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No. 10952

STATE PRESIDENT'S OFFICE

No. 2173.

30 September 1987

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

No. 75 of 1987: Deeds Registries Amendment Act, 1987.

KANTOOR VAN DIE STAATSPRESIDENT

No. 2173.

30 September 1987

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

No. 75 van 1987: Wysigingswet op Registrasie van Aktes, 1987.

Act No. 75, 1987

DEEDS REGISTRIES AMENDMENT ACT, 1987

GENERAL EXPLANATORY NOTE:

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

Words underlined with solid line indicate insertions in existing enactments.

ACT

To amend the Deeds Registries Act, 1937, so as to provide that certain acts of transfer, cession or registration with regard to property or rights which form part of a joint estate shall not be deemed to be certain acts of division or increase of undivided shares; to provide that women who are married in terms of marriages the legal consequences of which are governed by the law of any other country, be assisted by their spouses in the execution of certain deeds and documents; to further regulate the endorsements on deeds where marriages are dissolved by divorce, or joint estates are divided; to regulate the issuing of certificates of real rights in cases where rights pertaining to claim and stand licence moneys are reserved; and to amend the definitions of "owner" and "Minister"; and to provide for incidental matters.

(English text signed by the State President.)
(Assented to 22 September 1987.)

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:-

Amendment of
section 17 of
Act 47 of 1937,
as substituted by
section 29 of
Act 88 of 1984.

1. Section 17 of the Deeds Registries Act, 1937 (hereinafter referred to as the principal Act), is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

"(1) From the commencement of the **[Matrimonial Property Act, 1984]** Deeds Registries Amendment Act, 1987, immovable property, real rights in immovable property and notarial **[deeds]** 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, **[excluding agricultural land as defined in the Subdivision of Agricultural Land Act, 1970 (Act No. 70 of 1970),]** 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."

(b) by the substitution for subsection (5) of the following subsection:

"(5) A transfer, cession or registration referred to in subsection (1) in the name of a husband and wife, shall not be deemed—

(a) in a case where agricultural land referred to in section 3 of the Subdivision of Agricultural Land Act, 1970 (Act No. 70 of 1970), is concerned, to consti-

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ALGEMENE VERDUIDELIKENDE NOTA:

[**]** Woorde in vet druk tussen vierkantige hake dui skrappings uit bestaande verordenings aan.

_____ Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordenings aan.

WET

Tot wysiging van die Registrasie van Aktes Wet, 1937, ten einde te bepaal dat sekere handelinge van transport, oordrag of registrasie met betrekking tot goed of regte wat deel uitmaak van 'n gemeenskaplike boedel nie geag word sekere handelinge van verdeling of vermeerdering van onverdeelde aandele te wees nie; voorsiening te maak dat vroue wat getroud is ingevolge huwelike waarvan die regsgevolge deur die reg van 'n ander land bepaal word, deur hul gades bygestaan word by die ondertekening van sekere aktes en dokumente; die aantekening op aktes verder te reël waar huwelike deur egskedding onthind word, of gemeenskaplike boedels verdeel word; die uitreiking van sertifikate van saaklike regte te reël in gevalle waar regte met betrekking tot kleim- en standplaaslisensiegeelde voorbehoud is; en die omskrywings van "eienaar" en "Minister" te wysig; en om voorsiening te maak vir bykomstige aangeleenthede.

*(Engelse teks deur die Staatspresident geteken.)
(Goedgekeur op 22 September 1987.)*

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

1. Artikel 17 van die Registrasie van Aktes Wet, 1937 (hieronder die Hoofwet genoem), word hierby gewysig—
 - 5 (a) deur subartikel (1) deur die volgende subartikel te vervang:

“(1) Vanaf die inwerkingtreding van die **[Wet op Huweliksgoedere, 1984]** Wysigingswet op Registrasie van Aktes, 1987, word onroerende goed, saaklike regte oor onroerende goed en notariële verbande wat by die transport, oordrag of registrasie daarvan deel van 'n gemeenskaplike boedel sou uitmaak, **[uitgesonderd landbougrond soos omskryf in die Wet op die Onderverdeling van Landbougrond, 1970 (Wet No. 70 van 1970),]** op naam van die man en die vrou geregistreer tensy dié transport, oordrag of registrasie slegs op naam van 'n vennootskap geskied, en die man of vrou slegs in die hoedanigheid van vennoot in daardie vennootskap daarby betrokke is.”;
 - 20 (b) deur subartikel (5) deur die volgende subartikel te vervang:

“(5) 'n Transport, oordrag of registrasie in subartikel (1) bedoel op naam van 'n man en vrou, word nie geag—

25 (a) in 'n geval waar landbougrond bedoel in artikel 3 van die Wet op die Onderverdeling van Landbougrond, 1970 (Wet No. 70 van 1970), betrokke is, 'n

Wysiging van artikel 17 van Wet 47 van 1937, soos vervang deur artikel 29 van Wet 88 van 1984.

