

South Africa

Mining Titles Registration Act, 1967

Act 16 of 1967

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Mining Titles Registration Act, 1967

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South Africa

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[Amended by [Mining Titles Registration Amendment Act, 1980 \(Act 60 of 1980\)](#) on 23 May 1980]

[Amended by [Mining Titles Registration Amendment Act, 1991 \(Act 14 of 1991\)](#) on 3 April 1991]

[Amended by [Transfer of Powers and Duties of the State President Act, 1991 \(Act 51 of 1991\)](#) on 29 April 1991]

[Amended by [Mining Titles Registration Amendment Act, 1991 \(Act 14 of 1991\)](#) on 1 January 1992]

[Amended by [Minerals Act, 1991 \(Act 50 of 1991\)](#) on 1 January 1992]

[Amended by [General Law Fourth Amendment Act, 1993 \(Act 132 of 1993\)](#) on 1 December 1993]

[The Act was amended by the substitution for the expression "Registrar of Mining Titles" of the expression "Director General: Mineral and Energy Affairs", wherever it occurs by section 66 of [Act 50 of 1991](#), and by the substitution for the expression "registrar" of the expression "Director-General", wherever it occurs by section 2 of [Act 14 of 1991](#)]

(English text signed by the State President.)

ACT

To regulate the registration of mining titles, other rights connected with prospecting and mining, stand titles and certain other deeds and documents, and to provide for matters incidental thereto.

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

Chapter I Introduction

1. Interpretation of terms

In this Act, unless the context otherwise indicates, any expression to which a meaning has been assigned, in the Mining Rights Act, 1967, bears the meaning so assigned thereto, and—

“**bewaarplaats**” means any right granted under article 83 of [Law No. 15 of 1898](#) of the Transvaal or a corresponding provision of any prior law, and in existence at the commencement of this Act;

“**certificate of bezitrecht**” means a certificate issued under section 57 of the Mining Rights Act, 1967, or a corresponding provision of a prior law;

“**certificate of reservation of a trading site**” means a certificate issued under section 130 of the Mining Rights Act, 1967, or a corresponding provision of a prior law;

“**conveyancer**” means a person practising as such in the Republic;

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

“holder”, in relation to—

- (a) any right granted or created in terms of any existing or prior law relating to prospecting and mining for precious metals, base minerals, natural oil or precious stones; or
- (b) any right granted or created under any other law which, in terms of the provisions of such other law, is registerable in the Mining Titles Office,

means the person registered in such office as the holder thereof, and if such holder—

- (i) is a minor or is mentally disordered or insolvent or otherwise incompetent in law to administer his estate, or is deceased, includes the person recognized by law to administer his estate;
- (ii) is a company under judicial management or in liquidation, includes the judicial manager or liquidator thereof in so far as the person so recognized or such judicial manager or liquidator is acting within the authority conferred on him by law;

“Master”, in relation to any matter, means the Master, Deputy Master or Assistant Master of the Supreme Court having jurisdiction in respect of that matter;

“mining title” means—

- (a) any right included in the definition of “mining title” in section 1 of the Mining Rights Act, 1967;
- (b) any discoverer’s certificate issued under the Precious and Base Metals Act, 1908 ([Act No. 35 of 1908](#)), of the Transvaal;
- (c) any discoverer’s certificate or owner’s certificate in respect of precious stones in a mine, issued under any law relating to precious stones; and
- (d) any lease granted under section 21, 72 or 74 of the Precious Stones Act, 1964 ([Act No. 73 of 1964](#)), or corresponding provisions of a prior law;

“mortgage bond” or **“bond”** means a mortgage bond attested by the Director-General specially hypothecating any mining title, tributing agreement, stand title, surface right permit, water right, certificate of reservation of a trading site, personal servitude or bewaarplaats or any registered lease or sub-lease;

“nomination agreement” means a notarial deed—

- (a) referred to in section 19 of the Mining Rights Act, 1967 ([Act No. 20 of 1967](#)), or in a corresponding provision of a prior law; or
- (b) in which a right referred to in section 8 of the Precious Stones Act, 1964 ([Act No. 73 of 1964](#)), or in a corresponding provision of a prior law, is embodied.

[definition of “nomination agreement” substituted by section 1 of [Act 60 of 1980](#)]

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

“notary public” means, in relation to any document executed in the Republic, a person practising as such in the Republic; and, in relation to any document executed outside the Republic, a person practising as such in the place where the document is executed;

“permit to retain and treat residues” means—

- (a) a licence issued under section 138 of the Precious and Base Metals Act, 1908 ([Act No. 35 of 1908](#)), of the Transvaal, or of that Act as applied to the province of the Orange Free State by the Orange Free State Metals Mining Act, 1936 ([Act No. 13 of 1936](#)); or
- (b) a permit issued under section 161 of the Mining Rights Act, 1967;

“prescribed” means prescribed by or under this Act;

“prospecting contract” means a notarial deed whereby the holder of mining title in respect of precious metals, base minerals or natural oil grants the right to prospect and search for precious metals, base minerals or natural oil (depending on the nature of such mining title) on the land over which such mining title is held, together with the right to purchase or tribute such mining title or any portion thereof;

“registrar” *[definition of “registrar” deleted by section 1 of [Act 14 of 1991](#)]*

“registry duplicate” means the counterpart or copy of a certificate, deed or document consisting of more than one copy which is filed or intended to be filed of record in the Mining Titles Office;

“regulation” means a regulation in force under this Act;

“right” means any right which is held by or under any deed of grant, licence, certificate or other document of title issued or created in terms of the Mining Rights Act, 1967, or under any law relating to prospecting and mining for precious metals, base minerals, natural oil or precious stones, and which is registered or capable of being registered in the Mining Titles Office or is held by or under any deed of transfer, deed of cession, certificate of title or other deed which is so registered

“stand title” means the licence, deed of grant or other deed or document under which any stand is held;

“surface right permit” means any deed issued by a mining commissioner in relation to the use of the surface of land or evidencing any permission granted in respect of such use in terms of—

- (a) Chapter IX of the Precious and Base Metals Act, 1908 ([Act No. 35 of 1908](#)), of the Transvaal, or of that Act as applied to the province of the Orange Free State by the Orange Free State Metals Mining Act, 1936 ([Act No. 13 of 1936](#)); or
- (b) Chapter X of the Mining Rights Act, 1967;

“this Act” includes the regulations;

“tributiug agreement” means a notarial deed whereby the holder of mining title in respect of precious metals, base minerals or natural oil grants the right to mine in and under the land over which such mining title is held and to recover and dispose of, for the grantee’s own benefit and account, any precious metals, base minerals or natural oil lawfully won as a result of such mining, subject to the terms and conditions, if any, upon which the mining title has been granted and to the payment to such holder of a royalty in respect of the precious metals, base minerals or natural oil so won;

“water right” means a right granted under Chapter XI of the Mining Rights Act, 1967, or a corresponding provision of a prior law.

Chapter II Administration

2. Mining Titles Office

- (1) The Mining Titles Office established at Johannesburg by section 3 of the Registration of Deeds and Titles Act, 1909 ([Act No. 25 of 1909](#)), of the Transvaal, shall remain in existence notwithstanding the repeal of that Act by section 67 of this Act, and shall be the Mining Titles Office for the registration of all mining titles and stand titles and of all other rights, deeds and documents for the registration of which in such office provision is made in this Act or any other law.
- (2) All deeds and documents lodged for registration in the Mining Titles Office prior to the commencement of this Act shall be dealt with as if this Act had not been passed.
- (3) No right to mine registered or capable of being registered in the Mining Titles Office shall be deemed to be a lease of a right to minerals for the purposes of the Deeds Registries Act, 1937 ([Act No. 47 of 1937](#)).

3. Appointments

- (1) Subject to the laws governing the public service—
- (a) the Minister shall appoint a Director General: Mineral and Energy Affairs who shall exercise the powers and perform the functions and duties conferred or imposed upon him by this Act or any other law, and such other powers, functions and duties as may be conferred or imposed upon him by the Minister;
 - (b) the Director-General may appoint or designate one or more officers employed at the Mining Titles Office who shall have the power, subject to the provisions of this Act and to the directions of the Director-General, to do any act or thing which may lawfully be done under this Act or any other law by the Director-General.

[paragraph (b) substituted by section 3 of [Act 14 of 1991](#)]

- (2) Any person holding at the commencement of this Act any office referred to in subsection (1) shall be deemed to have been appointed under this Act.

4. Seal of office

The Director-General shall have a seal of office which shall be affixed to all deeds or documents executed, attested or registered by him, and to all copies of deeds or documents issued by him to serve in lieu of the original deeds or documents.

