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OFFICE OF THE PRESIDENT

No. 1396. 2 November 1998

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

No. 93 of 1998: Deeds Registries Amendment Act, 1998.

KANTOOR VAN DIE PRESIDENT

No. 1396. 2 November 1998

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

No. 93 van 1998: Wysigingswet op Registrasie van Aktes, 1998.

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- _____ Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the President.)
(Assented to 20 October 1998.)

ACT

To amend the Deeds Registries Act, 1937, in relation to acting appointments as chief registrar, registrar, deputy registrar and assistant registrar of deeds, and the minimum qualifications for holding any such office; in relation to the instances in which deeds of grant by which State land is transferred must have diagrams of the land annexed thereto; to adapt section 21 so as to make its provisions applicable also to cessions of rights to minerals that were assets in a joint estate; in relation to the circumstances in which the title deeds of two or more pieces of land may be superseded by a certificate of consolidated title; to provide for the reservation of a personal servitude in a deed of cession of rights to minerals; in relation to the separation of rights to minerals from the ownership of land at the instance of the State; to effect certain technical amendments; and to provide for incidental matters.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 2 of Act 47 of 1937, as amended by section 1 of Act 43 of 1957, section 1 of Act 43 of 1962, section 1 of Act 87 of 1965, section 2 of Act 61 of 1969, section 2 of Act 3 of 1972, section 7 of Act 62 of 1973, section 2 of Act 27 of 1982, section 2 of Act 62 of 1984, section 1 of Act 14 of 1993, section 10 of Act 11 of 1996, Proclamation R.9 of 1997 and section 35 of Act 47 of 1997 5

1. Section 2 of the Deeds Registries Act, 1937 (hereafter called the principal Act), is hereby amended—

- (a) by the substitution for subsection (1A) of the following subsection: 10
- “(1A) Whenever the chief registrar of deeds or any registrar, deputy registrar or assistant registrar of deeds **[is]**, because of absence or for any other reason, is unable to carry out the functions of **[his]** that office, or whenever such office becomes vacant, the Minister may authorize any officer in **[the public service]** a deeds registry or in the office of the chief 15 registrar of deeds to act in the place of such chief registrar, registrar, deputy registrar or assistant registrar during **[his]** the period of such absence or incapacity, or to act in the vacant office until the vacancy is filled, as the case may be.”;
- (b) by the substitution for subsection (1B) of the following subsection: 20

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.

(Engelse teks deur die President geteken.)
(Goedgekeur op 20 Oktober 1998.)

WET

Tot wysiging van die Registrasie van Aktes Wet, 1937, met betrekking tot waarnemende aanstellings as hoofregistrator, registrator, adjunk-registrator en assistent-registrator van aktes, en die minimum kwalifikasies vir die bekleding van so 'n amp; met betrekking tot die gevalle waarin daar aan grondbriewe waardeur Staatsgrond oorgedra word, kaarte van die grond aangeheg moet wees; artikel 21 aan te pas ten einde die bepalings daarvan ook van toepassing te maak op sessies van regte op minerale wat bates in 'n gemeenskaplike boedel was; met betrekking tot die omstandighede waarin die titelbewyse van twee of meer stukke grond deur 'n sertifikaat van gekonsolideerde titel vervang kan word; voorsiening te maak vir die voorbehoud van 'n persoonlike serwituut in 'n akte van sessie van regte op minerale; met betrekking tot die skeiding van regte op minerale van die eiendomsreg van grond op aandrang van die Staat; sekere tegniese wysigings teweeg te bring; en om voorsiening te maak vir bykomstige aangeleenthede.