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tute an act to which a provision of the said section 3 is applicable; and

- (b) in a case where a right to any mineral or minerals with regard to land referred to in section 2 (1) of the Mineral Laws Supplementary Act, 1975 (Act No. 10 of 1975), is concerned, to constitute an act to which a provision of the said section 2 (1) is applicable.”; and

- (c) by the substitution for subsection (6) of the following subsection:

“(6) A woman married out of community of property, or married in terms of a marriage the legal consequences of which are governed by the law of any other country, shall be assisted by her husband in executing any deed or other document required or permitted to be registered in any deeds registry or required or permitted to be produced in connection with any such deed or document, unless the marital power has been excluded or unless the assistance of the husband is in terms of this Act or on other grounds deemed by the registrar to be unnecessary.”.

Substitution of section 45bis of Act 47 of 1937, as inserted by section 21 of Act 43 of 1957 and amended by section 20 of Act 43 of 1962.

2. The following section is hereby substituted for section 45bis of the principal Act:

“Endorsement of deeds on divorce, division of joint estate, or change of matrimonial property system.

45bis. (1) If immovable property or a lease under any law relating to land settlement or a bond is registered in a deeds registry in the name of one of two spouses or in the name of both such spouses who—

- (a) were married in community of property but have been divorced, and the person in whose name such property, lease or bond is registered or, where such property, lease or bond is registered in the name of both spouses, one of them has lawfully acquired the share of his former spouse in the property, lease 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 property, lease or bond is awarded to the person in whose name it is registered or, where the property, lease or bond is registered in the name of both spouses, to one of them,

the registrar may, on written application by that person, accompanied by such documents as the registrar deems necessary, endorse on the title deeds of the property or on the lease or the bond that such person is entitled to deal with such property, lease 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 property, lease or bond.

(2) If immovable property referred to in subsection (1) is hypothecated under a registered mortgage bond, the provisions of subsections (2), (3) and (4) of section 45 shall *mutatis mutandis* apply.

(3) The reference in subsection (2) to a bond shall include a charge in favour of the Land and Agricultural Bank of South Africa or any Department of State.”.

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handeling te behels waarop 'n bepaling van genoemde artikel 3 van toepassing is nie; en

(b) in 'n geval waar 'n reg op enige mineraal of minerale ten opsigte van grond bedoel in artikel 2 (1) van die Aanvullende Wet op die Mineralewette, 1975 (Wet No. 10 van 1975), betrokke is, 'n handeling te behels waarop 'n bepaling van genoemde artikel 2 (1) van toepassing is nie.'; en

(c) deur subartikel (6) deur die volgende subartikel te vervang:

“(6) 'n Vrou wat buite gemeenskap van goed getroud is, of getroud is ingevolge 'n huwelik waarvan die regsgevolge deur die reg van 'n ander land bepaal word, moet deur haar man bygestaan word by die ondertekening van enige akte of ander dokument wat in 'n registrasiekantoor geregistreer moet of kan word of wat vertoon moet of kan word in verband met so 'n akte of dokument, tensy die maritale mag uitgesluit is of tensy die registrateur ingevolge die bepalings van hierdie Wet of om ander redes die bystand van die man onnodig ag.”.

2. Artikel 45bis van die Hoofwet word hierby deur die volgende artikel vervang:

“Aanteekening op aktes by egskeding, verdeling van gemeenskaplike boedel, of verandering van huweliksgoederebedeling.

45bis. (1) Indien onroerende goed of 'n huurkontrak ingevolge 'n wet op nedersetting of 'n verband in 'n registrasiekantoor geregistreer staan op naam van een van twee eggenote of op naam van beide eggenote wat—

(a) in gemeenskap van goedere getroud was maar geskei is, en die persoon op wie se naam die goed, huurkontrak of verband geregistreer is of, waar sodanige goed, huurkontrak of verband op naam van beide eggenote geregistreer is, een van hulle wettiglik die aandeel van sy voormalige eggenoot in die **[eiendom]** goed, huurkontrak of verband verkry het; of

(b) in gemeenskap van goed getroud is of was, en 'n hof 'n lasgewing uitgereik het, of 'n lasgewing uitgereik en 'n magtiging verleen het, kragtens artikel 20 of 21 (1) van die Wet op Huweliksgoedere, 1984 (Wet No. 88 van 1984), na gelang van die geval, ingevolge waarvan die goed, huurkontrak of verband aan die persoon op wie se naam dit geregistreer is of, waar die goed, huurkontrak of verband op naam van beide eggenote geregistreer is, aan een van hulle toegeken is,

kan die registrateur op skriftelike aansoek deur daardie persoon vergesel van die dokumente wat die registrateur nodig ag, op die titelbewys van die **[eiendom]** goed of op die huurkontrak of die verbandakte aanteken dat daardie persoon geregtig is om oor bedoelde **[eiendom]** goed, huurkontrak of verband te beskik, en daarop is daardie persoon geregtig om daarop te beskik asof hy formeel transport of 'n sessie op sy naam van die voormalige eggenoot of sy eggenoot, na gelang van die geval, se aandeel in die **[eiendom]** goed, huurkontrak of verband verkry het.

