

EXTRAORDINARY



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GENERAL NOTICE.

DEPARTMENT OF JUSTICE.

The following Bill is published for general information. Any person desiring to offer any comment on the Bill or to submit representations thereanent should kindly submit such comment or representations to the Secretary for Justice, Private Bag 81, Pretoria, on or before the 15th December, 1964.

ALGEMENE KENNISGEWING.

DEPARTEMENT VAN JUSTISIE.

Die onderstaande Wetsontwerp word vir algemene inligting gepubliseer. Enigiemand wat kommentaar op die Wetsontwerp wil lewer of vertoë daaromtrent wil rig moet asseblief sodanige kommentaar of vertoë op of voor 15 Desember, 1964 aan die Sekretaris van Justisie, Privaatsak 81, Pretoria stuur.

GENERAL EXPLANATORY NOTE:

- [** Words in bold type in square brackets indicate omissions proposed by Minister on introduction.
- Words underlined with solid line indicate insertions proposed by Minister on introduction.

BILL

To consolidate and amend the laws relating to the removal or modification of restrictions on immovable property imposed by will or other instrument and to impose a limit on the duration of such restrictions created by way of fideicommissum or otherwise.

(To be introduced by the MINISTER OF JUSTICE.)

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

Interpretation of terms.

1. In this Act, unless the context otherwise indicates—
 - (i) “beneficiary” means any person entitled to a beneficial interest in immovable property under a will or other instrument; (i)
 - (ii) “court” means a court **[composed of not less than two Judges]** of a provincial or local division of the Supreme Court of South Africa having jurisdiction. (ii)
 - [“magistrate” shall mean a chief magistrate, a magistrate, or an assistant magistrate, or any person lawfully acting in that capacity;**
 - “Master” shall mean any Master of the Supreme Court.]**

Application to the court for the removal or modification of restrictions on immovable property.

2. (1) If any beneficiary interested in immovable property which is subject to any restriction imposed by will or other instrument executed before or after the commencement of this Act, desires to have such restriction removed or modified on the ground that such removal or modification will be to the advantage of the persons, born or unborn, certain or uncertain, who are or will be entitled to such property or the income thereof under such will or instrument, such beneficiary may apply to the court for the removal or modification of such restriction.
- (2) An application to the court under this Act shall be on notice of motion supported by affidavits, and notice of such application shall be given to all other beneficiaries under the will or instrument: Provided that if all the beneficiaries join in such application, it may be made by way of petition.

Powers of court as to removal or modification of restrictions on immovable property and as to disposal of proceeds of such property.

3. (1) If the court to which application is made under this Act, is satisfied—
 - (a) that the shares which any of the beneficiaries in being at the time of the making of such application individually hold in the immovable property concerned are so small that they cannot be beneficially occupied or enjoyed; or
 - (b) that no beneficial use can be made of the immovable property concerned by the beneficiaries in being owing to there being a prohibition in the will or other instrument against the sub-division of the property; or
 - (c) that since the taking effect of the will or other instrument imposing any restriction upon the immovable property concerned circumstances materially affecting the value of the property have arisen which in the opinion of the court were not contemplated or foreseen by the person who made and executed the will or instrument; or
 - (d) that it will be in the public interest or in the interests of the persons referred to in sub-section (1) of section two, to do so,

it may remove or modify any restriction such as is referred to in sub-section (1) of section two and order the property to be sold in whole or in part or may make such further or other order as to it may seem just.

ALGEMENE VERDUIDELIKENDE NOTA:

Woorde in vet druk tussen vierkantige hake dui aan skrappings deur Minister by indiening voorgestel.
Woorde met 'n volstreep daaronder, dui aan invoegings deur Minister by indiening voorgestel.

WETSONTWERP

Tot samevatting en wysiging van die wetsbepalings met betrekking tot die opheffing of wysiging van beperkinge op onroerende goed opgelê by testament of ander dokument en om 'n beperking te plaas op die duur van sodanige beperkinge geskep by wyse van fideïkommis of andersins.

(Ingedien te word deur die MINISTER VAN JUSTISIE.)

