the country or place where the deed or document was executed;

“**owner**” means, in relation to -

- (a) immovable property, real rights in immovable property and movable property covered under notarial bonds, subject to paragraph (b), the person registered as the owner or holder of a property and includes -
  - (i) the trustee in an insolvent estate;
  - (ii) the liquidator of a company or of a close corporation which is the owner or holder and the representative recognised by law of any such owner or holder who has died or who is a minor or of unsound mind or is otherwise disabled,

but the trustee, liquidator or legal representative acts within the authority conferred upon him or her by law; or



- (b) immovable property, real rights in immovable property and movable property covered under notarial bonds which are registered in terms of section 12 -
  - (i) in the name of both spouses, either one of the spouses acting with the written consent of the other spouse; or
  - (ii) in the name of only one of the spouses and which form part of the joint estate of the spouses, either one of the spouses acting with the written consent of the other spouse;

**“Permanent Secretary”** means the Permanent Secretary for land affairs;

**“photocopy”** means a photocopy of any record or document, approved by the registrar;

**“prescribed”** means prescribed by regulation;

**“property”**, includes both movable property and immovable property;

**“public place”** means a public place as defined in the Land Survey Act, 1993 (Act [No. 33 of 1993](#));

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

**“record”** means -

- (a) any record, register, title deed, electronic data or other document, whether kept electronically or otherwise, relating to persons or any land; and
- (b) any ante-nuptial contracts and other notarial deeds and rights,

which record is registered or filed, or is to be registered or filed, in a deeds registry;

**“region”** means a region as defined in the Regional Councils Act, 1992 (Act [No. 22 of 1992](#));

**“registered”** means registered in a deeds registry in terms of this Act;

**“registrar”** means the registrar of deeds appointed or deemed to be appointed in terms of section 3, and includes, where applicable, a deputy registrar and an acting registrar;

**“registration”** in relation to land means the registration in accordance with this Act of a real right in or relating to land;

**“registration division”** means any registration division prescribed under section 93(1)(f);

**[A closing bracket is missing in this definition in the  
Government Gazette. The cross-reference should be “93(1)(f)”.]**

**“registry duplicate”** means the duplicate or copy of a deed or document which is filed or intended to be filed of record in a deeds registry;

**“regulation”** means a regulation made under section 93;

**“regulations board”** means the regulations board established by section 92, and the word board has a corresponding meaning;

**“settlement area”** means a settlement area as defined in section 1 of the Regional Councils Act, 1992 (Act [No. 22 of 1992](#));

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

**“staff member”** means a staff member as defined in the Public Service Act, 1995 (Act [No. 13 of 1995](#));

**“Surveyor-General”** means the Surveyor-General as defined in the Land Survey Act, 1993 (Act [No. 33 of 1993](#));

**“this Act”**, includes the regulations;

**“township”** means a township as defined in section 1 of the Townships and Division of Land Ordinance, 1963 (Ordinance No. 11 of 1963); and

“**transfer duty**” means transfer duty payable in terms of the Transfer Duty Act, 1993 (Act [No. 14 of 1993](#)).

## **Part 2 – DEEDS REGISTRY AND REGISTRAR**

### **2. Deeds registry**

- (1) The Minister may by notice in the *Gazette* -
  - (a) establish one or more deeds registries; or
  - (b) establish one or more deeds sub-registries within the area of jurisdiction of a deeds registry, and determine in the notice -
    - (i) name of the deeds registry or deeds sub-registry;
    - (ii) situation and area of jurisdiction of the deeds registry or deeds sub-registry; and
    - (iii) acts relating to the registration or the execution of deeds or other documents which may be performed, subject to this Act or of any other law, in the deeds registry or deeds sub-registry.
- (2) A deputy registrar is, where applicable, in charge of a deeds sub-registry.

### **3. Appointment of registrar and deputy registrar**

- (1) The Minister, subject to the Public Service Act, 1995 (Act [No. 13 of 1995](#)), must appoint a person as registrar of deeds.
- (2) The registrar is responsible for the deeds registry as determined under section 2.
- (3) The Minister, subject to the Public Service Act, 1995 (Act [No. 13 of 1995](#)), must appoint one or more persons as deputy registrar or deputy registrars.
- (4) A deputy registrar exercises and performs such powers and functions of the registrar subject to the directions and control of the registrar.
- (5) The Minister may -
  - (a) appoint at any time any staff member as an acting registrar; or
  - (b) delegate in writing any power referred to in paragraph (a) to a staff member of the Ministry.
- (6) An acting registrar appointed in terms of subsection (5) is appointed -
  - (a) subject to the Public Service Act, 1995 (Act [No. 13 of 1995](#)); and
  - (b) for the period of time and conditions as the Minister may determine.
- (7) The registrar has a seal of office, an imprint of which the registrar must affix to -
  - (a) every deed executed or attested by him or her; and
  - (b) the copy of every deed issued by him or her in lieu of an original deed.

### **4. Functions of registrar**

- (1) The functions of the registrar are to -
  - (a) take charge of and except as provided in subsection (2) or (3) or in section 5(1)(e), preserve or cause to be kept and preserved by means of electronic data processing and electronic data storage or any other manner or method as the registrar may determine -
    - (i) all the records which, prior to the commencement of this Act, were part of the records of a deeds registry;

- (ii) which may, at any time after the commencement of this Act, become part of the records of a deeds registry; and

including the deeds and other documents relating to land registered or filed, or to be registered or filed, in a deeds registry in terms of this Act;
- (b) examine, subject to subsection (2), all deeds or other documents lodged with him or her for execution or registration;
- (c) after the examination of a deed or other document in terms of paragraph (b), reject the deed or other document if -
  - (i) the execution or registration of the deed or other document is not permitted by this Act or by any other law; or
  - (ii) if there exists any other valid objection to the execution or registration of the deed or other document;
- (d) register -
  - (i) grants or leases lawfully issued by the State or grants issued by any other competent authority;
  - (ii) any amendment to or any renewal or cancellation of grants or leases registered in terms of subparagraph (1); or
  - (iii) the release of any part of the land leased in terms of a lease registered in terms of subparagraph (1);
- (e) attest or execute and register deeds of transfer of land or certificates of title to land;
- (f) attest and register mortgage bonds;
- (g) register -
  - (i) cessions, including cessions made as security, of mortgage bonds;
  - (ii) the cancellation of cessions registered in terms of subparagraph (1);
  - (iii) the cancellation of registered mortgage bonds;
  - (iv) the release of any portion of the land mortgaged by a mortgage bond;
  - (v) the release of all the land mortgaged by a mortgage bond, if the debt is further secured by a collateral mortgage bond;
  - (vi) the release of any joint debtor or of any surety in respect of a mortgage bond;
  - (vii) the substitution of another person for the debtor in respect of a mortgage bond;
  - (viii) the reduction of cover in respect of a mortgage bond intended to secure future debts; or
  - (ix) the part payments of the capital amount due in respect of a mortgage bond other than a mortgage bond intended to secure future debts;
- (h) register waivers of preference in respect of -
  - (i) registered mortgage bonds with regard to the entire land mortgaged by the bond, or any portion of the land, in favour of any other bond or bonds registered or to be registered; or
  - (ii) registered real rights in land in favour of mortgage bonds registered or to be registered;

- (i) register notarial bonds, cancellations and cessions of the notarial bonds including cessions made as security and cancellations of the cessions;
- (j) register -
  - (i) the release of the property mortgaged by a registered notarial bond or any portion of the property if the debt is further secured by a collateral mortgage bond;
  - (ii) the release of any joint debtor or of any surety in respect of a registered notarial bond;
  - (iii) the reduction of cover in respect of a registered notarial bond intended to secure future debts;
  - (iv) part payments in respect of the capital amount due in respect of a registered notarial bond other than a bond intended to secure future debts;
  - (v) ante-nuptial contracts;
  - (vi) notarial deeds of donation, including a donation to be held in trust; and
  - (vii) other notarial deeds relating to persons and property as are required or permitted by law to be registered;
- (k) register any servitude whether personal or praedial;
- (l) cancel the registration of any servitude referred to in paragraph (k) or record the lapse or extinction of or any amendment to the servitude;
- (m) register -
  - (i) notarial leases or sub-leases and cessions of leases or of sub-leases;
  - (ii) notarial cessions of unregistered leases or sub-leases of land;
- (n) register notarial cancellations or renewals of, and amendments to, leases or sub-leases referred to in paragraph (m) and releases of the property leased or any portion of the property;
- (o) register -
  - (i) any real right not specifically referred to in this subsection;
  - (ii) the cancellation of, or a cession or extinction of, or amendment to, a real right referred to in sub-paragraph (i);
- (p) register against a registered mortgage bond or notarial bond any agreement entered into by and between the mortgagor and the holder of the bond, where any term or condition of the bond, excluding terms relating to the cause of debt, the mortgaged security or the amount of the debt secured by the bond, are amended or varied;
- (q) register general plans of erven or of subdivisions of land, open registers in respect of the erven or subdivisions of land shown on the general plans, and record in the registers the conditions upon which the erven or subdivisions are laid out or established;
- (r) register -
  - (i) a power of attorney in terms of where the named agent is authorised to act, or to carry out a series of acts or transactions registrable in a deeds registry, for and on behalf of the principal granting the power of attorney;
  - (ii) a copy of a power of attorney registered in another deeds registry and is certified by the registrar of the other deeds registry, or granted for the purpose of being acted upon in a deeds registry by the Master or by the registrar of the Court;
  - (iii) the revocation of a power of attorney contemplated in subparagraphs (1) and (ii);

- (s) make, in connection with the registration of any deed or other document, or in compliance with the requirements of any law, the endorsements on a registered deed or other document as may be necessary to give effect to the registration or to the objectives of the law;
  - (t) record all notices, returns, statements or orders of court lodged with him or her in terms of any law;
  - (u) remove from his or her records, with the written approval of the Master and after a period of 10 years from the date of entry into the records, any entry made, whether the entry was made before or after the commencement of this Act, in pursuance of the lodging with him or her of a notice of liquidation or an order of liquidation or of sequestration;
  - (v) keep the registers prescribed in terms of this Act or of any other law, and make the entries in the registers as are necessary for the purpose of carrying out this Act or the other law and of maintaining an efficient system of registration designed and operated to afford security of title and ready reference and accessibility to any registered deed.
- (2) The registrar need not examine a deed or other document in its entirety before rejecting the deed or other document in terms of subsection (1)(c).
- (3) If the registrar is of the opinion that any part of a record referred to in subsection (1)(a) is illegible or has deteriorated to such an extent that it requires urgent restoration for the purpose of its preservation, the registrar may submit the record to the Head of Archives for restoration and preservation in terms of the Archives Act, 1992 (Act [No. 12 of 1992](#)).
- (4) The Head of Archives referred to in subsection (3) must -
- (a) furnish the registrar with as many photocopies as the registrar may require in writing of any part of a record submitted to him or her in terms of that subsection for restoration and preservation;
  - (b) restore for preservation a record submitted to him or her in terms of that subsection;
  - (c) furnish the registrar, as soon as a record has been restored in terms of paragraph (b) for preservation, with as many photocopies of the restored record as the registrar may require in writing; and
  - (d) preserve a record restored in terms of paragraph (b) in the archives as provided for in the Archives Act, 1992 (Act [No. 12 of 1992](#)).
- (5) A photocopy, duly certified by the Head of Archives or by any person designated in writing by him or her for the purpose, of any record furnished by that Head of Archives to the registrar in terms of subsection (4)(c) is deemed to be, for the purpose of a deeds registry, the original record.
- (6) The registrar may -
- (a) reproduce or cause to be reproduced any record referred to in subsection (1)(a) by means of reproducing electronic data records into analogue format or by any other process which in the opinion of the registrar accurately reproduces any such record in a manner that the reproduction forms a durable medium for reproducing and preserving the record; and
  - (b) preserve or cause to be preserved a reproduction of a record referred to in paragraph (a) in lieu of the record.
- (7) A reproduction of a record referred to in subsection (6) -
- (a) for the purpose of a deeds registry the original of the record; and
  - (b) if certified by the registrar as a true copy of the record is admissible as evidence in any Court.
- (8) “Head of Archives”, for the purpose of this section, means the Head of Archives as defined in section 1 of the Archives Act, 1992 (Act [No. 12 of 1992](#)).

## 5. Powers of registrar

- (1) The registrar may -
  - (a) require the production of proof upon affidavit or in the other manner as the registrar may determine, of any fact necessary to be established in connection with any act to be performed or effected in a deeds registry;
  - (b) subject to subsection (4), rectify any error in the name or the description of any person or property mentioned in any record registered or filed in a deeds registry or in the conditions affecting the property;
  - (c) issue, as near as practicable in the prescribed form and manner, certified copies of records registered or filed in a deeds registry;
  - (d) require that any deed or other document lodged with him or her and which has become, in his or her opinion, illegible or unserviceable be substituted as near as practicable in the prescribed form and manner by a certified copy of the deed or other document; or
  - (e) destroy or otherwise dispose of, in the prescribed manner, any prescribed record cancelled in terms of this Act or any record in connection with a caveat that has expired in terms of section 17(3) of the Insolvency Act, 1936 (Act [No. 24 of 1936](#)).
- (2) The regulations board may prescribe -
  - (a) the form and manner in which the registrar may require that a deed or other document be substituted in terms of subsection (1)(d); and
  - (b) the person or persons by whom the deed or other document referred to in paragraph (a) must be substituted.
- (3) If the registrar rectifies, in terms of subsection (1)(a), an error in a deed or other document registered or filed in a deeds registry -
  - (a) every person who appears from the deed or other document to have any interest in the rectification must consent to the rectification in writing;
  - (b) the rectification may be made in terms of an order of Court if any of the persons referred to in paragraph (a) refuses to consent to the rectification; and
  - (c) the registrar must rectify the error in all the deeds and other documents in the deeds registry in which the error appears.
- (4) A rectification of an error in terms of subsection (1)(b) may not be made if the rectification has the effect of transferring any right.
- (5) The registrar must perform, in the case of a dispute relating to fees charged by -
  - (a) a conveyancer or notary public for performing any act which is required or permitted by this Act to be performed by a conveyancer or notary public in connection with a deed executed, registered or filed or intended to be executed, registered or filed in a deeds registry; or
  - (b) a legal practitioner in connection with the preliminary work necessary for the purposes of the execution, registration or filing of the deed,all the functions of the taxing officer of the Court.

## 6. 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 registrar and deputy registrar concerned or deputy registrars concerned may

effect, subject to any regulations, by mutual arrangement the registration in the manner as may be found expedient.

### **Part 3 – REGISTRATION**

#### **7. Registration of deed to follow sequence of its relative cause**

- (1) Unless otherwise provided for in this Act or in any other law or as otherwise directed by the Court -
  - (a) transfers of land and cessions of real rights must follow the sequence of the successive transactions in pursuance of which they are made; or
  - (b) if the transfers of land and the cessions of real rights made in terms of paragraph (a) are made in pursuance of a testamentary disposition or of intestate succession, the transfers must follow the sequence in which the right to ownership or other real right in the land accrued to the persons successively becoming vested with the right.
- (2) The registrar may not depart from any sequence referred to in paragraph (a) or (b) of subsection (1) when recording in a deeds registry any change in the ownership in the land or the real right referred to in any one of those paragraphs.
- (3) Despite the other provisions of this section -
  - (a) if the land or real right referred to in subsection (1) has passed from a deceased person to the descendants of the deceased person in accordance with a will or through intestate succession and one or more of those descendants has died a minor and intestate, and no executor has been appointed in the deceased descendant's estate, transfer of the land or real right which has vested in the deceased descendant may be passed by the executor in the estate of the deceased person to the intestate heirs of the deceased descendant;
  - (b) if the registrar is of the opinion that the value of the land or real right vested in an heir or legatee in terms of a will or through intestate succession is equal to or exceeds the costs involved in the transferring or ceding to that heir or legatee, and if that heir or legatee has sold the land or real right, then the transfer or cession may be passed, with the written consent of that heir or legatee, by the executor in the estate of the deceased person directly to the purchaser;
  - (c) if in the administration of the estate of a deceased person, including a fiduciary, any redistribution of the whole or of any portion of the assets in the estate takes place -
    - (i) among the heirs and legatees of the deceased, including ascertained fideicommissary heirs and legatees; or
    - (ii) between the heirs and legatees and the surviving spouse,the executor or administrator of the estate may transfer the land or cede the real right directly to the person or persons entitled in terms of the redistribution;
  - (d) in a redistribution referred to in paragraph (c) movable property not forming part of the estate may be introduced for the purpose of equalising the division of assets;
  - (e) paragraph (c) applies with the necessary changes in respect of a redistribution of assets -
    - (i) of the joint estate of spouses married in community of property or whose marriage is governed by the Recognition of Certain Marriages Act, 1991 (Act [No. 18 of 1991](#)), and have been divorced or judicially separated; and
    - (ii) of a partnership on the dissolution of the partnership;
  - (f) if a fiduciary interest in land or in a real right terminates before the transfer of the land or the cession of the real right is registered in favour of the fiduciary, the land may be transferred or the real right may be ceded directly to the fideicommissary; or

- (g) if the right of any person to claim transfer of land or cession of a real right referred to in paragraph (a) from any other person is vested in a third person in terms of -
  - (i) a judgement or order of court of law; or
  - (ii) a sale in execution held pursuant to the judgement or order,the transfer of the land or the cession of the right may be passed directly to the third person from the person against whom the right was exercisable.
- (4) In a transfer or cession in terms of subsection (3), the transfer duty payable had the land or the real right concerned been transferred or ceded to each person successively becoming entitled to, must be paid in full.

## 8. Time when registration takes place

- (1) A deed executed or attested by the registrar is deemed to be registered upon the affixing of the registrar's signature to the deed.
- (2) A deed, other document or power of attorney lodged with the registrar for registration is deemed to be registered when a deeds registry endorsement in respect of the registration of the respective deed, other document or power of attorney is signed by the registrar.
- (3) Despite any other provision of this section to the contrary, no -
  - (a) deed referred to in subsection (1); or
  - (b) deed, other document or power of attorney referred to in subsection (2),and which is one of a batch of interdependent deeds, other documents or powers of attorney intended for simultaneous registration, is deemed to be registered, until such time as all the deeds, other documents or powers of attorney, or the endorsements of the registration has been signed by the registrar.
- (4) If by inadvertence the registrar failed to affix his or her signature to
  - (a) a deed executed or attested by him or her; or
  - (b) the registration endorsement in respect of the registration of a deed, other document or power of attorney lodged for registration,at the time when the registrar was required to so affix his or her signature in terms of subsection (1) or (2), the registrar must, when the omission is discovered, affix his or her signature to the deed, other document or power of attorney.
- (5) If the registrar in terms of subsection (4) affixes his or her signature to a deed, other document or power of attorney the registrar is deemed to have affixed his or her signature to the deed, other document or power of attorney at the time when he or she was required by subsection (1) or (2), to have affixed his or her signature.
- (6) An endorsement or entry made on a deed, other document, power of attorney or in a register, relating to the registration of a deed, other document or power of attorney, is deemed to have been effected at the time when the registrar signed the executed or attested deed or the registration endorsement in respect of the deeds, document or power of attorney lodged for registration, although the first mentioned endorsement or entry is made subsequently.
- (7) If the registrar is unable to affix his or her signature to any deed, other document, endorsement or register in terms of this section, then -
  - (a) the successor in office of the registrar; or
  - (b) any other person acting in the place of the registrar,may affix his or her signature to the deed, other document, endorsement or register.