(2) Indien onroerende goed in subartikel (1) bedoel met 'n geregistreerde verband beswaar is, is die bepalings van subartikels (2), (3) en (4) van artikel 45 *mutatis mutandis* van toepassing.

(3) Die verwysing in subartikel (2) na 'n verband sluit 'n las ten gunste van die Land- en Landboubank van Suid-Afrika of 'n Staatsdepartement in.”.

Vervanging van artikel 45bis van Wet 47 van 1937, soos ingevoeg deur artikel 21 van Wet 43 van 1957 en gewysig deur artikel 20 van Wet 43 van 1962.

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Amendment of
section 64 of
Act 47 of 1937,
as amended by
section 25 of
Act 87 of 1965.

3. Section 64 of the principal Act is hereby amended by the insertion after subsection (2)*bis* of the following subsection:

- “(2)*ter* (a) If any person who is the holder of, or who is entitled to, the right to receive the claim and stand licence moneys or rents, or any part thereof, accruing under any law relating to mining to the owner of land referred to in subsection (2)*bis*, and which was reserved before the commencement of this Act in respect of such land on which a township or settlement has before or after the commencement of this Act been established, applies therefor to the registrar in writing, the registrar may, notwithstanding the provisions of subsection (1), issue to such person a certificate of real rights in the prescribed form in respect of such rights without the production of the title deed of each erf or other piece of land in any such township or settlement which is subject to the reservation of such real rights. 5
- (b) Upon the issue of such certificate the registrar shall cause an appropriate note to be made in the relevant township or settlement registers, and thereupon each erf or other piece of land which is subject to the original reservation of real rights, shall be deemed to be subject to such certificate.”. 10 15 20

Amendment of
section 102 of
Act 47 of 1937,
as amended by
section 12 of
Act 3 of 1972,
section 22 of
Act 27 of 1982
and section 9 of
Act 62 of 1984.

4. Section 102 of the principal Act is hereby amended—

- (a) by the substitution for the definition of “Minister” of 25 the following definition:
“‘Minister’ means the Minister of **[Community Development] Public Works;**”; and
- (b) by the substitution for the definition of “owner” of the following definition: 30
“‘owner’ means, in relation to **[immovable property, means]**—
- (a) **immovable property**, subject to **[paragraph]** paragraphs (b) and (c), the person registered as the owner or holder thereof and includes the trustee in 35 an insolvent estate, a liquidator or trustee elected or appointed under the Agricultural Credit Act, 1966 (Act No. 28 of 1966), the liquidator of a company which is an owner and the representative recognized by law of any owner who has died or who 40 is a minor or of unsound mind or is otherwise under disability, provided such trustee, liquidator or legal representative is acting within the authority conferred on him by law; **[and]**
- (b) **immovable property**, where a right of leasehold in 45 respect of such property has been granted to any person and registered in his name, such person and; where such a right of leasehold has been registered in the name of both spouses in a marriage in community of property, the husband; and 50
- (c) **immovable property**, real rights in immovable property and notarial bonds—
- (i) which are registered under section 17 (1) in the name of both spouses in a marriage in community of property entered into before 1 55 November 1984 and to which the provisions of Chapter III of the Matrimonial Property Act, 1984 (Act No. 88 of 1984), are not applicable, the husband;
- (ii) which are registered under section 17 (1) in 60 the name of both spouses in a marriage in community of property entered into after 31 October 1984, or in such a marriage entered into before 1 November 1984 and in respect of which Chapter III of the Matrimonial Prop- 65 erty Act, 1984, applies, either one of the

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3. Artikel 64 van die Hoofwet word hierby gewysig deur na subartikel (2)*bis* die volgende subartikel in te voeg:

Wysiging van artikel 64 van Wet 47 van 1937, soos gewysig deur artikel 25 van Wet 87 van 1965.

