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GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF RURAL DEVELOPMENT AND LAND REFORM

NO. 117

07 FEBRUARY 2020

LAND DONATIONS POLICY



Agriculture, Forestry and Fisheries
Rural Development and Land Reform



The Minister of Agriculture, Land Reform and Rural Development, Ms Thoko Didiza, hereby publishes the Land Donations Policy for public comment.

Members of the public are invited to submit written comments, within 60 calendar days of the publication of this notice, to the following address:

By post to: The Director-General: Department of Agriculture, Land Reform and Rural Development
Attention: Mr Hilton Toolo
Private Bag X 833
0001

By fax:

By email: donationspolicy@drdlr.gov.za

Hand delivery: 184 Jeff Masemola Street, Pretoria, (Old Building Reception)

Comments received after the closing date will not be considered.

A copy of the policy document is also in the department website: www.drdlr.gov.za

THE PROBLEMS THAT THE LAND DONATIONS POLICY SEEKS TO ADDRESS

Some of the problems that the Land Donations Policy seeks to assist in resolving are the following:

1. The slow pace of land reform;
2. The persistence of landlessness and homelessness;
3. Insecure land tenure;
4. The sustained challenges of inequality, unemployment and poverty;
5. Unfair access to land by women;
6. Limited youth enterprise opportunities and high levels of youth unemployment;
7. Food and nutrition insecurity;
8. Challenges with access to social, economic and cultural opportunities;
9. Poor access to services by many South Africans, and
10. Poor post-transfer/production support.

THE POLICY PRINCIPLES

Amongst the key principles of the Land Donations Policy are the following:

1. Contributing to equitable access to land by citizens [s25(5)];
2. Upholding corporate good citizenship;
3. Being part of a caring nation;
4. Targeting land for strategic community economic facilities and public amenities;
5. Assurance and maintenance of uniform procedures and processes for all land acquisitions including through land donations;
6. All donated land allocated directly or ultimately to beneficiaries (within reasonable time);
7. Contributing to adequate food, shelter and comfort for all;
8. Contributing to social cohesion and nation building;
9. Ensuring that all citizens have a material basis for being South Africans; and
10. Upholding the preservation of arable agricultural land as it is a scarce resource in South Africa.

THE POLICY OBJECTIVES

The objectives of the Land Donations Policy are to:

1. Increase opportunities for land ownership amongst farm dwellers, labour tenants, small families and cooperative farmers, the landless in informal settlements, women, youth, and persons with disabilities;
2. Ensure that the lower strata of peri-urban and rural citizens are afforded meaningful opportunities to participate in the economy;
3. Promote primary shelter within proximity to employment opportunities including agricultural allotments, urban agriculture and agri-villages and urban agriculture;
4. Contribute to the development of sustainable human settlements as well as economic and public amenities;
5. Contribute land for facilities for incubation of youth and new entrants as well as enterprise development and innovation centres;
6. Provide a framework to respond to the various forms and configurations in which land donations come;
7. Provide a framework for managing risks associated with property donations, and
8. Provide for the processes and institutional arrangements through which donations will be managed.

POSSIBLE DONORS

According to the report of the Presidential Advisory Panel on Land Reform and Agriculture (August 2019), land donations must be viewed as part of a system that avails land for immediate use to land reform recipients in addition to the broader question of land acquisition and allocation.

Land donations should be expedited from large institutional landowners. These include agri-business, mining companies, financial institutions, churches and others.

Specific procedures should be established to respond to offers of donations, so that the department becomes responsible and expedites acquisition and transfer of the donated land.

The state will also undertake an assessment of all state and public land that is suitable and available for distribution (donation) to the prioritised beneficiaries for agricultural and secondary agricultural production, residential and human settlement, commonage and industrial development.

THE POLICY RISKS

Some of the anticipated risks arising from the Land Donations policy include the following:

1. Mining land donations that should come with a certified "Closure Certificate" from the Department of Mineral Resources and Energy;
2. All land donations will also need to be assessed to ascertain if there are any claims to such land in terms of the Restitution of Land Rights Act (22), 1994;
3. Procedural abuse and malaise related to sub-divisions of agricultural land;
4. Increasing social, racial, gender and economic dualism and socio-economic disparities;
5. The growing youth despair, desperation and increased social ills; and
6. The growing perception of landowners as unwilling participants in the land reform process.

