

CHAPTER 20:05
DEEDS REGISTRIES ACT

Acts 10/1959, 43/1962, (s. 2), 46/1962, 22/1964, (s. 54), 38/1964 (s. 25), 9/1968, 6/1971 (s. 69), 77/1971, 57/1972, (s. 20), 6/1973, 39/1973, (s. 21), 42/1974, 22/1976 (s. 87), 5/1979, 8/1980, 15/1981, 32/1981, 4/1983, 18/1989 (s. 18), 2/1991, 23/1991, 5/1998, 14/1999, 22/2001 (s. 4); R.G.N.s 801/1963, 214/1964, 217/1970, 144/1973, 1135/1975.

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

Section

1. Short title.
2. Interpretation.

PART II

ADMINISTRATION

3. Deeds registries.
4. Appointment of officers.
5. Duties of registrars.
6. Powers of registrars.
7. Transactions affecting land in both areas defined in Schedule.
8. Registered deeds not to be cancelled except upon order of court.
9. Inspection of records and supply of information.

PART III

REGISTRATION

General Provisions

10. When registration takes place.
11. Deeds to follow sequence of their relative causes.
12. Registration of land or real right in favour of trustee.
13. Preparation of deeds.
14. How real rights shall be transferred.
15. Special provisions relating to women.

PART IV

REGISTRATION OF LAND

Transfer of Land

16. Transfer of State land.
17. Registration of real rights in State land.
18. Cancellation of title deeds on direction of Minister.
19. Form and manner of execution of deeds of transfer.
20. Particulars required in deed.
21. Diagram deeds.
22. Necessity for diagrams despite issue of dispensation certificate.
23. Transfer from joint estate.
24. Transfer of two or more pieces of land by one deed.
25. Transfer of undivided shares in land by one deed.
26. Special provisions relating to transfer of undivided shares.
27. Special provisions relating to undivided shares with exclusive right of occupation.
28. Transfer to unascertained children.
29. Deeds of partition transfer.
30. Requisites where share in land partitioned is mortgaged.
31. Requisites where share in land partitioned is subject to other rights.
32. Effect of compliance with sections 30 and 31.
33. Partition of land subject to *fidei commissum*.

Substituted Title Deeds

34. Certificate of registered title of undivided share.
35. Certificate of registered title of aggregate share.
36. Certificate of registered title of one or more properties held under one deed.
37. Conditions governing issue of certificates of registered title.
38. Certificate of registered title taking place of lost or destroyed deed.
39. Certificate of registered title to correct error in registration.
40. Certificate of consolidated title of two or more pieces of land.
41. Certificate of registered title of portion of piece of land.

Rectification of Title by Endorsement

42. Rectification of title by endorsement.
43. Transfer or cession by means of endorsement.

PART V

BONDS

General Provisions

44. Execution of bonds.
45. Requirements in case of bonds intended to cover future advances.
46. Cession of bond to secure future advances.
47. Exclusion of general clause in mortgage bonds.
48. Passing of bonds in favour of agents.
49. Requirements in case of bonds passed by or in favour of two or more persons.

Rights of Mortgagees

50. Transfer of hypothecated property.
51. Substitution of debtor in respect of bond.
52. Notice by Master in connection with insolvent estates and further provisions relative to insolvent estates.
53. Endorsement of bond after sale in execution.
54. Consent of bond holder to registration of merger of rights of mortgagor.

Notarial Bonds

55. Where notarial bond to be registered.

PART VI

RIGHTS IN IMMOVABLE PROPERTY

General

56. Restriction on registration of rights in immovable property.

Servitudes

57. Creation of servitudes.
58. Requirements for preparation and submission of deed of servitude.
59. Restriction on registration of certain personal servitudes.
60. Cancellation of registration of servitude.
61. Transfer and mortgage of land with personal servitude thereon.
62. Joint transactions by fiduciary and *fidei* commissary.
63. Certain restrictive conditions to be of no force and effect and certain alienations, etc., of property not to be invalid on certain grounds.
64. Sale of land on instalments.

Leases

65. Registration of leases and sub-leases.
66. Termination of registered lease.
67. Where lease to be registered.
68. Cessions of leases and sub-leases.
69. No hypothecation of leases and sub-leases.
70. Bonds hypothecating leases or sub-leases.

