



**REPUBLIEK VAN SUID-AFRIKA**

**STAATSKOERANT**

**GOVERNMENT GAZETTE**

**OF THE REPUBLIC OF SOUTH AFRICA**

*As 'n Nuusblad by die Poskantoor Geregistreer*

*Registered at the Post Office as a Newspaper*

Verkoopprys • Selling price  
(AVB uitgesluit/GST excluded)

Plaaslik **70c** Local  
Buitelands R1,00 Other countries  
Posvry • Post free

VOL. 300

KAAPSTAD, 29 JUNIE 1990

CAPE TOWN, 29 JUNE 1990

No. 12569

**KANTOOR VAN DIE STAATSPRESIDENT**

No. 1445.

29 Junie 1990

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

No. 70 van 1990: Wysigingswet op Behuisingsontwikkelingskemas vir Afgetrede Persone, 1990.

**STATE PRESIDENT'S OFFICE**

No. 1445.

29 June 1990

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

No. 70 of 1990: Housing Development Schemes for Retired Persons Amendment Act, 1990.

**Wet No. 70, 1990****WYSIGINGSWET OP BEHUISINGSONTWIKKELINGSKEMAS VIR AFGETREDE PERSONE, 1990****ALGEMENE VERDUIDELIKENDE NOTA:**

- [ ]** Woerde 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 Wet op Behuisingsontwikkelingskemas vir Afgetrede Persone, 1988, ten einde reg van okkupasie te omskryf; verdere voorsiening te maak aangaande die inhoud van 'n kontrak ingevolge waarvan 'n behuisingsbelang aan 'n afgetrede persoon vervreem word; te bepaal dat grond onderworpe aan 'n reg van okkupasie slegs in sekere omstandighede vervreem mag word; te bepaal dat 'n ontwikkelaar nie 'n reg van okkupasie met betrekking tot 'n behuisingsbelang wat na 'n bepaalde datum ontstaan het, mag vervreem nie tensy die titelakte van die betrokke grond geëndosseer is ten effekte dat die grond die onderwerp van 'n behuisingsontwikkelingskema uitmaak; voorsiening te maak vir vrystelling van die toepassing van die bepalings van genoemde Wet; die Minister se bevoegdheid om regulasies te maak, uit te brei; en sekere boetes te verhoog; en om vir bykomstige aangeleenthede voorsiening te maak.

*(Engelse teks deur die Staatspresident geteken.)  
(Goedgekeur op 21 Junie 1990.)*

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

**Wysiging van artikel 1 van Wet 65 van 1988, soos gewysig deur artikel 1 van Wet 20 van 1989**

1. Artikel 1 van die Wet op Behuisingsontwikkelingskemas vir Afgetrede Persone, 1988 (hieronder die Hoofwet genoem), word hierby gewysig deur na die omskrywing van "praktisy" die volgende omskrywing in te voeg: 5

"reg van okkupasie" die reg van 'n koper van 'n behuisingsbelang—

- (a) wat onderhewig is aan die betaling van 'n bepaalde of bepaalbare geldsom deur middel van 'n lening of andersins, betaalbaar in een bedrag of in paaiemende, bykomend tot of in plaas van 'n heffing, en hetsy so 'n geldsom ten volle of ten dele terugbetaalbaar is aan die koper of iemand anders of aan die boedel van die koper of so 'n ander persoon; en 10
- (b) wat die bevoegdheid verleen om 'n eenheid in 'n behuisingsontwikkelingskema te okkuper vir die duur van die lewe van die koper of, behoudens artikel 7, iemand anders vermeld in die kontrak ingevolge waarvan die behuisingsbelang verkry is, maar sonder dat dit die bevoegdheid verleen om oordrag te eis van die eiendomsreg van die eenheid waarop die behuisingsbelang betrekking het;". 15

**Wysiging van artikel 4 van Wet 65 van 1988**

20

2. Artikel 4 van die Hoofwet word hierby gewysig—

- (a) deur na paragraaf (d) van subartikel (1) die volgende paragraaf in te voeg:

HOUSING DEVELOPMENT SCHEMES FOR RETIRED PERSONS  
AMENDMENT ACT, 1990

Act No. 70, 1990

## 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 Housing Development Schemes for Retired Persons Act, 1988, so as to define right of occupation; to make further provision concerning the contents of a contract in terms of which a housing interest is alienated to a retired person; to provide that land subject to a right of occupation may only in certain circumstances be alienated; to provide that a developer may not alienate a right of occupation in relation to a housing interest which originated after a certain date unless the title deed of the land concerned has been endorsed to the effect that the land forms the subject of a housing development scheme; to provide for exemption from the operation of the provisions of the said Act; to extend the powers of the Minister to make regulations; and to increase certain fines; and to provide for incidental matters.

(English text signed by the State President.)  
(Assented to 21 June 1990.)

**B**E IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:—

## Amendment of section 1 of Act 65 of 1988, as amended by section 1 of Act 20 of 1989

1. Section 1 of the Housing Development Schemes for Retired Persons Act, 1988 (hereinafter referred to as the principal Act), is hereby amended by the insertion after the definition of "retired person" of the following definition:

- "right of occupation" means the right of a purchaser of a housing interest—
- (a) which is subject to the payment of a fixed or determinable sum of money by way of a loan or otherwise, payable in one amount or in instalments, in addition to or in lieu of a levy, and whether or not such a sum of money is in whole or in part refundable to the purchaser or any other person or to the estate of the purchaser or of such other person; and
  - (b) which confers the power to occupy a unit in a housing development scheme for the duration of the lifetime of the purchaser or, subject to section 7, any other person mentioned in the contract in terms of which the housing interest is acquired, but without conferring the power to claim transfer of the ownership of the unit to which the housing interest relates;".

## Amendment of section 4 of Act 65 of 1988

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

- (a) by the insertion after paragraph (d) of subsection (1) of the following paragraph:

**Wet No. 70, 1990****WYSIGINGSWET OP BEHUISINGSONTWIKKELINGSKEMAS VIR AFGETREDE PERSONE, 1990**

- "(dA) 'n vermelding of die titelakte van die grond geëndosseer is soos in artikel 4C bedoel;"; en
- (b) deur na paragraaf (h) van subartikel (1) die volgende paragraaf in te voeg:  
"(hA) in die geval waar 'n behuisingsbelang uit 'n reg van okkupasie bestaan, die bedrag, as daar is, van die teenprestasie betaalbaar deur die koper wat deur die verkoper aangewend sal word ter verminderung van die uitstaande balans verskuldig deur die verbandgewer ingevolge die verband;".

5

**Invoeging van artikels 4A, 4B en 4C in Wet 65 van 1988**

3. Die volgende artikels word hierby in die Hoofwet na artikel 4 ingevoeg:

10

**"Reg van okkupasie verleen dieselfde reg as geregistreerde huurkontrak**

- 4A. Die houer van 'n reg van okkupasie het by die toepassing van enige wet dieselfde regte as dié verleen aan 'n huurder ingevolge 'n huurkontrak soos beoog in artikel 1 (2) van die Wet op Formaliteite met betrekking tot Huurkontrakte van Grond, 1969 (Wet No. 18 van 1969), wat teen die titelakte van die gehuurde grond geregistreer is, watter regte voorkeur geniet bo enige ander reg hetsy daardie ander reg teen die titelakte geregistreer of geëndosseer is en afgesien van die tydstip waarop die ander reg geregistreer of geëndosseer is.**

15

**Vervreemding van grond onderworpe aan reg van okkupasie**

20

- 4B. (1)** Tensy minstens 75 persent van die houers van regte van okkupasie in 'n behuisingsontwikkelingskema daartoe instem, mag die betrokke grond nie vry van daardie regte vervreem word nie: Met dien verstande dat die houers van die regte van okkupasie in die geval van so 'n vervreemding voorkeureise met betrekking tot die opbrengs van die verkoop van die grond het, watter eise, ondanks andersluidende bepaling van enige ander wet—

25

- (a) voorkeur geniet bo die eis van enige verbandhouer; en  
 (b) gelyk is aan die bedrag wat ingevolge paragraaf (a) van die omskrywing van reg van okkupasie betaal is.