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

Wysiging van artikel 2 van Wet 47 van 1937, soos gewysig deur artikel 1 van Wet 43 van 1957; artikel 1 van Wet 43 van 1962, artikel 1 van Wet 87 van 1965, artikel 5 2 van Wet 61 van 1969, artikel 2 van Wet 3 van 1972, artikel 7 van Wet 62 van 1973, artikel 2 van Wet 27 van 1982, artikel 2 van Wet 62 van 1984, artikel 1 van Wet 14 van 1993, artikel 10 van Wet 11 van 1996, Proklamasie R.9 van 1997 en artikel 35 van Wet 47 van 1997

1. Artikel 2 van die Registrasie van Aktes Wet, 1937 (hieronder die Hoofwet 10 genoem), word hierby gewysig—

(a) deur subartikel (1A) deur die volgende subartikel te vervang:

“(1A) Wanneer die hoofregistrator van aktes of 'n registrator, 15 adjunk-registrator of assistent-registrator van aktes weens afwesigheid of om [’n] enige ander rede nie in staat is om [sy ampswerksaamhede] die werksaamhede verbonde aan dié amp te verrig nie, of wanneer so 'n amp vakant raak, kan die Minister 'n beampte in [die Staatsdiens] 20 'n registrasiekantoor of in die kantoor van die hoofregistrator van aktes magtig om in die plek van bedoelde hoofregistrator, registrator, adjunk-registrator of assistent-registrator gedurende [sy] die tydperk van sodanige afwesigheid of onvermoë op te tree, of om in die vakante amp waar te neem totdat die vakature gevul word, na gelang van die geval.”;

(b) deur subartikel (1B) deur die volgende subartikel te vervang:

“(1B) The Minister may authorise any **[officer in the public service]** person to act temporarily, and either generally or in a particular matter, as assistant registrar of deeds in respect of any deeds registry **[in addition]** additional to any assistant registrar or acting assistant registrar of [such] the deeds registry concerned. Such a person must have proven appropriate expertise or the capacity to acquire, within a reasonable time, the ability required to perform the functions of that office, regard being had to the time available and the nature and extent of those functions and the responsibilities of that office.”; and

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

“(2) No person shall be appointed as chief registrar, registrar, deputy registrar or assistant registrar of deeds after the commencement of section 2 of the Deeds Registries Amendment Act, 1984 (Act No. 62 of 1984), unless he or she has passed the **[diploma iuris examination or an] final examination** for the Diploma *iuris*, or for any other diploma or a degree, **[deemed]** recognized by the Minister for the Public Service and Administration to be equivalent thereto, and has **[served in the administrative division of the public service in one or more deeds registries for a period of not less than seven years: Provided that this subsection shall not apply with reference to the authorization of any officer under subsection (1A) or (1B) to act as contemplated in the relevant subsection]** proven appropriate expertise or the capacity to acquire, within a reasonable time, the ability required to perform the functions of that office, regard being had to the time available and the nature and extent of those functions and the responsibilities of that office.”.

Substitution of section 15 of Act 47 of 1937, as substituted by Proclamation R.9 of 1997

2. The following section is hereby substituted for section 15 of the principal Act:

“Preparation of deeds by conveyancer

15. **[Save as is]** Except in so far as may be otherwise provided in any other law, no deed of transfer, mortgage bond or certificate of title or **[registration of any kind]** any certificate of registration of whatever nature, mentioned in this Act, shall be attested, executed or registered by a registrar unless it has been prepared by a conveyancer.”.

Amendment of section 16 of Act 47 of 1937, as substituted by section 7 of Act 87 of 1965 and amended by section 7 of Act 27 of 1982 and section 4 of Act 62 of 1984

3. Section 16 of the principal Act is hereby amended in the Afrikaans text by the substitution for the word “eiendom” where it occurs for the first time, of the word “eiendomsreg”.