PART VII

GENERAL

71. Cancellation of registration on lapse of certain registered rights.

72. Transfer and cession not to be passed as security.
 73. Transfer of immovable property by executor.
 74. Transfer duty to be paid before transfer.
 75. Registration of change of name.
 76. Renumbering of properties.
 77. Deletion of conditions of title.
 78. Attestation of powers of attorney.
 79. Notice to registrar of application to court.
 80. Production of documents in evidence.
 81. Penalty for false statement in affidavit.
 82. Substituted copy of lost deed supersedes original which must be surrendered on recovery.
 83. Appeals to Planning Appeals Board.
 84. Exemption from law for acts or omissions in deeds registry.
 85. Fees of office not chargeable in certain cases.
 86. Formal defects.
 87. Regulations.
 88. Special jurisdiction of magistrates courts.
- SCHEDULE: Areas of Deeds Registries.

AN ACT to make provision for the establishment of deeds registries and for the appointment of registrars of, deeds and to make further and different provision, for the registration of deeds and conventional hypothecations; and to make provision for other matters incidental to the foregoing.

[Date of commencement: 2nd January, 1960.]

PART I
PRELIMINARY

1 Short title

This Act may be cited as the Deeds Registries Act [*Chapter 20:05*].

2 Interpretation

In this Act—

“conveyancer” means a person registered as such in terms of the Legal Practitioners Act [*Chapter 27:07*];

“court” means the High Court;

“deeds registry” means—

- (a) when used in relation to immovable property, the deeds registry which serves the area in which that property is situate;
- (b) when used in relation to any deed or other document, the deeds registry in Zimbabwe wherein that deed or other document is registered or registrable;
- (c) when used in relation to a registrar, the deeds registry of which he is in charge;

“diagram” means a diagram which has been signed by a person recognized by law as a land surveyor and which has been approved or certified by the Surveyor-General, and includes a diagram or a copy thereof prepared in the Surveyor-General’s office and approved or certified as aforesaid, or a diagram which has at any time before the 2nd January, 1960, been accepted for registration in a deeds registry or the Surveyor-General’s office;

“dispensation certificate” means a certificate issued by the Surveyor-General in terms of section 49 of the Land Survey Act [*Chapter 20:12*];

“general plan” means a plan which represents the relevant positions and dimensions of two or more pieces of land and has been signed by a person recognized by law as a land surveyor, and which has been approved or certified as a general plan by the Surveyor-General, and includes a general plan or copy thereof prepared in the Surveyor-General’s office and approved or certified as aforesaid, or a general plan which has at any time prior to the 2nd January, 1960, been accepted for registration in a deeds registry or the Surveyor-General’s office;

“immovable property” includes any registered lease of land which, when entered into, was for a period of not less than ten years or for the natural life of the lessee or any other person mentioned in the lease, or which is renewable from time to time at the will of the lessee indefinitely or for periods which together with the first period amount in all to not less than ten years;

“land” includes an undivided share in land;

“legal practitioner” means a person registered as such in terms of the Legal Practitioners Act [Chapter 27:07];

“Master” means the Master of the High Court or the Assistant Master of the High Court at Bulawayo;

“Minister” means the Minister of Justice Legal and Parliamentary Affairs or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“mortgage bond” means a bond attested by the registrar specially hypothecating immovable property;

“notarial bond” means a bond attested by a notary public hypothecating movable property generally or specially;

“notarial deed” means a deed attested by a notary public, but does not include—

- (a) a document with a signature which is merely authenticated by a notary public; or
- (b) a copy of a document which has been certified as correct by a notary public;

“notary public” means a person registered as such in terms of the Legal Practitioners Act [Chapter 27:07] and, in relation to any document executed outside Zimbabwe, means a person lawfully practising as such in the place where the document was executed;

“owner”, in relation to immovable property, means the person registered as the owner or holder thereof and includes the trustee in an insolvent estate, the liquidator of a company 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 so long as such trustee, liquidator or legal representative is acting within the authority conferred on him by law;

“real right” means any right which becomes a real right upon registration;

“registered” means registered in a deeds registry;

“registrar” means a registrar of deeds appointed under this Act and, when used in relation to any deeds registry, means the registrar in charge of that deeds registry; and, when used in relation to a document, means a registrar in charge of the deeds registry wherein that document is registered or registrable or intended to be used or filed;

“registry duplicate” means the counterpart or copy of a deed consisting of more than one copy which is filed or intended to be filed of record in a deeds registry;

“share”, in relation to land, means undivided share;

“stand or lot” means any piece of land registered as a stand, lot or plot in a deeds registry;

“township” includes—

- (a) an area of land registered in a deeds registry as one or more pieces of land, either contiguous or in close proximity to each other which is being used or is intended to be used or which is being or is intended to be laid out or divided into sites for residential, business, industrial, building, occupational or similar purposes, or is intended or destined or likely to be used for any such purpose; and
- (b) any township established, approved, proclaimed or otherwise recognized as such under any enactment;

“unalienated State land” means State land in respect of which no title deed, other than a certificate of State title, exists.