- (8) A reference in this section to the signature of the registrar includes a reference to the signature of the successor in title of the registrar or the other person acting in the place of the registrar, referred to in subsection (7).

## **9. Preparation of deed of transfer, mortgage bond, grant or deed or certificate of title or certificate of registration**

- (1) Subject to this Act or any other law, the registrar may not attest, execute or register any deed of transfer, mortgage bond, grant or deed, certificate of title or certificate of registration of any kind, unless the deed of transfer, mortgage bond, grant or deed or certificate is prepared by -
- (a) the registered owner of the land as described; or
  - (b) a conveyancer, authorised by a power of attorney to act on behalf of the registered owner of the land as described.
- (2) A conveyancer referred to in subsection (1)(b) is entitled to the fees and charges as may be prescribed.

## **10. Proof of certain facts relating to deed or other document by means of certain certificates**

- (1) A conveyancer or registered owner of land referred to in section 9 who -
- (a) prepares a deed or other document for the purpose of registration or filing in a deeds registry; and
  - (b) signs a prescribed certificate on any deed or other document referred to in that section, accepts by virtue of the signing of the certificate the responsibility, to the prescribed extent, for the accuracy of the prescribed facts set out or contained in the deed or other document relevant to the registration or filing.
- (2) Subsection (1) applies with the necessary changes to -
- (a) any prescribed person; or
  - (b) any person authorised by any other law to prepare a deed or other document for registration or filing in the deeds registry,
- who has prepared, in accordance with this Act, a deed or other document for registration or filing in a deeds registry.
- (3) The registrar may accept, during the course of his or her examination of a deed or other document in accordance with this Act, that the facts referred to in subsection (1) relating to the registration or filing of a deed or other document in respect of which a certificate referred to in subsection (1) or (2) is signed, have for the purpose of the examination been conclusively proved.
- (4) This section does not derogate from the obligations of the registrar to give effect to an order of Court or to any other notification recorded in a deeds registry in terms of this Act or any other law and which affects the registration or filing of the deed or other document.

## **11. Transfer of real rights**

- (1) Unless otherwise provided in this Act or in any other law, the ownership of -
- (a) land may be conveyed from one person to another only by means of a deed of transfer executed or attested by the registrar; and

- (b) any real right in land, other than the ownership of land referred to in paragraph (a), 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.
- (2) Notarial attestation in terms of subsection (1)(b) is not necessary in respect of the conveyance from one person to another of a real right acquired under a mortgage bond.
- (3) If the State, a regional authority, a local authority or a body corporate or association of persons acquires, whether by way of expropriation or otherwise, all the land held in terms of any title deed, the registrar must make, free of charge -
  - (a) the amendments to, and entries in his or her registers; and
  - (b) the endorsements on the title deed necessary to register the transfer to the State, a regional authority, local authority, body corporate or association of persons of the land so acquired.
- (4) Section 28(12) applies with the necessary changes to a transfer by endorsement in terms of subsection (3).

## 12. Registration of immovable property in name of married person

- (1) Immovable property, a real right in immovable property, a mortgage bond and a notarial bond which upon transfer, cession or registration form part of a joint estate must be registered, subject to this Act, in the name of both the husband and the wife.
- (2) Subsection (1) does not apply if the transfer, cession or registration referred to in that subsection takes place in the name of a partnership and the husband or wife is involved in the transfer, cession or registration in the capacity of partner in that partnership.
- (3) Every deed or other document executed or attested by the 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 any person must -
  - (a) specify the full names of that person and the status of that person as married or unmarried;
  - (b) if the person is married and the marriage is governed by the law in force in Namibia, specify whether the marriage -
    - (i) is a marriage contracted in community of property or out of community of property; or
    - (ii) is a marriage governed by the Recognition of Certain Marriages Act, 1991 (Act [No. 18 of 1991](#));
  - (c) if the marriage of the person is in community of property or is governed by the Recognition of Certain Marriages Act, 1991 (Act [No. 18 of 1991](#)), specify the full names of the spouse of the person; and
  - (d) if the marriage of that person is governed by the laws of any country other than Namibia, specify -
    - (i) the name of the country by which laws the marriage is governed; and
    - (ii) the full names of the spouse of the person.
- (4) If a marriage -
  - (a) in community of property; or
  - (b) which is governed by the Recognition of Certain Marriages Act, 1991 (Act [No. 18 of 1991](#)),is dissolved by the death of one of the spouses before the immovable property or a mortgage bond or a notarial bond which on the transfer or cession formed part of the joint estate of those

spouses is transferred or ceded the immovable property or mortgage bond or notarial bond must be transferred or ceded to the joint estate of the spouses, pending the administration of the estate.

- (5) The immovable property, mortgage bond or notarial bond referred to in subsection (4) is considered to be the joint property of the surviving spouse and the estate of the deceased spouse, subject to any disposition relating to the immovable property, mortgage bond or notarial bond.
- (6) If immovable property, a real right in immovable property, a mortgage bond or a notarial bond forming part of a joint estate is registered in a deeds registry in the name of one of the spouses, the registrar, on the written application of one of the spouses, or of a conveyancer as the duly authorised agent of that spouse, and if the registrar is satisfied as to the relevant facts, must endorse on the deed or bond concerned and in the appropriate registers -
  - (a) the full name of the other spouse;
  - (b) that the spouses are married in community of property; or
  - (c) if applicable, that the marriage of the spouses is governed by the Recognition of Certain Marriages Act, 1991 (Act [No. 18 of 1991](#)).
- (7) If the spouse or a conveyancer as the duly authorised agent making an application in terms of subsection (6) is unable to lodge with the registrar the deed or bond referred to in that subsection, due to the other spouse's refusal to produce the deed or bond which is in his or her possession or in terms of his or her control, then the registrar may make the endorsement in terms of that subsection on the registry duplicate of the deed or bond in the appropriate registers.
- (8) A transfer, cession or registration referred to in subsection (1) in the name of a husband and wife may not constitute, in the case of agricultural land referred to -
  - (a) in section 3 of the Subdivision of Agricultural Land Act, 1970 (Act [No. 70 of 1970](#));
  - (b) in section 3 of the Agricultural Land Act, 1981 (Act [No. 5 of 1981](#)), of the Legislative Authority of Rehoboth; or
  - (c) in section 62(1)(d) of the Agricultural (Commercial Land Reform Act, 1995 (Act [No. 6 of 1995](#)),

[A closing bracket is missing after the word "Commercial".]

an act to which those sections are applicable.

- (9) A person married in terms of a marriage governed by the law of any country other than Namibia -
  - (a) is assisted by his or her spouse in executing any deed or other document required or permitted to be executed or registered in a deeds registry or required or permitted to be lodged in connection with the deed or document; or
  - (b) must lodge with the registrar the consent of his or her spouse to the execution, registration or production,

unless the assistance or consent of the spouse is in terms of this Act or of any other law is unnecessary.

### 13. Registration of immovable property in name of legal entities and foreign nationals

- (1) Immovable property, a real right in immovable property, a mortgage bond and a notarial bond which upon transfer, cession or registration in the name of a legal entity, is registered, subject to this Act, in the name of a company, close corporation, trust or body corporate.

[The full stop is missing after the section number in the Government Gazette. It has been inserted here.]

- (2) Every deed or other document executed or attested by the registrar or attested by a notary public and required to be registered in a deeds registry made by or on behalf of or in favour of a legal entity is accompanied by a statement made under oath or affirmation by legal entity declaring -
  - (a) the nationality of each member, shareholder or beneficiary in case of a trust and whether or not the legal entity is a foreign national; and
  - (b) whether or not the land or real right to be acquired or mortgaged is held by it on behalf or in the interest of any other person and, where applicable, giving particulars of the name and nationality of such person.
- (3) If in the statement referred to in paragraph (a) of subsection (2), the legal entity declares that it is a foreign national, or after investigation it comes out that the legal entity is a foreign national, the registrar -
  - (a) may not register any land or any real right or mortgage bond until he or she is satisfied that the legal entity, in terms of the law relating to the acquisition of ownership of or right in land, is entitled to so acquire such ownership or right; and
  - (b) may request any further proof as he or she may require.
- (4) The registrar may not register any ownership or right contemplated in subsection (1) in the name of a natural person who is a foreign national, unless satisfactory proof of compliance with the requirements of the Regional Councils Act, Local Authorities Act, the Land Act or any applicable law has been submitted to the registrar.

## Part 4 – TRANSFER OF LAND

### 14. Manner of dealing with State land

- (1) If the State alienates State land not previously registered in the name of any other person, then the State may transfer the ownership in the land to the transferee by means of a deed of grant issued in terms of proper authority.
- (2) Unless otherwise provided in this Act, or unless the land referred to in subsection (1) is represented on a general plan, a diagram relating to the land must be appended to the deed of grant referred to in that subsection.
- (3) If -
  - (a) the State re-acquires the ownership in land after the alienation to any other person; and
  - (b) the ownership in the land is registered in the name of the State,then the State may transfer the ownership in the land to the transferee by means of -
  - (i) a deed of grant issued by proper authority; or
  - (ii) a deed of transfer executed by proper authority.
- (4) The deed of grant or the deed of transfer referred to in subsection (3) must contain -
  - (a) a reference to the title deed by which the State holds the land concerned before the transfer to the transferee;
  - (b) a reference to the title deed to which the diagram relating to the land concerned is appended;
  - (c) the conditions upon which the land concerned is alienated by the State; and
  - (d) the rights relating to the land concerned reserved by the State upon the alienation.

- (5) The registrar, upon a written application by the Minister, and after consultation with the Minister responsible for works, must where a piece of State land not previously registered in the name of any other person is surveyed and represented on a diagram -
  - (a) enter particulars of the State land in the appropriate registers; and
  - (b) execute, as near as practicable in the prescribed form and in accordance with the diagram or general plan, a certificate of registered State title in respect of the State land.
- (6) An application by the Minister in terms of subsection (5) is accompanied by the diagram or general plan referred to in that subsection in duplicate.
- (7) A certificate of registered State title executed in terms of subsection (5)(b) is prepared by a conveyancer employed at the office of the Government Attorney.
- (8) The transfer of ownership of land held by the State in terms of a certificate of registered State title is effected by means of a deed of grant issued in terms of proper authority.
- (9) When a deed of grant is issued in terms of subsection (8) -
  - (a) it is not necessary to append a diagram or general plan relating to the land concerned to the deed of grant; and
  - (b) the deed of grant must contain a reference to the -
    - (i) certificate of registered State title referred to in that subsection; and
    - (ii) diagram appended to the certificate of registered State title referred to in subparagraph (1) or the general plan concerned.
- (10) A 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 State land not previously registered in the name of any other person, may not be registered until such time as a certificate of registered State title is executed in respect of the piece of land.

## 15. Form and manner of execution of deed of transfer

A deed of transfer is -

- (a) prepared in the prescribed form or in a form prescribed by other existing laws;
- (b) executed in the presence of the registrar by the registered owner of the land as described or a conveyancer authorised by a power of attorney to act on behalf of the registered owner of the land described in the deed of transfer; and
- (c) attested by the registrar,

unless otherwise provided in this Act or in any other law, or otherwise ordered by the Court in respect of deeds of transfer executed by the registrar.

## 16. Transfer or cession from joint estate

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

- (a) the executor is dealing only with the share of the deceased spouse;
- (b) the land is sold to pay the debts of the joint estate;
- (c) there is a massing of the joint estate and the surviving spouse has adiated;
- (d) the transfer or cession is in favour of the surviving spouse; or

- (e) the surviving spouse has signed the power of attorney to pass transfer or cession in his or her capacity as executor.

#### **17. 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 means of one deed of transfer, unless the transfer is authorised by a law or by an order of Court.
- (2) A person or persons holding the pieces of land in undivided shares may transfer two or more pieces of land by means of one deed of transfer to one or more persons acquiring the pieces of land in undivided shares.
- (3) Each piece of land referred to in subsection (2) is described in a separate paragraph in the deed of transfer concerned.
- (4) A person or more persons holding the whole of the piece of land in undivided shares may transfer two or more portions of a piece of land by means of one deed of transfer to one or more persons acquiring the portions in undivided shares.
- (5) Each portion of a piece of land referred to in subsection (4) is described in a separate paragraph in the deed of transfer.
- (6) In each paragraph in a deed of transfer referred to in subsection (5), reference is made to the diagram relating to the portion concerned.
- (7) A person transferring portions under subsection (4) must append to the deed of transfer the diagrams of all the portions described in the deed of transfer referred to in subsection (5).

#### **18. Transfer of undivided shares in land by one deed**

- (1) A person holding title to land may transfer the land by means of one deed of transfer to one or more other persons in undivided shares.
- (2) Two or more persons holding land in undivided shares may transfer the land by means of one deed of transfer from those persons to any other person or more other persons in undivided shares.

#### **19. Transfer of shares in properties to more than one transferee in one deed**

The registrar may not transfer undivided shares in more than one piece of land to more than one transferee in one deed of transfer if the shares appropriated to any one transferee are not the same in respect of each piece of land so transferred.

#### **20. Special provisions relating to transfer of undivided shares**

- (1) Subject to section 95(4) and (5), the registrar may not register the transfer of an undivided share in land intended or calculated to represent or purport to represent a defined portion of land.
- (2) If -
  - (a) two or more persons own a piece of land in undivided shares; and
  - (b) one or more of those persons referred to in paragraph (a) acquire the share or shares of the remaining owner or owners in a defined portion of such piece of land,the owners, including the owner or owners acquiring the share or shares, may transfer the portion to the person or persons acquiring it.

## 21. Transfer from partnership

- (1) If land or a real right registered in the name of a partnership is acquired by any partner of the partnership in his or her personal capacity, all the partners constituting the partnership must transfer such land or cede such right.
- (2) Except for the circumstances contemplated in subsection (1), the transfer of land or real rights owned by a partnership is dealt with by the partnership in the prescribed manner.
- (3) If on the dissolution of a partnership any land or real right owned by the partnership is awarded to all the partners, the registrar must endorse, upon a written application, on the title deed relating to the land or the real right that the land or real right vests in the individuals named in the title deed.
- (4) An application in terms of subsection (3) is -
  - (a) in writing and signed by all the partners; and
  - (b) accompanied by -
    - (i) written proof of the dissolution of the partnership; and
    - (ii) the other documents as may be prescribed or as the registrar may determine.
- (5) Upon the endorsement of a title deed by the registrar in terms of subsection (3), the person named in the title deed is entitled to deal with the land or the real right referred to in that subsection as if he or she has taken formal transfer or cession of the shares in the land or real right in his or her name.
- (6) If the land or real right referred to in subsection (3) is mortgaged under a mortgage bond, the registrar may not make the endorsement contemplated in that subsection, unless the mortgage bond is cancelled or the holder of the mortgage bond consents to the substitution of the individual partners as debtors under the bond.
- (7) The registrar may not allow the substitution of the individual partners as debtors under a mortgage bond in terms of subsection (6), unless -
  - (a) the partners apply individually to be substituted, jointly and severally, as debtors in terms of the bond;
  - (b) the application referred to in paragraph (a) is made in duplicate, duly signed by the partners concerned and witnessed;
  - (c) the written consent by the holder of the mortgage bond referred to in subsection (6) is lodged with the registrar in duplicate;
  - (d) the individual partners are competent to mortgage the land;
  - (e) if applicable, the partners renounce in the application referred to in paragraph (a) the exception de duobus vel pluribus reis debendi; and
  - (f) if the partner is a spouse, the spouse renounces in the application referred to in paragraph (a) any special legal exceptions which the spouse is entitled to raise.

## 22. Transfer to unascertained children

- (1) If a land, real right or mortgage bond is donated or bequeathed to a child or the children born or to be born of a person or of a marriage, or is otherwise acquired on behalf of the child or children, transfer of the land or cession of the real right or bond on behalf of the child or children may be passed -
  - (a) in the case of a child or children born or to be born of a person, to that person; and

- (b) in the case of a child or children born or to be born of a marriage, to the person who is to be the guardian of the child or those children when the child or children is or are minors, in trust for the child or children.
- (2) If a land, real right or mortgage bond is donated to a child or the children born or to be born of a person or of a marriage, the person to whom the transfer or the cession may be passed in terms of subsection (1) may for the purpose of the transfer or cession accept the donation.
- (3) When the identity of all the children referred to in subsection (1) or (2) has been established, the registrar must make an endorsement on the title deed or mortgage bond concerned which endorsement must contain the full names, dates of birth and identity numbers, if any, of those children.
- (4) Upon an endorsement made in terms of subsection (3), the title deed or mortgage bond concerned is deemed to be registered in favour of the children referred to in that subsection in the same manner as if the transfer or cession in terms of subsection (1) had originally been passed to them by name, despite section 12(1) and (2).

### 23. Deeds of partition transfer

- (1) Subject to subsection (3), if two or more persons who own in undivided shares the whole of any piece or pieces of land, including land situated in areas served by different deeds registries, agree in writing to partition the land, a person must lodge with the registrar a power of attorney, duly signed by all the persons, authorising the passing of deeds of partition transfer of the land in accordance with the agreement of partition.
- (2) An agreement of partition entered into in terms of subsection (1) must contain or describe fully in respect of the land to be partitioned the -
  - (a) full names and prescribed identification of the owners of the land;
  - (b) land to be partitioned;
  - (c) share or shares in the land registered in the name of each joint owner;
  - (d) land or shares in the land awarded to each of the owners;
  - (e) conditions, if any, affecting any land or share in land awarded to any owner;
  - (f) consideration, if any, given or paid for the purpose of equalising the partition; and
  - (g) other particulars as may be prescribed.
- (3) The power of attorney referred to in subsection (1) must contain full particulars of the agreement of partition referred to in subsection (2), or a copy of the agreement is to be appended to the power of attorney.
- (4) The persons referred to in subsection (1) must lodge, together with the power of attorney referred to in that subsection -
  - (a) the title deeds relating to; and
  - (b) the diagrams pertaining to,the land to be partitioned.
- (5) Despite subsection (4), no new diagram in respect of the whole or of the remaining extent of any one of the pieces of land to be partitioned may be lodged with the registrar.
- (6) Subject to this section, on receipt of the documents referred to in subsections (1) and (4), the registrar must attest the deeds of partition transfer, which is as near as practicable in the prescribed form, conveying to the respective owners the land or shares in the land awarded to them in terms of the agreement of partition referred to in subsection (2).