Amendment of section 18 of Act 47 of 1937, as amended by section 6 of Act 3 of 1972, section 8 of Act 27 of 1982 and section 10 of Act 14 of 1993

4. Section 18 of the principal Act is hereby amended—

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

“(1) The ownership of unalienated State land may be transferred from the State only by a deed of grant issued under proper authority, and **[save as hereinafter provided having]** , except where otherwise provided in this Act or the regulations, or unless the land is represented on a general

“(1B) Die Minister kan [**’n beampte in die Staatsdiens**] enige persoon magtig om tydelik, en óf in die algemeen óf in ’n bepaalde aangeleentheid, as assistent-registrateur van aktes ten opsigte van enige registrasiekantoor op te tree [**benewens**] bykomstig tot enige assistent-registrateur of waarnemende assistent-registrateur van [**daardie kantoor**] die betrokke registrasiekantoor. So ’n persoon moet beskik oor bewese toepaslike vaardighede of oor die bevoegdheid om binne ’n redelike tydperk die vermoë te verwerf wat nodig is om die werksaamhede verbonde aan daardie amp te verrig, inaggenome die tyd beskikbaar en die aard en omvang van daardie werksaamhede en die verantwoordelikhede aan daardie amp verbonde.”; en

(c) deur subartikel (2) deur die volgende subartikel te vervang:

“(2) Niemand word na die inwerkingtreding van artikel 2 van die Wysigingswet op Registrasie van Aktes, 1984 (Wet No. 62 van 1984), as hoofregistrateur, registrateur, adjunk-registrateur of assistent-registrateur van aktes aangestel nie, tensy hy of sy geslaag het in die [**diploma iuris eksamen of ’n eksamen**] finale eksamen vir die Diploma Iuris, of vir enige ander diploma of ’n graad, wat die Minister vir die Staatsdiens en Administrasie as [**daaraan gelykwaardig ag**] gelykwaardig daaraan erken, [**geslaag het en in die administratiewe afdeling van die Staatsdiens in een of meer registrasiekantore van aktes vir ’n tydperk van minstens sewe jaar gedien het**: Met dien verstande dat hierdie subartikel nie van toepassing is nie met betrekking tot die magtiging van ’n beampte kragtens subartikel (1A) of (1B) om op te tree of waar te neem soos in die betrokke subartikel beoog] en beskik oor bewese toepaslike vaardighede of oor die bevoegdheid om binne ’n redelike tydperk die vermoë te verwerf wat nodig is om die werksaamhede verbonde aan daardie amp te verrig, inaggenome die tyd beskikbaar en die aard en omvang van daardie werksaamhede en die verantwoordelikhede aan daardie amp verbonde.”.

Vervanging van artikel 15 van Wet 47 van 1937, soos vervang deur Proklamasie R.9 van 1997

2. Artikel 15 van die Hoofwet word hierby in die Engelse teks deur die volgende artikel vervang:

“Preparation of deeds by conveyancer

15. [**Save as is**] Except in so far as may be otherwise provided in any other law, no deed of transfer, mortgage bond or certificate of title or [**registration of any kind**] any certificate of registration of whatever nature, mentioned in this Act, shall be attested, executed or registered by a registrar unless it has been prepared by a conveyancer.”.

Wysiging van artikel 16 van Wet 47 van 1937, soos vervang deur artikel 7 van Wet 87 van 1965 en gewysig deur artikel 7 van Wet 27 van 1982 en artikel 4 van Wet 62 van 1984

3. Artikel 16 van die Hoofwet word hierby gewysig deur die woord “eiendom” waar dit die eerste keer voorkom, deur die woord “eiendomsreg” te vervang.

Wysiging van artikel 18 van Wet 47 van 1937, soos gewysig deur artikel 6 van Wet 3 van 1972, artikel 8 van Wet 27 van 1982 en artikel 10 van Wet 14 van 1993

4. Artikel 18 van die Hoofwet word hierby gewysig—

(a) deur subartikel (1) deur die volgende subartikel te vervang:

“(1) Die [**eiendom**] eiendomsreg van onvervreemde Staatsgrond kan [**alleen maar**] slegs deur ’n grondbrief, op bevoegde gesag uitgereik, van die Staat getransporeer word, en behalwe vir sover [**hieronder**] in hierdie Wet of die regulasies anders bepaal word, of tensy die grond op

- plan, the deed of grant must have a diagram of the land annexed thereto.”;
- (b) in the Afrikaans text of subsection (2), by the substitution for the word “eiendom” of the word “eiendomsreg”; and
- (c) in the Afrikaans text of subsections (4) and (5), by the substitution for the word “eiendom” of the word “eiendomsreg”.