5. Duties of Director-General

- (1) The Director-General shall be in charge of the Mining Titles Office and shall, subject to the provisions of this Act—
- (a) take charge of and preserve all records which prior to the commencement of this Act were or after such commencement may become records of the Mining Titles Office: Provided that the Director-General may, with due regard to any regulations made under section [10\(1\)\(k\)](#), destroy or otherwise dispose of any record which has been cancelled in terms of this section;
 - (b) examine all deeds, plans or other documents submitted to him for execution, registration, recording, noting or filing of record in his office, and after examination reject any such deed, plan or other document the execution, registration, recording, noting or filing of which is not permitted by this Act or by any other law or to the execution, registration, recording, noting or filing of record of which any other valid objection exists: Provided that no such deed, plan or document shall be required to be examined in its entirety before being rejected;
 - (c) register all mining titles and stand titles, bewaarplaatsen, certificates of bezitrecht, certificates of owner's reservation, certificates of reservation of trading sites, certificates of title in respect of mining claims, certificates of water reservation for owners, diagrams, grants of machinery sites, grants of water rights, mynpacht-brieven, permits to retain and treat residues, prospecting licences, plans and surface right permits, and generally all documents evidencing title which by law, established custom or usage are proper for registration in the Mining Titles Office;
 - (d) register nomination agreements and any cession, renewal, modification, abandonment or cancellation of a registered nomination agreement;
- [paragraph (d) substituted by section 2 of [Act 60 of 1980](#)]*
- (e) register mining leases granted under any law relating to prospecting and mining for precious metals, base minerals or natural oil and any transfer, cession, amendment, modification, abandonment or cancellation of any such lease;

- (f) register tributing agreements and any cession, amendment, renewal, modification, variation or cancellation of any such agreement;
- (g) attest or execute and register deeds of transfer and deeds of cession of rights, and execute and register certificates of title to rights;
- (h) attest and register mortgage bonds;
- (i) register cessions (including cessions made as security) of registered mortgage bonds, and register cancellations of such cessions if made as security;
- (j) register cancellations of registered mortgage bonds, releases of any part of the rights hypothecated thereby or of all such rights if the debt is further secured by a collateral bond, releases of any joint debtor or of any surety in respect of any such bond, the substitution of another person for a debtor in respect of any such bond, reductions of cover in respect of any such bond intended to secure future debts, and part payments of the capital amount due in respect of any such bond other than a bond intended to secure future debts;
- (k) register waivers of preference in respect of registered mortgage bonds with regard to the whole or any part of the rights hypothecated thereby, in favour of other bonds, whether registered or about to be registered;
- (l) register any servitude over any right capable of being encumbered by servitude by virtue of the provisions of any law relating to prospecting and mining, and record any amendment, modification, abandonment or extinction of any registered servitude;
- (m) register notarial leases, sub-leases and cessions of leases or sub-leases of any right capable of being leased by virtue of the provisions of any law relating to prospecting and mining, and notarial amendments of such leases and sub-leases and notarial renewals and notarial cancellations of such leases and subleases and notarial releases of any part of the rights leased;
- (n) register prospecting contracts and notarial variations, extensions, renewals and cessions thereof and cancellations of such contracts;
- (o) register against any registered mortgage bond any agreement entered into by the mortgagor and the holder of that bond, whereby any terms of that bond have been varied;
- (p) register powers of attorney whereby the agents named therein are authorized to act generally for the principals, or to carry out a series of acts or transactions registrable in the Mining Titles Office, and register copies of any such powers registered in a deeds registry, which have been certified by the Director-General thereof or have been issued for the purpose of being acted upon in the Mining Titles Office by a Director-General or Master of the Supreme Court of South Africa or a mining commissioner in his capacity as a registration officer;
- (q) in connection with the registration of any deed or other document, or in compliance with the requirements of any law or order of court, make such endorsements on any registered deed or other document as may be necessary to give effect to such registration or to the objects of such law or order of court;
- (r) record all notices, returns, statements or orders of court lodged with him in terms of any law;
- (s) give notice to the mining commissioner of any mining district of registrations effected in relation to any rights in that district;
- (t) record the conversion, renewal, modification, abandonment, lapsing or cancellation of any mining title or stand title or of any other rights evidenced by any registered title deed or by any grant, certificate, permit or licence registered, recorded, noted or filed in the Mining Titles Office;
- (u) note and record the issue, cancellation, extension or lapsing of any permission granted under the Mining Rights Act, 1967, or any other law, for the noting and recording whereof in the

Mining Titles Office provision is made in this Act or the Mining Rights Act, 1967, or such other law;

- (v) note and record the granting or cancellation of any prospecting lease or any prospecting and digging agreement in respect of precious stones, the noting and recording whereof in the Mining Titles Office is deemed expedient by the Minister;
 - (w) keep such registers and records and make such entries therein as may be necessary for the purpose of carrying out the provisions of this Act or any other law and of maintaining an efficient system of registration calculated to afford security of title and ready reference to any registered deed or document; and
 - (x) generally discharge all such duties as by law may or are to be discharged by him or are necessary to give effect to the provisions of this Act or any other law.
- (2) Notwithstanding the provisions of subsection (1), no mortgage bond shall be registered against, and no deed of transfer or deed of cession shall be attested or executed and registered in respect of any lease granted under section 21, 72 or 74 of the Precious Stones Act, 1964 ([Act No. 73 of 1964](#)), or corresponding provisions of a prior law, except with the written consent of the Minister.

6. Powers of Director-General

- (1) The Director-General shall have power—
- (a) to require the production of any deeds or documents or of proof upon affidavit or otherwise of any fact necessary to be established in connection with any matter or thing sought to be performed or effected in the Mining Titles Office;
 - (b) to rectify in any deed or other document recorded, noted, registered or filed in the Mining Titles Office, any error in the name or the description of any person or right mentioned therein or in the conditions affecting any such right, if every person appearing from the deed or other document to be interested in the rectification has in writing consented thereto or the court has ordered such rectification: Provided that no such rectification shall be effected which would have the effect of transferring any right;
 - (c) under such conditions as may be prescribed, to issue certified copies of deeds, plans or other documents registered or filed in the Mining Titles Office;
 - (d) if in his opinion any deed or other document submitted to him has become illegible or unserviceable, to require that a certified copy thereof be provided to take its place;
 - (e) to rectify any error in the numerical data, figure or wording of any plan registered or filed in the Mining Titles Office or to substitute another plan for a plan so registered or filed which in his opinion has become illegible or unserviceable.
- (2) Where any error to be rectified in terms of subsection (1)(b) is common to two or more deeds or other documents, including any register in the Mining Titles Office, the error shall be rectified in all those deeds or other documents.
- (3) The Director-General shall in case of dispute perform all the functions of a taxing officer of the court in relation to fees charged by conveyancers and notaries public for performing any acts which are required or permitted under this Act to be performed by conveyancers or notaries public in connection with deeds or other documents executed, registered or filed or intended to be executed, registered or filed in the Mining Titles Office or in relation to fees charged by other legal practitioners in connection with the preliminary work necessary for the purpose of any such deed or document.

7. Registered deeds not to be cancelled except upon an order of court

- (1) Save as is otherwise provided in this Act or in any other law, no registered deed of grant, deed of transfer, certificate of title or other deed conferring or conveying title to any right, and no cession

of any registered mortgage bond not made as security, shall be cancelled by the Director-General except upon an order of court.

- (2) Upon the cancellation as provided in subsection (1) of any deed conferring or conveying title to any right otherwise than by way of a mortgage bond, the deed (if any) under which such right was held immediately prior to the registration of the deed which is cancelled, shall, subject to the provisions of subsection (3), be revived to the extent to which the cancelled deed related thereto, and the Director-General shall cancel the relevant endorsement thereon evidencing the registration of the cancelled deed and make all necessary entries in the appropriate registers.
- (3) If the right referred to in any deed mentioned in subsection (1) was not prior to the registration of such deed held under a deed or title of which a registry duplicate is filed in the Mining Titles Office, the Director-General shall require the holder of such right to obtain, and shall upon payment to him of the prescribed fees issue and register a certificate of registered title in the form prescribed, and such certificate shall replace any such prior deed or title.

8. Inspection of records and supply of information

- (1) The Director-General shall on such conditions as may be prescribed and upon payment of the prescribed fees, permit any member of the public to inspect the public registers and other public records in the Mining Titles Office, other than the index to such registers or records, and to make copies of those records or extracts from those registers and to obtain such other information concerning deeds or other documents registered or filed in the said Office as prior to the commencement of this Act could customarily be made or obtained.
- (2) No fee shall be payable under subsection (1) in respect of any search or inspection made—
 - (a) by a conveyancer or notary public in connection with any deed which he has been instructed to prepare, attest or lodge in the Mining Titles Office; or
 - (b) by any land surveyor or mine surveyor in connection with any survey which he has been instructed or is required to perform; or
 - (c) by any sheriff or messenger of a magistrate's court or of a court of a Bantu Affairs Commissioner, or by the deputy of any such sheriff or messenger, in connection with the performance of his functions.

9. Regulations Board

- (1) There shall be established a Mining Titles Regulations Board (in this section referred to as "the board") with power to make regulations in regard to the matters mentioned in section 10.
- (2) The board shall consist of—
 - (a) the Director General: Mineral and Energy Affairs who shall be the chairman and executive officer of the board.
 - (b) a mining commissioner who shall be nominated by the Secretary and shall hold office during his pleasure; and
 - (c) two conveyancers (who shall also be notaries public) to be appointed by the Minister on the recommendation of the Association of Law Societies of South Africa.
- (3) A member appointed in terms of subsection (2)(c) shall hold office for a period of three years.
- (4) Every vacancy caused by the death or resignation of a member appointed in terms, of subsection (2)(c) shall be filled by the appointment by the Minister on the recommendation of the said Association of another member, and such other member shall hold office for the unexpired portion of the period for which the member whose office has become vacant was appointed.
- (5) The board shall meet at such times and places as the Minister may appoint and may regulate the procedure to be followed by it in carrying out its functions.

- (6) If the Director-General is unable to attend any meeting of the board, the most senior available officer employed at the Mining Titles Office shall act as chairman of the meeting.

[subsection (6) substituted by section 4 of [Act 14 of 1991](#)]

- (7) Three members of the board shall form a quorum for a meeting thereof, and a decision of a majority of the members present at any meeting shall be a decision of the board: Provided that in the event of an equality of votes on any matter at any meeting, the person presiding thereat shall have a casting vote in addition to his deliberative vote.