- (7) Subject to this section, sections 15, 16, 17 and 18 apply with the necessary changes to the deeds of partition transfer referred to in subsection (6).
- (8) A deed of partition transfer attested by the registrar in terms of subsection (6) -
  - (a) substitutes, in respect of the land described in the deed, or deeds in terms of which the land was previously held; and
  - (b) may not amend or affect -
    - (i) the conditions relating to the land described in the deed; or
    - (ii) any condition or conditions affecting the land in general, unless the amendment of the condition or conditions is provided for in the agreement of partition concerned, or consented to in writing by the parties with an interest in the land or condition.
- (9) This section applies with the necessary changes to the partition of land in terms of an order of Court or an arbitration award.
- (10) This section applies to partitions of land registered in different deeds registries.

## **24. Requirements if share in land to be partitioned is mortgaged**

- (1) If the share in land owned by any of the parties to an agreement of partition referred to in section 23(1) is mortgaged under a mortgage bond registered against the share, the registrar may not attest the partition transfer in terms of section 23(6), unless the parties to the agreement of partition lodge with the registrar the -
  - (a) mortgage bond; and
  - (b) written consent of the holder of the mortgage bond to the-
    - (i) partition; and
    - (ii) substitution of the land awarded to the mortgagor in terms of the agreement of partition for the share or shares in land mortgaged under the mortgage bond.
- (2) When registering the partition transfer referred to in subsection (1), the registrar must -
  - (a) endorse on the mortgage bond lodged in terms of subsection (1)(a) that the land referred to in subsection (1)(b)(ii) awarded to the mortgagor in terms of the agreement of partition referred to in subsection (1), has been substituted for the share in the land mortgaged under the mortgage bond;
  - (b) make an entry in the registers recording the substitution of the land referred to in paragraph (a); and
  - (c) endorse on the deed of transfer that the land described in the deed is mortgaged, in accordance with this section, by the mortgage bond referred to in paragraph (a).
- (3) If only a fraction of the share or shares owned by any of the parties to an agreement of partition referred to in section 23(1) is mortgaged, the substitution of the land in terms of this section may 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 is awarded separately in respect of the mortgaged fraction.
- (4) If more than one property is partitioned in terms of the same agreement of partition and the whole of any one or more of the properties affected is awarded to an owner, the property or properties may be substituted under the mortgage bond of the owner, if the bond is registered in respect of his or her share in all the properties so partitioned.

## **25. Requirements if share in land to be partitioned is subject to other rights**

- (1) If the shares or shares in land owned by any of the parties to an agreement of partition referred to in section 23(1) appear from the title deeds relating to the land partitioned in terms of the agreement to be subject to such a lease, personal servitude or other real right, then the holder of the lease, servitude or other real right must in writing consent to the partition and allocation of the lease, servitude or the other real right.
- (2) If any shares in land referred to in subsection (1) is subject to any of the rights referred to in that subsection, then registrar may not attest the partition transfer concerned in terms of section 23(6), unless the parties to the agreement of partition lodge with the registrar the consent referred to in subsection (1) together with the deed or deeds concerned, if any.
- (3) The land described in the deed of partition referred to in section 23(1) is made subject to the lease, servitude or real right referred to in subsection (1) to the same extent as the share or shares of land for which the land so described in the deed of partition is substituted.
- (4) The registrar must endorse, in the same manner as the bond referred to in section 24, the deed by which the lease, servitude or real right referred to in subsection (3) is held.
- (5) If the lease, servitude or real right referred to in subsection (3) is mortgaged by means of a mortgage bond, the holder of the mortgage bond must in writing consent to the partition and allocation of the lease, servitude or real right in terms of the agreement of partition referred to in subsection (1).
- (6) The registrar may not attest the partition transfer in terms of section 23(6), unless the parties to the agreement of partition concerned lodge with the registrar -
  - (a) the mortgage bond referred to in subsection (5);
  - (b) the written consent signed in terms of subsection (5); and
  - (c) the deeds concerned, if any.
- (7) Subject to this Act, the registrar must make the endorsements and entries referred to in section 24 on the bond and the deeds concerned and in the registers.

## **26. Effect of compliance with sections 24 and 25**

Upon the completion of the endorsements and entries by the registrar on the bonds and deeds and in the registers in terms of sections 24 and 25, the land described in the deeds of partition transfer, and in the lease, personal servitude or real right, if any, is deemed to be as fully and effectually -

- (a) mortgaged as if the land is mortgaged by the mortgage bond at the time of its execution; and
- (b) encumbered by the lease, personal servitude or real right as if the land is encumbered at the time of the registration.

## **27. Partition of land subject to fideicommissum**

- (1) If the whole or any share of a piece of land -
  - (a) is subject to a fideicommissum; and
  - (b) the partition of the land is not prohibited in terms of any law,the land may be partitioned with the written consent of the fideicommissary heirs or successors, if they are ascertained and are majors and competent to give consent.

- (2) If the fideicommissary heirs or successors referred to in subsection (1) are ascertained, but -
  - (a) one of them is a minor, then the written consent of the Master in respect of the minor or minors is required;
  - (b) the estate or estates of one or more of them is sequestrated, or if one or more of them are under curatorship or otherwise subject to any disability, then a written consent of his or her trustee, curator or other legal representative is required.
- (3) If the fideicommissary heir or successor referred to in subsection (1) is not ascertained or cannot be found, proof must be produced to the satisfaction of the registrar that the land awarded in the agreement of partition concerned to the owner of any share in land subject to a fideicommissum is equivalent to that share.
- (4) The land referred to in subsection (3) awarded in terms of the agreement of partition concerned must, in the deed of partition transfer, be made subject to the fideicommissum to the same extent as the corresponding share in its title deed made before partition.

## **28. Transfer of expropriated land or land vested by statute**

- (1) If -
  - (a) any land is expropriated under the authority of any law by; or
  - (b) the ownership of any land has by statute been vested in,  
the State, a regional authority, local authority, body corporate or association of persons, the transferee must lodge as near as practicable in the prescribed form a deed of transfer with the registrar.
- (2) The registrar must execute a deed of transfer lodged with him or her in terms of subsection (1).
- (3) Where the land referred to in subsection (1) is mortgaged, the registrar must endorse the prescribed particulars of the transfer in terms of that subsection on the registry duplicate of the mortgage bond.
- (4) If -
  - (a) the original mortgage bond referred to in subsection (3) is at any time lodged with the registrar for any reason other than for cancellation; or
  - (b) an application is made for the issue of a certified copy,  
the registrar must endorse the original bond or the certified copy with the same particulars that he or she endorsed the registry duplicate of the mortgage bond in terms of that subsection.
- (5) A transfer registered in terms of subsection (1) may not in any way prejudice any claim to compensation which an owner of the land concerned may have in respect of the change of ownership of the land.
- (6) No transfer may be registered in favour of the State, a regional authority, a local authority or body corporate or association of persons in terms of subsection (1), if the transfer of the land concerned has already been registered in favour of the State, a regional authority, a local authority, a body corporate or association of persons by means of an endorsement in terms of section 11(3).
- (7) The transferee referred to in subsection (1) must lodge with the registrar, together with the deed of transfer referred to in that subsection, the title deed relating to the land referred to in paragraph (a) or (b) of that subsection.
- (8) When the title deed is lodged with the registrar in terms of subsection (7) the registrar must endorse the transfer in terms of subsection (1) on the title deed.

- (9) If the transferee referred to in subsection (7) is unable to lodge with the registrar the title deed in terms of that subsection, the transferee must lodge with the registrar an affidavit to the satisfaction of the registrar that the transferee -
- (a) is not in possession of the deed of transfer; and
  - (b) has not been able to obtain possession of the deed of transfer.
- (10) When an affidavit is lodged with the registrar in terms of subsection (9), the registrar must endorse the transfer in terms of subsection (1) on the registry duplicate of the title deed concerned.
- (11) If -
- (a) the title deed referred to in subsection (7) is at any time lodged with the registrar for any purpose; or
  - (b) an application is made for the issue of a certified copy of the title deed,
- the registrar must endorse the transfer in terms of subsection (1) on the title deed or on the certified copy of such deed.
- (12) The registrar may not execute a deed of transfer in terms of subsection (1), unless the transferee has lodged with him or her a certificate, to the satisfaction of the registrar, to the effect that any law relating to the change of ownership in the land under expropriation or the vesting of the land is complied with.
- (13) The deed of transfer referred to in subsection (1) is registered subject to all the existing conditions affecting the expropriated land or land vested in the transferee.
- (14) No deed by the expropriating authority purporting to transfer the expropriated land, to create or to deal with any real right in the land, may be registered in a deeds registry until such time as -
- (a) transfer of the land is passed in terms of subsection (1); or
  - (b) the title deed concerned is endorsed in favour of the State, regional authority, a local authority, a body corporate or association of persons by means of an endorsement in terms of section 11(3).
- (15) The expropriating authority must lodge with the registrar soon after any land is expropriated in terms of any law -
- (a) a certified copy of the notice of expropriation;
  - (b) two copies of the expropriating plan relating to the land concerned; and
  - (c) a certificate containing -
    - (i) a full description of the land concerned, stating the name, number of the land, the registration division and the region where it is situated;
    - (ii) the full names and surname and prescribed identification of the registered owner of the land concerned; and
    - (iii) the number consisting of the serial number and the year of the title deed concerned.
- (16) If the whole of a piece of land is expropriated, a certified copy of the expropriation plan may not be lodged with the registrar in terms of subsection (15)(b).
- (17) Upon receipt of the documents referred to in subsection (15), the registrar must note the expropriation in his or her registers endorse the expropriation on the registry duplicate of the title deed concerned.

- (18) If the original of the title deed referred to in subsection (17) is at any time lodged with the registrar, or if an application is lodged for the issue of a certified copy the registrar must -
- (a) endorse the particulars of the expropriation referred to in that subsection on; and
  - (b) append the documents lodged in terms of subsection (15) to, the original title deed or certified copy.
- (19) An endorsement referred to in subsection (17) or (18) may not prohibit the registered owner of the land concerned to transfer or otherwise deal with any part of the land which is not subject to the expropriation concerned.
- (20) If the expropriation of land is endorsed on a title deed in terms of subsection (17) or (18), the registered owner of the land so expropriated may not -
- (a) transfer the land to any person; or
  - (b) deal with the land in any other manner,
- except to effect the registration of a deed of transfer in favour of the authority which expropriated the land.
- (21) Upon the registration of a deed of transfer in favour of the authority which expropriated the land concerned, the endorsement on the deed of transfer in terms of subsection (17) or (18) is deemed to be cancelled.
- (22) If land is expropriated, but the land is not transferred to the authority which expropriated the land, the authority and the registered owner of the land may apply in writing to the registrar for the cancellation of -
- (a) the endorsement of expropriation made on the title deed concerned in terms of subsection (18); and
  - (b) the notation made in the registers of the registrar in terms of subsection (17).
- (23) Upon receipt of an application in terms of subsection (22), the registrar must cancel the endorsement and notation referred to in that subsection.
- (24) Upon the cancellation of the endorsement and notation in terms of subsection (23), the expropriation of the land concerned is considered to be cancelled.

## **29. Registration of expropriated servitude or servitude vested by statute**

- (1) If a right of servitude over any land has under the authority of any law been expropriated by, or has by statute been vested in the State, a regional authority, local authority, body corporate or association of persons, the cessionary concerned must lodge with the registrar a deed of cession relating to the right of servitude.
- (2) A deed of cession referred to in subsection (1) is -
- (a) in favour of the State, the authority, body corporate or association of persons, referred to in that subsection;
  - (b) as near as practicable in the prescribed form; and
  - (c) prepared by the cessionary or a conveyancer duly authorised to do it.
- (3) The registrar must execute a deed of cession lodged with him or her in terms of subsection (1).
- (4) If the land referred to in subsection (1) is mortgaged, the registrar must endorse the prescribed particulars of the cession referred to in that subsection on the registry duplicate of the mortgage bond concerned.

- (5) If -
- (a) the original mortgage bond referred to in subsection (4) is at any time lodged with the registrar for any reason other than for cancellation; or
  - (b) if application is made for the issue of a certified copy,
- the registrar must endorse the original bond or the certified copy with the same particulars that the registrar endorsed on the registry duplicate of the mortgage bond in terms of that subsection.
- (6) No cession registered in terms of subsection (1) in any way prejudices any claim to compensation which an owner of the land concerned or any other person may have as a result of the expropriation or the vesting of the servitude referred to in this section.
- (7) The cessionary referred to in subsection (1) must lodge with the registrar, together with the deed of cession referred to in that subsection, the title deed relating to the land referred to in that subsection.
- (8) When the title deed is lodged with the registrar in terms of subsection (7), the registrar must endorse the cession on the title deed in terms of subsection (1).
- (9) If the cessionary referred to in subsection (7) is unable to lodge with the registrar the title deed in terms of that subsection, the cessionary must lodge with the registrar an affidavit to the satisfaction of the registrar that the cessionary is not in possession of the deed of transfer and that the cessionary is not in possession of such deed.
- (10) When an affidavit is lodged with the registrar in terms of subsection (9), the registrar must endorse the cession in terms of subsection (1) on the registry duplicate of the title deed concerned.
- (11) If the title deed referred to in subsection (7) is at any time lodged with the registrar for any purpose or if an application is made for the issue of a certified copy of the title deed, the registrar must endorse the cession in terms of subsection (1) on the title deed or on the certified copy.
- (12) The registrar may not register the deed of cession in terms of subsection (1), unless the cessionary has lodged with him or her a certificate, to the satisfaction of the registrar, to the effect that any law relating to the expropriation or vesting of the servitude concerned has been complied with.
- (13) If a right of servitude referred to in subsection (1) is expropriated or vested subject to any existing condition or conditions, the deed of cession referred to in that subsection is registered subject to the condition or conditions.
- (14) As soon as practicable after any right of servitude over any land is expropriated, the expropriating authority must lodge with the registrar -
- (a) a certified copy of the notice of expropriation;
  - (b) two copies of the expropriation plan relating to the servitude; and
  - (c) a certificate containing -
    - (i) a full description of the land concerned stating the name and number of the land and the registration division and region in which it is situated;
    - (ii) the full names and surname and prescribed identification of the registered owner of the land concerned; and
    - (iii) the number, consisting of the serial number and the year, of the title deed concerned.
- (15) Upon receipt of a notice in terms of subsection (14), the registrar must -
- (a) make a note in his or her registers; and

- (b) endorse on the registry copy of the title deed relating to the land which is subject to the servitude concerned,  
of the expropriation concerned referred to in that subsection.
- (16) If the original of the title deed referred to in subsection (15)(b) is for any reason lodged with the registrar or if an application is made for the issue of a certified copy, the registrar must -
  - (a) endorse particulars of the expropriation referred to in that subsection on; and
  - (b) append the documents referred to in subsection (14) to,  
the original title deed or the certified copy of the title deed.
- (17) If a right of servitude is expropriated but the cession of the right to the authority which expropriated the right is registered, the authority and the registered owner of the right of servitude may apply in writing to the registrar for the cancellation of the endorsement of expropriation made on the title deed and the notation made in the register of the registrar in terms of subsection (15).
- (18) Upon receipt of an application in terms of subsection (17), the registrar must cancel the endorsement and notation referred to in that subsection.
- (19) Upon the cancellation of the endorsement and the notation in terms of subsection (18), the expropriation of the right of servitude concerned is considered to be cancelled.

### 30. Registration of title in terms of order of Court

- (1) A person who -
  - (a) has acquired, in any manner other than by means of expropriation, the right to the ownership of immovable property registered in the name of any other person; and
  - (b) is unable to procure registration of the property in his or her name in terms of this Act and according to the sequence of the successive transactions or the succession in pursuance of which the right to the ownership of the property has devolved upon him or her,  
may apply to Court for an order authorising the registration of the property in his or her name.
- (2) The allegations contained in an application referred to in subsection (1) must be supported by the necessary affidavits and all the available documentary evidence which the applicant may be able to adduce.
- (3) An application referred to in subsection (1) is -
  - (a) lodged with the registrar of the Court; and
  - (b) laid before one of the judges of the Court in Chambers.
- (4) The judge before whom an application is laid in terms of subsection (3)(b) may -
  - (a) make an order relating to the application as the judge considers appropriate; or
  - (b) order that any matter or issue contained in or arising from the application be argued before and determined by the full Court.
- (5) The Court considering a petition referred to in subsection (1) may -
  - (a) grant, if the Court considers it expedient to do so, a rule nisi containing the description of the immovable property referred to in the application and calling upon all persons claiming to have any right or title to the property to appear before the Court on a date specified in the rule and to establish their claims to the property; and
  - (b) give directions as to the manner of service or of publication of the rule granted in terms of paragraph (a).

- (6) Upon the return day of the rule nisi granted in terms of subsection (5), and if the rule is not opposed, the Court may order the registrar to register the property described in the order in the name of the person named in the order, subject to the terms and conditions as may be determined in the order.
- (7) If any person upon the return day of the rule nisi referred to in subsection (6) opposes the rule, the Court may -
  - (a) require any issue of fact in dispute to be tried upon pleadings, without the issue of a summons; or
  - (b) make such other or alternative order relating to the issue referred to in paragraph (a), as it considers fit, including an order relating to the payment of costs.
- (8) A deed of transfer passed pursuant to an order made in terms of this section, is subject to -
  - (a) the terms and conditions determined by the order; and
  - (b) every condition, servitude, bond or other encumbrance to which the property concerned is subject, according to the records of the deeds registry concerned.
- (9) The registrar, in respect of the conditions, servitudes, bonds or other encumbrances referred to in subsection (8), must make the proper and required entries and endorsements upon or in respect of the deed of transfer concerned in his or her registry, before the deed is delivered to the applicant referred to in subsection (1).
- (10) The registration of immovable property in the name of any person in pursuance of an order made in terms of this section has the effect of vesting that person with a title to the property, which title may be annulled, limited or altered on any of the grounds on which the title of the person to the property would have been liable to be annulled, limited or altered if the property is transferred to the person in terms of any other provision of this Act.
- (11) If the registrar registers any property in the name of any person in pursuance of an order made in terms of this section, the person is liable to pay the taxes, duties and fees of office as if the property is transferred to him or her directly from the last registered owner of the property in terms of any other provision of this Act.
- (12) The person referred to in subsection (11) in whose name the property is registered is not liable to pay any tax, duty or interest in respect of the property which the owner referred to in that subsection, or any intermediate holder of the right to the property, may have become liable to pay, unless -
  - (a) the person has by agreement bound himself or herself to pay the tax, duty or interest; or
  - (b) the delay in the registration of the property in name of the person is due to the neglect or default of himself or herself, or of his or her agent.
- (13) If any person is liable in terms of this section for the payment of any tax, duty or interest in respect of any property, the person remains liable for such payment to the extent to which the person is liable, despite the fact that the property is registered in the name of any other person pursuant to an order made in terms of this section.
- (14) If -
  - (a) an order made in terms of this section and a certificate by the proper authority confirming the payment of transfer duty, if the duty is payable, are lodged with the registrar; and
  - (b) the other requirements of this Act relating to the transfer concerned are complied with,the registrar must register the property concerned in accordance with the order referred to in paragraph (a), by means of the execution of a deed of transfer in favour of the person named in the order.