DAAR WORD BEPAAL deur die Staatspresident, die Senaat en die Volksraad van die Republiek van Suid-Afrika, soos volg:—

1. Tensy uit die samehang anders blyk, beteken in hierdie Woordbepalings.

(i) „begunstigde” iemand wat 'n voordelige reg op onroerende goed ingevolge 'n testament of ander dokument het; (i)

10 (ii) „hof” ’n hof **[bestaande uit minstens twee regters]**
van ’n provinsiale of plaaslike afdeling van die
Hooggeregshof van Suid-Afrika wat jurisdiksie
het. (ii)

15 **„Magistraat”** een hoofd magistraat, een magistraat
of een assistent-magistraat, of een persoon wettig
als zodanig agerend;

„Meester” een Meester van het Hooggerechtshof.

2. (1) Indien 'n begunstigde wat belang het by onroerende goed wat onderworpe is aan 'n beperking opgelê by testament of ander dokument, wat voor of na die inwerkingtreding van hierdie Wet verly is, verlang dat die beperking ophef of gewysig word op die grond dat die opheffing of wysiging tot die voordeel sal wees van die persone, gebore of ongebore, seker of onseker, wat ingevolge daardie testament of ander dokument geregtig is of geregtig sal word op daardie onroerende goed of die inkomste daarvan, kan daardie begunstigde by die hof aansoek doen om die opheffing of wysiging van daardie beperking.

(2) 'n Aansoek by die hof ingevolge hierdie Wet geskied by kennisgewing van mosie gesteun deur beëdigde verklarings, en 30 kennis van die aansoek moet aan al die ander begunstigdes onder die testament of dokument gegee word: Met dien verstande dat indien al die begunstigdes saam die aansoek doen, dit by petisie kan geskied.

3. (1) Indien die hof by wie aansoek ingevolge hierdie Wet Bevoegdheids van
35 gedoen word, oortuig is— hof betreffende

(a) dat die aandeel wat deur een of meer van die begunstigdes wat ten tyde van die doen van die aansoek in lewe is, afsonderlik in die betrokke onroerende goed gehou word, so klein is dat hulle nie met voordeel geokkupeer of geniet kan word nie; of

(b) dat geen nuttige gebruik van die betrokke onroerende goed deur die begunstigdes wat in lewe is, gemaak kan word nie ten gevolge van 'n verbod in die testament of ander dokument teen die onderverdeling van daardie goed; of

(c) dat sedert die inwerkingtreding van die testament of ander dokument wat 'n beperking op die betrokke onroerende goed lê, omstandighede ontstaan het wat 'n wesentlike invloed op die waarde van die goed het en wat volgens die oordeel van die hof nie deur die persoon wat die testament of dokument gemaak en verly het, beoog of voorsien is nie; of

(d) dat dit in die openbare belang of in die belang van die in sub-artikel (1) van artikel twee bedoelde persone is om dit te doen.

kan hy enige in sub-artikel (1) van artikel twee bedoelde beperking ophef of wysig en beveel dat die goed in sy geheel of ten dele verkoop word of kan hy so 'n verdere of ander bevel gee wat hy goedgevind.

(2) If the court orders the property or any portion thereof to be sold, it may further order that the proceeds derived from such sale—

- (a) be paid over to some person specially appointed by the court who shall, for the benefit of the persons referred to in sub-section (1) of section two, invest the same in securities or immovable property which shall *mutatis mutandis* be subject to all the terms, conditions and trusts contained in the will or other instrument relating to the property sold; or
- (b) be distributed among the beneficiaries in being to be enjoyed by them absolutely; or
- (c) be dealt with in such further or other manner as to it may seem just in order to give effect to any order it may make under sub-section (1) of this section.

Powers of court relating to evidence.

4. The court may, if it thinks fit—

- (a) order oral evidence to be produced before it upon any point arising out of the application and affecting the rights of any person, whether such person is a party to the application or not;
- (b) order any magistrate or other person specially appointed by the court as commissioner to take and record such oral evidence or to cause the same to be recorded and transmit the record thereof to the court;
- (c) refer the application to the Master of the Supreme Court or to some other person specially appointed by the court for a report thereon or upon some matter arising therefrom.