- (8) With the Minister's approval the board may make regulations without holding a meeting: Provided that no regulation so made shall have any force or effect unless agreed to in writing by all the members of the board.

- (9) No regulation or amendment or repeal of any regulation made by the board shall have effect unless it has been approved by the Minister and published in the *Gazette* at least one month before the date on which it is expressed to take effect.

[subsection (9) amended by section 9 of [Act 51 of 1991](#)]

- (10) Every such regulation, amendment or repeal shall, within fourteen days after it has taken effect, be laid upon the Table in the Senate and in the House of Assembly by the Minister if Parliament is then in ordinary session, or, if Parliament is not then in ordinary session, within fourteen days after the commencement of its next ensuing ordinary session.

10. Regulations

- (1) The board established under section 9 may from time to time make, alter or rescind regulations, not inconsistent with this Act, prescribing—
- (a) the fees of office (if any) to be charged in respect of any act, matter or thing required or permitted to be done in or in relation to the Mining Titles Office, including any report made to the court by the Director-General in connection with any application or action to which he is not a party;
 - (b) the fees and charges of conveyancers and notaries public in connection with the preparation, passing and registration of deeds or other documents registered or filed or intended for registration or filing in the Mining Titles Office, and the fees and charges of any other legal practitioners in connection with the preliminary work required for the purpose of any such deed or other document, and the fees and charges in connection with the taxation of any such fees or charges;
 - (c) the manner and form in which and the qualifications of the person by whom any deed or other document required or permitted to be lodged, registered or filed in the Mining Titles Office shall be prepared, lodged, executed, registered, filed or delivered, and the time within which any deed shall be executed;
 - (d) the particular documents which, when produced in the Mining Titles Office, shall be attested or witnessed, and the manner in which any such document shall be so attested or witnessed.
 - (e) the conditions upon which any conveyancer, notary public, land surveyor, mine surveyor or other person may conduct any search in the Mining Titles Office, and the precautions which shall be taken to ensure preservation of the records from damage by improper handling or otherwise.
 - (f) the transmission by the Director-General to any mining commissioner, Director-General of deeds or other officer, of returns of deeds of transfer, deeds of grant, certificates of title, mortgage bonds and other rights registered in the registrar's office, and the manner and form of and times for transmitting such returns.

- (g) the conditions under which copies of deeds, plans and other documents registered, recorded or filed in the Mining Titles Office may be issued for judicial purposes or for purposes of information or in substitution for deeds or other documents which have been lost, destroyed, defaced or damaged, and the conditions under which extracts from registers or from any documents registered or filed in the said office may be furnished.
 - (h) the manner and form in which consent shall be signified to any cancellation, cession, part payment, reduction of cover, release or amendment of or other registerable transaction affecting any bond or other document registered in the Mining Titles Office;
 - (i) the conditions under which a copy of a power of attorney may be accepted by the Director-General in lieu of the original;
 - (j) the forms of deeds which shall be used in circumstances not provided for in this Act or in the Mining Rights Act, 1967, or any other law;
 - (k) the records which may be destroyed in terms of the proviso to section 5(1)(a); and
 - (l) any matter which under this Act is required or permitted to be prescribed.
- (2) In making any regulation prescribing the fees and charges of conveyancers and notaries public in connection with the preparation and passing of deeds or other documents, the aforesaid board may prescribe separate fees for the preparation and the passing of deeds or other documents in the event of the deeds or other documents being prepared by one conveyancer or notary public and passed by another.
- (3) The regulations published under [Government Notice No. 2072 of 1938](#), as amended by [Government Notice No. 3 of 1944](#), shall, notwithstanding the repeal by section 67 of this Act of the Registration of Deeds and Titles Act, 1909 ([Act No. 25 of 1909](#)), of the Transvaal, remain in force until they are amended or repealed by the said board.

Chapter III

Registration: General provisions

11. Registers

In addition to the registers he may be required by any other law to keep, the Director-General shall, as soon as may be after the date of coming into effect of regulations made in terms of section 10, prepare, open and keep such registers as may be necessary to enable him to carry out the provisions of this Act or any other law.

12. Temporary continuation of existing registers

Until such time as any register has been prepared and opened under section 11, the Director-General shall continue to keep the corresponding register in use in the Mining Titles Office immediately prior to the commencement of this Act and to make therein, in respect of any matter provided for in this Act, the like entries as were customarily made therein prior to such commencement.

13. When registration takes place

- (1) Deeds executed or attested by the Director-General shall be deemed to be registered upon the affixing of his signature thereto, and deeds, documents or powers of attorney lodged for registration shall be deemed to be registered when the Mining Titles Office endorsement in respect of the registration thereof is signed: Provided that no such deed, document or power of attorney which is one of a batch of interdependent deeds, documents or powers of attorney intended for registration together, shall be deemed to be registered until all the deeds, documents or powers of attorney in the batch or the registration endorsements in respect thereof, as the case may be, have been signed by the Director-General.

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

14. Deeds to follow sequence of their relative causes

- (1) Save as is otherwise provided in this Act or in any other law or as directed by the court—
 - (a) transfers or cessions of rights shall follow the sequence of the successive transactions in pursuance of which they are made, and if made in pursuance of testamentary disposition or intestate succession they shall follow the sequence in which the rights accrued to the persons successively becoming vested with such rights;
 - (b) it shall not be lawful to depart from any such sequence in recording in the Mining Titles Office any change in the vesting of such rights: Provided that—
 - (i) if the rights have passed in terms of a will or through intestate succession from a deceased person to his descendants, and one or other of those descendants has died a minor and intestate and no executor has been appointed in his estate, transfer or cession of the rights which have vested in that descendant may be passed by the executor in the estate of the deceased person direct to the heirs *ab intestato* of the descendant;
 - (ii) if the Director-General is satisfied that the estimated value of the rights which have vested in any heir or legatee in terms of a will or through intestate succession would be equalled or exceeded by the estimated costs involved in transferring or ceding the rights to the heir or legatee, and the heir or legatee has sold the rights, transfer or cession thereof may, with the consent in writing of the heir or legatee, be passed by the executor in the estate of the deceased person direct to the purchaser;
 - (iii) if in the administration of the estate of a deceased person any redistribution of the whole or any portion of the assets in such estate takes place among the heirs and legatees (including ascertained fideicommissary heirs and legatees) of the deceased, or between such heirs or legatees and the surviving spouse, the executor or administrator of such estate may transfer or cede the rights direct to the persons entitled thereto in terms of such redistribution.
 - (iv) in a redistribution mentioned in proviso (iii) it shall be lawful to introduce movable property not forming part of the estate for the purpose of equalizing the division.
 - (v) the provisions of proviso (iii) shall apply *mutatis mutandis* with reference to a redistribution of assets of the joint estate of spouses who were married in community

of property and have been divorced or judicially separated, and with reference to a redistribution of assets of a partnership on dissolution of the partnership.

- (vi) if a fiduciary interest in any right terminates before transfer or cession of such right has been registered in favour of the fiduciary, it shall be competent to transfer or cede the right direct to the fideicommissary.
 - (vii) if any person has obtained the right to claim transfer or cession of a right from any other person and such first-mentioned right has been vested in any third person in terms of any judgment or order of court (including a magistrate's court or a court of a Bantu Affairs Commissioner) or in terms of a sale in execution held pursuant to any such judgment or order, transfer or cession may be passed direct to such third person by the person against whom such first-mentioned right was exercisable.
- (2) In any transfer or cession in terms of any proviso to subsection (1)(h) there shall be paid the transfer duty and estate duty which would have been payable had the rights concerned been transferred or ceded to each person successively becoming entitled thereto.

15. Preparation of deeds

- (1) Save as is otherwise provided in this Act or in any other law, no deed of transfer or mortgage bond shall be registered unless it has been prepared and executed by a conveyancer, and no contract or agreement (other than an agreement mentioned in section 5(1)(o)), servitude, lease, sub-lease or deed of cession (other than a cession of a mortgage bond) shall be registered unless it has been attested by a notary public.
- (2) Any such conveyancer or notary public may in respect of his services recover the fees and charges to which he may be entitled in accordance with any regulation in force under this Act.

15A. Proof of certain facts in connection with deeds and documents by means of certain certificates

- (1) A conveyancer who prepares a deed or other document for the purposes of registration or filing in the Mining Titles Office, and who signs a prescribed certificate on such deed or document, accepts by virtue of such signing the responsibility, to the extent prescribed by regulation for the purposes of this section, for the accuracy of those facts mentioned in such deed or document or which are relevant in connection with the registration or filing thereof, and which are prescribed by regulation.
- (2) The provisions of subsection (1) shall apply *mutatis mutandis* to any person other than a conveyancer, who is prescribed by regulation, and who has in accordance with the regulations prepared a deed or other document prescribed by regulation for registration or filing in the Mining Titles Office.
- (3) The Director-General shall accept, during the course of his examination of a deed or other document in accordance with the provisions of this Act, that the facts referred to in subsection (1) in connection with the registration or filing of a deed or other document in respect of which a certificate referred to in subsection (1) or (2) has been signed, have for the purposes of such examination been conclusively proved: Provided that the foregoing provisions of this subsection shall not derogate from the obligation of the Director-General to give effect to any order of court or any other notification recorded in the Mining Titles Office in terms of this Act or any other law, and which affects the registration or filing of such deed or other document.