- (15) A deed of transfer executed in terms of subsection (14) must be as near as practicable in the prescribed form.
- (16) If the person in whose name the property concerned is to be registered in terms of subsection (14) is not able to obtain possession of the title deed relating to the property, the person must lodge an affidavit with the registrar confirming the inability to obtain the title deed.
- (17) The registrar may register, upon receipt of the affidavit lodged in terms of subsection (16), the transfer of the property concerned in the name of the person referred to in that subsection, despite the fact that the title deed relating to the property concerned is not lodged with the registrar.

## **Part 5 – SUBSTITUTED TITLE DEEDS**

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

- (1) A person who is the joint owner of a piece of land the whole of or shares in which is or are held by that person and another person or other persons under one title deed, may obtain, subject to section 34, a certificate of registered title in respect of his or her undivided share in the land.
- (2) No transfer of a fraction only of an undivided share in land, or the mortgaging or lease of the whole or any fraction of the undivided share, may be registered in a deeds registry unless a certificate of registered title of the undivided share is lodged with the registrar.
- (3) Despite subsection (2) -
  - (a) all the joint owners of the whole or any piece of land in terms of one title deed, jointly acting may -
    - (i) transfer an undivided share in the land or a fraction of a share held in terms of the title deed; or
    - (ii) mortgage or effect the registration of a lease of the whole of the land or share in the land,without the lodging of a certificate of registered title; and
  - (b) a joint owner may dispose of the whole of his or her undivided share in the land.
- (4) Subsection (1) applies with the necessary changes to any person who is the owner of the whole of or a share in a piece of land and who wishes to obtain a certificate of registered title of any fraction of his or her undivided share in the land.
- (5) If the title deed in terms of which land or shares in the land is held in joint ownership is lost or destroyed, any joint owner may obtain upon compliance with the prescribed requirements a certificate of registered title in respect of his or her share in the land.
- (6) If a joint owner obtains a certificate of registered title in terms of subsection (5), the owner is not required to obtain a certified copy of the lost or destroyed title deed referred to in that subsection.
- (7) This section applies if two or more pieces of land or shares in the land are under joint ownership in terms of the same title deed.
- (8) All the pieces of land referred to in subsection (7) or the shares in the land are -
  - (a) included in the certificate of registered title concerned; and
  - (b) described in separate paragraphs in the certificate of registered title referred to in paragraph (a).

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

- (1) A person who is the owner, in terms of more than one title deed, of undivided shares in one piece of land or more than one piece of land may obtain subject to section 34 a certificate of registered title in respect of his or her aggregate share in the land.
- (2) All the pieces of land or the shares in the land must be described in separate paragraphs in the certificate of registered title if two or more pieces of land are included in the certificate of registered title referred to in subsection (1).

**33. Certificate of registered title of one or more properties held in terms of one deed**

- (1) A person who holds two or more pieces of land or undivided shares in the land by means of one title deed may obtain, subject to section 34, a certificate of registered title in respect of one or more of the pieces of land or of the undivided share or shares held by him or her.
- (2) Despite subsection (1), not less than one of the pieces of land or of the undivided share or shares in the land, held by means of the title deed referred to in that subsection, may remain held by the title deed.

**34. Conditions governing issue of certificate of registered title**

- (1) A certificate of registered title referred to in section 31, 32 or 33 may be obtained upon a written application made to the registrar by the owner of the land concerned.
- (2) An application in terms of subsection (1) is as near as practicable in the prescribed form and is accompanied, subject to section 31(3) and (4), by the title deed relating to the land concerned and by the other particulars or documents as prescribed.
- (3) If the property in respect of which a certificate of registered title is applied for is mortgaged, the holder of the mortgage bond concerned must, at the written request and at the cost of the applicant for the certificate of registered title, lodge the mortgage bond with the registrar.
- (4) The registrar, upon receipt of an application in terms of subsection (1) and subject to this section, may issue the certificate of registered title applied for in terms of that subsection.
- (5) Before issuing a certificate of registered title in terms of subsection (4), the registrar must make upon -
  - (a) the title deed or title deeds, subject to subsection (6), relating to the land concerned;
  - (b) the registry duplicate or registry duplicates of the title deed or the title deeds referred to in paragraph (a); and
  - (c) the mortgage bond, if any registered in respect of the land concerned,an endorsement that a certificate of registered title is substituted in accordance with this Act for the title deed or title deeds relating to the land.
- (6) If a certificate of registered title is obtained as provided for in section 31(4), the registrar must endorse only the registry duplicate of the title deed.
- (7) If the registrar issues a certificate of registered title, the registrar must -
  - (a) record the issue of the certificate of registered title in the registers of the deeds registry concerned; and
  - (b) endorse, if a mortgage bond is registered in respect of the land concerned, particulars of the mortgage bond on the certificate of registered title.
- (8) A certificate of registered title substitutes, in respect of the property described in the certificate, the title deed or title deeds by which the property is previously held.

- (9) The issue of a certificate of registered title may not affect any right or obligation relating to the property described in the certificate.

### **35. Certificate of registered title replacing lost or destroyed deed**

- (1) If -
- (a) the title deed relating to any land; and
  - (b) the registry duplicate of the title deed referred to in paragraph (a),
- is lost or destroyed, the owner of the land may apply in writing to the registrar for the execution of a certificate of registered title.
- (2) If no diagram relating to the land concerned is filed in a deeds registry or in the office of the Surveyor-General, an application in terms of subsection (1) is accompanied by a diagram relating to the land and by the other particulars or documents as may be prescribed.
- (3) Upon receipt of an application in terms of subsection (1), the registrar must execute, subject to this section and in accordance to the diagram relating to the land concerned, a certificate of registered title in respect of the land.
- (4) Before the registrar may issue a certificate of registered title executed in terms of subsection (3) the registrar must publish -
- (a) in the *Gazette*; and
  - (b) in two consecutive issues of a newspaper circulating in the registration division and region in which the land concerned is situated,
- a notice as near as practicable in the prescribed form of his or her intention to issue the certificate of registered title.
- (5) The costs relating to the publication of the notice in the newspaper in terms of subsection (4) is borne by the owner of the land in respect of which the certificate of registered title concerned is issued.
- (6) The application referred to in subsection (1), including -
- (a) a draft of the proposed certificate of registered title referred to in that subsection; and
  - (b) a copy of the diagram relating to the land concerned, if any,
- is made available for inspection at the deeds registry, free of charge, by any person having an interest in the issue of the certificate of registered title.
- (7) The application referred to in subsection (1) is open for inspection in terms of subsection (6) for a period of not less than six weeks from the date of the first publication of the notice in the *Gazette* in terms of subsection (4).
- (8) A person with an interest in the issue of the certificate of registered title referred to in subsection (4) may at any time within the period of time referred to in subsection (7), lodge an objection against the issue of the certificate of registered title.
- (9) A person lodging an objection in terms of subsection (8) must -
- (a) lodge it in writing;
  - (b) set out the grounds upon which the objection is based;
  - (c) set out his or her name and address and his or her interest in the issue of the certificate of registered title concerned;
  - (d) lodge it with the registrar in duplicate; and

- (e) set out the other information as may be prescribed.
- (10) The registrar must forward a copy of the objection lodged with him or her in terms of subsection (8) to the applicant concerned or to the conveyancer who lodged the application for and on behalf of the applicant.
- (11) If -
  - (a) a person lodges an objection in terms of subsection (8) against the issue of a certificate of registered title; and
  - (b) the person and the applicant concerned fails to reach an agreement relating to the issue of the certificate of registered title,

**[The verb “fails” should be “fail” to be grammatically correct.]**

the person who lodged the objection may apply, within 30 days after the final date upon which the objection may have been lodged in terms of that subsection, to the Court for an order prohibiting the registrar from issuing the certificate of registered title.

- (12) The Court, upon receipt of an application in terms of subsection (11), may make an order relating to the application as it may considers appropriate, including an order relating to the payment of costs.

**[The verb “considers” in the phrase “as it may considers” should be “consider” to be grammatically correct.]**

- (13) A certificate of registered title issued in terms of this section -
  - (a) is as near as practicable in the prescribed form;
  - (b) substitutes the lost or destroyed title deed concerned; and
  - (c) contains or refers to every condition, servitude, bond, lease or other encumbrance which according to the records of the deeds registry concerned is contained or referred to in the lost or destroyed title deed, or in any endorsement on the title deed.

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

- (1) If by reason of an error the same land is registered -
  - (a) in the names of different persons; or
  - (b) in the name of the same person or persons by more than one deed of transfer,the registrar, upon transfer of the land being passed to one of those persons by the other person or persons, may issue to the person to whom transfer is so being passed a certificate of registered title relating to the land held by him or her in terms of various title deeds.
- (2) A person who is the registered owner of any one or more defined portions of land in terms of a registered title deed reflecting conditions or servitudes that lapsed by a merger or which is cancelled may apply for the issue to him or her of a certificate of registered title in respect of the land, free of the conditions or servitudes.
- (3) A certificate of registered title issued in terms of this section is -
  - (a) as near as practicable in the prescribed form; and
  - (b) substitutes the title deed in terms of which the land concerned is previously held.
- (4) Section 34 applies with the necessary changes in respect of the issue of a certificate of registered title in terms of this section.

### 37. Certificate of consolidated title of two or more pieces of land

- (1) If a diagram prepared and approved in terms of the Land Survey Act, 1993 (Act [No. 33 of 1993](#)), and the diagram represents two or more pieces of land which are -
  - (a) contiguous to one another;
  - (b) owned by the same person or by two or more persons in the same undivided share in each piece of land;
  - (c) registered in a deeds registry;
  - (d) registered in the same property register; and
  - (e) situated in the same registration division,the title deeds relating to the pieces of land may be substituted, upon compliance with the requirements of this section, by a certificate of consolidated title issued by the registrar as near as practicable in the prescribed form.
- (2) The particulars contained in a certificate of consolidated title issued in terms of subsection (1) must correspond to and be in accordance with the diagram referred to in that subsection.
- (3) The owner or owners of the pieces of land concerned must apply in writing to the registrar for the issue of a certificate of consolidated title in terms of subsection (1).
- (4) An application in terms of subsection (3) is accompanied by -
  - (a) the title deed or title deeds relating to the land referred to in subsection (1);
  - (b) the mortgage bond and the written consent of the holder of the bond to the issue of the certificate of consolidated title concerned, if there is a mortgage bond registered in respect of the land referred to in paragraph (a); and
  - (c) the other particulars or documents as may be prescribed.
- (5) When issuing the certificate of consolidated title referred to in subsection (1), the registrar must -
  - (a) endorse on the title deed relating to the land in respect of which the certificate of consolidated title is issued that the title deed is substituted by the certificate of consolidated title in respect of the land described in the certificate;
  - (b) endorse on the certificate of consolidated title that the described land or the share of the land referred to in the endorsement is mortgaged by the mortgage bond referred to in subsection (4)(b); and
  - (c) make the endorsements on the mortgage bond referred to in paragraph (b), and the entries in the registers in the deeds registry concerned, to indicate that -
    - (i) the land described in the certificate of consolidated title concerned is owned by virtue of the certificate; and
    - (ii) that the land or the share of the land referred to in the endorsement is subject to the mortgage bond.
- (6) If the land represented on the diagram referred to in subsection (1) or any portion of the land is mortgaged a certificate of consolidated title may not be issued in respect of the land represented on the diagram, unless the mortgage bond concerned is cancelled.
- (7) On the written application of the owner of the land referred to in subsection (6) and -
  - (a) with the written consent of the holder of the mortgage bond; and

- (b) despite the other provisions of that subsection,  
all the land included in the diagram referred to in subsection (1) may be substituted for the land originally mortgaged under the mortgage bond.
- (8) If different portions of the land represented on the diagram referred to in subsection (1) is mortgaged in terms of different mortgage bonds, a certificate of consolidated title may not be issued in respect of the land represented on the diagram, unless the mortgage bond concerned is cancelled.
- (9) If only a portion of the land represented on the diagram referred to in subsection (1) is subject to any registered deed of lease or other registered deed other than a bond where any real right in the land is held by any other person a certificate of consolidated title may not be issued in terms of that subsection unless -
  - (a) a diagram relating to the portion is already appended to the registered deed; or
  - (b) if no diagram referred to in paragraph (a) is so appended to the registered deed referred to in that paragraph, so many copies of the diagram relating to the portion as the registrar may determine is lodged with him or her.
- (10) Despite subsection (9)(b), it is not necessary to lodge with the registrar a diagram relating to the portion of the land referred to in that subsection, if the diagram relating to the consolidated land indicates the portion -
  - (a) by means of dotted lines; or
  - (b) by means of any other manner,to properly identify the portion.
- (11) The diagram referred to in subsection (9)(b) is -
  - (a) appended to the registered deed referred to in that subsection and to the registry duplicate of the deed; and
  - (b) referred to in any endorsement made on the certificate of consolidated title replacing the registered deed referred to in paragraph (a).
- (12) No diagram representing a combination of portions of two or more pieces of land may be accepted in deeds registry for the purpose of a transfer of any land until a certificate of consolidated title is issued in respect of the land represented on the diagram.
- (13) More than one combination of portions of two or more pieces of land, each of which combination is represented on a separate diagram may be included in one certificate of consolidated title issued in terms of this section.
- (14) Section 34 applies with the necessary changes to any application made in terms of this section.

### **38. Certificate of uniform title**

- (1) If the owner of two or more pieces of land which are -
  - (a) contiguous to one another;
  - (b) registered in a deeds registry;
  - (c) registered in the same property register;
  - (d) situated in the same registration division; and

- (e) held on different conditions of tenure or subject to different rights reserved in favour of the State,  
intends to consolidate his or her title in respect of the pieces of land on uniform conditions of tenure or subject to the reservation of uniform rights in favour of the State, the registrar, with the written consent of the Minister responsible for agriculture and subject to this section, may issue a certificate of uniform title substituting the title deeds relating to the pieces of land.
- (2) A certificate of uniform title issued in terms of subsection (1) is -
  - (a) as near as practicable in the prescribed form; and
  - (b) subject to -
    - (i) the uniform conditions of tenure referred to in that subsection; or
    - (ii) the reservation of the uniform rights in favour of the State,as contained, in such written consent.
- (3) Section 37(2) to (11) applies with the necessary changes in respect of a certificate of uniform title issued in terms of subsection (1).
- (4) The Minister of Agriculture may enter into an agreement with the owner of the land referred to in subsection (1) as to the uniform conditions of tenure or uniform rights in favour of the State referred to in subsection (2) before giving his or her consent to the issue of the certificate of uniform title.
- (5) If -
  - (a) the land referred to in subsection (1) is subject to a mortgage bond; or
  - (b) the land or any portion is subject to a registered deed of lease or other registered deed in terms of which any real right in the land is held by any other person,the holder of the mortgage bond, lease or real right to the -
  - (i) issue of the certificate of uniform title; and
  - (ii) uniform conditions of tenure or uniform rights in favour of the State which may be agreed upon in terms of subsection (4),must issue a written consent to be produced to the registrar.
- (6) This section applies with the necessary changes in respect of land comprising portions -
  - (a) held on different conditions of tenure; or
  - (b) subject to different rights reserved in favour of the State,subject to the title which is consolidated prior to the commencement of this Act.

### **39. Certificate of registered title of portion of piece of land**

- (1) If a defined portion of a piece of land is surveyed and a diagram relating to it is approved by the Surveyor-General, the owner of the piece of land may in writing apply for the issue of a certificate of registered title in respect of the portion.
- (2) An application in terms of subsection (1) is accompanied by -
  - (a) the diagram describing the portion of a piece of land in respect of which the application is made;
  - (b) the title deed relating to the land concerned;

- (c) if a mortgage bond is registered in respect of the land concerned -
    - (i) the mortgage bond; and
    - (ii) the written consent of the holder of the mortgage bond to the issue of the certificate of registered title; and
  - (d) the other particulars or documents as may be prescribed.
- (3) Upon receipt of an application in terms of subsection (2) and subject to this section, the registrar may issue a certificate of registered title in respect of the portion of a piece of land described in the diagram referred to in paragraph (a) of that subsection.
- (4) A certificate of registered title issued in terms of subsection (3) is as near as practicable in the prescribed form.
- (5) When the registrar registers the certificate of registered title issued in terms of subsection (3), the registrar must -
- (a) endorse on the title deed concerned that it is substituted by the certificate of registered title in respect of the portion of a piece of land described in the certificate of registered title;
  - (b) endorse on the certificate of registered title that the described land mortgaged by the mortgage bond referred to in subsection (2); and
  - (c) make the endorsements on the bond referred to in paragraph (b) and in the registers in the deeds registry concerned to indicate that the land referred to in paragraph (a) is now owned by virtue of the certificate of registered title and is subject to the bond.
- (6) This section applies if two or more defined portions of a piece of land have been surveyed and the diagrams in respect of such properties have been approved.
- (7) Each of the defined portions of land referred to in subsection (6) is described in a separate paragraph in the certificate of registered title concerned.
- (8) No defined portion of land referred to in subsection (6) may be mortgaged until such time as the owner of the portion has obtained a certificate of registered title in respect of the portion in terms of this section.
- (9) Unless a whole erf is transferred, no owner of a township or settlement in whose title deed in respect of the township or settlement the individual erven in the township or settlement are not separately described, may deal separately in any way with -
- (a) an individual erf in the township or settlement; or
  - (b) any portion or share of an individual erf,
- until the owner obtains a certificate of registered title relating to the erf in the prescribed form.

#### **40. Certificate of registered title in respect of land previously held under registered sectional title**

- (1) In the event of land reverting to the land register in terms of the Sectional Titles Act, 2009 (Act [No. 2 of 2009](#)), without the revival of the title deed of the developer under that Act, the registrar must issue a certificate of registered title -
- (a) as near as practicable in the prescribed form in respect of the land;
  - (b) in substitution for the certificates of registered sectional title in terms of which the land is held prior to the reversion.



