

Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages.



REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

Registered at the Post Office as a Newspaper

As 'n Nuusblad by die Poskantoor Geregistreer

PRICE (GST included) 30c PRYS (AVB ingesluit)
ABROAD 40c BUITELANDS
POST FREE · POSVRY

Vol. 214]

CAPE TOWN, 27 APRIL 1983

[No. 8681

KAAPSTAD, 27 APRIL 1983

OFFICE OF THE PRIME MINISTER

KANTOOR VAN DIE EERSTE MINISTER

No. 891.

27 April 1983

No. 891.

27 April 1983

It is hereby notified that the State President has assented to the following Act which is hereby published ~~in~~ general information:—

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 51 of 1983: Alienation of Land Amendment Act, 1983.

No. 51 van 1983: Wysigingswet op Vervreemding van Grond, 1983.

Act No. 51, 1983

ALIENATION OF LAND AMENDMENT ACT, 1983

GENERAL EXPLANATORY NOTE:

[Words in bold type in square brackets indicate omissions from existing enactments.

 Words underlined with solid line indicate insertions in existing enactments.

ACT

To amend the Alienation of Land Act, 1981, regarding definitions; so as to further regulate the application of the said Act to sales of land by public auction, the statement in any contract of certain amounts which are payable as endowments and levies in respect of the land concerned, the furnishing by certain mortgagees of land sold under a contract of certain certificates regarding discharge and release amounts, and the fulfilling by certain purchasers of certain obligations of owners or intermediaries; to effect certain textual improvements to section 19; to regulate the recording of certain contracts in certain respects anew; to provide that the transfer of land to a purchaser when such land is attached or the owner becomes an insolvent shall be effected subject to the provisions of the Deeds Registries Act, 1937; to further regulate the powers of a magistrate's court in respect of relief contemplated in section 24; to regulate the restriction on the receipt of consideration by virtue of certain deeds of alienation in certain respects anew; to make the restriction of liability applicable only in respect of the State and its servants; and to provide for exemption by the Minister from provisions of the said Act; and to provide for incidental matters.

*(Afrikaans text signed by the State President.)
(Assented to 21 April 1983.)*

BE IT ENACTED by the State President and the House of Assembly of the Republic of South Africa, as follows:—

Amendment of
section 1 of
Act 68 of 1981.

1. Section 1 of the Alienation of Land Act, 1981 (hereinafter referred to as the principal Act), is hereby amended—

(a) by the insertion in subsection (1) after the definition of "alienate" of the following definition: 5

"consideration", in relation to a sale of land under any deed of alienation, means the purchase price and interest thereon, excluding rent or occupational interest constituting a reasonable compensation for the use and enjoyment of the land by the purchaser; 10

(b) by the substitution for the definition of "deed of alienation" in subsection (1) of the following definition: 15
"'deed of alienation' means a document or documents under which land is alienated;"

(c) by the substitution in subsection (1) in the definition of "land" for the words preceding subparagraph (i) of paragraph (c) of that definition of the following words: 20
"in section 3 (2) and Chapter II"; and

(d) by the substitution in subsection (1) for the definition of "registrable" of the following definition:

Act No. 51, 1983

ALIENATION OF LAND AMENDMENT ACT, 1983

“registrable”, in relation to land, means capable of being registered as the subject of a separate title deed in a deeds registry in that [in the case of—

- (a) an erf a register has been opened in terms of the Deeds Registries Act in respect of the township in which the erf is situated;
- (b) a unit a sectional titles register has been opened in terms of the Sectional Titles Act in respect of the building or buildings comprised in a scheme as defined in section 1 of that Act and referring to the unit; and
- (c) a subdivision of land] the requirements of any law relating to [the subdivision] such registration have been complied with;”.

Amendment of section 3 of Act 68 of 1981.

2. Section 3 of the principal Act is hereby amended by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“If in terms of [such] a sale of land by public auction the purchase price or any other charges is or are payable by the purchaser in more than two instalments over a period exceeding one year—”.

