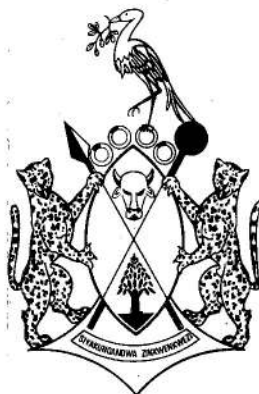


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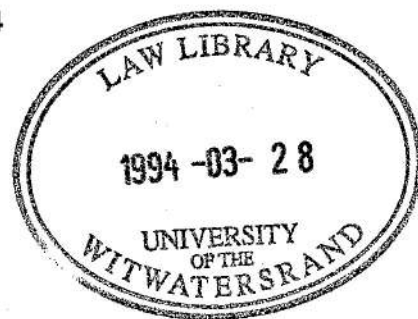
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DEPARTMENT OF THE COUNCIL OF STATE

GOVERNMENT NOTICE No. 10 OF 1994

It is hereby notified that the Chairman of the Council of State has assented to the following decree which is hereby published for general information:-

**Deeds Registries Amendment Decree, 1994
(Decree No. 6 of 1994)**



COUNCIL OF STATE — REPUBLIC OF CISKEI

DEEDS REGISTRIES AMENDMENT DECREE, 1994

DECREE

To amend the Deeds Registries Act, 1937.

[English text signed by the Chairman of the Council of State. Assented to on 10 February 1994.]

BE IT DECREED by the Council of State of the Republic of Ciskei, as follows:-

1. Amendment of section 2 of Act 47 of 1937, as substituted by section 2 of Act 19 of 1981, section 1 of Act 29 of 1983 and section 1 of Decree 14 of 1991. - Section 2 of the Deeds Registries Act, 1937 (hereinafter referred to as the principal Act) is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) The Minister may delegate any power conferred on him by this section to the Director-General or Deputy Director-General: Internal Affairs and Land Tenure.”.

2. Amendment of section 3 of Act 47 of 1937, as substituted by section 2 of Act 87 of 1965 and amended by section 3 of Act 19 of 1981. - Section 3 of the principal Act is hereby amended by the substitution for paragraph (x) of subsection (1) of the following paragraph:

“(x) remove from his records, with the approval of the Master and after the lapse of ten years from the date of entry in such records, any entry made therein, whether before or after the commencement of this Act, in pursuance of the transmission to him of a notice of liquidation or an order of liquidation or sequestration;”.

3. Substitution of section 7 of Act 47 of 1937, as substituted by section 3 of Act 87 of 1965. - The following section is hereby substituted for section 7 of the principal Act:

“**7. Inspection of records and supply of information.** - The registrar shall, on the prescribed conditions and upon payment of the prescribed fees, permit any person to inspect the public registers and other public records in his registry, 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 registry as prior to the commencement of this Act could, customarily, be made or obtained.”.

4. Amendment of section 14 of Act 47 of 1937, as amended by section 7 of Act 43 of 1957, section 7 of Act 43 of 1962 and section 6 of Act 87 of 1965. - Section 14 of the principal Act is hereby amended -

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

(iii) if in the administration of the estate of a deceased person (including a fiduciary) 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 and legatees and the surviving spouse, the executor or trustee of such estate may transfer the land or cede the real rights therein direct to the persons entitled thereto in terms of such redistribution;”;

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

“(vii) if the right of any person to claim transfer of such land or cession of such real right from any other person has been vested in any third person in terms of any judgement or order of any court (including a magistrate's court) or in terms of a sale in execution held pursuant to any such judgement or order, transfer of such land or cession of such real right may be passed direct to such third person by the person against whom such right was exercisable.”; and

DEEDS REGISTRIES AMENDMENT DECREE, 1994

- (c) by the substitution for subsection (2) of the following subsection:

"(2) In any transfer or cession in terms of any proviso to subsection (1)(b), there shall be paid the transfer duty which would have been payable had the property concerned been transferred or ceded to each person successively becoming entitled thereto."