THE BENEFICIARIES OF DONATED LAND

Based on experience that some donors of land will come with preselected beneficiaries, it is assumed that donated land will be delivered as follows, where:

1. The owner wants to donate land to long-term occupiers and/or others;
2. The donor may want to donate the land and propose that the state uses the value of the land, or the amount it may have paid the donor (if it was bought), to reinvest into the donated land and towards its new beneficiaries;
3. It may also be a land donation that comes with no beneficiaries, for instance when the donor may want to go on retirement or urgently emigrate; and
4. It might be a purely voluntary donation.

As indicated, in cases where there are no identified beneficiaries, the farm dwellers, labour tenants, small families and cooperative farmers, the landless in informal settlements, women, youth, and persons with disabilities will be prioritised.

Land delivery through municipalities

The Beneficiary Selection and Land Allocation Policy also provides for municipalities, local authorities and communities to apply for acquisition of properties for commonage, residential, human settlement and industrial development purposes; these may also be to address emergencies such as natural disasters.

Such applications will be tabled directly at the appropriate Selection and Allocation Panel.

Donated land without beneficiaries will also be used for such purposes.

THE LAND DONATIONS PROCESSES

The state will register both these types of properties and a due diligence process will follow. This due diligence process will include assessments in terms of land suitability and the extent of the state's fiduciary, administrative and technical responsibilities for such land. This will also involve land rights enquiries, farm/property assessments and special technical attention given to the donations concerned.

As indicated, achieve transparent and credible processes for donated land management, the department will register the land and link it to its land reform and land management system.

Donated land coming with pre-selected beneficiaries

Where land is made available for donation and comes with preselected beneficiaries, it will be prioritised for disposal. Such land will follow the due process but will not be advertised for allocation and will be tabled directly at the appropriate Selection and Allocation Panel to process it and determine the extent of the state's responsibilities to the preselected beneficiaries.

Where the land has no identified beneficiaries

Where the donated land has no identified beneficiaries, it will be treated as provided for in the Beneficiary Selection and Land Allocation policy and prepared for the beneficiaries who have been prioritised by the Beneficiary Selection and Land Allocation Panel.

Due diligence will also be required to check whether there is a claim to the land in terms of the Restitution of Land Rights Act (22), 1994.

Where required, an added assessment would be undertaken in terms of a rating methodology and software developed, to rank strategically located land based on natural resources, availability of infrastructure and proximity to markets.

Land Donated Primarily for Agriculture or for Human Settlement Purposes

All donated land that is agricultural and cleared, will be registered and logged into the Agricultural Land Holdings Account. Such land will be advertised for selected beneficiaries to apply and this will follow due processes outlined in Annexure A below.

Where the donated land is for human settlements, it will be processed via the Department of Human Settlements, Water and Sanitation.

Valuation of donated land

The valuation of the donated land will be done after the above-mentioned assessments have been conducted.

Sub-divisions and land

If sub-division or consolidation of properties is required, the proposed sub-division will be subjected to the prescripts of the Spatial Planning and Land Use Management Act, 2013 (Act No. 16 of 2013).

Transfer of donated land

All land acquired for donation will be subjected to the normal transfer process, which will include the appointment of conveyances, the transfer of the properties, property management and land disposals to the identified beneficiaries. This will be in the form the signing of lease agreements and/or hand over of the properties in freehold form, mainly to farm workers, labour tenants, restitution claimants and other designated groups.

In certain instances, a reversionary right to the state will apply to such land

The procedural steps are outlined under **Annexure “A”**

Annexure “A”

The Procedural Steps:

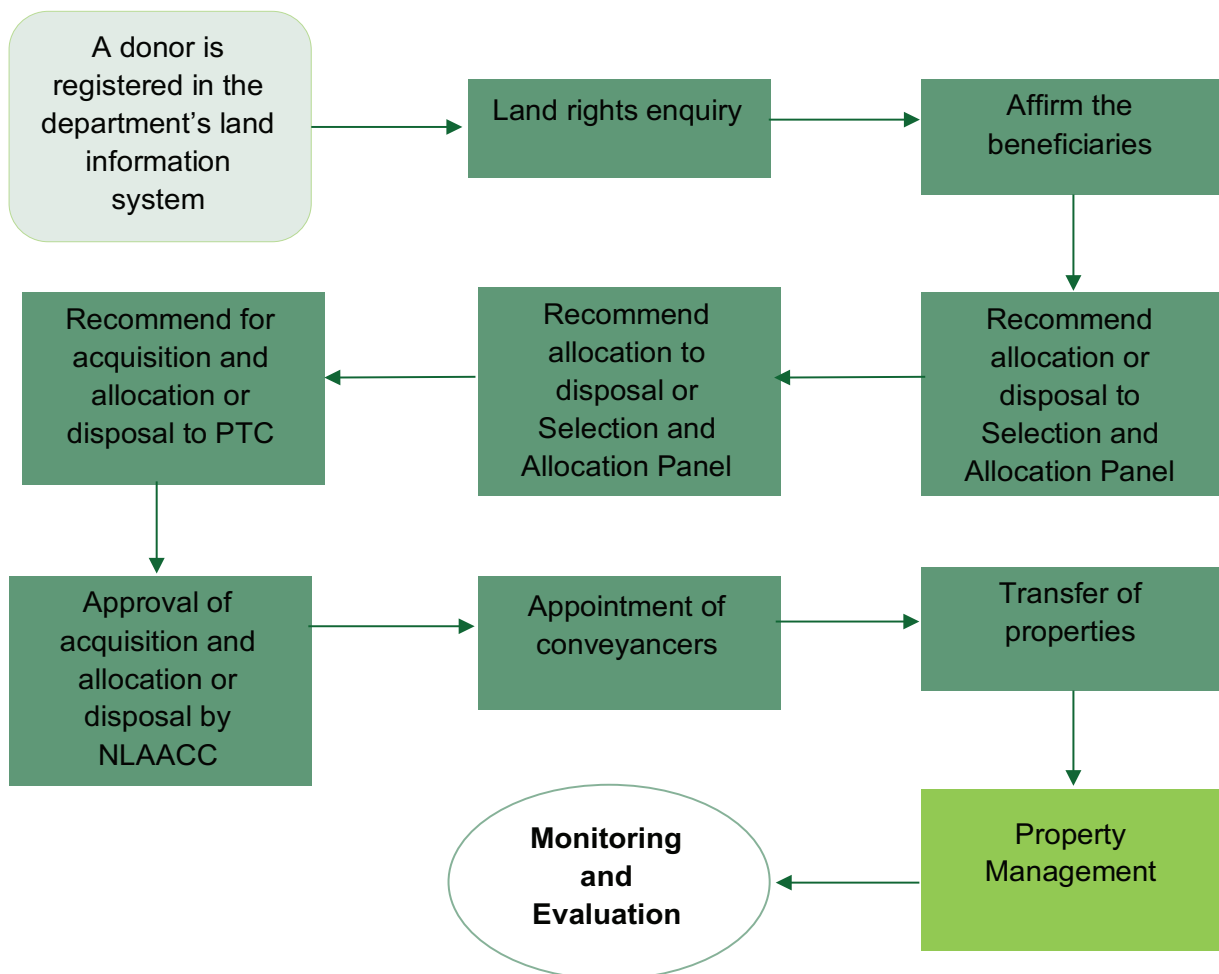
1. Donation to long-term residents or other identified beneficiaries for agriculture

- i) The donated land is registered as such;
- ii) A land rights enquiry is undertaken;
- iii) Planning funds to conduct farm assessments, property valuation, due diligence and any other planning activities as per Act 126 delegations are approved;
- iv) Recommendations on allocation or disposal to the Selection and Allocation Panel are made;
- v) Analyses and recommendations for acquisition and allocation or disposal to the Provincial Technical Committee;
- vi) The final approval for acquisition and allocation or disposal is made by National Land Acquisition, Allocation Control Committee (NLAACC);
- vii) Land transfers procedures are affected:
 - a. appointment of conveyancers
 - b. transfer of the property
 - c. property management
- viii) Monitoring and Evaluation is routinely undertaken.