[section 15A inserted by section 5 of [Act 14 of 1991](#)]

16. Registration of rights in name of married persons

- (1) From the commencement of the Mining Titles Registration Amendment Act, 1991, rights and bonds which would upon transfer, cession or registration thereof form part of a joint estate shall be registered in the name of the husband and the wife, unless that transfer, cession or registration

takes place only in the name of a partnership, and the husband or wife is involved therein only in the capacity of partner in that partnership.

- (2) Every deed executed or attested by the Director-General, or attested by a notary public and required to be registered in the Mining Titles Office, and made by or on behalf of or in favour of any person, shall—
- (a) state the full name and marital status of the person concerned;
 - (b) where the marriage concerned is governed by the law in force in the Republic or any part thereof, state whether the marriage was contracted in or out of community of property;
 - (c) where the person concerned is married in community of property, state the full name of his spouse; and
 - (d) where the marriage concerned is governed by the law of any other country, state that the marriage is governed by the law of that country.
- (3) Where a marriage in community of property has been dissolved by the death of one of the spouses before a right which on transport or cession thereof would have formed part of the joint estate could be transferred or ceded, that right shall be transferred or ceded to the joint estate of the spouses, pending the administration thereof, and is, subject to the provisions of any disposition with regard to that right, deemed to be the joint property of the surviving spouse and of the estate of the deceased spouse.
- (4) If a right forming part of a joint estate is registered in the Mining Titles Office in the name of either the husband or the wife, the Director-General shall on the written application of the husband or the wife, as the case may be, if he is satisfied as to the relevant facts, make a note on the title deed of that right or, if the title deed can for any reason not be produced to him, only on the registry duplicate thereof, and in the appropriate registers, to the effect that it is a right in respect of which the provisions of section 15(2)(a) of the Matrimonial Property Act, 1984, apply.
- (5) A person married in terms of a marriage the legal consequences of which are governed by the law of any other country, shall be assisted by his or her spouse in executing any deed or other document required or permitted to be registered in the Mining Titles Office or required or permitted to be produced in connection with any such deed or document, unless the assistance of the other spouse is in terms of this Act or on other grounds deemed by the registrar to be unnecessary.

[subsection (5) substituted by section 18 of [Act 132 of 1993](#)]

[section 16 substituted by section 6 of [Act 14 of 1991](#)]

Chapter IV

Registration of deeds of transfer and of cession

17. Form and manner of execution of deed of transfer or cession

- (1) Deeds of transfer shall be prepared in the form prescribed by law and shall, save in so far as, in the case of deeds of transfer executed by the Director-General, it is otherwise provided in this Act or any other law or ordered by the court, be executed in the presence of the Director-General by a conveyancer authorized by power of attorney to act on behalf of the holder of the right described therein, and shall be attested by the Director-General.
- (2) Deeds of cession of rights, other than cessions of mortgage bonds, shall be prepared and attested by a notary public and shall be registered by the Director-General.

18. Transfer or cession from joint estates

In any deed of transfer or of cession lodged in the Mining Titles Office relating to a right which is an asset in a joint estate, the surviving spouse shall be joined in his personal capacity with the executor of the estate of the deceased spouse except—

- (a) where the executor is dealing only with the share of the deceased spouse; or
- (b) where the right has been sold to pay the debts of the joint estate; or
- (c) where there has been a massing of the joint estate and the surviving spouse has adiated; or
- (d) where such transfer or cession is in favour of the surviving spouse; or
- (e) where the surviving spouse is the executor of the estate of the deceased spouse; or
- (f) where claims have been pegged for and on behalf of any person, partnership or company and transfer of the claims is being passed by the pegger in favour of such person, partnership or company in terms of section 19(4).

19. Transfer or cession of two or more rights by one deed

- (1) Two or more persons each holding different rights may not transfer or cede those rights to one or more persons by the same deed, unless such transfer or cession is authorized by the provisions of a law or by an order of court.
- (2) Two or more rights may by one deed be transferred or ceded by one person or by two or more persons holding such rights in undivided shares to one person or to two or more persons acquiring such rights in undivided shares, provided each right is described in a separate paragraph or the rights are grouped in paragraphs to the satisfaction of the Director-General.
- (3) Where provision is made in any law for portions of a right to be transferred or ceded, two or more portions of such right may by one deed be transferred or ceded by one person or by two or more persons holding the whole of such right in undivided shares to one person or to two or more persons acquiring such portions in undivided shares, if each portion is described in a separate paragraph in which reference is made to the diagram or plan of such portion which shall whenever possible be annexed to the deed: Provided that the Director-General may permit any number of portions of the same kind of right to be grouped in one or more paragraphs to his satisfaction.
- (4) Notwithstanding the provisions of subsection (1), two or more persons who have lawfully pegged claims for and on behalf of any other person or of a partnership or a company may transfer the claims to that person, partnership or company by the same deed, provided the relevant claim licences held by each of such persons are described in separate paragraphs to the satisfaction of the Director-General.

20. Special provisions relating to transfer or cession of undivided shares

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

21. Transfers or cessions to unascertained children

- (1) If any right or a bond is donated or bequeathed to the children born or to be born of any person or of any marriage or is otherwise acquired on behalf of such children, transfer or cession of the right or bond on behalf of such children may be passed, in the case of children born or to be born of a

person, to that person in trust for such children, or, in the case of children born or to be born of a marriage, to the person who would be the natural guardian of those children during their minority, in trust for such children.

- (2) If any right or a bond is donated to the children born or to be born of any person or of any marriage, the person to whom transfer or cession may be passed in terms of subsection (1), may for the purposes of such transfer or cession accept the donation.
- (3) When the identity of all such children has been established the Director-General shall make an endorsement on the deed of transfer or cession or bond setting out their names, and thereupon the deed of transfer or cession or bond shall, notwithstanding the provisions of section 16(3), be deemed to be to and in favour of such children in the same way as if transfer or cession had originally been passed to them by name.

22. Special provisions relating to partnerships

- (1) All deeds or documents executed by or on behalf or in favour of persons carrying on business as a firm or a partnership, or to which a firm or partnership may be a party, shall, subject to the provisions of section 16, contain the full names of the partners constituting the firm or partnership.
- (2) When rights are registered in the name of persons carrying on business as a firm or a partnership, such rights may, subject to the provisions of this Act, so long as the firm or partnership consists of the same partners, be transferred, ceded, hypothecated or otherwise dealt with on a power of attorney bearing the signature of the firm or partnership and of the partner who affixed the firm's or partnership's signature: Provided that if any such right is acquired by any member or partner of such firm or partnership in his individual capacity, transfer or cession thereof shall be given by all the members or partners constituting such firm or partnership.
- (3)
 - (a) No transfer or cession by a partner in a firm or partnership, to the remaining partners, or to such partners and any other persons, of his share in any right held by that firm or partnership shall, if such right is proposed to be held by a new firm or partnership consisting of such remaining partners or of those partners and such other persons, be passed unless the whole of the right in question, and not merely the share of the partner concerned, is transferred or ceded to the new firm or partnership, and the deed, power of attorney or other document necessary to effect such transfer or cession shall be signed by each of the partners of the original firm or partnership or by his duly authorized representative or agent.
 - (b) Where a new partner has been admitted into an existing firm or partnership, no rights which prior to the admission of such partner were vested in such existing firm or partnership shall be capable of being transferred, ceded, mortgaged or otherwise dealt with by the new firm or partnership formed in consequence of the admission of such new partner, unless transfer or cession of those rights has been registered in the name of the said new firm or partnership.
- (4) In the event of the dissolution of a firm or partnership any rights of the firm or partnership which are not being dealt with in the manner described in subsection (3) shall be transferred or ceded to the individual partners in the shares to which they are respectively entitled, and after such dissolution no partner shall be entitled to deal separately with his share of any such rights until transfer or cession of such share has been registered in his name.
- (5) Subject to the provisions of subsection (3), no member of a firm or partnership shall during the continuance thereof be permitted to register any transaction (other than an endorsement pursuant to section 28 or 29) affecting his share in any rights registered in the name of such firm or partnership, until transfer or cession has been passed to him of the share to which he is entitled.
- (6) Where a partner is deceased and the deed of partnership or the will of such partner provided that the firm or partnership shall not be terminated by reason of his death but that his share in such firm or partnership shall be administered by an administrator, it shall be competent for the Director-General on production to him of such documents as he may require or as may be prescribed, to endorse the title deed of any rights held by such firm or partnership to the effect that the firm or partnership has not been dissolved by reason of the death of such partner and that the share of such

deceased partner in such firm or partnership is to be administered in terms of the provisions of such deed of partnership, or in terms of section 40 of the Administration of Estates Act, 1965 ([Act No. 66 of 1965](#)).

Chapter V

Substituted title deeds

23. Certificates of registered title in respect of rights to which the only existing title is a licence

The holder of any right whose only title thereto consists of a licence or permit which is renewable from time to time by the payment of an amount prescribed by the Mining Rights Act, 1967, or the regulations made thereunder, shall not be entitled to obtain registration of any transaction in the Mining Titles Office or to have any endorsement made in terms of section [28](#), [29](#), [30](#) or [39](#) (5) of this Act in relation to such right or any part thereof until he has obtained a certificate of registered title in respect of such right or part thereof in the form prescribed: Provided that no such certificate shall be required where the whole of the right held under the relevant licence or permit is transferred or ceded so that upon registration of the transfer or cession the holder is divested entirely thereof, or where it is sought to register a certificate of bezitrecht in respect of the whole of such right.