5. Amendment of section 15A of Act 47 of 1937, as inserted by section 4 of Act 19 of 1982. - Section 15A of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) The provisions of subsection (1) shall apply *mutatis mutandis* to any person other than a conveyancer -

- (a) who is prescribed by regulation, or
 - (b) who is authorized by any other law to prepare a deed or other document for registration or filing in a deeds registry,
- and who has in accordance with the regulations prepared a deed or other document for registration or filing in a deeds registry."

6. Amendment of section 33 of Act 47 of 1937, as substituted by section 15 of Act 43 of 1962 and amended by section 13 of Act 87 of 1965. - Section 33 of the principal Act is hereby amended by the deletion of subsection (2).

7. Amendment of section 45 of Act 47 of 1937, as amended by section 20 of Act 43 of 1957, section 19 of Act 43 of 1962 and section 27 of Decree 7 of 1992. - Section 45 of the principal Act is hereby amended -

- (a) by the substitution for paragraph (c) of subsection (2) of the following paragraph:

"(c) the said bond has been passed by the survivor alone or by both spouses who were married in community of property and a written consent (which shall be in duplicate in the prescribed form and 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 registrar together with the bond."; and

- (b) by the substitution for subsection (4) of the following subsection:

"(4) As from the date of the endorsement on the title deeds of the property in terms of subsection (1) the estate of the deceased spouse shall be absolved from any obligation secured by the 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 and, if the bond is a bond to secure future debts, the immovable property thereby mortgaged will secure any further or future advances which are made by the mortgagee of the bond to the survivor."

8. Amendment of section 45bis of Act 47 of 1937, as inserted by section 21 of Act 43 of 1957 and section 27 of Decree 7 of 1992. - Section 45bis of the principal Act is hereby amended -

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

"(1A) If immovable property or a lease under any law relating to land settlement or a bond is registered in the deeds registry in the name of both spouses who -

- (a) were married in community of property but have been divorced and such property, lease or bond accrues to both the former spouses in undivided shares in terms of the division of the joint estate, 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 Decree, 1992 (Decree No. 7 of 1992), as the case may be, in terms of which the property, lease or bond is awarded to both spouses in undivided shares,

the registrar may on written application by both spouses, accompanied by such documents as the registrar deems necessary, endorse on the title deeds of the property, or on the lease or bond, that such spouses are entitled to deal with such property, lease 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 property, lease or bond."; and

DEEDS REGISTRIES AMENDMENT DECREE, 1994

- (b) by the substitution for subsection (2) of the following subsection:

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

(b) If immovable property referred to in subsection (1A) is hypothecated under a registered mortgage bond, the endorsement provided for in the said subsection shall not be made unless -

- (i) such bond is cancelled; or
- (ii) the said property is released from the bond; or
- (iii) the former spouses jointly and severally assume liability in writing (in the prescribed form and signed by both such spouses and the legal holder of the bond) for all the indebtedness and renounce the exception *de duobus vel pluribus reis debendi*."

9. Amendment of section 56 of Act 47 of 1937, as amended by section 26 of Act 43 of 1957, section 23 of Act 87 of 1965, section 8 of Act 3 of 1972 and section 17 of Act 19 of 1982. - Section 56 of the principal Act is hereby amended by the substitution for paragraph (b) of the proviso to subsection (1) of the following paragraph:

"(b) by the trustee of an insolvent estate, an executor administering and distributing an estate under section 34 of the Administration of Estates Act, 1965 (Act 66 of 1965), the liquidator of a company or a close corporation 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 28 of 1966); or"

10. Amendment of section 57 of Act 47 of 1937, as amended by section 27 of Act 43 of 1957, section 24 of Act 43 of 1962 and section 7 of Act 92 of 1978. - Section 57 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) As from the date of the transfer deed 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 and, if the bond is a bond to secure future debts, the immovable property thereby mortgaged will secure any further or future advances which are made by the mortgagee of the bond to the transferee."