Substitution of section 21 of Act 47 of 1937, as amended by section 10 of Act 43 of 1957

5. The following section is hereby substituted for section 21 of the principal Act:

“Transfer or cession from joint estate

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21. In any deed of transfer or cession lodged in a deeds registry and relating to land or rights to minerals which [is an asset] are assets in a joint estate, the surviving spouse shall be joined in his or her personal capacity with the executor of the estate of the deceased spouse except—

- (a) where the executor is [only] dealing only with the share of the deceased spouse; or
- (b) where the land [has] or rights to minerals have 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 has signed as executor] the power of attorney to pass such transfer or cession, has been signed by the surviving spouse in the capacity of executor.”.

Amendment of section 40 of Act 47 of 1937, as amended by section 18 of Act 43 of 1957 and section 16 of Act 43 of 1962

6. Section 40(1) of the principal Act is hereby amended—

- (a) in the portion preceding paragraph (a), by the substitution for the expression “Land Survey Act, 1927” of the expression “Land Survey Act, 1997”;
- (b) by the deletion of the word “and” at the end of paragraph (d);
- (c) by the substitution for paragraph (e) of the following paragraph:
- “(e) [situate] situated in the same administrative district; and”;
- (d) by the addition after paragraph (e) of the following paragraph:
- “(f) situated in the same province.”; and
- (e) by the substitution for the portion following paragraph (f), of the following:
- “the title deed or deeds of the said pieces of land may [on compliance with the requirements of this section] be superseded by a certificate of consolidated title issued by the registrar in the prescribed form, provided the requirements of this section are met: Provided that if the diagram was approved before the commencement of the Deeds Registries Amendment Act, 1998, the requirement contained in paragraph (f) shall be disregarded.”.

Insertion of section 46B in Act 47 of 1937

7. The following section is hereby inserted in the principal Act after section 46A:

“Section 46 applies *mutatis mutandis* to land otherwise subdivided

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46B. The provisions of section 46 do not preclude the registration of a general plan and opening of a register in respect of any land other than land subdivided into lots or erven, and the provisions of that section shall *mutatis mutandis* apply to such land.”.

'n algemene plan aangedui word, moet 'n kaart van die grond aan die grondbrief geheg wees.';

- (b) deur in subartikel (2) die woord "eiendom" deur die woord "eiendomsreg" te vervang; en
- 5 (c) deur in subartikels (4) en (5) die woord "eiendom" deur die woord "eiendomsreg" te vervang.

Vervanging van artikel 21 van Wet 47 van 1937, soos gewysig deur artikel 10 van Wet 43 van 1957

5. Artikel 21 van die Hoofwet word hierby deur die volgende artikel vervang:

10 "Transport of sessie vanuit gemeenskaplike boedel

21. In 'n transportakte of akte van sessie by 'n registrasiekantoor ingedien, wat betrekking het op grond of regte op minerale wat ['n bate is] bates in 'n gemeenskaplike boedel is, moet die langslewende [eggenoot] gade in sy of haar persoonlike hoedanigheid by die eksekuteur van die boedel van die oorlede [eggenoot] gade gevoeg word, behalwe—
- 15 (a) waar die eksekuteur [alleen] met slegs die oorlede [eggenoot] gade se aandeel handel; of
- (b) waar die grond of regte op minerale verkoop is om die skulde van die gemeenskaplike boedel te vereffen; of
- 20 (c) waar die gemeenskaplike boedel gekonsolideer is en die langslewende [eggenoot] gade geadieer het; of
- (d) waar bedoelde transport of sessie ten gunste van die langslewende [eggenoot] gade is; of
- 25 (e) waar [die langslewende eggenoot] die prokurasie om bedoelde transport of sessie te gee [as], deur die langslewende gade in die hoedanigheid van eksekuteur geteken [het] is."