Appeal.

5. An appeal from a judgment or order of the court under this Act shall lie direct to the Appellate Division of the Supreme Court of South Africa without leave first obtained.

Only two fideicommissary substitutions or two further fideicommissary substitutions permitted in respect of immovable property or any beneficial interest therein.

6. From and after the commencement of this Act, no more than two fideicommissary substitutions shall be permitted under any will or other instrument executed before or after such commencement in respect of immovable property or any beneficial interest therein or, in any case where at such commencement one or more such substitutions have already taken place under any will or other instrument in respect of immovable property or any beneficial interest therein, no more than two further fideicommissary substitutions shall be permitted under such will or other instrument in respect of such immovable property or such beneficial interest, as the case may be.

Effect of wills or other instruments executed after the commencement of this Act providing for more than two fideicommissary substitutions in respect of immovable property.

7. Immovable property which has been disposed of by will or other instrument executed after the commencement of this Act subject to a fideicommissum in favour of more than two successive fideicommissaries, shall, notwithstanding the terms of such will or other instrument, when it vests in the second successive fideicommissary, vest in such fideicommissary absolutely.

Effect of existing wills or other instruments providing at the commencement of this Act for more than two fideicommissary substitutions in respect of immovable property.

8. Immovable property which has been disposed of by will or other instrument executed before the commencement of this Act subject to a fideicommissum in favour of successive fideicommissaries and which at such commencement is in terms of the will or other instrument still subject to a fideicommissum in favour of more than two successive fideicommissaries, shall, notwithstanding the terms of such will or other instrument, when it vests in the second successive fideicommissary after the beneficiary in whom such property is vested at such commencement, vest in such fideicommissary absolutely.

Limitation of duration of restrictions on alienation of immovable property imposed

9. No restriction against the alienation of immovable property imposed by will or other instrument executed before or after the commencement of this Act and providing for benefits for successive beneficiaries otherwise than by way of a fidei-

(2) Indien die hof beveel dat die goed of 'n gedeelte daarvan verkoop moet word, kan hy verder beveel dat die opbrengs wat van die verkoop verkry word—

- 5 (a) aan 'n persoon spesiaal deur die hof benoem betaal word, wat dit ten voordele van die in sub-artikel (1) van artikel twee bedoelde persone moet belê in sekuriteite of onroerende goed wat *mutatis mutandis* onderworpe is aan alle bedinge, voorwaardes en trusts vervat in die testament of ander dokument wat op
10 die verkoopte goed betrekking het; of
- (b) verdeel word onder die begunstigdes wat in lewe is, om deur hulle onvoorwaardelik geniet te word; of
- (c) op die verdere of ander manier wat hy goeddink aangewend word om gevolg te gee aan 'n bevel wat hy kragtens sub-artikel (1) van hierdie artikel gee.
- 15

4. Die hof kan, na goeddunke—

- (a) beveel dat mondelinge getuienis aan hom voorgelê word oor enige punt wat uit die aansoek ontstaan en wat die regte van iemand raak, hetsy daardie iemand
20 'n party by die aansoek is al dan nie;
- (b) 'n landdros of ander persoon spesiaal deur die hof benoem beveel om as kommissaris bedoelde getuienis af te neem en te notuleer of te laat notuleer en om die notule daarvan na die hof te stuur;
- 25 (c) die aansoek verwys na die Meester van die Hooggeregshof of na 'n ander persoon spesiaal deur die hof benoem om daarvoor of oor die een of ander aangeleentheid wat daaruit ontstaan, verslag te doen.

Bevoegdheids van hof met betrekking tot getuienis.

30 5. Van 'n uitspraak of bevel van die hof ingevolge hierdie Appèl. Wet kan regstreeks na die Appèlafdeling van die Hooggeregshof van Suid-Afrika geappelleer word sonder om vooraf verlof daartoe te verkry.