11. Amendment of section 58 of Act 47 of 1937 as amended by section 27 of Act 43 of 1957, section 24 of Act 43 of 1962, section 9 of Act 19 of 1981 and section 18 of Act 19 of 1982. - Section 58 of the principal Act is hereby amended in subsection (4) -

- (a) by the deletion at the end of paragraph (b) of the word "and"; and
- (b) by the insertion after paragraph (b) of the following paragraph:

"(bA) close corporations which are unable to pay their debts and are being liquidated and wound up by or under the supervision of the court; and"

12. Insertion of section 74ter in Act 47 of 1937. - The following section is hereby inserted in the principal Act after section 74bis:

"74ter. Substitution of lost or destroyed title deed of rights to minerals. -

(1) If a title deed of the rights to minerals has been lost or destroyed and registration duplicate thereof has also been lost or destroyed, the registrar may on written application by the holder of such rights issue a certificate of rights to minerals in the prescribed form in lieu of the title deed which has been lost or destroyed.

(2) The provisions of section 38(2), (3), (4) and (5) shall *mutatis mutandis* apply in respect of the issue of such certificate."

DEEDS REGISTRIES AMENDMENT DECREE, 1994

13. Amendment of section 75 of Act 47 of 1937 as amended by section 34 of Act 43 of 1957. - Section 75 of the principal Act is hereby amended by the deletion of subsection (2).

14. Amendment of section 93 of Act 47 of 1937 as amended by section 38 of Act 43 of 1957, section 36 of Act 43 of 1962 and section 26 of Act 19 of 1982. - Section 93 of the principal Act is hereby amended by the addition of the following subsection:

“(3)(a) Notwithstanding the provisions of subsection (2), any owner of immovable property may in writing request the Minister to change the name of such immovable property which appear in any registered deed on the ground that such name is offensive.

(b) If the Minister is satisfied that such name may be offensive for whatever reason, he may order the Surveyor-General to effect the change of name in the relevant registers and documents and on the relevant diagrams.

(c) The Surveyor-General shall notify the registrar concerned of any change of name effected under paragraph (b) and the registrar shall thereupon amend the relative deeds and registers in the deeds registry.”.

15. Amendment of section 102 of Act 47 of 1937, as amended by section 12 of Act 3 of 1972, section 11 of Act 19 of 1981, section 29 of Act 19 of 1982 and section 3 of Act 29 of 1983. - Section 102 of the principal Act is hereby amended -

(a) by the substitution in subsection (1) for the definition of “conveyancer” of the following definition:

“ ‘conveyancer’ means a person practising as such in Ciskei or in the province of which the area comprising Ciskei previously formed a part;”;

(b) by the substitution in subsection (1) for the definition of “Minister” of the following definition:

“ ‘Minister’ means the Minister of Internal Affairs and Land Tenure;”;

(c) by the substitution in subsection (1) for paragraphs (a) and (b) of the definition of “owner” of the following paragraphs:

(a) immovable property, subject to paragraphs (b) and (c), the person registered as the owner or holder thereof and includes the trustee in an insolvent estate, a liquidator or trustee elected or appointed under the Agricultural Credit Act, 1966 (Act 28 of 1966), the liquidator of a company or a close corporation which is an owner and the representative recognized by law of any owner who has died or who 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;

(b) where a right of leasehold 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 -

(i) to which the provisions of Chapter 3 of the Matrimonial Property Decree, 1992 (Decree 7 of 1992) are not applicable, the husband; and

(ii) to which the provisions of Chapter 3 of the Matrimonial Property Decree, 1992 are applicable, either one of the spouses acting with the written consent, attested by two competent witnesses, of the other spouse; and”;

(e) by the deletion in subsection (1) of the definitions of “province” and “provincial administration”; and

(f) by the deletion of subsection (2).

16. Short title and commencement. - This decree shall be called the Deeds Registries Amendment Decree, 1994 and shall come into operation on a date to be fixed by the Head of State by proclamation in the *Gazette*.

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