24. Certificate of registered title of one or more rights held under one title deed

Any person who holds two or more rights or undivided shares therein under one title deed may, subject to the provisions of section [26](#), obtain a certificate of registered title in respect of one or more of such rights or of the undivided share held by him therein, if, except in the case where the only title held by virtue of such title deed is a licence renewable from time to time by the payment of an amount prescribed by the Mining Rights Act, 1967, or the regulations made thereunder, at least one of the rights or the share therein so held remains so held.

25. Certificate of registered title of undivided share

- (1) Any person who is the joint holder of a right the whole of or shares in which are held by such person and others under one title deed, may, subject to the provisions of section [26](#), obtain a certificate of registered title of his undivided share in such right, and no transfer or cession of a fraction only of his undivided share or mortgage of the whole or any fraction of his undivided share in the right shall be registered in the Mining Titles Office unless a certificate of registered title of such undivided share is produced to the Director-General: Provided that, subject to the provisions of section [23](#), all the joint holders so holding under one title deed may together transfer or cede an undivided share in the right or a fraction of the share held under such title deed or mortgage the whole of such right or share without the production of such a certificate: Provided further that such a certificate shall not be necessary where a joint holder disposes of the whole of his share by deeds of transfer to be registered simultaneously.
- (2) If the title deed under which a right or shares therein is held jointly by two or more holders is lost or destroyed, any such holder may, upon compliance with the prescribed requirements, obtain a certificate of registered title in respect of his share in the right without obtaining a certified copy of the title deed which has been lost or destroyed.
- (3) The provisions of subsections [\(1\)](#) and [\(2\)](#) shall apply also where two or more rights or shares therein are held jointly by two or more persons by the same title deed: Provided that all the rights or the shares therein shall be included in the certificate of registered title and shall be described in separate paragraphs to the satisfaction of the Director-General.

26. Conditions governing the issue of certificates of registered title

- (1) A certificate of registered title mentioned in section [23](#) [24](#) or [25](#) may be obtained upon written application by the holder of the right in question to the Director-General, and shall, save as pro-

vided in section [25\(2\)](#), be accompanied by the title deed under which such right is held and shall be as nearly as practicable in the form prescribed by regulation.

- (2) If the right in question is subject to a registered mortgage bond, that bond shall upon the request and at the expense of the applicant for the certificate of registered title, be produced to the Director-General by the holder thereof.
- (3) Before issuing any such certificate the Director-General shall cause to be made upon the title deed in question and upon the registry duplicate thereof or, in the case provided for in section [25\(2\)](#), upon the registry duplicate only, and upon the mortgage bond (if any) an endorsement that a certificate of registered title has in accordance with the appropriate section of this Act been substituted for the said title deed in respect of the right in question, and shall make entries in the registers of the issue of the certificate and, if the right is mortgaged, endorse that fact upon the certificate.
- (4) Any such certificate when issued shall in respect of the right described therein take the place of the title deed under which such right was previously held, and the issue of the certificate shall not in any manner affect any right or obligation in connection with such right.
- (5) The provisions of subsections [\(2\)](#) and [\(3\)](#) shall apply, *mutatis mutandis*, in connection with the registration of a certificate of bezitrecht.

27. Certificate of registered title where registration in the usual manner cannot be obtained

- (1) Any person who has otherwise than by prescription or expropriation acquired rights registered in the name of any other person, and who is unable to procure registration thereof in his name in the usual manner and according to the sequence of the successive transactions or successions in pursuance of which the rights have devolved upon him, may, in lieu of applying to the court, apply in writing to the Director-General for the issue of a certificate of registered title in his name in respect of such rights.
- (2) Any such application shall be accompanied by sworn declarations and all available documentary evidence in support thereof.
- (3)
 - (a) Particulars of any such application received by the Director-General shall be published by the applicant in a form approved of by the Director-General in two successive ordinary issues of the *Gazette* and once a week during two successive weeks in Afrikaans in one Afrikaans language newspaper and in English in one English language newspaper circulating in the magisterial district in which the property which is the subject of such rights is situated.
 - (b) Any person objecting to the grant of such an application shall within a period of two months from the date of the last publication in the *Gazette*, submit in writing to the Director-General and to the applicant full particulars of the grounds upon which his objection is based, together with any sworn declaration or documentary evidence which he may be able to produce in support of his objection.
- (4) If any person has lodged an objection in terms of subsection [\(3\)\(b\)](#) and such objection is not subsequently withdrawn in writing, the Director-General shall refuse to grant the application and shall in writing notify the applicant and the objector of such refusal.
- (5) Where any such application has been so refused, the applicant shall be entitled to apply to the court by petition for an order authorizing the registration in his name of the relevant right or any part thereof.
- (6) Every petition under subsection [\(5\)](#) shall be lodged with the Director-General of the court and a copy of the petition shall be served on the Director-General and on the person who lodged the relevant objection, and the allegations contained in such petition shall be supported by sworn declarations and all available documentary evidence which the applicant may be able to adduce.

- (7) If no person has lodged an objection in terms of subsection (3)(b) or any objection so lodged is subsequently withdrawn in writing, and if the Director-General is satisfied that the applicant has validly acquired the right to which the application relates or the court has ordered registration in terms of subsection (5), the Director-General shall issue and register a certificate of registered title in the name of the applicant in respect of such right or in respect of such part thereof as may be authorized by the relevant order of the court.
- (8) Any certificate of registered title issued and registered under this section shall be in the form prescribed by regulation and shall be made subject to every condition, bond or other encumbrance to which, according to the records of the Mining Titles Office, the rights to which the application relates are subject, and the Director-General shall in connection with such condition, bond or other encumbrance make the usual and proper entries and endorsements upon or in respect of such certificate of registered title in the said office before such deed is delivered to the applicant: Provided that it shall not be necessary to produce the title deed of the right in question or a certified copy thereof if an affidavit is produced to the Director-General by the applicant to the effect that he has been unable to obtain possession of such title deed.
- (9) A registration of rights effected in the name of any person in pursuance of this section shall have the effect of vesting in such person a title to such rights which shall be liable to be annulled, limited or altered on any ground on which the title of such person to such rights would have been liable to be annulled, limited or altered if such rights had been transferred or ceded to such person in the ordinary course.
- (10) If the Director-General registers any rights in pursuance of this section in the name of any person, such person shall be liable to pay such taxes, duties and fees of office in respect of such registration as he would have been liable to pay if such rights had been transferred or ceded to him in the usual manner directly from the last registered holder thereof, but shall not be liable to pay any tax, duty or interest thereon which such holder or any intermediate holder of the rights may have become liable to pay, unless he shall by agreement have bound himself to pay such tax, duty or interest or unless the delay in obtaining the registration in his name was due to the neglect or default of himself or his agent: Provided that any person who has become liable to pay any such tax, duty or interest shall continue to be so liable notwithstanding that such rights have, in pursuance of this section, been registered in the name of another person.

Chapter VI

Change of title by endorsement

28. Transfer of cession by means of endorsement

- (1) If rights are or a bond is registered in the name of the survivor of two spouses who were married in community of property or in the name of the joint estate of such spouses, or in the name of both such spouses, and such survivor has lawfully acquired the share of the deceased spouse in the rights or bond, the Director-General shall, subject to the provisions of section 23, on written application by the executor in the estate of the deceased spouse and by such survivor, save where such survivor has already signed as executor, accompanied by such other documents as may be prescribed, endorse on the title deeds evidencing the rights or on the bond that the survivor is entitled to deal with such rights or bond, and thereupon the survivor shall be entitled to deal therewith as if he had taken formal transfer or cession into his own name of the share of the deceased spouse in the rights or bond.
[subsection (1) substituted by section 7 of [Act 14 of 1991](#)]
- (2) If the rights mentioned in subsection (1) are hypothecated under a registered mortgage bond the endorsement provided for in the said subsection shall not be made unless—
 - (a) such bond is cancelled; or
 - (b) the said rights or the share of the deceased spouse therein are released from the bond; or

- (c) the estate of the deceased spouse is released from liability under the bond and the survivor assumes full liability for all the indebtedness of the joint estate thereunder; or
 - (d) the said bond has been passed by the survivor alone and a written consent (which shall be in duplicate, in the prescribed form, and shall be signed by the survivor and the legal holder of the bond) to the release of the estate of the deceased spouse from liability under the bond and to the substitution of the survivor as sole debtor in respect thereof, is produced to the Director-General together with the bond.
- (3) The Director-General shall, in case of release and substitution in terms of subsection (2)(d), when he endorses on the title deeds evidencing the rights that the survivor is entitled to deal therewith—
- (a) make in the appropriate register an entry setting forth that the estate of the deceased spouse is released from liability in respect of the obligation secured by the bond and that the survivor has become sole debtor in respect of the bond;
 - (b) annex to the bond one duplicate of the written consent referred to in subsection (2)(d) and file the other in his office, making a suitable reference on the registry duplicate of the bond to such filing; and
 - (c) endorse on the bond that the estate of the deceased spouse is released from liability in respect of the obligation secured thereby and that the survivor has become sole debtor in respect of the bond.
- (4) As from the date of the endorsement on the title deeds evidencing the rights in terms of subsection (1), the estate of the deceased spouse shall be absolved from any obligation secured by the relevant bond and the survivor shall become sole debtor in respect thereof in the same manner as if he had passed the bond at that date.