35 6. Vanaf die inwerkingtreding van hierdie Wet word ingevolge 'n testament of ander dokument wat voor of na daardie inwerkingtreding verly is, ten opsigte van onroerende goed of 'n voordelige reg daarop hoogstens twee fideikommissêre substitusies toegelaat of, in 'n geval waar by daardie inwerkingtreding reeds een of meer sodanige substitusies ten opsigte van onroerende goed of 'n voordelige reg daarop ingevolge 'n
40 testament of ander dokument plaasgevind het, word hoogstens twee verdere fideikommissêre substitusies ingevolge daardie testament of dokument toegelaat ten opsigte van daardie onroerende goed of daardie voordelige reg, na gelang van die geval.

Alleen twee fideikommissêre substitusies of twee verdere fideikommissêre substitusies word ten opsigte van onroerende goed of 'n voordelige reg daarop toegelaat.

45 7. Onroerende goed waaroor by testament of ander dokument wat na die inwerkingtreding van hierdie Wet verly is, beskik is onderworpe aan 'n fideikommis ten gunste van meer as twee opeenvolgende fideikommissariusse, gaan, ondanks die bepalinge van daardie testament of ander dokument, wanneer
50 dit op die tweede opeenvolgende fideikommissarius oorgaan, onvoorwaardelik op daardie fideikommissarius oor.

Uitwerking van testamente of ander dokumente wat na die inwerkingtreding van hierdie Wet verly is en wat ten opsigte van onroerende goed vir meer as twee fideikommissêre substitusies voorsiening maak.

55 8. Onroerende goed waaroor by testament of ander dokument wat voor die inwerkingtreding van hierdie Wet verly is, beskik is onderworpe aan 'n fideikommis ten gunste van opeenvolgende fideikommissariusse en wat by daardie inwerkingtreding ingevolge daardie testament of ander dokument nog onderworpe is aan 'n fideikommis ten gunste van meer as twee opeenvolgende fideikommissariusse, gaan, ondanks die bepalinge van daardie testament of ander dokument, wanneer dit oorgaan
60 op die tweede opeenvolgende fideikommissarius na die begunstigde by wie dit by daardie inwerkingtreding berus, onvoorwaardelik op daardie fideikommissarius oor.

Uitwerking van bestaande testamente of ander dokumente wat by die inwerkingtreding van hierdie Wet ten opsigte van onroerende goed vir meer as twee fideikommissêre substitusies voorsiening maak.

65 9. Geen beperking op die vervreemding van onroerende goed opgelê by testament of ander dokument wat voor of na die inwerkingtreding van hierdie Wet verly is en wat op enige wyse behalwe by wyse van 'n fideikommis, voorsiening maak vir voordele vir opeenvolgende begunstigdes, het die regs krag om

Beperking op duur van beperkings op vervreemding van onroerende goed

by will or
other instrument
otherwise than
by way of a
fideicommissum.

commissum, shall be effectual to prohibit or restrict the alienation of such immovable property after any beneficial interest in such immovable property or in any fund of which such immovable property forms a part has in terms of the will or other instrument become vested in the third successive beneficiary or, in any case where in terms of the will or other instrument any beneficial interest in immovable property or in any fund of which such immovable property forms a part has at such commencement already become vested in a beneficiary, after any beneficial interest in such immovable property, or in such fund has in terms of the will or other instrument become vested in the third successive beneficiary after the beneficiary in whom a beneficial interest in such immovable property or in such fund was so vested at such commencement.

Application of
this Act in
South-West
Africa.

10. This Act and any amendment thereof shall apply also in the territory of South-West Africa, including that portion of the said territory known as the Eastern Caprivi Zipfel and referred to in sub-section (3) of section *three* of the South-West Africa Affairs Amendment Act, 1951 (Act No. 55 of 1951), and also in relation to all immovable property in that portion of the said territory known as the "Rehoboth Gebiet" and defined in the First Schedule to Proclamation No. 28 of 1923 of the Administrator of the said territory.

Repeal of laws.

11. (1) The laws specified in the Schedule are hereby repealed to the extent set out in the fourth column thereof.
(2) Any application made and any other thing done under any provision of any law repealed by this Act shall be deemed to have been made or done under the corresponding provision of this Act.