30

- (2) Enige vervreemding wat plaasvind sonder die instemming van die houers soos in subartikel (1) beoog, is van nul en gener waarde.

35

**Vervreemding van reg van okkupasie is aan endossement teen titelakte onderhewig**

40

- 4C. (1) (a)** Geen ontwikkelaar mag 'n reg van okkupasie met betrekking tot 'n behuisingsbelang wat vanaf die inwerkingtreding van die Wysigingswet op Behuisingsontwikkelingskemas vir Afgetrede Personae, 1990, ontstaan het, vervreem of 'n ooreenkoms aangaan wat daardie strekking het of vorgee om dit te hê nie, tensy die titelakte van die betrokke grond waarop daardie reg betrekking het, met die toestemming van die eienaar van daardie grond en, indien die grond met 'n verband beswaar is, die toestemming van die verbandhouer, of, in die geval van 'n deelnemingsverband, die toestemming van die betrokke benoemde maatskappy beoog in die Wet op Deelnemingsverbande, 1981 (Wet No. 55 van 1981), ten gunste van wie die verband geregistreer is, deur 'n registerieur soos omskryf in artikel 102 van die Registrasie van Aktes Wet, 1937 (Wet No. 47 van 1937), geëndosseer is ten effekte dat daardie grond die onderwerp van 'n behuisingsontwikkelingskema uitmaak.

45

- (b) By die toepassing van paragraaf (a) word daar geag dat 'n reg van okkupasie met betrekking tot 'n behuisingsbelang ontstaan sodra 'n ontwikkelaar die eerste reg van okkupasie in 'n behuisingsontwikkelingskema vervreem.

50

- (2) Die bepaling van subartikel (1) belet nie 'n ontwikkelaar wat nie verplig is om die bepaling van daardie subartikel na te kom nie, om by bedoelde registerieur aansoek te doen dat die titelakte van grond ten opsigte waarvan hy 'n reg van okkupasie met betrekking tot 'n behuisingsbelang vervreem het, geëndosseer word ten effekte dat daardie grond die onderwerp van 'n behuisingsontwikkelingskema uitmaak nie.

55

HOUSING DEVELOPMENT SCHEMES FOR RETIRED PERSONS  
AMENDMENT ACT, 1990

Act No. 70, 1990

- 5       “(dA) a statement as to whether the title deed of the land has been endorsed  
as referred to in section 4C;”; and  
(b) by the insertion after paragraph (h) of subsection (1) of the following  
paragraph:
- 5       “(hA) in the case of a housing interest consisting of a right of occupation, the  
amount, if any, of the consideration payable by the purchaser which  
will be applied by the seller in reduction of the outstanding balance  
owing by the mortgagor in terms of the mortgage bond.”

**Insertion of sections 4A, 4B and 4C in Act 65 of 1988**

10      3. The following sections are hereby inserted in the principal Act after section 4:

**“Right of occupation shall confer same right as registered lease**

15      **4A. The holder of a right of occupation shall for the purposes of any law have the same rights as those conferred on a lessee in terms of a lease as contemplated in section 1 (2) of the Formalities in respect of Leases of Land Act, 1969 (Act No. 18 of 1969), registered against the title deed of the leased land, and such rights shall rank in priority over any other right whether or not such other right has been registered or endorsed against the title deed and irrespective of the time when such other right was registered or endorsed.**

20      **Alienation of land subject to right of occupation**

25      **4B. (1) Unless at least 75 per cent of the holders of rights of occupation in a housing development scheme consent thereto the land concerned may not be alienated free from such rights: Provided that the holders of the rights of occupation shall in the case of such an alienation have preferential claims in respect of the proceeds of the sale of the land, which claims shall, notwithstanding the provisions of any other law—**

- 30      (a) rank in priority over the claim of any mortgagee; and  
(b) be equal to the amount paid in terms of paragraph (a) of the definition of right of occupation.