Amendment of section 6 of Act 68 of 1981.

3. Section 6 of the principal Act is hereby amended by the substitution for paragraph (o) of subsection (1) of the following paragraph:

“(o) a statement—

- (i) of any amount which in terms of any law is payable in respect of [endowment, improvement or any other matter in terms of any law in relation to] the land [at the time the contract is concluded and of the payment thereof and, if such amount has not been so paid,] as endowment, betterment or enhancement levy, a development contribution or any similar imposition and an indication of the person to and the person by whom it is so payable; and
- (ii) that no amount contemplated in subparagraph (i) is payable in respect of the land, if such is the case;”.

Amendment of section 7 of Act 68 of 1981.

4. Section 7 of the principal Act is hereby amended by the addition of the following subsection:

“(4) A mortgagee shall, within 21 days of being requested thereto by a seller, furnish him with the certificate referred to in subsection (1), and if he fails to do so, he shall be liable to such person as if he were obliged by contract to furnish him with such certificate and failed to do so.”.

Amendment of section 9 of Act 68 of 1981.

5. Section 9 of the principal Act is hereby amended by the substitution for subparagraph (ii) of subsection (3) (b) of the following subparagraph:

“(ii) in a case referred to in paragraph (b), a proportionate share of any amount paid by or on behalf of the mortgagor in redemption of the mortgage bond as well as any amount paid by the purchaser to the mortgagee or mortgagees in terms of section 11 (1) (a) (i) and (iii).”.

Amendment of section 11 of Act 68 of 1981.

6. Section 11 of the principal Act is hereby amended by the substitution for subparagraph (iii) of subsection (1) (a) of the following subparagraph:

Act No. 51, 1983

ALIENATION OF LAND AMENDMENT ACT, 1983

“(iii) any payment to be made by him to the person who alienated the land to him, would reduce the amount owed by him to that person to an amount less than the amount **[owed by the owner of the land to] or amounts in aggregate which in terms of section 9 (3) the mortgagee or mortgagees referred to in subparagraph (i) may at that time require for the discharge of the mortgage bond or bonds or the release of the land from the mortgage bond or bonds, as the case may be, or the amount owed by any intermediary to the person referred to in subparagraph (ii),”.**

Amendment of section 16 of Act 68 of 1981.

7. Section 16 of the principal Act is hereby amended by the substitution for paragraph (d) of subsection (2) of the following paragraph:

“(d) the amount, if any, payable in respect of any endowment, **[improvement or any other matter] betterment or enhancement levy, a development contribution or any similar imposition in terms of any law in relation to the land at the end of that period;”.**

Amendment of section 19 of Act 68 of 1981.

8. Section 19 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for the word “informed” of the word “notified”;
- (b) by the substitution for paragraphs (a), (b) and (c) of subsection (2) of the following paragraphs, respectively:
- “(a) a description of the **[obligation the purchaser has failed to fulfil] purchaser’s alleged breach of contract;**
- (b) a demand that the purchaser **[fulfil the obligation in question] rectify the alleged breach** within a stated period, which, subject to the provisions of subsection (3), shall not be less than 30 days calculated from the date on which the notice was handed to the purchaser or sent to him by registered post, as the case may be; and
- (c) an indication of the steps the seller intends to take if the **[obligation in question] alleged breach of contract is not [fulfilled] rectified.”.**

Amendment of section 20 of Act 68 of 1981.