Wysiging van artikel 40 van Wet 47 van 1937, soos gewysig deur artikel 18 van Wet 43 van 1957 en artikel 16 van Wet 43 van 1962

6. Artikel 40(1) van die Hoofwet word hierby gewysig—
- 30 (a) deur in die gedeelte wat paragraaf (a) voorafgaan, die uitdrukking "Opmetingswet, 1927" deur die uitdrukking "Grondopmetingswet, 1997" te vervang;
- (b) deur die woord "en" aan die einde van paragraaf (d) te skrap;
- (c) deur paragraaf (e) deur die volgende paragraaf te vervang:
- 35 "(e) wat in dieselfde administratiewe distrik geleë is; en";
- (d) deur na paragraaf (e) die volgende paragraaf by te voeg:
- "(f) wat in dieselfde provinsie geleë is,"; en
- (e) deur die gedeelte wat ná paragraaf (f) volg, deur die volgende te vervang:
- 40 "kan die titelbewys of titelbewyse van bedoelde stukke grond vervang word deur 'n sertifikaat van gekonsolideerde titel deur die registrateur in die voorgeskrewe vorm uitgereik [vervang word], mits aan die vereistes van hierdie artikel voldoen [is] word: Met dien verstande dat indien die kaart voor die inwerkingtreding van die Wysigingswet op Registrasie van Aktes, 1998, goedgekeur is, die vereiste vervat in
- 45 paragraaf (f) buite rekening gelaat word."

Invoeging van artikel 46B in Wet 47 van 1937

7. Die volgende artikel word hierby in die Hoofwet ingevoeg na artikel 46A:

"Artikel 46 *mutatis mutandis* van toepassing op grond andersins onderverdeel

- 50 **46B.** Die bepalings van artikel 46 verhinder nie die registrasie van 'n algemene plan en opening van 'n register ten opsigte van enige ander grond as grond wat in persele of erwe verdeel is, nie, en die bepalings van daardie artikel is *mutatis mutandis* op sulke grond van toepassing."

Substitution of section 67 of Act 47 of 1937

8. The following section is hereby substituted for section 67 of the principal Act:

“Reservation of personal servitudes

67. A personal servitude may be reserved by condition in a deed of transfer of land or in a deed of cession of rights to minerals, if the reservation is in favour of the transferor or cedent, or in favour of the transferor or cedent and his or her 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 or given from the joint estate of spouses who were married in community of property.”.

Amendment of section 72 of Act 47 of 1937, as amended by section 33 of Act 43 of 1957, section 30 of Act 43 of 1962 and section 10 of Act 3 of 1972

9. Section 72 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Whenever the Minister [of Agriculture] to whom the responsibility for immovable property belonging to the State has been entrusted, deems it necessary that rights to minerals be separated from the ownership of State land or land granted or transferred subject to a reservation of rights to minerals in favour of the State, he or she may apply in writing to the registrar for the issue in favour of the Government of a certificate in respect of [such] the rights to minerals [as may be set forth] that are specified in the application, and the registrar shall thereupon issue such a certificate in the form prescribed by regulation and endorse on the title deed of the land in question that such rights and the ownership of the land have been so separated.”.

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, section 9 of Act 62 of 1984, section 4 of Act 75 of 1987, section 7 of Act 3 of 1988, section 6 of Act 24 of 1989, section 32 of Act 113 of 1991, section 22 of Act 14 of 1993, section 68 of Act 67 of 1995, section 9 of Act 11 of 1996 and Proclamation R.9 of 1997

10. Section 102 of the principal Act is hereby amended by the substitution for the definition of “court” of the following definition:

“ ‘court’ or ‘the court’ means the [provincial or local division of the Supreme] High Court having jurisdiction [or], and includes any judge thereof;”.