- (2) If the land which reverts to the land register referred to in subsection (1) forms a portion only of the land previously registered in the land register, a diagram relating to the land reverting to the land register is appended to the certificate of registered title concerned.
- (3) The registrar must make all the necessary entries in his or her registers and records and the necessary endorsements on the registered deeds and other documents concerned to give effect to the reversion of the land to the land register in terms of subsection (1).

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

- (1) If the rectification of a title is required in respect of any one piece of land in consequence of -
  - (a) a survey or re-survey of the land; or
  - (b) a correction of any error in the diagram relating to the land made in terms of the Land Survey Act, 1993 (Act [No. 33 of 1993](#)),the owner of the piece of land may apply to the registrar for the rectification of the description of the land in -
  - (i) the title deed relating to the land; and
  - (ii) the mortgage bond and any registered deed of lease or other registered deed where any real right in the piece of land is held by any other person.
- (2) An application in terms of subsection (1) is in writing and is accompanied by the -
  - (a) title deed relating to the piece of land concerned;
  - (b) corrected diagram referred to in subsection (1);
  - (c) mortgage bond, if any, registered in respect of the piece of land concerned;
  - (d) deed of lease or other real right, if any, registered in respect of the piece of land concerned;
  - (e) written consent by the holder of -
    - (i) the mortgage bond referred to in paragraph (b); and
    - (ii) the deed of lease or other real right referred to in paragraph (d),
  - (f) other particulars or documents as may be prescribed.
- (3) Upon receipt of an application in terms of subsection (1), the registrar may endorse on -
  - (a) the title deed referred to in subsection (2)(a);
  - (b) the mortgage bond, if any, referred to in subsection (2)(c); and
  - (c) the deed of lease or other real right, if any, referred to in subsection (2) (d),the description of the piece of land as it appears on the diagram referred to in subsection (1).
- (4) The description of the piece of land referred in subsection (3) substitutes the description of the piece of land as it appears in the deeds referred to in that subsection before the endorsements made by the registrar in terms of that subsection.
- (5) When the registrar makes an endorsement on a deed in terms of subsection (3) the registrar must substitute the corrected diagram lodged with him or her in terms of subsection (2)(b) for the incorrect diagram.

## 42. Transfer or cession by means of endorsement

- (1) If a title deed relating to immovable property or a lease in terms of any law or a mortgage bond is -
- (a) registered in a deeds registry in the name of the survivor of two spouses who were married in community of property or whose marriage is governed by the Recognition of Certain Marriages Act, 1991 (Act [No. 18 of 1991](#)); or
  - (b) registered in the name of the joint estate of the spouses, or in the name of both the spouses, and the surviving spouse has lawfully acquired the share of the deceased spouse in the property, lease or mortgage bond, the registrar, upon a written application made by the executor in the estate of the deceased spouse and by the surviving spouse, must endorse -
    - (i) on the title deeds relating to the property;
    - (ii) on the deed of lease; or
    - (iii) on the mortgage bond,that the surviving spouse is entitled to deal with the property, lease or mortgage bond.
- (2) An application in terms of subsection (1) is -
- (a) signed by the executor referred to in that subsection, and if the executor is not the surviving spouse, in addition by the surviving spouse;
  - (b) accompanied by the deeds to be endorsed by the registrar and by the other particulars and documents as may be prescribed; and
  - (c) lodged with the registrar.
- (3) Upon the endorsement by the registrar in terms of subsection (1) of the title deed, lease or mortgage bond referred to in that subsection, the surviving spouse may deal with it as if he or she had taken formal transfer or cession into his or her own name of the share of the deceased spouse in the property, lease or mortgage bond.
- (4) If the immovable property referred to in subsection (1) is mortgaged under a mortgage bond, the registrar may not make the endorsement in terms of that subsection unless the -
- (a) mortgage bond is cancelled;
  - (b) property or the share of the deceased spouse in the property is released from the bond;
  - (c) estate of the deceased spouse is released from liability in terms of the mortgage bond and the surviving spouse assumes full liability for the indebtedness of the estate under the mortgage bond; or
  - (d) bond is passed by -
    - (i) the surviving spouse alone; or
    - (ii) by both spouses -
      - (aa) who were married in community of property; or
      - (bb) whose marriage is governed by the Recognition of Certain Marriages Act, 1991 (Act [No. 18 of 1991](#)),and a written consent to the release of the estate of the deceased spouse from liability in terms of the bond and to the substitution of the surviving spouse as sole debtor in respect of the bond, is lodged with the registrar.

- (5) A consent in terms of subsection (4)(d) is -
- (a) as near as practicable in the prescribed form;
  - (b) signed by the surviving spouse and the holder of the mortgage bond;
  - (c) lodged with the registrar in duplicate; and
  - (d) accompanied by the mortgage bond concerned and the other information or documents as may be prescribed.
- (6) In the case of the release of the estate of the deceased and the substitution of the surviving spouse as sole debtor in terms of subsection (4)(d), the registrar, when endorsing the title deeds relating to the immovable property concerned in terms of subsection (1) to the effect that the surviving spouse is entitled to deal with the property, must -
- (a) make an entry in the appropriate register in the deeds registry noting that the estate of the deceased spouse is released from liability in respect of the liability secured by the mortgage bond concerned;
  - (b) append the consent referred to in subsection (4)(d) to the mortgage bond and file the duplicate of the consent with the registry duplicate of the mortgage bond referred to in subsection (a); and
  - (c) endorse on the mortgage bond referred to in paragraph (a) that the -
    - (i) estate of the deceased spouse is released from; and
    - (ii) surviving spouse has become the sole debtor in respect of,the liability secured by the mortgage bond.
- (7) From the date of the endorsement of the mortgage bond in terms of subsection (6)(c) -
- (a) the estate of the deceased spouse concerned is released from any liability secured by the mortgage bond; and
  - (b) the surviving spouse becomes the sole debtor in respect of the liability so secured in the same manner as if the surviving spouse had passed the mortgage bond on the date of endorsement.
- (8) If the mortgage bond referred to in subsection (7) is a mortgage bond which provides for the securing of future debts, the immovable property mortgaged by the mortgage bond secures any further or future advances made by the holder of the mortgage bond to the surviving spouse referred to in that subsection.
- (9) A reference in this section to a mortgage bond, includes a reference to a liability or charge against the immovable property concerned in favour of the State or the Agricultural Bank of Namibia established by the Agricultural Bank of Namibia Act, 2003 (Act [No. 5 of 2003](#)).

#### **43. Endorsement of deed on divorce**

- (1) If a -
- (a) title deed relating to immovable property;
  - (b) lease in terms of any law; or
  - (c) mortgage bond,

is registered in a deeds registry in the name of one or two spouses or in the name of both spouses, who were married in community of property or whose marriage was governed by the Recognition of Certain Marriages Act, 1991 (Act [No. 18 of 1991](#)), but who are divorced, and -

- (i) the spouse in whose name the title deed, lease or mortgage bond is registered, has lawfully acquired the share of his or her former spouse in the property to which the title deed relates or the lease or mortgage bond; or
- (ii) if the title deed, mortgage bond or lease is registered in the name of both spouses, one of them has lawfully acquired the share of his or her former spouse in the property to which the title deed relates, or the lease or mortgage bond,

the registrar must endorse, upon a written application made by the spouse who has acquired the share in the property, lease or mortgage bond, on -

- (aa) the title deed relating to the immovable property;
- (bb) the lease; or
- (cc) the mortgage bond,

that the applicant is entitled to deal with the property, lease or mortgage bond.

- (2) An application in terms of subsection (1) is -

- (a) signed by the applicant;
- (b) accompanied by -
  - (i) the deeds referred to in that subsection as endorsed by the registrar; and
  - (ii) by the other particulars as may be prescribed or as the registrar may consider necessary; and
- (c) lodged with the registrar.

- (3) Upon the endorsement by the registrar in terms of subsection (1) of the title deed, lease or mortgage bond referred to in that subsection, the spouse who lodged the application in terms of that subsection may deal with the mortgage bond as if the spouse has taken formal transfer or cession into his or her own name of the share of his or her former spouse in the property, lease or mortgage bond.

- (4) If a title deed relating to immovable property or a lease in terms of any law or a mortgage bond is registered in a deeds registry in the name of both spouses -

- (a) married in community of property; or
- (b) whose marriage is governed by the Recognition of Certain Marriages Act, 1991 (Act [No. 18 of 1991](#)),

but who are divorced, and the property, lease or mortgage bond accrues to both the former spouses in undivided shares in terms of the division of the joint estate, the registrar, upon a written application made by any one of the spouses, must endorse on -

- (i) the title deed;
- (ii) the lease; or
- (iii) the mortgage bond,

that those spouse are entitled to deal with the property, lease or mortgage bond.

**[The phrase “those spouse” should be “that spouse” to be grammatically correct.]**

- (5) An application in terms of subsection (4) is -

- (a) signed by the applicant;

- (b) accompanied by -
  - (i) the deeds referred to in that subsection as endorsed by the registrar; and
  - (ii) the other particulars as may be prescribed or as the registrar may consider necessary; and
- (c) lodged with the registrar.
- (6) Upon the endorsement by the registrar in terms of subsection (4) of the title deed, lease or mortgage bond referred to in that subsection, the spouses referred to in that subsection may deal with the mortgage bond as if they had taken formal transfer or cession into their names of their respective shares in the property, lease or mortgage bond.
- (7) If the person who lodges an application in terms of subsection (1) or (4), is not able to lodge with the registrar the title deed, lease or mortgage bond concerned for the reason that the former spouse of the applicant -
  - (a) has the title deed, lease or mortgage bond in his or her possession or under his or her control; and
  - (b) refuses to submit the title deed, lease or mortgage bond to the applicant,the registrar must endorse only the registry duplicate of the title deed, lease or mortgage in terms of the applicable subsection.
- (8) If -
  - (a) the registrar endorsed a deeds registry duplicate of a title deed, lease or mortgage bond in terms of subsection (1) or (4); and
  - (b) the original title deed, lease or mortgage bond referred to in subsection (1) or (4) is at any time after the endorsement of the deeds registry duplicate referred to in paragraph (a), lodged with the registrar for any reason other than for the transfer or cancellation or if an application is made for the issue of a certified copy,the registrar must endorse the original title deed, lease or mortgage bond or the certified copy with the same particulars that he or she endorsed the deeds registry copy of the title deed, lease or mortgage bond in terms of subsection (7).
- (9) If immovable property referred to in subsection (1) is mortgaged under a mortgage bond, section 42(6) and (7) applies with the necessary changes to an endorsement made in terms of subsection (1).
- (10) If immovable property referred to in subsection (4) is mortgaged under a mortgage bond, an endorsement in terms of that subsection may not be made, unless the -
  - (a) mortgage bond is cancelled;
  - (b) property or the share of the other spouse in the property, is released from the mortgage bond; or
  - (c) former spouses jointly and severally assume liability for the indebtedness secured by the mortgage bond and they renounce the exception de duobus vel pluribus reis debendi.
- (11) An assumption of liability in terms of subsection (10)(c) is -
  - (a) as near as practicable in the prescribed form;
  - (b) signed by both the former spouses referred to in that subsection and the holder of the mortgage bond; and
  - (c) lodged with the registrar.

- (12) A reference in subsection (9) or (10) to a mortgage bond, includes a reference to a liability or charge registered against the immovable property concerned in favour of the State or the Agricultural Bank of Namibia.

#### **44. Endorsement of deed if spouse is entitled in terms of section 8 of Married Persons Equality Act, 1996, to immovable property forming part of joint estate**

- (1) If during the existence of a marriage one of the spouse becomes entitled to immovable property forming part of the joint estate of the spouses as the result of a settlement in terms of section 8 of the Married Persons Equality Act, 1996 (Act [No. 1 of 1996](#)), the registrar, on the written application of the spouse who became so entitled to the immovable property, must endorse on the title deed concerned that the spouse may deal with the immovable property as if the spouse had taken formal transfer of the half share of the other spouse in the property subject to subsection (5) of that section.
- (2) An application in terms of subsection (1) is -
- (a) as near as practicable in the prescribed form;
  - (b) signed by the applicant;
  - (c) accompanied by the title deed concerned and by the other documents as the registrar may consider necessary; and
  - (d) lodged with the registrar.
- (3) If the spouse who makes the application in terms of subsection (1) is unable to lodge the title deed referred to in subsection (2)(c) with the registrar for the reason that the other spouse to the marriage concerned -
- (a) has the title deed in his or her possession or under his or her control; and
  - (b) refuses to submit the title deed to the applicant,
- the registrar must -
- (i) endorse only the deeds' registry copy of the title deed in terms of subsection (1); and
  - (ii) make the necessary endorsement in the relevant registers.
- (4) If at any time after the endorsement of the deeds registry duplicate in terms of subsection (3) -
- (a) the original title deed referred to in subsection (2)(c) is lodged with the registrar for any reason other than the transfer or the cancellation; or
  - (b) an application is made for the issue of a certified copy of the original title deed,
- the registrar must endorse the original title deed or the certified copy of the title deed, with the same particulars that he or she endorsed on the registry duplicate of the title deed in terms of subsection (3).

### **Part 6 – TOWNSHIPS AND SETTLEMENTS**

#### **45. Requirements in case of subdivision of land into erven or portions**

- (1) The owner of the subdivided land must lodge a copy of the general plan with the registrar where the land is subdivided into erven or portions shown on a general plan.
- (2) The registrar must -
- (a) register, subject to this section and of any other law, the general plan lodged with him or her in terms of subsection (1); and

- (b) open a register in which all the registrable transactions affecting the respective erven shown on the general plan referred to in paragraph (a) are registered.
- (3) For the purpose of the registration of a general plan in terms of subsection (2)(a), the owner of the land concerned must lodge with the registrar -
  - (a) the diagram of the land to be registered;
  - (b) the title deed relating to the subdivided land;
  - (c) the diagram relating to the land;
  - (d) the mortgage bond, if a mortgage bond is registered in respect of the land; and
  - (e) the consent of the holder of the mortgage bond lodged in terms of paragraph (d) to the endorsement of the bond to the effect that it appends to the land described in the general plan.
- (4) If the land subdivided as shown on the general plan registered in terms of subsection (2)(a) -
  - (a) forms the whole of any registered piece of land held in terms of the title deed concerned, the registrar must make, on the title deed and on the registry duplicate, an endorsement indicating that -
    - (i) the land is laid out as -
      - (aa) a township;
      - (bb) a settlement; or
      - (cc) subdivided erven or portions, in accordance with the general plan; and
    - (ii) the erven or portions shown on the plan are to be registered in the register concerned; or
  - (b) forms a portion only of any registered piece of land held in terms of the title deed concerned, the registrar, upon the written application by the owner of the land, must issue -
    - (i) a certificate of township title;
    - (ii) a certificate of settlement title; or
    - (iii) a certificate of registered title, in favour of the owner.
- (5) An application in terms of subsection (4)(b) is accompanied by -
  - (a) the general plan referred to in that subsection; and
  - (b) the other particulars or documents as may be prescribed.
- (6) A certificate of township title or a certificate of settlement title or a certificate of registered title issued in terms of subsection (4)(b) is issued as near as practicable in the prescribed form and in accordance with the diagram relating to the land concerned.
- (7) If the land subdivided as shown on the general plan referred to in subsection (1) comprises the whole or portions of two or more registered pieces of land, the registrar may require that the owner obtain a certificate of consolidated title relating to the land so subdivided.
- (8) If the registrar requires that the owner of land must obtain a certificate of consolidated title in terms of subsection (7), the registrar must inform the owner of the requirement by written notice, in which notice the registrar must specify the period of time within which the certificate of consolidated title has to be applied for.

- (9) When the owner referred to in subsection (8) receives a notice in terms of that subsection, the owner must lodge with the registrar an application for the issue of the certificate of consolidated title within the period of time specified in the notice referred to in that subsection.
- (10) An application in terms of subsection (9) is accompanied by the general plan referred to in subsection (7) and by the other particulars or documents as may be prescribed.
- (11) Upon receipt of an application in terms of subsection (9), the registrar must issue the required certificate of consolidated title applied for.
- (12) Section -
  - (a) 39 applies with the necessary changes in respect of the issue of a certificate of township title, a certificate of settlement title or a certificate of registered title referred to in subsection (4) (b); and
  - (b) 37(2) to (9) apply with the necessary changes to the issue of a certificate of consolidated title in terms of subsection (11).
- (13) If -
  - (a) a general plan is registered in terms of subsection (1); and
  - (b) a whole erf which is shown on the general plan is transferred,it is not necessary to lodge a diagram relating to the erf with the registrar.
- (14) If a diagram is not lodged with the registrar as provided for in subsection (13), a reference is made to the general plan concerned in a deed of transfer relating to the erf concerned.

#### **46. Transfer of township or portion**

- (1) The owner of land in respect of which a register is opened in terms of section 45(2)(b) may transfer by means of one deed of transfer -
  - (a) the whole of the land;
  - (b) any portion of the land; or
  - (c) any share in the whole of the land.
- (2) If it is only a portion of the land referred to in subsection (1) to be transferred in terms of the deed referred to in that subsection -
  - (a) the transfer is passed in accordance with the diagram concerned which diagram is appended to the deed; and
  - (b) the boundaries of the portion must coincide with one or more of the lines of division shown on the general plan referred to in section 45(1) and may not intersect any of the erven shown on the general plan.
- (3) All erven forming part of the land represented on the diagram referred to in subsection (2)(a) and which have already been transferred are excluded from a transfer in terms of that subsection.
- (4) The total area of the erven which have already been transferred as referred to in subsection (3) is indicated on the diagram referred to in that subsection.
- (5) If the remainder of the land referred to in subsection (1) is transferred in terms of the deed referred to in that subsection or is mortgaged or dealt with, there must be lodged with the registrar a certificate of remainder signed by the Surveyor-General.



- (6) A deed of transfer referred to in subsection (1) must disclose that -
  - (a) the land so transferred -
    - (i) is laid out as a township or is a portion of land;
    - (ii) remains subject to the laws relating to townships; and
  - (b) the rights of -
    - (i) owners of erven in the township; and
    - (ii) other persons to the public place,are not affected by the transfer, if a public place or a portion of the public place in a township forms part of the land so transferred.

## Part 7 – BONDS

### 47. Execution of bonds

- (1) A mortgage bond is executed in the prescribed form in the presence of the registrar -
  - (a) by the registered owner of the land described in the mortgage bond; or
  - (b) by a conveyancer duly authorised by a power of attorney to act on behalf of the registered owner of the land described in the mortgage bond.
- (2) The registrar must attest the mortgage bond executed in terms of subsection (1).
- (3) A mortgage bond or a notarial bond may be registered to secure an existing debt or a future debt or both such an existing and such a future debt.
- (4) A mortgage bond or a notarial bond intended to secure a loan for building purposes is deemed to be a bond to secure an existing debt.
- (5) If in a mortgage bond or notarial bond purporting to secure a future debt, the amount of an existing debt is mentioned, the existing debt is deemed to be secured as part of the maximum amount intended to be secured by the bond.
- (6) Unless authorised by any other law or by an order of Court, debts or liabilities to more than one creditor arising from different causes may not be secured by the same mortgage bond or notarial bond.