PART II

ADMINISTRATION

3 Deeds registries

(1) There shall be deeds registries at Harare and Bulawayo, each to serve its respective area as defined in the Schedule.

(2) In each of the deeds registries in Zimbabwe existing at the 2nd January, 1960, there shall be carried out to completion, as if this Act had not been passed, all matters which, immediately before such date, were pending in that registry, and each registry mentioned in subsection (1) shall be a continuation of the registry existing at the 2nd January, 1960, in the area served thereby.

4 Appointment of officers

(1) Subject to the law relating to the Public Service, the Minister—

- (a) shall appoint an officer to be styled the Chief Registrar of Deeds, who shall exercise general supervision and direction of the deeds registries in Zimbabwe; and
- (b) may appoint such registrars of deeds and other officers as the Minister deems necessary for the better carrying out of the provisions of this Act.

(2) Any person appointed in terms of subsection (1) shall, if the Minister so directs, have the power to do any act or thing which may be lawfully done by a registrar of deeds under this Act or any other enactment.

(3) Each registrar shall have a seal of office.

5 Duties of registrars

The registrar shall, subject to this Act—

- (a) take charge of all records which were, prior to the 2nd January, 1960, or may become after such date, records of any deeds registry in respect of which he has been appointed and preserve or deal with such records in such manner as may be prescribed;
- (b) examine all deeds or other documents submitted to him for execution or registration, and after examination reject any such deed or other document the execution or registration of which is not permitted by this Act or by any other law, or to the execution or registration of which any other valid objection exists;
- (c) register grants or leases of land lawfully issued by the State and register amendments, renewals and cancellations of such leases and releases of any part of the property leased;
- (d) attest or execute and register deeds of transfer of land and execute and register certificates of title to land;
- (e) attest or execute and register mortgage bonds;
- (f) register cessions, including cessions made as security, of registered mortgage bonds and register cancellations of such cessions if made as security;
- (g) register cancellations of registered mortgage bonds, part payments of the capital amount due in respect of any such bond other than a bond intended to secure future debts, releases of any part of the property hypothecated thereby, or of all such property if the debt is further secured by a collateral bond, releases of any joint debtor or of any surety in respect of any such bond, the substitution of another person for a debtor in respect of any such bond and reductions of cover in respect of any bond intended to secure future debts;
- (h) register waivers of preference in respect of registered mortgage bonds in favour of other bonds, whether registered or about to be registered;
- (i) register waivers of preference in respect of registered real rights in land, in favour of mortgage bonds, whether registered or about to be registered;
- (j) register notarial bonds and cessions thereof, including cessions made as security;
- (k) register cancellations of notarial bonds and cessions thereof if made as security, part payments of the capital amount due in respect of any such bond other than a bond intended to secure future debts, releases of any part of the property hypothecated thereby, or of all such property if the debt is further secured by a collateral bond, releases of any joint debtor or of any surety in respect of any such bond, the substitution of another person for a debtor in respect of any such bond and reductions of cover in respect of any bond intended to secure future debts;
- (l) register waivers of preference in respect of registered notarial bonds in favour of other bonds, whether registered or about to be registered;
- (m) register antenuptial contracts, such notarial deeds of donation, including a donation to be held in trust, and such other deeds having reference to persons and property within the area served by the deeds registry in question as are required or permitted by law to be registered;
- (n) register any servitude, whether personal or praedial, and record the modification or extinction of any registered servitude;
- (o) register notarial deeds of lease, sub-lease and cessions of lease or sub-lease of land and notarial deeds of renewal and also register cancellations of such leases and sub-leases and releases of any part of the property leased;
- (p) register any real right, not specifically referred to in this section, and any cession, modification or extinction of any such registered right;
- (q) register against any registered bond any agreement entered into by the mortgagor and the registered holder of that bond whereby any terms of that bond have been varied;
- (r) register general plans of stands or lots or of subdivisions of land, open registers of the stands, lots or subdivisions of land shown on such general plans and record in such registers the conditions upon which the stands, lots or subdivisions have been laid out or established;
- (s) record powers of attorney whereby the agents named therein are authorized to act generally for the principals granting such powers, or to carry out a series of acts or transactions registrable in a deeds registry, and file copies of such powers recorded in the other deeds registry which have been certified by the registrar thereof;
- (t) make, in connexion with the registration of any deed or other document, or in compliance with the requirements of any enactment, such endorsements on any registered deed or other document as may be necessary to give effect to such registration or to the objects of such enactment;
- (u) record all notices, returns, statements or orders of court lodged with him in terms of any law;
- (v) remove from his records, with the approval of the Master and after the lapse of five years from the date of entry in such records, any entry made therein, whether before or after the 2nd January, 1960, in pursuance of the transmission to him of a notice of liquidation or an order of liquidation or sequestration;