29. Endorsement of deed on divorce, division of joint estate, or change of matrimonial property system

- (1) If rights are or a bond is registered in the Mining Titles Office in the name of one of two spouses or in the name of both spouses who—
- (a) were married in community of property but have been divorced, and the person in whose name such rights are or bond is registered or, where such rights are or bond is registered in the name of both spouses, one of them has lawfully acquired the share of his former spouse in the rights or bond; or
 - (b) are or were married in community of property, and a court has made an order, or has made an order and given an authorization, under section 20 or 21 (1) of the Matrimonial Property Act, 1984 ([Act No. 88 of 1984](#)), as the case may be, in terms of which the rights are or bond is awarded to the person in whose name it is registered or, where the rights are or bond is registered in the name of both spouses, to one of them,
- the Director-General may, on written application by that person, accompanied by such documents as the Director-General deems necessary, endorse on the title deeds of the rights or on the bond that such person is entitled to deal with such rights or bond, and thereupon such person shall be entitled to deal therewith as if he had taken formal transfer or cession into his name of the share of the former spouse or his spouse, as the case may be, in the rights or bond.
- (2) If rights are or a bond is registered in the Mining Titles Office in the name of both spouses who—
- (a) were married in community of property but have been divorced, and such rights accrue or bond accrues to both the former spouses in undivided shares in terms of the division of the joint estate;
 - (b) are or were married in community of property and a court has made an order, or has made an order and given an authorization under section 20 or 21 (1) of the Matrimonial Property

Act, 1984 ([Act No. 88 of 1984](#)), as the case may be, in terms of which the rights are or bond is awarded to both spouses in undivided shares,

the Director-General may on written application by both spouses, accompanied by such documents as the Director-General deems necessary, endorse on the title deeds of the rights or on the bond, that such spouses are entitled to deal with such rights or bond, and thereupon such spouses shall be entitled to deal therewith as if they had taken formal transfer or cession into their names of their respective shares in such rights or bond.

- (3) If the rights mentioned in subsection (1) or (2) are hypothecated under a registered mortgage bond, the provisions of section [28 \(2\)](#), [\(3\)](#) and [\(4\)](#) shall *mutatis mutandis* apply.

[section 29 substituted by section 8 of [Act 14 of 1991](#)]

30. Endorsement of deed to reflect the change of status of a person

When rights are or a bond is registered in the name of—

- (a) a person who since the registration was effected has been married either in or out of community of property or has been married and whose marriage is governed by the law of any country other than the Republic; or
- (b) a person who at the date of the registration was married out of community of property or whose marriage was at that date governed by the law of any country other than the Republic and who has since become a widow or widower or been divorced,

the registrar may on written application by such person (assisted where necessary by such person's spouse) and on production of the relevant deed or, where there are two or more interdependent deeds, of all such deeds, and of proof to his satisfaction of the change in such person's status, record the change on such deed or deeds and in the registers.

[section 30 substituted by section 19 of [Act 132 of 1993](#)]

Chapter VII

Bonds: General provisions

31. Execution of bonds

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

32. Requirements in case of bonds intended to secure future debts

- (1) No bond attested and registered after the commencement of this Act shall be of any force or effect for the purpose of giving preference or priority in respect of any debt incurred after the registration of the bond, unless—
 - (a) it is expressly stipulated in the bond that it is intended to secure future debts generally or some particular future debt described therein; and
 - (b) a sum is fixed in the bond as an amount beyond which future debts shall not be secured thereby.
- (2) A bond shall not be deemed to be a bond securing future debts within the meaning of subsection (1) by reason of the fact that it purports to secure payment by the mortgagor of the costs of preserving and realizing any security or of fire insurance premiums or of costs of notice or bank exchange.

33. Cession of bond to secure future advances

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

34. Exclusion of general clause in mortgage bonds

Save as is provided in this Act or in any other law, the Director-General shall not attest and register any mortgage bond which contains the clause, commonly known as the general clause, purporting to bind generally all the immovable or movable property or registered rights of the debtor or both such immovable or movable property and such rights.

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

- (1) No mortgage bond shall be passed by two or more mortgagors unless it purports to bind registered rights of each mortgagor: Provided that, notwithstanding the provisions of section 31(1), rights held subject to a condition that on the happening of a certain event such rights shall revert to a person named in such condition, may be mortgaged by the holder thereof and such person by means of a bond passed by them jointly and severally, or may be mortgaged by the holder of such rights with the written consent of such person, in which case the mortgage bond shall contain a reference to such consent.
- (2) If a bond is passed by two or more mortgagors, no release from the bond—
 - (a) of any mortgagor and his rights, or of a portion of the rights of any mortgagor shall be registered without the written consent of the other mortgagor or mortgagors;
 - (b) of all the rights of any mortgagor shall be registered unless such mortgagor is also released.
- (3) If a bond is passed by two or more mortgagors no waiver of preference by the mortgagee in favour of a further mortgage bond over the rights of one of the mortgagors may be registered without the written consent of the other mortgagor or mortgagors.
- (4) No bond shall be passed in favour of two or more persons in which it is stipulated that the share of one bond holder shall rank in priority to the share of another, nor shall any transaction be registered which would have the effect of giving preference to one share in a bond over another share.

36. No bond to be passed in favour of an agent

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

Chapter VIII

Rights of mortgagees

37. Transfer or cession of mortgaged rights

- (1) No transfer or cession of any mortgaged right shall be attested, executed or registered by the Director-General until the bond has been cancelled or the right has been released from the operation of the bond with the consent in writing of the holder thereof, or unless, in the case of any such mortgage bond which has been lost or destroyed, the Director-General has on application by the registered holder thereof, cancelled the entry in his register in respect of such bond: Provided that no such cancellation or release shall be necessary if the transfer or cession is made—
 - (a) in execution of the judgment of any court (including a magistrate's court or a court of a Bantu Affairs Commissioner); or
 - (b) by the trustee of an insolvent estate, an executor liquidating and distributing an estate under section 34 of the Administration of Estates Act, 1965 ([Act No. 66 of 1965](#)), the liquidator of a company which is unable to pay its debts, and which is being wound up by or under the supervision of the court, or a liquidator or trustee elected or appointed under the Agricultural Credit Act, 1966 ([Act No. 28 of 1966](#)); or
 - (c) in any other circumstances in this Act or in any other law specially provided or by order of the court.
- (2) A consent to the release from the operation of a bond of all the rights mortgaged thereunder shall, except where the debt secured by such bond is further secured by a collateral bond, be deemed to be a consent to the cancellation of that bond.

38. Substitution of debtor in respect of a bond

- (1) If the holder (in this section referred to as the transferor) of rights which are hypothecated under a registered mortgage bond, other than a mortgage bond to secure the obligations of a surety (not being a person referred to in section [37\(1\)\(b\)](#)), transfers or cedes to another person (in this section referred to as the transferee) all the rights hypothecated thereunder, the Director-General may, notwithstanding the provisions of section [37\(1\)](#), register the transfer or cession and substitute the transferee for the transferor as debtor in respect of the bond, provided there is produced to him, in duplicate, the written consent in the prescribed form of the holder of the bond and the transferee to the substitution of the transferee for the transferor as the debtor in respect of the bond for the amount of the debt disclosed therein or for such lesser amount as may be specified in such consent.
- (2) In registering the transfer or cession the Director-General shall—
 - (a) make an entry in the appropriate register setting forth—
 - (i) that the debt of the transferor secured by the bond is cancelled; and
 - (ii) that the transferee has become the debtor in respect of the bond;
 - (b) annex one duplicate of the written consent referred to in subsection [\(1\)](#) to the bond and file the other in his office and make a suitable reference on the registry duplicate of the bond to such filing;
 - (c) endorse upon the bond—
 - (i) the name of the transferee;
 - (ii) the date and number of the transfer or cession;
 - (iii) a reference to the said written consent; and

- (iv) that the transferee has been substituted for the transferor as debtor in respect of the bond; and
- (d) make on the transfer deed or deed of cession an endorsement of mortgage containing the date and number of the bond and the amount due in terms thereof.
- (3) As from the date of registration of the transfer or cession the transferor shall be absolved from any obligation secured by the bond and the transferee shall be substituted for him as the debtor in respect of such bond and shall be bound by the terms thereof in the same manner as if he had himself passed the bond and had renounced therein the benefit of all relevant exceptions.
- (4) The provisions of this section shall not apply if the mortgaged rights are to be transferred or ceded —
 - (a) to a person who would not himself be competent to mortgage them; or
 - (b) to two or more persons, unless they take transfer or cession of the rights in undivided shares and renounce in the written consent referred to in subsection (1) the exception *de duobus vel pluribus reis debendi*.

[subsection (4) substituted by section 20 of [Act 132 of 1993](#)]

39. Return by master in connection with insolvent estates and further provisions relative to insolvent estates

- (1) If it appears from the liquidation account of any estate which has been sequestrated or from the vouchers relating thereto that a payment has been made to any creditor on account of a bond registered in the Mining Titles Office, the Master shall notify the payment to the Director-General who shall thereupon write off the amount thereof in the appropriate register, on the registry duplicate of the bond and also, if available, on the original bond, and the holder of the bond shall deliver the bond to the Master who shall forward it to the Director-General in order that the amount paid may be written off thereon.
- (2) (a) Except in cases where an insolvent has been rehabilitated in pursuance of a composition made by him with his creditors, the Master shall from time to time transmit to the Director-General a return specifying—
 - (i) the name and address of every person who has been rehabilitated after the sequestration of his estate; and
 - (ii) the rights and registered bonds appearing in the schedules lodged with the Master by or on behalf of such person or in the liquidation account of his estate,
 and upon receipt of that return the Director-General shall in accordance therewith, cancel in the appropriate registers all bonds registered therein against the rights of the said person prior to the sequestration of his estate and endorse the registry duplicates, and, if available, also the bonds themselves as cancelled.
 - (b) The holders of such bonds shall, when requested to do so by the Master, deliver the bonds to him, and the Master shall forward them to the Director-General for cancellation.
- (3) If any of the rights mentioned in the return referred to in subsection (2) have not yet been transferred or ceded by the trustee, the Director-General shall note in the appropriate register that such rights have in terms of the law relating to insolvency vested in the trustee.
- (4) Rights which have vested in a trustee in accordance with the provisions of the law relating to insolvency and which have not in terms of that law been re-vested in the insolvent may, whether before or after rehabilitation of the insolvent, be transferred or ceded only by the trustee, and shall not after such rehabilitation be transferred, ceded, mortgaged or otherwise dealt with by the insolvent until they have been transferred or ceded to him by the trustee: Provided that if after the rehabilitation the trustee has been discharged, or if there is no trustee in existence, the

Master shall, if satisfied that the rehabilitated insolvent is entitled to the rights, give him transfer or cession thereof in such manner as may be prescribed.