9. Section 20 of the principal Act is hereby amended by the substitution for subsections (1), (2) and (3) of the following subsections, respectively:

- “(1) (a) A seller, whether he is the owner of the land concerned or not, shall cause the contract to be recorded by the registrar concerned in the prescribed manner **[, within three months from the date—**
- (i) of the contract, if the land is registrable, or
- (ii) upon which the land becomes registrable,] provided a prior contract in force in respect of the land has not been recorded or is not required to be recorded **[against the title deed in question] in terms of this section.**
- (b) **[If a contract recorded against a title deed in terms of this section is terminated for whatever reason, such recording shall be cancelled and the next succeeding relevant contract shall be recorded against the title deed in question in terms of this section.] If a period of 90 days from the date—**
- (i) of the contract, if the land is registrable; or

Act No. 51, 1983

ALIENATION OF LAND AMENDMENT ACT, 1983

- (ii) upon which the land becomes registrable; or
- (iii) upon which the land is registered in the name of a purchaser in terms of a preceding contract which was or was required to be recorded in terms of this section,
- has expired without the seller having caused the contract to be recorded in terms of paragraph (a), the purchaser may—
- (aa) within 14 days after such expiry cancel the contract, in which case the parties shall be entitled to the relief provided for in section 28 (1): Provided that nothing in this subparagraph contained shall detract from any additional claim for any damages which the purchaser may have; or
- (bb) at any time thereafter, if he does not cancel the contract under subparagraph (aa), apply to the registrar concerned to record the contract in the prescribed manner: Provided that should a purchaser exercise his right to cause a contract to be recorded in terms of the foregoing provisions of this subparagraph, he shall not be liable for any wasted costs arising from the seller also having taken steps or taking steps to have such contract recorded.
- (c) If a [period referred to in paragraph (a) has expired without the seller having caused the contract to be recorded in terms of that paragraph, the purchaser may—
- (i) within 14 days after such expiry cancel the contract, in which case the parties shall be entitled to the relief provided for in section 28 (1): Provided that nothing contained in this subparagraph shall detract from any additional claim for damages which the purchaser may have; or
- (ii) at any time thereafter, if he elects not to cancel the contract under subparagraph (i) of this paragraph, apply to the registrar concerned to record the contract in the prescribed manner] contract recorded in terms of this section is terminated for whatever reason, such recording shall be cancelled in the prescribed manner.
- (2) The registrar concerned—
- (a) [shall record a contract by means of an endorsement made in the prescribed manner on the deeds registry copy of the title deed concerned] may register a mortgage bond over land in respect of which a contract has been recorded;
- (b) [may likewise endorse the owner's copy of the title deed, and shall do so if at any time after a recording in terms of paragraph (a) that copy is lodged in the deeds registry for any purpose] shall not register a transfer of land in respect of which a contract has been recorded, unless—
- (i) the transferee is the purchaser under the contract; or
- (ii) the transferee is an intermediary in relation to the purchaser; or
- (iii) such recording has been cancelled.
- [(c) shall, on application in the prescribed manner by the owner or seller concerned, cancel any such recording in the prescribed manner;
- (d) may register a mortgage bond over land on the title deed of which a contract has been recorded;
- (e) shall not register a transfer of land on the title deed of which a contract has been recorded, unless—
- (i) the transferee is the purchaser under the contract; or
- (ii) such recording is or has been cancelled.]

Act No. 51, 1983

ALIENATION OF LAND AMENDMENT ACT, 1983

(2A) The provisions of section 43 (5) (a) of the Deeds Registries Act shall not be applicable in respect of the recording of a contract in terms of this section.

(3) The owner of land and any person in possession of the owner's copy of the title deed concerned shall render all necessary assistance to enable a seller or purchaser of that land to cause a contract to be recorded in terms of subsection (1), or to effect a cancellation of such recording in terms of subsection [(2)] (1) (c), and if he fails to do so he shall be liable to such seller or purchaser as if he were obliged by contract to do so and failed to do so."

Amendment of section 22 of Act 68 of 1981.

10. Section 22 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"When the owner of land alienated under a contract becomes an insolvent, or a judgement creditor of the owner attaches such land by virtue of a writ of execution, that land shall, subject to the provisions of the Deeds Registries Act, be transferred to any person who purchased that land in terms of a contract or who is an intermediary in relation to that contract and who, in accordance with the provisions of subsection (2), makes arrangements for the payment of all costs in connection with the transfer and of an amount equal to —"; 25 and

(b) by the substitution in subsection (1) for subparagraph (ii) of paragraph (b) of the following subparagraph:

"(ii) any amount payable in respect of any endowment, [improvement or any other matter] betterment or enhancement levy, a development contribution or any similar imposition in terms of any law in relation to the land; and".