(w) keep registers and make such entries therein as are necessary for the purpose of carrying out the provisions of this Act or any other enactment and of maintaining an efficient system of registration calculated to afford security of title and ready reference to any registered deed; and, generally, the registrar shall discharge all such duties as by law may or are to be discharged by a registrar of deeds or as are necessary to give effect to the provisions of this Act.

6 Powers of registrars

A registrar shall have power—

- (a) to require the production of proof upon affidavit or otherwise of any fact necessary to be established in connection with any matter or thing sought to be performed or effected in his registry;
- (b) whenever it is, in his opinion, necessary or desirable to rectify in any deed or other document registered or filed in his registry, an error in the name or description of any person or property mentioned therein or in the conditions affecting any such property or in the conditions of any bond, to rectify such error, subject to the following conditions and exceptions—
 - (i) every person appearing from the deed or other document to be interested in the rectification shall have consented thereto in writing;
 - (ii) if any such person refuses to consent thereto or his consent thereto cannot be obtained the rectification may be made on the authority of an order of court;
 - (iii) if the error is common to two or more deeds or other documents, including any register in his registry, the error shall be rectified in all those deeds or other documents;
 - (iv) no such rectification shall be made if it would have the effect of transferring any right;
 - (v) if the error rectified occurred in a notarial deed, he shall require notice to be given of the rectification to the notary public concerned or, if such legal practitioner is deceased or has ceased to practise, to the person having lawful custody of his protocol;
- (c) to issue, under conditions prescribed by regulation, certified copies of deeds or other documents registered or filed in his registry;
- (d) if, in his opinion, any deed or other document submitted to him has become illegible or unserviceable or has been altered or tampered with by any unauthorized person, to require that a certified copy thereof be obtained to take its place.

7 Transactions affecting land in both areas defined in Schedule

If it is sought to register simultaneous transactions affecting separate pieces of land situate within both areas defined in the Schedule, the registrars may, subject to the provisions of any regulations, by mutual arrangement, effect such registration in such manner as may be found expedient.

8 Registered deeds not to be cancelled except upon order of court

(1) Save as is otherwise provided in this Act or in any other enactment, no registered deed of grant, deed of transfer, certificate of title or other deed conferring or conveying title to land, or any real right in land other than a mortgage bond, and no cession of any registered bond not made as security, shall be cancelled by a registrar except upon an order of court.

(2) Upon the cancellation of any deed pursuant to an order of court—

- (a) the deed under which the land or any real right in land was held immediately prior to the registration of the deed which is cancelled shall be revived to the extent of such cancellation unless a court orders otherwise; and
- (b) the registrar shall make the appropriate endorsements on the relevant deeds and entries in the registers.

9 Inspection of records and supply of information

A registrar shall, on conditions prescribed and upon payment of the prescribed fees under this Act or any other enactment, permit any member of the public to inspect the public registers and other public records in his registry, 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 2nd January, 1960, could be made or obtained.

PART III

REGISTRATION

General Provisions

10 When registration takes place

(1) Deeds executed or attested by a registrar shall be deemed to be registered upon the affixing of the registrar's signature thereto:

Provided that no such deed which is one of a batch of interdependent deeds, intended for registration together, shall be deemed to be registered until all the deeds of the batch have been signed by the registrar.

(2) If by inadvertence the registrar's signature has not been affixed to a deed at the time at which the signature should have been affixed in the ordinary course, the registrar may affix his signature thereto when the omission is discovered, and the deed shall thereupon be deemed to have been registered at the time at which the signature should have been affixed.

(3) All endorsements or entries made on title deeds or in registers in connexion with the registration of any deed executed or attested by a registrar shall be deemed to have been effected simultaneously with the registration of such deed, although in fact they may have been made subsequent thereto.