- (5) If by virtue of the provisions of the law relating to insolvency an insolvent has been re-vested with any rights, such rights shall not be transferred, ceded, mortgaged or otherwise dealt with by the insolvent until an endorsement that the rights have been restored to him has been made by the Director-General on the title deed evidencing the rights: Provided that no such endorsement shall be made by the Director-General if the rights are registered in the name of a partnership until the rights have been dealt with in terms of section 22.
- (6) Nothing in this section contained shall be construed as modifying any provision of the law relating to insolvency.
- (7) The provisions of this section shall apply *mutatis mutandis* in respect of—
 - (a) estates liquidated and distributed under section 34 of the Administration of Estates Act, 1965 ([Act No. 66 of 1965](#));
 - (b) companies which are unable to pay their debts and are liquidated or wound up by or under the supervision of the court under the law relating to companies; and
 - (c) assets of an applicant under the Agricultural Credit Act, 1966 ([Act No. 28 of 1966](#)), which are administered by a liquidator or trustee who has received from the Master a certificate mentioned in section 29 of the said Act.

40. Endorsement on bond after sale in execution

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

Chapter IX

Servitudes, contracts, tributing agreements and leases

41. Registration of servitudes and contracts

- (1) Save as otherwise provided in this Act or in any other law, any servitude or contract referred to in section 5(1)(l) or (n) shall be created by means of a deed executed before and attested by a notary public, and any amendment, modification, cession or cancellation of such a servitude or contract shall likewise be effected by notarial deed: Provided that if any such servitude or contract has lapsed by effluxion of time or for any other reason, the Director-General may, on written application by or on behalf of the holder of the right encumbered thereby, accompanied by proof of such lapsing, the title deed evidencing the right and, if available, the deed of servitude or contract, note on such title deed and on such deed of servitude or contract, if such deed or contract has been produced, that such servitude or contract has lapsed.
- (2) Each notarial deed shall contain a sufficient description of the rights encumbered by the servitude or contract together with a reference to the diagram, if any, defining the servitude or the rights or any part thereof to which the notarial deed relates, unless such servitude or such rights or portion thereof are in the opinion of the Director-General sufficiently described in such deed, and shall mention the title deed evidencing the encumbered rights.
- (3) (a) For the purposes of the registration of the notarial deed there shall be produced a signed original of the deed to be filed in the Mining Titles Office as the registry duplicate, together

with such further originals or grosses or copies certified by a notary public as may be prescribed and the title deed evidencing the rights affected.

- (b) Subject to the provisions of subsection (2), diagrams setting out the extent to which rights are affected by the servitude or contract shall be bound with each original, registry duplicate and grosse of the deeds.
- (4) If the servient rights or the rights to which the contract relates are mortgaged or subject to any other encumbrance with which the servitude or contract may conflict, the bond or other registered deed evidencing such other encumbrance, shall be produced together with the consent in writing of the legal holder thereof to the registration of the servitude or contract.
- (5) The provisions of subsections (1), (2) and (3) shall *mutatis mutandis* apply in connection with tributing agreements.

42. Restriction of registration of personal servitudes

- (1) No servitude of *usufruct*, *usus* or *habitatio* purporting to extend beyond the lifetime of a person in whose favour it is created, and no transfer or cession of such a servitude to any person other than the holder of the right encumbered thereby, shall be registered.
- (2) Notwithstanding the provisions of section 41, a personal servitude may be reserved by condition in a deed of transfer or cession of a right, if the reservation is in favour of the transferor or cedent, or in favour of the transferor or cedent and his spouse or the survivor of them if they are married in community of property, or in favour of the surviving spouse if transfer or cession is passed from the joint estate of spouses who were married in community of property.

43. Registration of lapse of personal servitude

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

44. Transfer, cession and mortgage of rights with personal servitude thereon

- (1) If the holder of a right subject to a personal servitude and the holder of that servitude have disposed of the right or any portion thereof together with the rights of servitude to any other person, they may together give transfer or cession thereof to that other person.
- (2) The deed of transfer or cession shall describe the transferor or cedent as the holder of the right and holder of the servitude, respectively, but no mention of the servitude shall be made in the description of the right therein.
- (3) The holder of a right subject to a personal servitude and the holder of that servitude may together mortgage the right to the full extent of their respective interests therein.
- (4) The holder of the right and the holder of the servitude may either of them as principal debtor mortgage the right or the servitude and the other of them may in the same bond mortgage the servitude or the right as surety.

45. Joint transactions by fiduciary and fideicommissary

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

46. Registration of leases and sub-leases

- (1)
 - (a) Save where provision to the contrary is made in any law, any lease or sub-lease of any right capable of being leased by virtue of the provisions of any law relating to prospecting and mining, and any cession of such a lease or sub-lease intended or required to be registered in the Mining Titles Office, shall be executed by the lessor and the lessee or by the lessee and the sub-lessee or by the cedent and the cessionary and shall be attested by a notary public.
 - (b) Any such lease shall be registered for the full term thereof, including periods of renewal.
- (2) If the right leased or sub-leased is mortgaged or subject to rights of any other person it shall not be necessary for purposes of registration of the lease or sub-lease or any cession thereof to produce the bond or the other deed, whereby such rights are held or the consent of the legal holder thereof.

47. Termination of registered lease

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

Chapter X Miscellaneous

48. Registration of nomination agreements and matters relating to such agreements

- (1) An applicant for the registration of any nomination agreement or any cession, renewal, modification, abandonment or cancellation of a registered nomination agreement, shall forward to the registrar—
 - (a) a signed original of the first-mentioned agreement or the deed in which the cession, renewal, modification, abandonment or cancellation of a registered nomination agreement is embodied, as the case may be, together with three further originals or copies of that agreement or deed, as the case may be, certified as true by a notary public; and
 - (b) subject to the provisions of subsection (2), the title deed of the land in question.

- (2) The Director-General may, if the applicant, for a reason acceptable to the Director-General, is unable to obtain the title deed of the land in question in the case of an application for the registration of any cession, renewal, modification, abandonment or cancellation of a registered nomination agreement, exempt the applicant from the provisions of subsection (1)(b).
- (3) Whenever the Director-General has registered any nomination agreement or any cession, renewal, modification, abandonment or cancellation of a registered nomination agreement, he shall forward to the Director-General of deeds for the area in which the land in question is situated—
 - (a) a copy of the first-mentioned agreement or the deed referred to in subsection (1)(a), as the case may be; and
 - (b) the title deed of the land in question or, where the Director-General has in terms of subsection (2) exempted the applicant from the provisions of subsection (1)(b), a certificate to that effect issued by the Director-General.
- (4) After receipt of the documents referred to in subsection (3), the said Director-General of deeds shall note the nomination agreement in question or the cession, renewal, modification, abandonment or cancellation of a registered nomination agreement, as the case may be, in his records and shall also note that nomination agreement or, where the Director-General has not in terms of subsection (2) exempted the applicant from the provisions of subsection (1)(b), that cession, renewal, modification, abandonment or cancellation of a registered nomination agreement, as the case may be, against the title deed of the land in question.
- (5) Where the Director-General has in terms of subsection (2) exempted the applicant from the provisions of subsection (1)(b) and has issued a certificate in terms of subsection (3)(b), the Director-General of deeds concerned shall register no further transactions relating to the land until the relevant cession, renewal, modification, abandonment or cancellation of a registered nomination agreement has been noted against the title deed of that land.

[section 48 substituted by section 3 of [Act 60 of 1980](#)]

49. Registration of mining leases and other matters relating to such leases

- (1) Every mining lease, every transfer or cession of the rights and obligations thereunder and every amendment of the terms and conditions of any mining lease shall be in the form of a notarial deed which shall be submitted for registration to the Director-General together with such further originals or copies thereof and such other documents and deeds as may be prescribed.
- (2) Whenever any mining lease has been amended, modified, abandoned or cancelled, either wholly or in part, such plans, diagrams, deeds and other documents as may be prescribed shall be submitted to the Director-General who shall register or record such amendment, modification, abandonment or cancellation.
- (3) Whenever the Minister amends a mining lease in respect of natural oil by excluding therefrom or including therein any area of land, the holder of such lease shall cause a diagram to be prepared showing the area so excluded or included, and shall lodge with the Director-General so many copies of such diagram and such other documents as may be prescribed, and the Director-General shall register the amendment and make such endorsements on the lease as may be necessary to give effect thereto and shall record the amendment in the appropriate register.

50. Special provisions relating to leases in respect of base minerals granted under [Act 16 of 1907](#) (Cape)

The sub-letting or assignment of any lease in respect of base minerals granted under The Mineral Law Amendment Act, 1907 ([Act No. 16 of 1907](#)), of the Cape of Good Hope, and registered in the Mining Titles Office in terms of section 77 (6) of the Mining Rights Act, 1967, shall be effected by means of a notarial deed which shall be registered by the Director-General upon production to him of such documents as may be prescribed.