“(2)*ter (a)* As iemand wat die besitter is van, of geregtig

5 is op, die reg om kleim- en standplaaslisensiegelde of -huur, of deel daarvan, wat kragtens ’n wet betreffende mynbou toeval aan die eienaar van grond bedoel in subartikel (2)*bis*, te ontvang, en wat voor die inwerkingtreding van hierdie Wet voorbehou is ten opsigte van sodanige grond waarop ’n dorp of nedersetting
10 voor of na die inwerkingtreding van hierdie Wet gestig is, skriftelik daarom by die registrateur aansoek doen, kan die registrateur, ondanks die bepalings van subartikel (1), aan so ’n persoon ’n sertifikaat van saaklike regte in die voorgeskrewe vorm uitreik ten opsigte van
15 bedoelde regte sonder voorlegging van die titelbewys van elke erf of ander stuk grond in so ’n dorp of nedersetting wat aan die voorbehoud van sodanige saaklike regte onderworpe is.

20 (b) By die uitreiking van so ’n sertifikaat laat die registrateur ’n paslike aantekening aanbring in die betrokke dorp- of nedersettingsregister, en daarna word elke erf of ander stuk grond wat aan die oorspronklike voorbehoud van saaklike regte onderworpe is, geag aan daardie sertifikaat onderworpe te wees.”

25 4. Artikel 102 van die Hoofwet word hierby gewysig—

(a) deur die omskrywing van “Minister” deur die volgende omskrywing te vervang:

““Minister” beteken die Minister van **[Gemeenskapsontwikkeling] Openbare Werke;**” en

30 (b) deur die omskrywing van “eienaar” deur die volgende omskrywing te vervang:

““eienaar” beteken, met betrekking tot **[onroerende goed]**—

Wysiging van artikel 102 van Wet 47 van 1937, soos gewysig deur artikel 12 van Wet 3 van 1972, artikel 22 van Wet 27 van 1982 en artikel 9 van Wet 62 van 1984.

35 (a) onroerende goed, behoudens **[paragraaf] paragrafe (b) en (c)**, die persoon wat as eienaar of besitter daarvan geregistreer is, en omvat die kurator van ’n insolvente boedel, ’n beredderaar of kurator ingevolge die Wet op Landboukrediet, 1966 (Wet No. 28 van 1966), gekies of aangestel, die likwidateur van ’n maatskappy wat eienaar is, en die wetlik erkende verteenwoordiger van ’n eienaar wat oorlede is, of wat minderjarig of kranksinnig of andersins onbevoeg is, mits daardie kurator, beredderaar, likwidateur of wetlike verteenwoordiger
40 binne sy wetlike bevoegdheid handel; **[en]**

45 (b) onroerende goed ten opsigte waarvan ’n reg van huurpag aan iemand toegeken en op sy naam geregistreer is, so ’n persoon en, waar so ’n reg van huurpag op naam van beide gades in ’n huwelik in
50 gemeenskap van goed geregistreer is, die man; en

(c) onroerende goed, saaklike regte oor onroerende goed en notariële verbande—

55 (i) wat kragtens artikel 17 (1) geregistreer is op naam van beide gades in ’n huwelik in gemeenskap van goed wat gesluit is voor 1 November 1984 en waarop die bepalings van Hoofstuk III van die Wet op Huweliksgoedere, 1984 (Wet No. 88 van 1984), nie van toepassing is nie, die man;

60 (ii) wat kragtens artikel 17 (1) geregistreer is op naam van beide gades in ’n huwelik in gemeenskap van goed wat gesluit is na 31 Oktober 1984, of in so ’n huwelik wat voor 1 November 1984 gesluit is en ten opsigte waarvan die bepalings van Hoofstuk III van die
65 Wet op Huweliksgoedere, 1984, geld, enigeen

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spouses acting with the written consent, attested by two competent witnesses, of the other spouse; and

- (iii) which are registered in the name of only one spouse and which form part of the joint estate of both spouses in a marriage in community of property entered into after 31 October 1984, or in such a marriage entered into before 1 November 1984 and in respect of which Chapter III of the Matrimonial Property Act, 1984, applies, either one of the spouses acting with the written consent, attested by two competent witnesses, of the other spouse.”.

Short title.

5. This Act shall be called the Deeds Registries Amendment Act, 1987.

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- van die gades handelende met die skriftelike
toestemming, deur twee bevoegde getuies
geattesteer, van die ander gade; en
- 5 (iii) wat geregistreer is op die naam van slegs een
gade en wat deel uitmaak van die gemeen-
skaplike boedel van beide gades in 'n huwelik
in gemeenskap van goed wat gesluit is na 31
10 Oktober 1984, of in so 'n huwelik wat voor 1
November 1984 gesluit is en ten opsigte waar-
van die bepalings van Hoofstuk III van die
Wet op Huweliksgoedere, 1984, geld, enigeen
van die gades handelende met die skriftelike
toestemming, deur twee bevoegde getuies
geattesteer, van die ander gade."

- 15 5. Hierdie Wet heet die Wysigingswet op Registrasie van Ak- Kort titel.
tes, 1987.