11 Deeds to follow sequence of their relative causes

(1) Save as otherwise provided in this Act or as directed by the court—

- (a) transfers of land and cessions of real rights therein shall follow the sequence of the successive transactions in pursuance of which they are made, and if made in pursuance of testamentary disposition or intestate succession they shall follow the sequence in which the right to ownership or other real right in the land accrued to the persons successively becoming vested with such right;
- (b) it shall not be lawful to depart from any such sequence in recording in any deeds registry any change in the ownership in such land or of such real right unless the registrar is satisfied that the circumstances are exceptional and has consented to such departure:

Provided that—

- (i) if the property has passed, in terms of a will or through intestate succession, from a deceased person to his descendants, and one or other of those descendants has died a minor and intestate and no executor has been appointed in his estate, transfer or cession of the property which has vested in that descendant may be passed by the executor in the estate of the deceased person direct to the heirs *ab intestato* of the descendant;
- (ii) if the registrar is satisfied that the value of the immovable property which has vested in any heir or legatee in terms of a will or through intestate succession would be equalled or exceeded by the costs involved in transferring or ceding it to the heir or legatee, and the heir or legatee has sold the property, transfer or cession thereof may, with the consent in writing of the heir or legatee, be passed by the executor in the estate of the deceased person direct to the purchaser;
- (iii) if in the administration and distribution of the estate of a deceased person—
 - (a) a redistribution of any of the assets in such estate takes place; or
 - (b) a redistribution of any of the assets in such estate and movable property not forming part of such estate which is introduced for the purpose of equalizing the division takes place;the executor of such estate may transfer the land or cede the real rights therein direct to the person entitled thereto in terms of such redistribution;
- (iv) if a fiduciary interest in any land or real right therein terminates before transfer of the land or cession of the real right has been registered in favour of the fiduciary, the land or real right therein may be transferred or ceded, as the case may be, direct to the *fidei* commissary;
- (v) if the right of any person to claim transfer of any land or cession of a real right therein from any other person has been vested in any third person in terms of a judgment or order of any court or in terms of a sale in execution held pursuant to any such judgment or order, transfer of the land or cession of the real right therein may be passed direct to such third person by the person against whom the right to claim transfer or cession was exercisable.

(2) Prior to the registration of any transfer or cession in terms of paragraph (b) of and the provisos to subsection (1), there shall be paid the stamp duty, estate duty and any other such duty which would have been payable had the land been transferred or the real rights been ceded to each person successively becoming entitled thereto.

12 Registration of land or real right in favour of trustee

When any land or real right therein or a notarial bond is or has been registered or recorded in favour of a trustee in his capacity as such, such registration or recording shall be sufficient to vest successors in office of that trustee with the ownership of such land or real right or the rights under such notarial bond.

13 Preparation of deeds

(1) No deed of transfer, certificate of title, mortgage bond, other than a mortgage bond intended to be registered as security for a loan or advance referred to in paragraph (c) of subsection (1) of section *forty-four* cession of a mortgage bond, agreement referred to in paragraph (o) of section *five* or consent mentioned in subsection (1) of section *fifty-one* shall be attested, executed or registered by a registrar unless it has been prepared by a notary public.

(2) Subsection (1) shall not apply to a title deed issued in terms of paragraph (d) of subsection (2) of section 41 or subsection (2) or (3) of section 56 of the Regional, Town and Country Planning Act [*Chapter 29:12*] which shall be prepared by a registrar.

14 How real rights shall be transferred

Subject to this Act or any other law—

- (a) the ownership of land may be conveyed from one person to another only by means of a deed of transfer executed or attested by a registrar;
- (b) other real rights in land may be conveyed from one person to another only by means of a deed of cession attested by a notary public and registered by a registrar:

Provided that attestation by a notary public shall not be necessary in respect of the conveyance of real rights acquired under a mortgage bond.

15 Special provisions relating to women

(1) A married woman shall be assisted by her husband in executing any deed or document required or permitted to be—

- (a) registered in any deeds registry; or
- (b) produced in connection with any deed or document referred to in paragraph (a);

if, by virtue of her marriage, she has no legal capacity to execute such deed or document without the assistance of her husband.

(2) A registrar shall record the change of marital status and any consequent change of name of a woman in a deed or document filed in the deeds registry on written application by such woman accompanied by the relevant deed or document and proof to his satisfaction of such change of marital status.