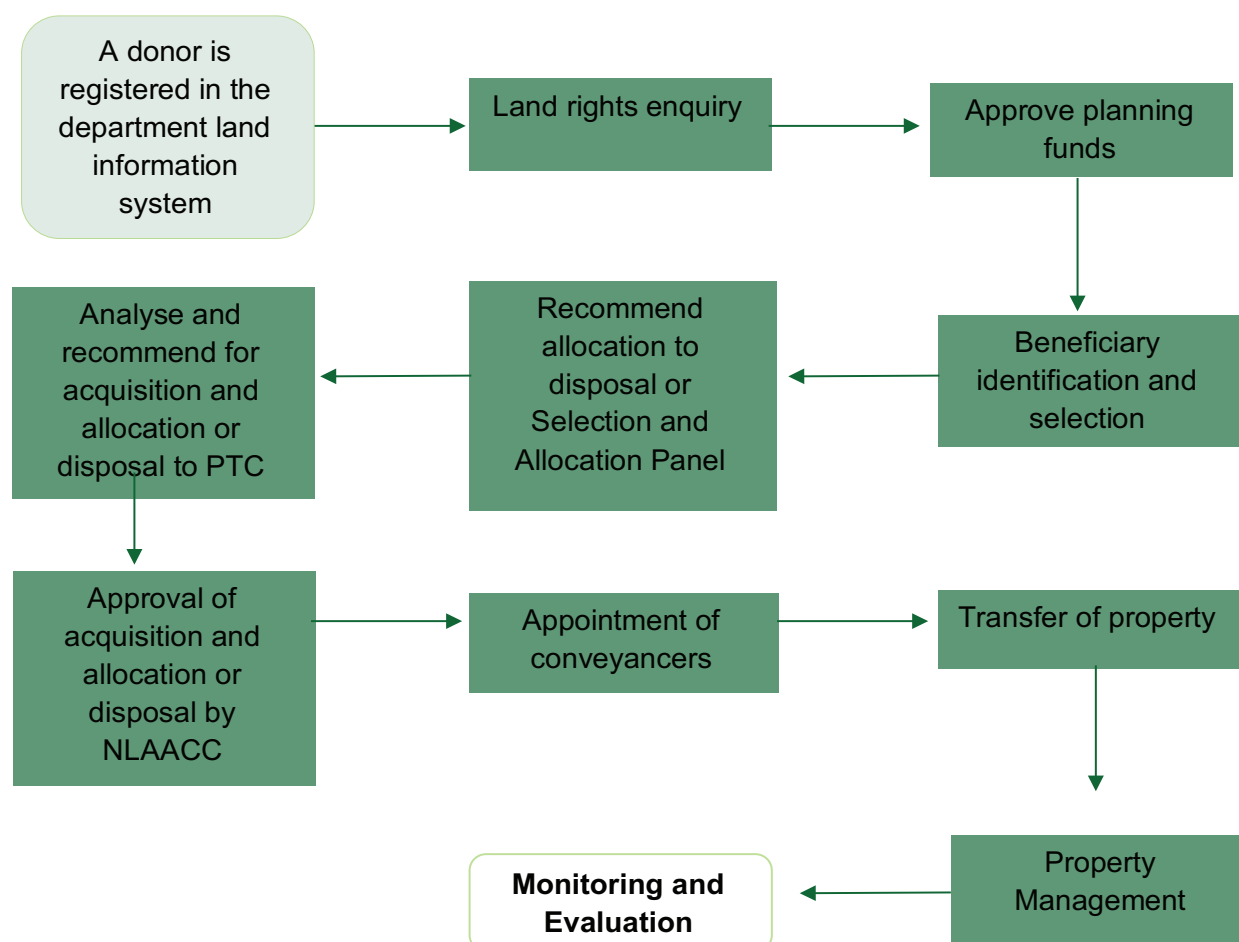
2. Donations without identified beneficiaries by those leaving RSA and others for agriculture

- i) The donated land is registered as such;
- ii) A land rights enquiry is undertaken;
- iii) Planning funds to conduct farm assessments, property valuation, due diligence and any other planning activities as per Act 126 delegations, are approved;
- iv) Beneficiary identification and selection is undertaken;
- v) Analysis and recommendations for acquisition and allocation or disposal to the Provincial Technical Committee are made;
- vi) Recommendations on allocation or disposal to the Selection and Allocation Panel are made;
- vii) The final approval for acquisition and allocation or disposal is made by NLAACC;
 - a) Land Transfers Procedures
 - b) Appointment of conveyancers;
 - c) Transfer of the property; and
 - d) Property management.
- viii) Monitoring and Evaluation is routinely undertaken.

DONATION TO LONG-TERM RESIDENTS OR OTHER IDENTIFIED BENEFICIARIES



DONATIONS WITHOUT IDENTIFIED BENEFICIARIES



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