Amendment of section 24 of Act 68 of 1981.

11. Section 24 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection: 35

"(3) A magistrate's court shall, notwithstanding the value of the land or claim concerned, have jurisdiction to grant any relief contemplated in subsection (1) or (2).".

Amendment of section 26 of Act 68 of 1981.

12. Section 26 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"[Subject to the provisions of section 8A of the Sectional Titles Act,] No person shall by virtue of a deed of alienation relating to an erf or a unit receive any consideration until—"; 45

(b) by the substitution for paragraphs (a) and (b) of subsection (3) of the following paragraphs, respectively:

"(a) the [purchaser] alienee, by virtue of a deed of alienation, entrusts to a practitioner or an estate agent in his capacity as such, to keep, for the benefit of the [seller] alienator in terms of that deed of alienation, in the trust account of the practitioner or estate agent; or

(b) by virtue of a deed of alienation is [made] paid to the [seller] alienator if, before such payment, the [purchaser] alienee is furnished with an irrevocable and unconditional guarantee by a banking institution registered otherwise than provisionally under the Banks Act, 1965 (Act No. 23 of 1965), a build-

Act No. 51, 1983

ALIENATION OF LAND AMENDMENT ACT, 1983

ing society registered otherwise than provisionally under the Building Societies Act, 1965 (Act No. 24 of 1965), or a registered insurer as defined in section 1 of the Insurance Act, 1943 (Act No. 27 of 1943), in terms of which the said banking institution, building society or insurer undertakes to repay the said amount to the **[purchaser] alienee** if the erf or unit is not registrable and, where applicable, a recording is not effected within a period specified in the said guarantee.”; and

(c) by the substitution for subsection (4) of the following subsection:

“(4) If, in the circumstances contemplated in subsection (3), the **[seller] alienator** becomes an insolvent before the erf or unit has become registrable or the relevant contract has been recorded in terms of section 20, any amount kept in a trust account in terms of paragraph (a) of that subsection or the repayment of which was guaranteed in terms of paragraph (b) of that subsection, shall immediately become payable to the **[purchaser] alienee** concerned by the practitioner, estate agent, banking institution, building society or insurer concerned.”.

Substitution of section 30 of Act 68 of 1981.

13. The following section is hereby substituted for section 30 of the principal Act:

“Restriction of liability.

30. **[No person, including] The State, a conveyancer and any servant of the State [is] shall not be liable** in respect of anything done in good faith in the exercise or performance of a power or duty conferred or imposed by or under this Act.”.

Amendment of section 31 of Act 68 of 1981.

14. Section 31 of the principal Act is hereby amended by the addition of the following subsection, the existing section becoming subsection (1):

“(2) (a) **The Minister may by regulation or by written notice exempt any person or category of persons, on the conditions deemed fit by him and set out in any such regulation or notice, from any provision of this Act.**

(b) A notice contemplated in paragraph (a) directed to any person, shall be delivered to such person in the manner directed by the Minister, and any such notice directed to a category of persons shall be published in the *Government Gazette*.

(c) The Minister may at any time amend or withdraw any notice contemplated in paragraph (a), and a notice relating to such amendment or withdrawal shall be delivered or published as contemplated in paragraph (b).”.

Substitution of section 33 of Act 73 of 1968.

15. The following section is hereby substituted for section 33 of the principal Act:

“Application of Act 73 of 1968.

33. No provision of the Limitation and Disclosure of Finance Charges Act, 1968 (Act No. 73 of 1968), shall apply **[with reference to any matter referred to in section 12, 13 or 16] to any contract which is subject to the provisions of Chapter II of this Act.**”.

Short title and commencement.

16. This Act shall be called the Alienation of Land Amendment Act, 1983.