### 48. Irrelevant provision

Despite section 4(1)(b) and (c), the registrar may not examine any provision relating to a mortgage bond not relevant to the registration of the bond.

### 49. Requirements in case of bond intended to secure future debts

- (1) No mortgage bond or notarial bond attested or registered after the commencement of this Act is of any force or effect for the purpose of giving preference or priority in respect of any debt incurred after the registration of the mortgage bond or notarial bond, unless -
  - (a) it is expressly stipulated in the mortgage bond or notarial bond that the bond is intended to secure future debts in general or some particular future debt described in the bond; and
  - (b) an amount is specified in the mortgage bond or notarial bond as the amount in excess of which future debts are not 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 realising the security of fire insurance premiums, costs relating to any given notices or bank exchange and charges, the costs are not deemed to be future debts within the meaning of subsection (1).

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

- (1) The registrar may register a cession of a mortgage bond or of a notarial bond passed to secure future advances.
- (2) The registration of a cession of a mortgage bond or of a notarial bond in terms of subsection (1) does not affect the provisions of the bond relating to future advances up to the amount specified in the bond or the amount as reduced.

#### **51. Exclusion of general clause in mortgage bond**

- (1) Unless otherwise provided in any other law, the registrar may not -
  - (a) attest a mortgage bond which -
    - (i) purports to bind movable property; or
    - (ii) contains a general clause purporting to bind all the immovable property or all the movable property or the immovable and movable property of the mortgagor in general; or
  - (b) register a notarial bond which purports to bind immovable property.
- (2) Two or more mortgagors may not pass a mortgage bond, unless the mortgage bond binds immovable property of each of the mortgagors.
- (3) Despite section 47 (1), land held subject to a condition that on the occurrence of a specified event the land reverts to a person specified in the condition, such land may be mortgaged -
  - (a) by the owner of the land and by the person so specified by means of a bond passed by them jointly and severally; or
  - (b) by the owner of the land with the written consent of the person so specified.

#### **52. No bond to be passed in favour of agent**

A mortgage bond or notarial bond may not be passed in favour of the agent of a principal.

#### **53. Requirements in case of bond 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 of -
  - (a) any of the mortgagors or his or her property, portion of the property of any mortgagor, may be registered without the written consent of all the other mortgagors; or
  - (b) all the property of any mortgagor may be registered unless the mortgagor is also so released.
- (2) If a mortgage bond or a 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 all the other mortgagors.
- (3) A mortgage bond or notarial bond may not be passed in favour of two or more persons if it is stipulated in the bond that the share of one of the holders of the bond has preference over the share of the other holder of the bond, or over the share of any one of the other holders.

- (4) The registrar may not register any instrument that has effect that the share of one of the holders of a mortgage bond or notarial bond referred to in subsection (3) has preference over the share of the other holder or holders of the bond referred to in that subsection.

#### **54. Transfer of mortgaged immovable property**

- (1) The registrar may not -
  - (a) attest or execute the transfer of land encumbered by a mortgage bond; or
  - (b) register a cession of a mortgaged lease of immovable property or a mortgaged real right in land,until the bond is cancelled or the land, lease or real right is released from the operation of the mortgage bond with the written consent of the holder of the bond.
- (2) If a mortgage bond which must be cancelled in terms of subsection (1) is lost or destroyed, then the registry duplicate of the bond must be cancelled before the registrar may attest or execute the transfer in terms of paragraph (a) or register the cession in terms of paragraph (b) of that subsection.
- (3) No cancellation of a mortgage bond, or release of the land, lease or real right from the operation of the mortgage bond in terms of subsection (1), is necessary, if the transfer or cession referred to in that subsection is made -
  - (a) by a competent officer in the execution of a judgement of the Court or of a magistrate's court;
  - (b) by the trustee of an insolvent estate;
  - (c) by the executor administering and distributing an estate in terms of section 34 of the Administration of Estates Act, 1965 (Act [No. 66 of 1965](#));
  - (d) by the liquidator of a company or of a close corporation unable to pay its debts and is being wound up by, or under the supervision of, the Court; or
  - (e) in any other circumstances provided for in this Act or in any other law or in terms of an order of Court or the Master.
- (4) A consent to the release from the operation of a mortgage bond all the properties mortgaged under the bond is deemed to be the consent for the cancellation of the mortgage bond, unless the debt secured by the mortgage bond is further secured by a collateral bond.

#### **55. Substitution of debtor in respect of bond**

- (1) If the owner of land mortgaged under a mortgage bond other than a mortgage bond to secure the liabilities of a surety as transferor -
  - (a) transfers to another person the whole or his or her or its entire share of the land so mortgaged; and
  - (b) has not reserved any real right in the land,the registrar may register, despite section 54(1), but subject to subsection (2), the transfer and substitute the transferee for the transferor as debtor in respect of the mortgage bond.
- (2) The holder of the mortgage bond and the transferee referred to in subsection (1), must lodge with the registrar a consent, as near as practicable in the prescribed form, to the substitution of the transferee for the transferor as debtor in respect of the mortgage bond for -
  - (a) the amount of the debt as specified in the mortgage bond; or
  - (b) a lesser amount as specified in the consent.

- (3) A transferor referred to in subsection (1) may not include a person referred to in section 54(3)(b), (c) or (d).
- (4) In registering a transfer in terms of subsection (1), the registrar must -
  - (a) endorse upon the deed of transfer that the land is transferred subject to the mortgage bond;
  - (b) endorse upon the mortgage bond that the transferee is substituted for the transferor as debtor; and
  - (c) make the consequential entries in the registry records as the registrar may consider necessary.
- (5) As from the date of the registration of the deed of transfer in terms of subsection (1) -
  - (a) the transferor is absolved from any obligation secured by the mortgage bond referred to in that subsection;
  - (b) the transferee concerned is -
    - (i) substituted for the transferor as debtor in respect of the mortgage bond referred to in that subsection; and
    - (ii) bound by the terms and conditions of the mortgage bond referred to in that subsection in the same manner as if the transferee himself or herself has passed the mortgage bond and renounced the benefit of all relevant exceptions.
- (6) If a mortgage bond referred to in subsection (5) is a mortgage bond to secure future debts, the immovable property mortgaged by the mortgage bond secure any further or future advances made by the holder of the mortgage bond to the transferee.
- (7) This section does not apply if the mortgaged land is transferred -
  - (a) to a person who is not competent to mortgage the land; or
  - (b) to two or more persons, unless they take transfer of the land in undivided shares and renounce, in the consent referred to in subsection (2), the exception de duobus vel pluribus reis debendi.
- (8) This section applies with the necessary changes in respect of immovable property other than land which is mortgaged under a mortgage bond.

## **56. Powers in respect of certain property in insolvent estates and certain other estates**

- (1) Immovable property which has vested in a trustee in terms of the laws relating to insolvency and which has not in accordance with that laws been re-vested in the insolvent may be transferred, whether before or after the rehabilitation of the insolvent, only by the trustee of the insolvent estate.
- (2) After the rehabilitation of an insolvent referred to in subsection (1), the rehabilitated insolvent may not transfer, mortgage or otherwise deal with the immovable property referred to in that subsection until such time as the trustee concerned has transferred the immovable property into the name of the rehabilitated insolvent.
- (3) If after the rehabilitation of an insolvent his or her trustee is -
  - (a) discharged; or
  - (b) otherwise unable to transfer the immovable property referred to in subsection (2) into the name of the rehabilitated insolvent,

the Master must give transfer to the rehabilitated insolvent of the immovable property in the prescribed manner, if the Master is satisfied that the rehabilitated insolvent is entitled to the immovable property.

- (4) If in terms of the laws relating to insolvency an insolvent has been re-vested with the ownership of any immovable property, the insolvent may not transfer, mortgage or otherwise deal with the property until such time as the registrar has made an endorsement on the title deed relating to the property to the effect that the property has been restored to the insolvent.
- (5) Nothing in this section contained may be construed as amending any law relating to insolvency.
- (6) This section applies with the necessary changes in respect of -
  - (a) deceased estates liquidated and distributed in terms of the Administration of Estates Act, 1965 (Act [No. 66 of 1965](#));
  - (b) companies unable to pay their debts and liquidated and wound up by or under the supervision of the Court in terms of the Companies Act, 2004 (Act [No. 28 of 2004](#)); and
  - (c) close corporations unable to pay their debts and liquidated and wound up by or under the supervision of the Court in terms of the Close Corporations Act, 1988 (Act [No. 26 of 1988](#)).

## **57. Consent of bondholder to registration of merger of rights of mortgagor**

If -

- (a) the holder of a mortgaged lease of land or mortgaged real rights in land acquires the ownership of the land;
- (b) the holder of a mortgaged lease of real rights in land acquires the rights; or
- (c) the owner of mortgaged land which is entitled to a right of servitude over any other land or piece of land, acquires the ownership of the other land or piece of land,

the acquisition of the additional land or real rights may not be registered without the consent in writing of the holder of the mortgage bond concerned.

## **58. Registration of notarial bond**

- (1) A notarial bond executed before or after the commencement of this Act must be registered in a deeds registry within a period of three months after the date of the execution of the notarial bond or within the extended period of time as the Court on application may allow.
- (2) A notarial bond referred to in subsection (1) must specify the -
  - (a) place at which and the date upon which the notarial bond is executed;
  - (b) physical address where the notary public concerned practises; and
  - (c) address at which the debtor resides and the place or places, if any, where the debtor conducts his or her business.

## **59. Where notarial bond is to be registered**

- (1) Subject to subsections (2), (4) and (5), every notarial bond is registered in the deeds registry for the area in which the debtor resides and carries on business.
- (2) If the debtor resides and carries on business in areas served by different deeds registries, the notarial bond concerned is registered in -
  - (a) the deeds registry for the area in which the debtor resides; and
  - (b) in every deeds registry serving any area in which the debtor carries on business.
- (3) Registration of a notarial bond in accordance with subsections (1) and (2) is effective as registration for the whole of Namibia.

- (4) Registration of a notarial bond in the deeds registry for any area in which the debtor resides or carries on business is effective for that area.
- (5) Registration of a notarial bond executed by -
  - (a) a company incorporated with limited liability; or
  - (b) a close corporation,is effective at the date of the registration of the bond as registration for the whole of Namibia, if the bond is registered in the deeds registry for the area in which the registered office of the company or close corporation is situated.
- (6) A notarial bond which is required to be registered in more than one deeds registry is registered -
  - (a) in the first registry within the period prescribed by section 58(1);
  - (b) in the second registry within an additional period of 30 days; and
  - (c) in each successive registry within a further period of 30 days.
- (7) For the purpose of registration in the other deeds registries it is sufficient if the original bond registered in the first registry is produced together with a further duplicate or grosse or a copy certified by a notary public for filing in the deeds registry concerned, but if simultaneous registration in more than one deeds registry is necessary, the registrars in respect of the other registries -
  - (a) may each accept one duplicate or grosse or a copy certified by a notary, for registration and for filing as the registry duplicate; and
  - (b) must, on production of the original bond registered in the first registry, endorse the facts of registration in the other registries and similarly record on the registry duplicate facts of registration in other registries.

## **Part 8 – RIGHTS IN IMMOVABLE PROPERTY**

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

- (1) The registrar may not register -
  - (a) a deed or condition in a deed purporting to create or which embodies a personal right; or
  - (b) a condition which does not restrict the exercise of any right of ownership,in respect of immovable property.
- (2) Despite subsection (1), the registrar may register a deed containing a condition referred to in that subsection if the registrar is of the opinion that the condition is complementary or ancillary to a registrable condition or right contained in or conferred by the deed.
- (3) Subsection (1) does not apply to any condition in a mortgage bond or in a lease or in a deed referred to in section 4(1)(d), (m) or (n).

### **61. Certificate 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 or her favour, may apply for the issue of a certificate of registered real right in respect of the real rights so reserved.
- (2) An application in terms of subsection (1) is -
  - (a) signed by the applicant;

- (b) accompanied by the title deed relating to the land concerned; and
  - (c) lodged with the registrar.
- (3) Upon receipt of an application in terms of subsection (1), the registrar may issue a certificate of registered real right in the prescribed form.
- (4) A person referred to in subsection (1) may not separately mortgage or deal with any real right referred to in that subsection unless the registrar has issued to him or her a certificate of registered real right in terms of subsection (3).
- (5) Section 34(3) to (9) applies with the necessary changes in respect of a certificate of registered real right issued in terms of subsection (3).

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

- (1) Unless otherwise provided in any other law, a personal servitude may be created by means of a deed executed by the owner of the land encumbered by the servitude and the person in whose favour the servitude is created.
- (2) A deed executed in terms of subsection (1) contains the full description of the land encumbered by the servitude referred to in that subsection, including a description and the number of the title deed relating to the land.
- (3) A deed created in terms of subsection (1) is attested by a notary public.
- (4) If -
  - (a) a servitude is in favour of the public or in favour of all or some of the owners or occupiers of erven in a township or settlement; and
  - (b) if the registrar is of the opinion that it is not practicable to require that the deed concerned be executed by all the persons in whose favour the servitude is created,the registrar may register the deed despite the fact that it is not executed by all those persons.
- (5) If a road or thoroughfare in favour of the public is to be registered at the same time as the registration of a subdivision of land which is served by the road or thoroughfare, the servitude may be registered in the deed relating to the subdivision without the registration of a notarial deed.
- (6) The deed relating to the remainder of the land referred to in subsection (5) is endorsed with the particulars relating to the servitude registered in terms in of that subsection.
- (7) Conditions that restrict the exercise of any right of ownership in immovable property may be included in a deed of transfer relating to the immovable property lodged for registration, if the conditions may be enforced by -
  - (a) the person or persons named in the deed of transfer;
  - (b) the person or persons ascertainable from the contents of the deed of transfer or from other evidence to the satisfaction of the registrar, if the person or persons referred to in paragraph (a) is or are not named in the deed of transfer.
- (8) The person or persons referred to in subsection (7)(a), and the person or persons referred to in paragraph (b) of that subsection, if such person or persons is or are ascertainable, must sign an acceptance of the conditions referred to in that subsection before the registration of the deed of transfer concerned.
- (9) If the land to be encumbered by a personal servitude in terms of subsection (1) is mortgaged or is subject to another real right with which the servitude may be in conflict -
  - (a) the mortgage bond or other registered deed by which the other real right is held; and

- (b) a consent in writing by the holder of the mortgage bond or other real right to the registration of the personal servitude,  
are together lodged with the registrar.
- (10) A personal servitude referred to in subsection (9) is registered free from the mortgage bond referred to in that subsection.

### 63. Restriction on registration of personal servitude

The registrar may not register -

- (a) a personal servitude of usufruct, usus or habitatio purporting to extend beyond the lifetime of the person in whose favour it is created; or

[The word “extend” in the phrase “purporting to extend” is misspelt in the *Government Gazette*, as reproduced above.]

- (b) a transfer or cession of a registered personal servitude referred to in paragraph (a) to or in favour of any person other than the owner of the land encumbered by the servitude.

### 64. Reservation of personal servitude

A personal servitude may be reserved by means of a condition in a deed of transfer relating to land if the reservation is in favour of -

- (a) the transferor;
- (b) the transferor and his or her spouse or the survivor of them, if they are married in community of property; or
- (c) the surviving spouse, if transfer is passed from the joint estate of spouses married in community of property or whose marriage is governed by the Recognition of Certain Marriages Act, 1991 (Act [No. 18 of 1991](#)).

### 65. Registration of lapse and cancellation of personal servitude

- (1) If a personal servitude registered in terms of this Act has lapsed, the owner of the land encumbered by the servitude may lodge a written application with the registrar for the endorsement of the lapse on the title deed relating to the land encumbered by the servitude and the deed by means of which the servitude is created.
- (2) An application in terms of subsection (1) is -
  - (a) signed by the applicant; and
  - (b) accompanied by -
    - (i) documentary proof of the lapse of the servitude referred to in that subsection to the satisfaction of the registrar;
    - (ii) the title deed relating to the land concerned; and
    - (iii) the deed by which the servitude is created.
- (3) The holder of the servitude concerned must submit to the applicant or lodge with the registrar the deed by which the servitude is created, upon the written demand of the applicant referred to in subsection (1).
- (4) The registrar must endorse, on receipt of an application in terms of subsection (1), upon the title deed relating to the land concerned and the deed by means of which the servitude has lapsed.



- (5) The cancellation of the registration of a personal servitude in terms of an agreement entered into between the owner of the encumbered land and the holder of the servitude must be effected by means of a notarial deed.
- (6) The registrar may not register a notarial deed attested in terms of subsection (5), if the servitude concerned is mortgaged, unless the mortgagee in writing consents to the cancellation of the bond or to the release of the servitude from the operation of the bond.

#### **66. Transfer and mortgage of land subject to personal servitude**

- (1) If the owner of land which is subject to a personal servitude has disposed of the land or any part to any person and the holder of the servitude has disposed of his or her rights of servitude to the same person, the owner and holder jointly acting may give transfer of the land and servitude to the person.
- (2) The deed of transfer relating to the transfer referred to in subsection (1) -
  - (a) must describe the transferor as the owner of the land and the holder of the servitude, respectively; and
  - (b) may not mention in the description of the land the servitude referred to in that subsection.
- (3) The owner of land subject to a personal servitude and the holder of the servitude may mortgage -
  - (a) jointly acting, the land to the full extent of their respective rights; or
  - (b) either of them acting as principal debtor, the land or the servitude.
- (4) When the owner of land or the holder of a right to a servitude mortgages the land or the servitude in terms of subsection (3)(b), the other one of them may mortgage, in the same mortgage bond, the servitude or the land as surety in respect of the payment of the principal debt concerned.

#### **67. Joint transactions by fiduciary and fideicommissary**

- (1) If the owner of land which is subject to a fideicommissum, and the fideicommissary, if the latter is competent to do so, disposed of the land or any portion of the land together with the fideicommissary rights to any other person they may, jointly acting, give transfer of the land or of the portion to the other person.
- (2) The deed of transfer relating to the transfer of the land in terms of subsection (1) -
  - (a) must describe the transferors as the owner of the land and the holder of the fideicommissary rights, respectively;
  - (b) may not mention the fideicommissary rights in the description of the land in the deed of transfer.
- (3) The owner of land subject to a fideicommissum and the fideicommissary, if the latter may so do, jointly acting may mortgage the land to the full extent of their respective rights in the land.