Short title.

12. This Act shall be called the Immovable Property (Removal or Modification of Restrictions) Act, 1964.

Schedule.

Republic or Province.	No. and year of Law.	Title.	Extent of Repeal.
Republic.	Act No. 2 of 1916.	The Removal or Modification of Restrictions on Immovable Property Act, 1916.	The whole.
"	Act No. 20 of 1924.	The Removal or Modification of Restrictions on Immovable Property Act, 1916, Amendment Act, 1924.	The whole.
"	Act No. 32 of 1952.	The General Law Amendment Act, 1952.	Section <i>six</i> .
South-West Africa.	Proclamation No. 43 of 1948.	The Removal or Modification of Restrictions on Immovable Property Proclamation, 1948.	The whole.
"	Ordinance No. 12 of 1956.	The General Law Amendment Ordinance, 1956.	Section <i>five</i> .

- die vervreemding van daardie onroerende goed te verbied of te beperk nadat 'n voordelige reg op daardie onroerende goed of op 'n fonds waarvan daardie onroerende goed 'n deel uitmaak ingevolge die testament of ander dokument op die derde opeenvolgende begunstigde oorgegaan het nie of, in 'n geval waar ingevolge die testament of ander dokument 'n voordelige reg op onroerende goed of op 'n fonds waarvan daardie onroerende goed 'n deel uitmaak, alreeds by daardie inwerking-treding op 'n begunstigde oorgegaan het, nadat 'n voordelige reg op daardie onroerende goed of op daardie fonds ingevolge die testament of ander dokument oorgegaan het op die derde opeenvolgende begunstigde na die begunstigde by wie 'n voorde-lige reg op daardie goed of op daardie fonds by daardie inwerk-ingtreding aldus berus het nie.
- 15 10. Hierdie Wet en enige wysiging daarvan is ook van toepas-sing in die gebied Suidwes-Afrika, met inbegrip van daardie deel van genoemde gebied wat bekend staan as die Oostelike Caprivi Zipfel en wat in sub-artikel (3) van artikel drie van die Wysigingswet op Aangeleenthede van Suidwes-Afrika, 1951 (Wet No. 55 van 1951), genoem word, en ook met betrekking tot alle onroerende goed in dié deel van genoemde gebied wat bekend staan as die „Rehoboth Gebiet” en wat in die Eerste Bylae by Proklamasie No. 28 van 1923 van die Administrateur van daardie gebied omskryf word.
- 25 11. (1) Die wette in die Bylae vermeld, word hierby herroep in die mate in die vierde kolom daarvan uiteengesit.
(2) 'n Aansoek en enigiets anders gedoen kragtens 'n bepaling van 'n wet wat deur hierdie Wet herroep word, word geag krag-tens die ooreenstemmende bepaling van hierdie Wet gedoen te 30 gewees het.
12. Hierdie Wet heet die Wet op die Opheffing of Wysiging Kort titel. van Beperkinge op Onroerende Goed, 1965.

opgelê by testa-
ment of ander
dokument anders
as by wyse van
'n fideikommis.

Toepassing van
hierdie Wet in
Suidwes-Afrika.

Herroeping van
wette.

Bylae.

Republiek of Provinsie.	No. en jaar van Wet.	Titel.	In watter mate herroep.
Republiek.	Wet No. 2 van 1916.	„De Wegneming of Wijziging van Beperkingen op Vast- goed Wet, 1916”.	Die geheel.
„	Wet No. 20 van 1924.	„De Wegneming of Wijziging van Beperkingen op Vast- goed Wet, 1916, Wijzigings Wet, 1924”.	Die geheel.
„	Wet No. 32 van 1952.	Die Algemene Regswysigings- wet, 1952.	Artikel ses.
Suidwes-Afrika.	Proklamasie No. 43 van 1948.	Die Proklamasie tot Verwyde- ring of Wysiging van Be- perkings op Vaste Goedere, 1948.	Die geheel.
„	Ordonnansie No. 12 van 1956.	Die Algemene Regswysigings- ordonnansie, 1956.	Artikel vyf.