35      **(2) Any alienation taking place without the consent of the holders as contemplated in subsection (1) shall be null and void.**

**Alienation of right of occupation shall be subject to endorsement against title deed**

40      **4C. (1) (a) No developer shall alienate a right of occupation in relation to a housing interest which originated as from the commencement of the Housing Development Schemes for Retired Persons Amendment Act, 1990, or enter into an agreement having such effect or purporting to have such effect, unless the title deed of the land concerned to which such right relates, has, with the consent of the owner of that land and, if the land is encumbered by a mortgage bond, the consent of the mortgagee, or, in the case of a participation bond, the consent of the nominee company concerned as contemplated in the Participation Bonds Act, 1981 (Act No. 55 of 1981), in whose favour the bond is registered, been endorsed by a registrar as defined in section 102 of the Deeds Registration Act, 1937 (Act No. 47 of 1937), to the effect that such land is subject to a housing development scheme.**

- 45      (b) For the purposes of paragraph (a) it shall be deemed that a right of occupation in relation to a housing interest originates as soon as a developer alienates the first right of occupation in a housing development scheme.

50      **(2) The provisions of subsection (1) do not preclude any developer who is not compelled to comply with the provisions of that subsection, to apply to the registrar concerned that the title deed of land in respect of which he has alienated a right of occupation in relation to a housing interest, be endorsed to the effect that such land is subject to a housing development scheme.**

**Wet No. 70, 1990 WYSIGINGSWET OP BEHUISINGSONTWIKKELINGSKEMAS VIR AFGETREDE PERSONE, 1990**

(3) Die betrokke registrator moet, by ontvangs van 'n aansoek in die vorm wat na oorleg met die hoofregistrator van aktes by regulasie voorgeskryf is, die aantekeninge maak wat hy nodig ag ten einde aan die bepalings van subartikels (1) en (2) gevolg te gee, en geen kantoor- of ander gelde is ten opsigte van so 'n aantekening aan die registrator betaalbaar nie.

(4) Iemand wat die bepalings van subartikel (1) oortree, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete van hoogstens R20 000 of met gevangenisstraf vir 'n tydperk van hoogstens vyf jaar of met daardie boete sowel as daardie gevangenisstraf.".

5

10

**Wysiging van artikel 6 van Wet 65 van 1988**

**4. Artikel 6 van die Hoofwet word hierby gewysig—**

- (a) deur die woord "en" aan die einde van paragraaf (a) van subartikel (1) te skrap;
- (b) deur paragraaf (b) van subartikel (1) deur die volgende paragraaf te vervang:
  - "(b) 'n afskrif van daardie sertifikaat en 'n afskrif van die kontrak aan die betrokke koper verstrek is; en";
- (c) deur die volgende paragraaf by subartikel (1) te voeg:
  - "(c) in die geval waar 'n behuisingsbelang ook 'n reg van okkupasie behels, 'n praktisyne sertifikaat uitgereik het dat die titelakte van die grond waarop die reg van okkupasie betrekking het, geëndosseer is soos in artikel 4C beoog, vir sover endossering deur daardie artikel vereis word, en 'n afskrif van daardie sertifikaat aan die betrokke koper verstrek is.;"
- (d) deur in subartikel (2) die uitdrukking "R10 000" deur die uitdrukking "R20 000" te vervang; en
- (e) deur subartikels (3) en (4) deur onderskeidelik die volgende subartikels te vervang:
  - "(3) Subartikel (1) is nie van toepassing nie op die ontvangs van enige bedrag—
    - (a) wat die koper uit hoofde van 'n kontrak toevertrou aan 'n praktisyne of 'n eiendomsagent in sy hoedanigheid as sodanig, om vir die voordeel van die ontwikkelaar in die trustrekening van die praktisyne of eiendomsagent gehou te word totdat die [sertifikaat vermeld in] bepalings van subartikel (1) [uitgereik is en 'n afskrif daarvan aan die koper verstrek] nagekom is; of
    - (b) wat uit hoofde van 'n kontrak aan die ontwikkelaar betaal word indien, voor sodanige betaling, die koper voorsien is van 'n onherroeplike en onvoorwaardelike waarborg deur 'n bankinstelling wat anders as voorlopig geregistreer is kragtens die Bankwet, 1965 (Wet No. 23 van 1965), 'n onderlinge bouvereniging wat anders as voorlopig geregistreer is kragtens die Wet op Onderlinge Bouverenigings, 1965 (Wet No. 24 van 1965), 'n bouvereniging wat anders as voorlopig geregistreer is kragtens die Wet op Bouverenigings, 1986 (Wet No. 82 van 1986), of 'n geregistreerde versekeraar soos omskryf in artikel 1 van die Versekeringswet, 1943 (Wet No. 27 van 1943), waarvolgens die bankinstelling, onderlinge bouvereniging, bouvereniging of versekeraar onderneem om genoemde bedrag aan die koper terug te betaal indien die [sertifikaat in] bepalings van subartikel (1) [vermeld nie uitgereik en aan die koper verstrek word binne die tydperk in artikel 4 (1) (m) beoog] nie nagekom word nie.
  - (4) Indien, onder die omstandighede beoog in subartikel (3), die ontwikkelaar 'n insolvent word voordat die [sertifikaat vermeld in] bepalings van subartikel (1) [uitgereik] nagekom word, word enige bedrag in 'n trustrekening gehou ingevolge paragraaf (a) van subartikel (3) of waarvan die terugbetaling gewaarborg is ingevolge paragraaf (b) van daardie subartikel, onmiddellik betaalbaar aan die betrokke koper deur die betrokke praktisyne, eiendomsagent, bankinstelling, onderlinge bouvereniging, bouvereniging of versekeraar.".