51. Special provisions relating to surface right permits

- (1) Whenever a mining commissioner has in terms of section 90(9) of the Mining Rights Act, 1967, consented to the transfer to any holder of mining title of any permission to use the surface of proclaimed land or land held under mining title for purposes incidental to mining, the Director-General shall, notwithstanding the provisions of sections [15](#) and [17](#) of this Act, upon lodgment with him of such consent in writing together with the document of title evidencing such permission, by endorsement of such document, transfer the permission to such holder.
- (2) The Director-General shall not register any lease, transfer or encumbrance by mortgage or servitude in respect of the rights granted under any permit issued in terms of section 76 of the Precious and Base Metals Act, 1908 ([Act No. 35 of 1908](#)), of the Transvaal, or of that Act as applied to the province of the Orange Free State by the Orange Free State Metals Mining Act, 1936 ([Act No. 13 of 1936](#)), unless there is lodged with him a written consent to such registration which shall be issued free of charge by the mining commissioner concerned in a form approved by the Director-General and shall state the period for which such consent is available.

52. Special provisions relating to stands

- (1) If a mining commissioner has amended any condition subject to which a stand was granted, and the title to such stand consists of a stand licence only, the amendment shall not be recorded in the Mining Titles Office until the holder of the stand licence has applied for and received a certificate of registered title in terms of section [23](#).
- (2) Whenever any stand has been subdivided with the approval of the Minister, the Director-General may, subject to the provisions of section [26](#), issue a certificate of registered title in respect of the subdivided portion of such stand.

53. Special provisions relating to permits to retain and treat residues

- (1) Whenever any permit to retain and treat residues has been transferred in respect of part only of such residues, the Director-General shall after registration transmit the transferee's copy of the deed of transfer to the mining commissioner concerned who shall upon receipt thereof issue a new permit to the transferee in respect of the residues so transferred and shall return the deed of transfer and the new permit to the Director-General.
- (2) On receipt of the deed of transfer and new permit the Director-General shall endorse such deed and his registry duplicate thereof to reflect the issue of such permit.

54. Special provisions relating to bewaarplaatsen

If a bewaarplaats is registered in the name of a company whose name has been struck off the register of companies in terms of section 199 of the Companies Act, 1926 ([Act No. 46 of 1926](#)), the Director-General may, on production to his satisfaction of proof that the name of such company has been struck off the register, make such endorsements on the title deeds to such bewaarplaats, and such entries in his records as may be necessary to record such fact, and thereupon the bewaarplaats in question shall cease to be a bewaarplaats.

55. Special provisions relating to machinery sites

Whenever the grant of any machinery site mentioned in section 73 of the Precious and Base Metals Act, 1908 ([Act No. 35 of 1908](#)), of the Transvaal, has been cancelled by a mining commissioner, the Director-General shall upon receiving advice of such cancellation make such entries in his records as may be necessary and thereupon the machinery site in question shall cease to be a machinery site.

56. Special provisions relating to the registration of certain rights in respect of precious stones

- (1) (a) If at any time prior to the commencement of this Act, a Director-General of deeds, a magistrate or a civil commissioner has under any law relating to precious stones registered a discoverer's certificate or an owner's certificate in respect of precious stones in a mine, or any transfer or hypothecation thereof, such Director-General of deeds, magistrate or civil commissioner shall, if any such certificate is still in force, forward a certified copy thereof and certified copies of any current deed of transfer and any current hypothecation to the Director-General who shall, free of charge, register such certificate or deed and file the certified copies thereof as his registry duplicates.
 - (b) Upon registration of the said certificates and deeds in accordance with the provisions of paragraph (a), the Director-General shall notify the officers concerned of such registration who shall thereupon make appropriate endorsements on their office copies of such certificates and deeds and in the relevant registers whereby attention is directed to such registration and to the provisions of subsection (2).
- (2) After the commencement of this Act any registration of any transaction relating to any such certificate shall be effected only in the Mining Titles Office.
- (3) The provisions of subsections (1) and (2) shall *mutatis mutandis* apply in connection with any lease granted under section 21, 72 or 74 of the Precious Stones Act, 1964 ([Act No. 73 of 1964](#)), or corresponding provisions of a prior law, and recorded in the office of a mining commissioner.

57. Transfer and cession not to be passed as security

No transfer or cession of any right (except a mortgage bond) made as security for a debt or other obligation shall be attested by the Director-General or registered or recorded in the Mining Titles Office.

58. Taxes and transfer duty to be paid before transfer or cession

- (1) No deed of transfer or cession of any right or certificate of registered title issued in terms of section [27](#) shall be registered unless accompanied by a receipt or certificate of a competent public revenue officer that the taxes, duties and fees payable to the Government or any provincial administration on the rights to be transferred, ceded or registered have been paid.
- (2) If any right has been settled upon or donated to an intended spouse in terms of an antenuptial contract, no transfer or cession of such right by the donor to any person other than the donee and no mortgage thereof by the donor shall be executed, attested or registered by the Director-General unless the transfer duty (if any) payable on the settlement or donation has been paid.

59. Registration of change of name

- (1) If any person or partnership whose name appears in any registered deed or other document has changed his or its name, the Director-General shall, upon written application by that person or partnership and upon production of the consent in writing of every other person interested in such deed or other document or in the rights created, conveyed or evidenced thereby, if he is satisfied that no change of person in law is implied in such change of name, endorse on the said deed or other document that the name of the person or partnership has been changed to the name stated in the application, and if the old name appears in another deed or other document registered in the Mining Titles Office, that deed or other document shall be likewise endorsed, and in either case corresponding entries shall be made in the registers.
- (2) Except in the case of a person or partnership whose name has been changed in accordance with the provisions of any law, the Director-General shall refuse to make any endorsement in terms of subsection (1) until the applicant has published a notice in a form approved of by the Director-General once in the *Gazette* and three times in a newspaper approved by him, and if any objection

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

60. ***

[section 60 repealed by section 21 of [Act 132 of 1993](#)]

61. Attestation of powers of attorney and other documents in the Republic

- (1) (a) Any power of attorney executed within the Republic which purports to give authority to pass, cede, amend or cancel a deed or document capable of being registered or to perform any act which may properly be performed in the Mining Titles Office, shall be attested either by two witnesses above the age of fourteen years who are competent to give evidence in any court of law in the Republic or by a magistrate, justice of the peace, commissioner of oaths or notary public under his designation as such.
- (b) No person shall be competent to attest any power of attorney under which he is appointed as an agent or derives any benefit.
- (2) The provisions of subsection (1) shall *mutatis mutandis* apply to any other original document intended for registration or filing or production in the Mining Titles Office.

62. Execution of deeds by prospective holders of rights

If any deed or document required to be executed by the holder of any right has been executed by a person who has become entitled to receive transfer or cession of such right, such deed or document shall, upon such person's receiving transfer or cession of such right, for the purposes of this Act be deemed to have been executed by the holder of such right.

63. Notice to Director-General of application to court

- (1) No application made to the court for authority or an order involving the performance of any act in the Mining Titles Office shall be heard, unless the applicant has at least fourteen days before the hearing given the Director-General written notice of his intention to make such application: Provided that the Director-General may accept notice of shorter duration if the exigencies of his office permit.
- (2) The Director-General may submit to the court such report on any such application as he may deem desirable to make.

64. Substitute copy of lost deed supersedes original which must be surrendered on recovery

- (1) If a copy of a registered deed or other document has been issued in the manner prescribed by regulation, in substitution for a deed or other document which has been lost or is believed to have been destroyed, the original deed or other document, if still in existence, shall thereupon become void.
- (2) If a deed or other document which has become void as aforesaid, comes into the custody or possession of any person who knows that a copy has been issued in substitution therefor, he shall forthwith deliver or transmit such deed or other document to the Director-General.
- (3) When any deed or document which has become void as aforesaid is delivered or transmitted to the Director-General, he shall impound such deed or document and file it in his office after having made an endorsement thereon that it has become void.

65. Exemption from liability for act or omissions in the mining title office

No act or omission of the Director-General or of any officer employed in the Mining Titles Office shall render the Government or the Director-General or such officer liable for damage sustained by any person in consequence of such act or omission: Provided that if such act or omission is *mala fide* or if the Director-General or such officer has not exercised reasonable care and diligence in carrying out his duties in connection with the matter in relation to which such act or omission occurred, the Government shall be liable for the damage, and in that event any amount paid by the Government shall be recoverable from the Director-General or such officer.

66. Formal defects

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

67. Repeal of laws

The Mining Titles Registration Act, 1908 ([Act No. 29 of 1908](#)), of the Transvaal, the Registration of Deeds and Titles Act, 1909 ([Act No. 25 of 1909](#)), of the Transvaal, and section [95\(2\)](#) of the Deeds Registries Act, 1937 ([Act No. 47 of 1937](#)), are hereby repealed: Provided that notwithstanding the repeal of the said Mining Titles Registration Act, 1908, the provisions of section 1 of that Act and any provision of any repealed law kept in operation by the said section shall continue to apply in connection with stands and leasehold lots in townships for which freehold title may be obtained under the Townships Amendment Act, 1908 ([Act No. 34 of 1908](#)), of the Transvaal, until such freehold title has been so obtained.

68. Short title and commencement

This Act shall be called the Mining Titles Registration Act, 1967, and shall come into operation on the date of commencement of the Mining Rights Act, 1967.