“Diagram” in Afrikaans text of Land Survey Act, 1997, to be regarded and treated as “kaart” for purposes of Act 47 of 1937

11. A document which is a “diagram” as defined in the Afrikaans text of section 1 of the Land Survey Act, 1997 (Act No. 8 of 1997), must be regarded and treated for the purposes of the principal Act as a “kaart” as defined in the Afrikaans text of section 102 of the principal Act.

Short title

12. This Act will be called the Deeds Registries Amendment Act, 1998.

Vervanging van artikel 67 van Wet 47 van 1937

8. Artikel 67 van die Hoofwet word hierby deur die volgende artikel vervang:

“Voorbehoud van persoonlike serwitute

5 67. 'n Persoonlike serwituut kan deur 'n voorwaarde in 'n transportakte van grond of in 'n akte van sessie van regte op minerale voorbehoud word, as dit 'n voorbehoud is ten gunste van die transportgewer of sedent, of ten gunste van die transportgewer of sedent en sy of haar [eggenoot] gade of die langselewende van hulle as [hul] hulle in gemeenskap van goedere getroud is, of ten gunste van die langselewende [eggenoot] gade as
10 transport of sessie gegee word uit die gemeenskaplike boedel van [eggenote] gades wat in gemeenskap van goedere getroud was.”.

Wysiging van artikel 72 van Wet 47 van 1937, soos gewysig deur artikel 33 van Wet 43 van 1957, artikel 30 van Wet 43 van 1962 en artikel 10 van Wet 3 van 1972

15 9. Artikel 72 van die Hoofwet word hierby gewysig deur subartikel (2) deur die volgende subartikel te vervang:

“(2) Wanneer die Minister [van Landbou] aan wie die verantwoordelikheid vir onroerende goed behorende aan die Staat toevertrou is, dit nodig ag dat regte op minerale geskei word van die eiendomsreg van Staatsgrond of grond toegeken of getransporteer [onder] onderworpe aan 'n voorbehoud van regte op minerale ten
20 gunste van die Staat, [geskei word,] kan hy of sy skriftelik by die registrateur aansoek doen om die uitreiking, ten gunste van die Regering, van 'n sertifikaat ten opsigte van [sodanige] die regte op minerale [as] wat in die aansoek vermeld word, en die registrateur moet daarop so 'n sertifikaat uitreik in die vorm by regulasie [voorgeskrewe vorm uitreik] voorgeskryf, en op die titelbewys van die
25 betrokke grond endosseer dat bedoelde regte en die eiendomsreg van die grond aldus geskei is.”.

**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, artikel 9 van Wet 62 van 1984, artikel 4 van Wet 75 van 1987, artikel 7 van Wet 3 van 1988, artikel 6 van Wet 24
30 van 1989, artikel 32 van Wet 113 van 1991, artikel 22 van Wet 14 van 1993, artikel 68 van Wet 67 van 1995, artikel 9 van Wet 11 van 1996 en Proklamasie R.9 van 1997**

10. Artikel 102 van die Hoofwet word hierby gewysig deur die omskrywing van “hof” deur die volgende omskrywing te vervang:
35 “ ‘hof’ of ‘die hof’ beteken die bevoegde [provinsiale of plaaslike afdeling van die Hooggeregshof of 'n] Hoë Hof, en omvat dit enige regter daarvan;”.

“Diagram” in Afrikaanse teks van Grondopmetingswet, 1997, beskou en behandel te word as “kaart” by toepassing van Wet 47 van 1937

40 11. 'n Dokument wat 'n “diagram” is soos omskryf in die Afrikaanse teks van artikel 1 van die Grondopmetingswet, 1997 (Wet No. 8 van 1997), word by die toepassing van die Hoofwet beskou en behandel as 'n “kaart” soos in die Afrikaanse teks van artikel 102 van die Hoofwet omskryf.

Kort titel

12. Hierdie Wet word die Wysigingswet op Registrasie van Aktes, 1998, genoem.