25

35

40

45

50

55

60

HOUSING DEVELOPMENT SCHEMES FOR RETIRED PERSONS  
AMENDMENT ACT, 1990

Act No. 70, 1990

5

(3) The registrar concerned shall, on receipt of an application in the form prescribed by regulation after consultation with the chief registrar of deeds, make such endorsements as he may deem necessary so as to give effect to the provisions of subsections (1) and (2), and no office fee or other charge shall be payable to the registrar in respect of such endorsement.

10

(4) Any person contravening the provisions of subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding R20 000 or to imprisonment for a period not exceeding five years or to both that fine and that imprisonment.”.

**Amendment of section 6 of Act 65 of 1988**

4. Section 6 of the principal Act is hereby amended—

15

(a) by the deletion of the word “and” at the end of paragraph (a) of subsection (1);

20

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

“(b) a copy of that certificate and a copy of the contract have been furnished to the purchaser concerned; and;”;

(c) by the addition to subsection (1) of the following paragraph:

“(c) in the case where a housing interest includes a right of occupation, a practitioner has issued a certificate that the title deed of the land to which the right of occupation relates, has been endorsed as contemplated in section 4C, in so far as endorsement is required by that section, and a copy of that certificate has been furnished to the purchaser concerned.”;

25

(d) by the substitution in subsection (2) for the expression “R10 000” of the expression “R20 000”; and

30

(e) by the substitution for subsections (3) and (4) of the following subsections, respectively:

“(3) Subsection (1) shall not apply to the receipt of any amount—

35

(a) which the purchaser by virtue of a contract entrusts to a practitioner or an estate agent in his capacity as such, to be kept, for the benefit of the developer, in the trust account of the practitioner or estate agent until the [certificate referred to in] provisions of subsection (1) [has] have been [issued and a copy thereof has been furnished to the purchaser] complied with; or

40

(b) which by virtue of a contract is paid to the developer if, before such payment, the purchaser was furnished with an irrevocable and unconditional guarantee by a banking institution registered otherwise than provisionally under the Banks Act, 1965 (Act No. 23 of 1965), a mutual building society registered otherwise than provisionally under the Mutual Building Societies Act, 1965 (Act No. 24 of 1965), a building society registered otherwise than provisionally under the Building Societies Act, 1986 (Act No. 82 of 1986), or a registered insurer as defined in section 1 of the Insurance Act, 1943 (Act No. 27 of 1943), in terms of which the banking institution, mutual building society, building society or insurer undertakes to repay the said amount to the purchaser, if the [certificate referred to in] provisions of subsection (1) [is] are not [issued and furnished to the purchaser within the period contemplated in section 4 (1) (m)] being complied with.