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

- (1) A praedial servitude in perpetuity or for a limited period of time may be created by means of a deed of servitude executed by the owners of the dominant property and of the servient property jointly acting.
- (2) A deed of servitude executed in terms of subsection (1) is attested by a notary public.
- (3) If the servient property referred to in subsection (1) is mortgaged or is subject to any other real right with which the servitude referred to in that subsection may be in conflict, the bond or other registered deed by means of which the other right is held must be lodged with the registrar together with the written consent of the holder of the other real right to the registration of the servitude.

- (4) If a servitude referred to in subsection (1) is to be cancelled the owner of the dominant servitude must lodge a written consent to the cancellation with the registrar.
- (5) A consent to the cancellation lodged in terms of subsection (4) is accompanied by -
  - (a) the deed relating to the servitude concerned; and
  - (b) a written consent to the cancellation by the holder of the mortgaged bond concerned, if the dominant property is mortgaged.
- (6) Section 62(2) to (9) applies with the necessary changes in respect of the creation of a praedial servitude in terms of this section.

## **69. Conditions relating to registration of praedial servitude**

- (1) A praedial servitude in perpetuity or for a limited period of time may be created when land is transferred and only if the servitude is imposed -
  - (a) in respect of the land so transferred as servient property in favour of other land as dominant property registered in the name of the transferor; or
  - (b) against other land as servient property registered in the name of the transferor in favour of the land so transferred as dominant property.
- (2) If the -
  - (a) person intending to pass transfer of land referred to in subsection (1) admits that the land is subject to an unregistered right of servitude in favour of land registered in the name of a third person;
  - (b) person to whom the transfer of the land in terms of paragraph (a) is to be passed consents in writing to the servitude referred to in that paragraph being incorporated into the deed of transfer concerned; and
  - (c) third person referred to in paragraph (a) appears by means of a conveyancer as the duly authorised agent before the registrar at the time of the execution of the transfer and accepts the servitude in favour of his or her land,the servitude may be incorporated into the deed of transfer.
- (3) The appearance of the third person before the registrar by means of a conveyance as the duly authorised agent, and his or her acceptance of the servitude in terms of subsection (2)(c) is specified in the deed of transfer concerned.
- (4) The owner of the dominant property must lodge the title deed relating to the property with the registrar who must endorse the servitude on the title deed so lodged.
- (5) If a praedial servitude created for a limited period of time has lapsed the owner of any land affected by the lapsing of the servitude may lodge an application with the registrar for the endorsement of the title deeds concerned confirming the lapse.
- (6) An application in terms of subsection (5) is -
  - (a) signed by the applicant or on his or her behalf; and
  - (b) accompanied by -
    - (i) the title deeds relating to the dominant property and the servient property; and
    - (ii) the deed, if any, relating to the servitude referred to in subsection (5).
- (7) The holder of the servitude referred to in subsection (5) and the owners of the dominant property and the servient property must lodge with the registrar, upon a written demand made by the

- applicant referred to in that subsection, the title deeds relating to the servitude and properties, respectively.
- (8) The registrar must endorse, upon receipt of an application in terms of subsection (5), the lapse of the servitude concerned upon the title deeds relating to the property concerned and relating to the servitude.
- (9) If the -
- (a) servitude is imposed on other land in favour of the land to be transferred; and
  - (b) the other land is mortgaged or is subject to any other registered real right with which the servitude may be in conflict,
- the holder of the bond or of the other right must lodge with the registrar -
- (i) a written consent to the registration of the servitude;
  - (ii) the mortgage bond or deed relating to other registered real right; and
  - (iii) the title deed relating to the servient property.
- (10) When registering a deed of transfer in which a servitude is created or incorporated in terms of this section, the registrar must endorse the terms and conditions relating to the servitude and the number and date of the deed of transfer on -
- (a) the title deed relating to the other property affected by the servitude; and
  - (b) the mortgage bond or other deed referred to in subsection (9).
- (11) The owner of land subdivided and who is entitled to a servitude over other land may stipulate, in the power of attorney granted by him or her when transferring the subdivision to any other person, that the exercising of the rights relating to the servitude is restricted to the portion of the land still held by him or her.
- (12) In the event of a transfer referred to in subsection (11) -
- (a) the deed of transfer relating to the subdivision so transferred may not refer to the servitude referred to in that subsection; and
  - (b) it is not necessary to endorse on the title deed relating to the servient property that the exercising of the rights relating to the servitude referred to in that subsection is restricted in any manner.

## Part 9 – LEASES

### 70. Registration of lease and sub-lease

- (1) Unless otherwise provided in any other law, a deed of lease or sub-lease of land and a deed of cession of the lease or sub-lease, intended or required to be registered in the deeds registry, is executed by -
- (a) the lessor and the lessee;
  - (b) by the lessee and the sub-lessee; or
  - (c) by the cedent and the cessionary,
- attested by a notary public.
- (2) A deed of lease or sub-lease referred to in subsection (1) is registered for the full term including periods of renewal in such respect.

- (3) When a deed of cession of a lease is to be registered in respect of any portion of the land leased in terms of the deed of lease concerned a notarially certified copy of the deed of lease is appended to the deed of cession.
- (4) After the registration of the deed of cession referred to in subsection (3) the deed of cession together with the notarially certified copy of the deed of lease appended to it is deemed to be -
  - (a) the title deed; and
  - (b) part of the title deed in respect of any subsequent registration, relating to the portion of the land referred to in that subsection.
- (5) If land subject to an agreement of lease or sub-lease referred to in subsection (1) is mortgaged or subject to any right in favour of any other person or land, it is not necessary for the purposes of registration of -
  - (a) a lease or sub-lease in terms of that subsection; or
  - (b) any cession of a lease or sub-lease,to lodge with the registrar the mortgage bond or other deed relating to the rights or the consent of the holder of the registration of the deed of lease or sub-lease.

## 71. Termination of registered lease

- (1) When a deed of lease or sub-lease registered in terms of section 69 lapses or is terminated, the owner of the land affected by the lease or sub-lease or the holder of the lease may lodge a written application with the registrar for the endorsement on the registered deed of lease or sub-lease with particulars of the lapse or termination.
- (2) An application in terms of subsection (1) is accompanied by -
  - (a) in the case of the lapse or termination of a registered lease -
    - (i) the deed of lease concerned;
    - (ii) the title deed relating to the leased land; and
    - (iii) written proof of the lapse or termination of the lease; or
  - (b) in the case of the lapse or termination of a registered sub-lease -
    - (i) the deed of sub-lease concerned;
    - (ii) the deed of lease concerned; and
    - (iii) written proof of the lapse or termination of the lease.
- (3) A person in possession of any deed or other document referred to in subsection (2) must lodge, upon receipt of a written notice addressed and delivered to him or her by an applicant referred to in subsection (1), the deed or document with the registrar.
- (4) Upon receipt of an application in terms of subsection (1), the registrar must endorse -
  - (a) in the case of the lapse or termination of a registered lease, the title deed relating to the leased land and the deed of lease concerned; or
  - (b) in the case of the lapse or termination of a registered sub-lease, the registered deed of lease and the deed of sub-lease,with the particulars of the lapse or termination.
- (5) If the full terms of a lease or sub-lease, including any period or periods of renewal has expired no further transactions relating to the lease or sub-lease may be registered.

**72. Lease which may be registered**

Unless otherwise provided in any other law a deed of -

- (a) lease relating to immovable property which property is registered in a deeds registry in the name of the lessor; or
  - (b) sub-lease of a lease referred to in paragraph (a),
- may be registered in a deeds registry.

**73. Cession of lease or sub-lease**

A deed of cession of a lease or sub-lease may not be registered in a deeds registry, unless the deed of lease or the deed of sub-lease which is ceded is registered in a deeds registry.

**74. Mortgaging of lease or sub-lease**

A mortgaging of a lease or sub-lease may not be registered in a deeds registry unless the mortgaging 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.

**75. Notarial bond mortgaging lease or sub-lease**

- (1) For the purpose of the registration of a notarial bond mortgaging a registered lease or sub-lease, the deed of lease or sub-lease is lodged with the registrar
- (2) When registering a notarial bond in terms of subsection (1), the registrar must endorse on the registered deed of lease or sub-lease concerned that the lease or sub-lease has been mortgaged by the notarial bond.
- (3) Section 54(1) applies with the necessary changes in respect of a lease or sub-lease mortgaged under subsection (1).

**76. Mortgaging of settlement lease after exercising of option to purchase**

- (1) If in a lease entered into in terms of any law relating to land settlement, the lessee is given the option to purchase the property so leased or any of that portion and if the lessee has exercised the option, the rights to the property so acquired by the lessee may be mortgaged by a notarial bond, if the lease is registered in a deeds registry and is not subject to an existing bond.
- (2) Section 75 applies with the necessary changes in respect of the registration of a notarial bond in terms of subsection (1).
- (3) If a lease referred to in subsection (1) is subject to an existing notarial bond at the date of the exercise of the option referred to in that subsection the rights acquired by means of the exercise of the option are subject to the notarial bond.

**Part 10 – ANTENUPTIAL CONTRACT****77. Antenuptial contract to be registered**

- (1) An antenuptial contract executed -
  - (a) before and not registered at the commencement of this Act; or

- (b) executed after the commencement of this Act,  
is registered in the deeds registry for the area in which the spouses reside in the manner and within the period of time determined by section 78.
- (2) An antenuptial contract not registered in accordance with this section is of no force and effect relating to any person who is not a party to it.
- (3) Registration of an antenuptial contract in accordance with subsection (1) is effective as registration for the whole of Namibia.

## **78. Manner of and time for registration of antenuptial contract**

- (1) An antenuptial contract executed in Namibia is attested by a notary public and is registered in the deeds registry concerned within a period of three months after the date of its execution or within the extended period of time as the Court may determine on application.
- (2) An antenuptial contract executed outside Namibia is attested by a notary public or entered into in accordance with the laws of the country where it was executed and is registered in the deeds registry concerned within -
  - (a) a period of six months after the date of its execution; or
  - (b) the extended period of time as the Court may determine on application.

## **79. Postnuptial execution of antenuptial contract**

- (1) Despite sections 77 and 78, the Court may authorise, on application and subject to the conditions as it may determine, the postnuptial execution of a notarial contract having the effect of an antenuptial contract, if the Court is satisfied that the terms and conditions relating to the contract are agreed upon by the spouses before their marriage.
- (2) The Court may order the registration of a contract executed in terms of subsection (1) within a specified period of time.

# **Part 11 – GENERAL PROVISIONS**

## **80. Cancellation of registered deed**

- (1) Unless otherwise provided for in this Act or in any other law, the registrar may not cancel the registration of -
  - (a) any registered deed of transfer, deed of grant, certificate of title or other deed conferring or conveying title to any land;
  - (b) any real right in land other than a mortgage bond; and
  - (c) a cession of any registered bond not made as security,  
except in terms of an order of Court.
- (2) Upon the cancellation in terms of subsection (1) of any deed or certificate conferring or conveying -
  - (a) title to land; or
  - (b) any real right in land other than a mortgage bond,the title deed or certificate in terms of which the land or real right concerned was held immediately before the registration of the deed or certificate or real right which is cancelled in terms of that subsection, is deemed to have been revived to the extent of the cancellation.

- (3) The registrar must cancel any endorsement on any deed evidencing or relating to the registration of a deed, a certificate or real right cancelled in terms of subsection (1).

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

- (1) If it is expressly provided in a registered deed -
- (a) of lease of land; or
  - (b) creating or evidencing a servitude,
- that it lapses upon the failure to make the payment or payments on the date, specified in the deed the lessor or the grantor of the registered rights concerned may lodge with the registrar an application for the cancellation of the registration of the deed of lease or deed of servitude.
- (2) An application in terms of subsection (1) is in writing and is accompanied by -
- (a) the registered deed of lease or other deed referred to in that subsection;
  - (b) an affidavit by the applicant that the periodical payments referred to in that subsection are in arrear; and
  - (c) particulars of the notice to the lessee or grantee concerned, given in terms of subsection (4) or (7).
- (3) Upon receipt of an application in terms of subsection (1), the registrar must cancel the registration of the registered deed of lease or the deed creating or evidencing the servitude concerned referred to in that subsection.
- (4) If the address of -
- (a) the lessee relating to the registered lease referred to in subsection (1) (a); or
  - (b) of the grantee relating to the registered deed referred to in paragraph (b) of that subsection,
- appears on the deed concerned or if the registrar is advised in writing of the address or any change the applicant referred to in that subsection must give written notice by prepaid registered post to the lessee or grantee that the applicant intends to lodge an application with the registrar in terms of that subsection.
- (5) A notice in terms of subsection (4) is addressed to the lessee or grantee concerned at the address referred to in that subsection, and must specify -
- (a) that the application in terms of subsection (1) is made on the grounds of the failure of the lessee or the grantee concerned to duly make the payments referred to in that subsection, specifying the particulars of the failure; and
  - (b) that the application will be lodged with the registrar within a period of not less than -
    - (i) 30 days after the date of the posting of the notice, if the address to which the notice is posted is within Namibia; or
    - (ii) 90 days after the date of the posting of the notice or the other period of time as the registrar may determine, if the address to which the notice is posted is not within Namibia.
- (6) The lessee or the grantee referred to in subsection (4) may lodge with the registrar, within the period specified in the notice in terms of subsection (5)(b), a written objection to the intended application referred to in the notice, setting out the reasons for the objection.

- (7) If the address of the lessee or the grantee referred to in subsection (4) does not appear on the deed concerned or if the registrar has not been notified of the address or changes in terms of that subsection, the applicant referred to in subsection (1) must publish the notice concerned -
- (a) once in the *Gazette*;
  - (b) twice in a newspaper circulating in the registration division and region in which the land concerned is situate; and
  - (c) once in a newspaper circulating in the registration division and region in which that lessee or grantee is resident, according to his or her last known address.
- (8) The registrar must determine the newspaper or newspapers in which the notices referred to in subsection (7)(b) and (c) is published.
- (9) If -
- (a) a lessee or grantee lodges with the registrar an objection in terms of subsection (6); and
  - (b) the objection lodged under paragraph (a), in the opinion of the registrar, discloses reasonable grounds for the refusal of the cancellation of the registration of the deed of lease or the deed of servitude,
- the registrar may not cancel the registration concerned until -
- (i) the objection is withdrawn or falls away; or
  - (ii) the cancellation is ordered by the Court.
- (10) An applicant who intends to lodge an application in terms of subsection (1) must give written notice by prepaid registered post to the holder of a mortgage bond registered against the registered deed the applicant intends to have cancelled.
- (11) A notice in terms of subsection (10) must be posted to the holder of the mortgage bond within a period of seven working days after -
- (a) the posting of a notice in terms of subsection (4); or
  - (b) the publication of a notice in terms of subsection (7).
- (12) For the purposes of this section -
- (a) “lessor” or “grantor”, relating to a registered deed of lease of land or a registered deed of servitude, means the person who from the records in the deeds registry appears to be the owner of the land concerned; and
  - (b) “lease”, includes a sub-lease.

## **82. Transfer or cession not to be passed as security**

A transfer of land or cession of a registered lease, sub-lease or other real right in land, excluding a mortgage bond, may not be attested by the registrar or be registered in a deeds registry as security for or in respect of a debt or other liability.

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

- (1) A deed of grant or a deed of transfer, relating to land which is lodged with the registrar for registration is accompanied by a receipt or certificate, issued by a competent staff member in the Ministry of Finance, to the effect that the transfer duty, taxes, fees and other duties payable to the State on or in respect of the land which has to be transferred, have been duly paid unless an exemption for payment is given or applies.



- (2) The registrar may not register a deed of grant or a deed of transfer referred to in subsection (1) unless a valid receipt or certificate referred to in that subsection is lodged with him or her, unless an exemption for payment is given or applies.
- (3) If land or any real right in land is donated or ceded to a spouse or future spouse in terms of a registered antenuptial contract, the registrar may not execute, attest or register a transfer of the land or a cession of the right by the donor or cedent to any person other than that donee or cessionary, or the mortgage by the donor or cedent, unless the transfer duty payable in respect of the donation or cession to that donee or cessionary is paid.
- (4) The transfer duty payable in respect of the land or real right donated or ceded to a spouse or future spouse in terms of a registered antenuptial contract referred to in subsection (3), is payable in addition to the transfer duty payable in respect of the transfer of the land or cession of the real right to a person other than the donee or cessionary referred to in that subsection.

#### **84. Registration of change of name**

- (1) If a person or partnership whose name appears in a deed or other document registered in a deeds registry has changed his or her or its name, the person or the partners of the partnership must lodge a written application with the registrar for an endorsement on the deed or other document to record the change of name.
- (2) An application in terms of subsection (1) is signed by or on behalf of the applicant and accompanied by -
  - (a) the deed or document to be endorsed by the registrar in terms of subsection (3);
  - (b) any other deed or document registered in the deeds registry in which the previous name of the applicant appears as a party to the deed or document, other than as a transferor or cedent; and
  - (c) written proof of the change of name referred to in that subsection to the satisfaction of the registrar.
- (3) Upon receipt of an application in terms of subsection (1), and if the registrar is satisfied that -
  - (a) an endorsement in terms of this subsection does not have the effect of a change of ownership in respect of the land or other real right referred to in the deed or other document to be so endorsed; or
  - (b) the change of name concerned does not constitute a change of legal entity,the registrar must endorse, the deed or other document concerned and the deeds or documents referred to in subsection (2)(b), to the effect that the name of the person or partnership concerned is changed to the name specified in the application.
- (4) If it appears from a deed or document referred to in this section that any person other than the applicant concerned is affected by the endorsement of a change of name in terms of subsection (3), the registrar must refuse to endorse the deed or document until that person so affected has lodged with the registrar a written consent to the endorsement.
- (5) A person who assumes the surname of his or her spouse or who re- assumes his or her previous surname, is not obliged to apply in terms of subsection (1) for the endorsement on any deed or document of the assumption or re-assumption of surname in order to enable the person to deal with land or a real right in land held by the person in terms of the deed or other document.
- (6) No change in the name of immovable property may be recorded in a deeds registry unless 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.
- (7) Despite subsection (6), the owner of immovable property may apply to the Minister in writing for the change of the name of the immovable property.