45

50

55

(4) If, in the circumstances contemplated in subsection (3), the developer becomes an insolvent before the [certificate referred to in] provisions of subsection (1) [is issued] have been complied with, any amount kept in a trust account in terms of paragraph (a) of subsection (3) or the repayment of which was guaranteed in terms of paragraph (b) of that subsection, shall immediately become payable to the purchaser concerned by the practitioner, estate agent, banking institution, mutual building society, building society or insurer concerned.”.

**Wet No. 70, 1990****WYSIGINGSWET OP BEHUISINGONTWIKKELINGSKEMAS VIR  
AFGETREDE PERSONE, 1990****Invoeging van artikel 10 in Wet 65 van 1988****5. Die volgende artikel word hierby in die Hoofwet na artikel 9 ingevoeg:****"Vrystelling van toepassing van bepalings van Wet**

**10. Die Minister kan, by kennisgewing in die Staatskoerant of by skriftelike kennisgewing deur die pos gestuur of oorhandig, en onderworpe aan die voorwaardes wat hy bepaal, enige persoon, met inbegrip van 'n maatskappy of ander regspersoon of klas sodanige persone, of in die algemeen of onder die omstandighede wat in die kennisgewing vermeld word en of vir 'n onbepaalde tydperk of vir die tydperk wat aldus vermeld word, van die toepassing van enige van of al die bepalings van hierdie Wet vrystel."**

**Wysiging van artikel 11 van Wet 65 van 1988****6. Artikel 11 van die Hoofwet word hierby gewysig—**

- (a) deur paragraaf (d) van subartikel (1) deur die volgende paragraaf te vervang:  
**"(d) wat adverteering in verband met 'n behuisingsontwikkelingskema reël op die voorwaardes wat die Minister bepaal, of dit verbied;"**
- (b) deur die volgende paragraaf by subartikel (1) te voeg:  
**"(i) wat die formaliteitie vir 'n aansoek om 'n endossement ingevolge artikel 4C voorskryf, asook watter persone so 'n aansoek mag voorberei en die gelde wat in verband met die aansoek betaalbaar is."**; en
- (c) deur in subartikel (2) die uitdrukking "R6 000" deur die uitdrukking "R12 000" te vervang.

**Kort titel**

**7. Hierdie Wet heet die Wysigingswet op Behuisingsontwikkelingskemas vir Afgetrede Persone, 1990.**

**HOUSING DEVELOPMENT SCHEMES FOR RETIRED PERSONS  
AMENDMENT ACT, 1990****Act No. 70, 1990****Insertion of section 10 in Act 65 of 1988**

- 5        5. The following section is hereby inserted after section 9 of the principal Act:

**"Exemption from operation of provisions of Act"**

10        10. The Minister may, by notice in the *Gazette* or by written notice sent by post or handed over, and subject to such conditions as he may determine, exempt any person, including any company or other juristic person or class of such persons, either generally or under such circumstances as may be specified in the notice and either indefinitely or for such period as may be so specified, from the operation of any or all of the provisions of this Act."

**Amendment of section 11 of Act 65 of 1988**

- 15        6. Section 11 of the principal Act is hereby amended—

(a) by the substitution for paragraph (d) of subsection (1) of the following paragraph:  
15        "(d) regulating advertising in connection with any housing development scheme on such conditions as the Minister may determine, or prohibit such advertising;";  
(b) by the addition to subsection (1) of the following paragraph:  
20        "(i) prescribing the formalities for an application for an endorsement in terms of section 4C, the persons by whom such application may be prepared and the fees payable in respect of such application."; and  
(c) by the substitution in subsection (2) for the expression "R6 000" of the expression "R12 000".

**Short title**

- 25        7. This Act shall be called the Housing Development Schemes for Retired Persons Amendment Act, 1990.