- (8) In an application in terms of subsection (7) the applicant must -
  - (a) state the reason for the change of name; and
  - (b) propose a new name as a substitute for the existing name of the immovable property referred to in that subsection.
- (9) If the Minister is satisfied that the name of the immovable property referred to in subsection (7) must be changed for the reason specified in the application concerned and if the Minister approves the proposed new name for the property referred to in subsection (8) the Minister must -
  - (a) instruct the Surveyor-General in writing to effect the change of name of the property in the registers and other documents and on the diagrams relating to the property; and
  - (b) notify in writing the owner who made the application in terms of subsection (7) of the instructions to the Surveyor-General in terms of paragraph (a).
- (10) Upon receipt of an instruction in terms of subsection (9)(a), the Surveyor-General must -
  - (a) effect the change of name of the immovable property concerned in accordance with the instructions of the Minister in terms of that subsection; and
  - (b) notify the registrar in writing of the change of name in terms of paragraph (a), of the immovable property concerned.
- (11) Upon receipt of the written notification by the Surveyor-General in terms of subsection (10)(b) of the change of name of the immovable property concerned, the registrar must -
  - (a) notify the registered owner of the immovable property in writing of the change of name requesting him or her to lodge the original title deed relating to the property with the registrar;
  - (b) amend the registry duplicates of the deeds, other documents and records relating to the immovable property in the deeds registry in accordance with the notification received from the Surveyor-General; and
  - (c) amend the original title deed relating to the immovable property referred to in paragraph (a) upon such receipt,in the prescribed manner.

## **85. Attestation of power of attorney executed in Namibia**

- (1) A power of attorney executed in Namibia purports to give authority -
  - (a) to pass, cede, amend or cancel a deed capable of being registered in a deeds registry; or
  - (b) to perform an act which may be performed legally in the deeds registry,is attested by -
  - (i) two witnesses above the age of 14 years old and who are competent to give evidence in Court; or
  - (ii) a magistrate, justice of the peace, commissioner of oaths or notary public, duly described as such in the power of attorney.
- (2) A person may not attest a power of attorney in terms of which the person is appointed as an agent or derives any benefit from it.

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

If -

- (a) a deed or document required to be executed by the owner of immovable property is executed by a person who has acquired the right to receive transfer or cession of the property; and
- (b) if the deed or document is executed before the person has received transfer or cession of the property,

the deed or document so executed is, upon the person receiving transfer or cession of the property, deemed to have been executed by the owner of the property.

**87. Notice to registrar of application to Court**

- (1) An applicant who applies to Court for an authorisation or an order relating to the performance of any act in a deeds registry, must serve a copy of the application on the registrar not less than 10 working days before the date of the hearing of the application.
- (2) The registrar, not less than three working days before the hearing of an application made in terms of subsection (1), may submit to Court a report relating to the application as the registrar may consider appropriate.

**88. Substituted copy of lost deed supersedes original which is surrendered on recovery**

- (1) If a copy of a registered deed or other document is issued by the registrar, in the prescribed manner, in substitution for a deed or other document which is lost or destroyed or is supposedly believed to be so destroyed, the original deed or other document, if still in existence, becomes void upon the issue of a copy.
- (2) If a deed or document which has become void in terms of subsection (1), comes into the possession or custody of any person who knows that a copy of the deed or document is issued in terms of that subsection, the person must, as soon as practicable, submit the original deed or document to the registrar.

**89. Exemption from liability**

- (1) Subject to subsection (2) the State, the registrar or the staff member is not liable for damages sustained by any person as a result of the commission of any act or omission by the registrar or staff member.
- (2) If an act or omission by the registrar or staff member referred to in subsection (1) is due to gross negligence, fraud or dishonesty, the State is liable for the payment of damages referred to in that subsection.
- (3) If the State becomes liable for the payment of damages in terms of subsection (2), then the registrar or the staff member referred to in that subsection is liable to refund to the State any loss suffered by the State as a result of the act or omission by the registrar or the staff member.

**90. Formal defects**

No act relating to any registration in a deeds registry is invalidated by any formal defect in any -

- (a) deed passed or registered;
- (b) document upon the authority of which any deed is passed or registered; or

- (c) document required to be lodged in a deeds registry in connection with the passing or registration of a deed,

unless the act causes substantial prejudice to any person which in the opinion of the Court cannot be remedied by any order of Court.

## **91. Inspection of records and supply of information**

- (1) Subject to subsection (2), the registrar must permit any person to -
  - (a) inspect the public registers and other public records in a deeds registry, excluding the index to the registers and records;
  - (b) obtain copies of the registers or extracts from the records, referred to in paragraph (a); or
  - (c) obtain the other information concerning deeds or other documents registered or filed in a deeds registry as the registrar may determine in writing.
- (2) Despite anything to the contrary in any other law, a person, including a person performing functions in the employ of the State, other than a staff member performing functions for the Ministry administering for land affairs, must pay the prescribed fees for the inspection, making of copies, extracts or images of records and the obtaining of the information referred to in subsection (1).

## **92. Regulations board**

- (1) There is established a deeds registries regulations board to be known as the regulations board.
- (2) The regulations board consists of the following members -
  - (a) the ex officio members, namely -
    - (i) the registrar;
    - (ii) one deputy registrar; and
    - (iii) the Surveyor-General; and
  - (b) a conveyancer nominated by the Law Society of Namibia and appointed by the Minister.
- (3) In respect of the member of the regulations board appointed in terms of subsection (2)(b), the Law Society of Namibia must nominate and the Minister must appoint an alternate member.
- (4) An alternate member appointed in terms of subsection (3) must act in the place of the member in respect of whom the alternate member is appointed as alternate member, when that member is absent from a meeting or is unable to act as a member of the regulations board.
- (5) The registrar must -
  - (a) address and deliver to the Law Society of Namibia a written request for the nomination in terms of subsection (2)(b) or in terms of subsection (3) of a conveyancer or of conveyancers to be appointed in terms of this section as a member, or an alternate member of the regulations board, when a nomination becomes necessary; and
  - (b) submit to the Minister in writing the name or names of the conveyancer or conveyancers nominated by the Law Society of Namibia for appointment in terms of subsection (2)(b) or subsection (3) as a member or alternate member of the regulations board.
- (6) The Law Society of Namibia must submit to the registrar, within a period of 30 days after receipt of a notice from the registrar in terms of subsection (5) (a), the name or names of the conveyancer or conveyancers nominated for appointment as member or alternate member, of the regulations board, respectively.

- (7) If the Law Society of Namibia fails to nominate in terms of subsection (6) a conveyancer or conveyancers for appointment as a member or alternate member of the regulations board within the period determined by that subsection, the Minister may appoint any conveyancer or conveyancers as a member or alternate member of the regulations board.
- (8) An appointment or a nomination in terms of this section is -
  - (a) made in writing; and
  - (b) submitted to the registrar.
- (9) A member of the regulations board appointed by the Minister in terms of subsection (2)(b) or subsection (7) holds office for the period determined by the Minister upon the appointment.
- (10) Despite subsection (9), the Minister may remove from office any member referred to in that subsection at any time during the term of office of the member, if the Minister, after having afforded the member the opportunity to be heard, is satisfied that there is good cause for the termination removal of the member from office.
- (11) If -
  - (a) a member or alternate member of the regulations board appointed by the Minister in terms of this section dies or vacates office before the expiration of his or her term of office; or
  - (b) a member is removed from office under subsection (10),the Minister may appoint, subject to this section, member or alternate member to fill the vacancy for the unexpired portion of such member or alternate member.
- (12) A member of the regulations board whose term of office has expired may be reappointed.
- (13) The registrar is the chairperson of the regulations board.
- (14) If the registrar is absent from any meeting of the regulations board, the deputy registrar acts as chairperson at the meeting.
- (15) The regulations board meets on the dates and at the times and venues as the chairperson, subject to subsection (16), may determine.
- (16) The Minister, at any time by notice in writing, may direct the chairperson of the regulations board to convene a special meeting of the regulations board on a date and at a time and venue, and for the purposes, as the Minister may specify in the notice.
- (17) Three members of the regulations board, of whom one is a member appointed in terms of subsection (2)(b) and two ex officio members, constitute a quorum for a meeting of the regulations board.
- (18) A decision of the majority of the members of the regulations board present and voting at a meeting of the board forms a decision of the board.
- (19) In the event of an equality of votes at a meeting of the regulations board the person presiding at the meeting has a casting vote in addition to his or her deliberative vote.
- (20) A decision taken by the regulations board is not invalid by reason only of -
  - (a) a vacancy on the regulations board;
  - (b) the fact that a person who is not entitled to sit as a member of the regulations board sat as a member at the time when the decision was taken,if the decision was taken by the required majority of the members of the board present at the time of the taking of the decision and were entitled to sit as members and to vote.

- (21) The regulations board -
- (a) may determine the proceedings at its meetings as it may consider appropriate;
  - (b) must cause minutes of the proceedings at its meetings to be kept;
  - (c) must furnish a copy of the minutes of every meeting of the board to the Minister within a period of 14 working days after the date of the conclusion of the meeting;
  - (d) may at any time -
    - (i) co-opt any suitable person as a member; or
    - (ii) appoint or contract any suitable person,in the manner and subject to the conditions and for the period of time as the regulations board may determine for the purpose of assisting the regulations board in the exercise and performance of its powers and functions.
- (22) The regulations board must -
- (a) review this Act and make recommendations to the Minister relating to any necessary amendments;
  - (b) review the regulations and make the necessary amendments; and
  - (c) advise the Minister on any matter relating to this Act referred to it by the Minister.

### 93. Regulations

- (1) The Minister on the recommendation of the regulations board may, make regulations relating to -
- (a) any matter required or permitted to be prescribed in terms of this Act;
  - (b) the -
    - (i) fees 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 a report made to court by the registrar and the furnishing of copies of extracts from or the making of images of deeds or other documents registered or filed in a deeds registry;
    - (ii) manner in which payment of the fees prescribed under subparagraph (1) may be enforced, including the suspension of -
      - (aa) lodgement facilities for deeds or other documents in a deeds registry; or
      - (bb) the submission of monthly reports,by or to any person in default of the payment of the fees;
  - (c) the fees and charges of conveyancers and notaries public in connection with the preparation, passing and registration of deeds, other documents registered, 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 deed or other document and the fees and charges in connection with the taxation of any of the fees or charges;
  - (d) the -
    - (i) manner and form in which; and

- (ii) the qualifications of any person by whom,  
any deed or other document required or permitted to be lodged, registered or filed in a deeds registry is prepared, lodged, executed, registered, filed or delivered and the period of time within which a deed is executed after the lodging;
  - (e) the particular documents which, when lodged with the registrar, is attested or witnessed and the manner in which any such document is so attested or witnessed;
  - (f) the registration divisions, regions or other areas within the area served by any deeds registry which is used or adopted in the numbering of the farms and other pieces of land for the purpose of registration in a deeds registry;
  - (g) the method or system according to which farms or other pieces of land in any registration division, region or other area referred to in paragraph (f) is numbered;
  - (h) the manner and form in which the identity of persons is established or verified for the purposes of this Act;
  - (i) the conditions subject to which a deputy sheriff or messenger of court or any other person may conduct a search in a deeds registry and the precautions that are taken to ensure preservation of the deeds registry records;
  - (j) the conditions upon which copies of deeds or other documents registered or filed in a deeds registry may be issued for judicial purposes or for the purpose of information or in substitution of deeds or other documents which have been lost, destroyed, defaced or damaged;
  - (k) the conditions upon which extracts from deeds or other documents registered or filed in a deeds registry may be made or furnished to any person;
  - (l) the form of the consent to the cancellation, cession, part payment, release or amendment of, or relating to or affecting, a mortgage bond or other document registered in a deeds registry, or any other registrable transaction relating to it;
  - (m) the procedures relating to the cancellation of a mortgage bond or other document referred to in paragraph (l), or relating to the registration of a cession, part payment, release or amendment of, or relating to or affecting, a bond or other document;
  - (n) the conditions upon which the registrar may accept a copy of a power of attorney in lieu of the original and the requirements relating to the power of attorney;
  - (o) the form of deeds which is used in circumstances not provided for in this Act and the procedures relating to the execution, registration or cancellation of the deeds; or
  - (p) generally, any matter which the regulations board considers necessary or expedient to prescribe for the purpose of attaining the objectives of this Act.
- (2) The commencement date of the regulations is a date specified in the notice which date may not be a date less than 30 days after the publication of the regulations in the *Gazette*.
  - (3) The regulations may differentiate in respect of different deeds registries or deeds sub-registries established in terms of section 2.
  - (4) In making any regulation prescribing the fees and charges of conveyancers in connection with the preparation and passing of deeds, the regulations 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.
  - (5) A regulation may prescribe a fine not exceeding N\$5 000 or a period of imprisonment not exceeding 12 months, or both such fine and imprisonment, as a penalty for the contravention or failure to comply with the regulation.

## 94. Repeal of laws

The laws specified in the Schedule are repealed to the extent set out in Column 3 of the Schedule.

## 95. Savings and transitional provisions

- (1) Despite the repeal of the Deeds Registries Act, 1937 (Act [No. 47 of 1937](#)) by section 94 -
  - (a) the deeds registry in Windhoek established by section 1 of that repealed Act, is deemed to have been established under section 2 for the whole of Namibia until such time that the change is made under that section;
  - (b) a person who, at the commencement of this Act, held the position of registrar or deputy registrar or acting registrar of the deeds registry in Windhoek by virtue of an appointment in terms of section 2 of that repealed Act, is deemed to have been appointed under section 3; and
  - (c) property registers and other registers prescribed for use in the deeds registry in Windhoek in terms of that repealed Act is deemed to have been prescribed in terms of this Act.
- (2) A deed or other document lodged with the registrar of deeds for registration, filing or endorsement in terms of the repealed Deeds Registries Act, 1937, before the commencement of this Act, is to be registered, filed or endorsed in terms of the repealed Act.
- (3) Despite the repeal of the Registration of Deeds in Rehoboth Act, 1976 (Act [No. 93 of 1976](#)), by section 94, the registry for the registration of deeds in the Rehoboth Gebiet established by section 2 of that repealed Act -
  - (a) continues to exist; and
  - (b) is deemed to have been established in terms of section 2 of this Act.
- (4) A land title issued in terms of the repealed Registration of Deeds in Rehoboth Act, 1976 -
  - (a) is, for the purposes of this Act, deemed to be a deed of transfer registered in terms of this Act in respect of the land held in terms of the land title; and
  - (b) the land held in terms of a land title referred to in paragraph (a) may be transferred in terms of this Act to any other person by means of a deed of transfer registered by the deputy registrar of the registry for the registration of deeds in the Rehoboth Gebiet.
- (5) For the purposes of subsection (4) and in order to assist the owners of undivided shares in agricultural land in the Rehoboth Gebiet to survey the land, the Minister may -
  - (a) appoint, at the cost of the State, land surveyors; or
  - (b) designate land surveyors in the Public Service,to survey the agricultural land concerned.
- (6) A right of leasehold in respect of immovable property situate in Walvis Bay and registered in terms of any law in the name of any person in any deeds registry may be transferred to any other person by means of a deed of transfer registered by the registrar, where the transferee receives full property ownership of the immovable property concerned.
- (7) The Minister, by notice in the *Gazette*, on the recommendation of the registrar and with the consent of the Minister responsible for urban land, may determine -
  - (a) that any right of leasehold referred to in subsection (6) or any title deed relating to that right of leasehold be lodged with the registrar;
  - (b) the times when, or the period within which, a title deed referred to in paragraph (a) is to be lodged with the registrar in terms of that paragraph; and



- (c) the procedures relating to the issue of a deed of transfer in terms of subsection (8).
- (8) The registrar must issue a deed of transfer in substitution for the title deed relating to a leasehold referred to in subsection (7)(a) lodged with him or her pursuant to a notice in terms of that subsection.
- (9) The issue of a deed of transfer in terms of subsection (8) is exempt from the payment of transfer duty and stamp duties payable in terms of any law.
- (10) “Walvis Bay”, for the purposes of this sections, means the area defined as Walvis Bay by section 1 of the Walvis Bay and Off-shore Islands Act, 1994 (Act [No. 1 of 1994](#)).
- (11) Subject to this Act, anything done, or any deed or other document attested, executed, registered, issued, filed or endorsed in terms of an Act repealed by section 94 is deemed to have been done, attested, executed, registered, issued, filed or endorsed in terms of the corresponding provision of this Act.

## 96. Short title and commencement

This Act is called the Deeds Registries Act, 2015, and commences on a date determined by the Minister by notice in the *Gazette*.

## SCHEDULE

### Laws Repealed

*(Section 94)*

No. and year of law	Short Title	Extent of Repeal
Act <a href="#">No. 47 of 1937</a>	Deeds Registries Act, 1937	The whole
Act <a href="#">No. 15 of 1953</a>	Deeds Registries Amendment Act, 1953	The whole
Act <a href="#">No. 37 of 1953</a>	Matrimonial Affairs Act, 1953	Section 1
Act <a href="#">No. 50 of 1956</a>	General Law Amendment Act, 1956	Sections 14 and 15
Act <a href="#">No. 43 of 1957</a>	Deeds Registries Amendment Act, 1956	The whole
Act <a href="#">No. 43 of 1962</a>	Deeds Registries Amendment Act, 1962	The whole
Act <a href="#">No. 80 of 1964</a>	General Law Amendment Act, 1964	Sections 4 and 5
Act <a href="#">No. 87 of 1965</a>	Deeds Registries Amendment Act, 1965	The whole
Act <a href="#">No. 16 of 1967</a>	Mining Titles Registration Act, 1967	Section 67
Act <a href="#">No. 61 of 1969</a>	Deeds Registries Amendment Act, 1969	The whole
Act <a href="#">No. 3 of 1972</a>	Deeds Registries Amendment Act, 1972	The whole
Act <a href="#">No. 71 of 1972</a>	Land Survey Amendment Act, 1972	Section 17
Act <a href="#">No. 62 of 1973</a>	General Law Amendment Act, 1973	Sections 7, 8(1), 9(a) and (b) and 10
Act <a href="#">No. 29 of 1974</a>	General Law Amendment Act, 1974	Section 10

Act <a href="#">No. 57 of 1975</a>	General Law Amendment Act, 1975	Sections 9 and 12
Act <a href="#">No. 63 of 1975</a>	Expropriation Act, 1975	Section 95
Act <a href="#">No. 93 of 1976</a>	Registration of Deeds in Rehoboth Act, 1976	The whole
Act <a href="#">No. 41 of 1977</a>	Deeds Registries Amendment Act, 1977	The whole
Act <a href="#">No. 92 of 1978</a>	Deeds Registries Amendment Act, 1978	The whole
Act <a href="#">No. 8 of 1981</a>	(Rehoboth) Registration of Deeds in Rehoboth Amendment Act, 1981	The whole
Proclamation No. AG 32 of 1985	The Executive Powers (Justice) Transfer Proclamation, 1985	Sections 2 to 7, both inclusive
Act <a href="#">No. 26 of 1985</a>	Deeds Registries Amendment Act, 1985	The whole
Act <a href="#">No. 35 of 1994</a>	Registration of Deeds in Rehoboth Amendment Act, 1994	The whole
Act <a href="#">No. 2 of 1996</a>	Deeds Registries Amendment Act, 1996	The whole
Act <a href="#">No. 22 of 1996</a>	Deeds Registries Further Amendment Act, 1996	The whole