PART IV

REGISTRATION OF LAND

Transfer of Land

16 Transfer of State land

(1) The ownership of—

- (a) unalienated State land held under a certificate of State title referred to in subsection (2) of section *seventeen* shall be transferred only by deed of transfer executed under proper authority;
- (b) any other unalienated State land shall, subject to the provisions of subsection (2), be transferred only by a deed of grant issued under proper authority and having a diagram of the land annexed thereto.

(2) It shall not be necessary to annex to a deed referred to in paragraph (b) of subsection (1) a diagram of any land if a dispensation certificate has been issued in respect of that land and the deed contains a reference to the general plan on which that land is represented.

17 Registration of real rights in State land

(1) No deed purporting to create or deal with or dispose of any real right in any unalienated State land, other than a deed of grant, shall be capable of registration until a certificate of State title has been issued in respect of that land in terms of subsection (2).

(2) If any unalienated State land has been surveyed and is represented on a diagram, a registrar shall, upon written application by the Minister accompanied by the diagram of the land in duplicate, enter the particulars of the land in the appropriate registers and execute in the prescribed form and in accordance with the diagram a certificate of State title thereof prepared by a conveyancer.

(3) If, in relation to any State land, a dispensation certificate has been issued, a registrar shall, upon written application by the Minister, enter the particulars of the land in the appropriate registers and execute in the prescribed form a certificate of State title thereof prepared by a notary public and containing a reference to the general plan on which the land is represented.

18 Cancellation of title deeds on direction of Minister

(1) Subject to the provisions of this section, the appropriate Minister may direct a registrar to cancel the title deed of any land—

- (a) owned by the State under title deed; or
- (b) in respect of which the State has the right to claim transfer; and the registrar shall comply with such direction.

(2) Before a direction in terms of subsection (1) is given—

- (a) the appropriate Minister shall—
 - (i) give notice in terms of subsection (3) of his intention to give such direction; and
 - (ii) consider every objection lodged in accordance with the notice given in terms of subsection (3);and

(b) the necessary steps shall be taken to extinguish every servitude or other encumbrance registered over the land concerned.

(3) A notice referred to in paragraph (a) of subsection (2) shall—

- (a) be published once in the *Gazette* and once a week for three consecutive weeks in a newspaper circulating in the district where the land concerned is situated; and

- (b) state that the appropriate Minister proposes to direct a registrar of deeds to cancel the title deed concerned; and
- (c) describe the land concerned, the district in which the land is situated and the number of the title deed of the land; and
- (d) call upon any person who has any objection to the proposed cancellation to lodge his objection in writing with the appropriate Minister within thirty days of the date of the last publication of the notice in terms of paragraph (a).

(4) Upon the cancellation of a title deed of any land in terms of subsection (1) the land shall become unalienated State land and the necessary entries and endorsements in the records of the deeds registry concerned shall be made.

(5) In this section—

“appropriate Minister” means—

- (a) the Minister empowered to deal with the land in question; or
- (b) a Vice-President, where that Vice-President is empowered to deal with the land in question; as the case may be.

19 Form and manner of execution of deeds of transfer

Deeds of transfer shall be prepared in the form prescribed by law or by regulation or in such other form as the registrar may in each case approve, and, save as in this Act or any other enactment provided or as ordered by the court in respect of deeds of transfer executed by the registrar, shall be executed in the presence of the registrar by the owner of the land described or by a notary public authorized by power of attorney by the owner, and shall be attested by the registrar.

20 Particulars required in every deed

Every deed conferring title to land shall contain the following particulars in addition to the description and area of the land concerned—

- (a) the date and number of the grant, transfer or other title to which—
 - (i) if such be the case, the diagram of the land is annexed or relates;
 - (ii) if such be the case, the diagram of the land would, but for the issue of a dispensation certificate, be annexed or related;
- (b) if a dispensation certificate has been issued in respect of the land, a reference to the general plan concerned;
- (c) the name of the person in whose favour the grant, transfer and other title deed referred to in paragraph (a) was made;
- (d) the date and number of the grant, transfer or other title by which the land is held;
- (e) the special conditions, if any, contained in the title deed from which the land is being transferred.

21 Diagram deeds

(1) No portion of any piece of land shall be transferred except upon a diagram thereof and reference shall be made to that diagram in the deed.

Provided that no diagram shall be required if a dispensation certificate has been issued in respect of the land concerned but in such event the deed shall contain a reference to the general plan in which the land is represented.

(2) No deed of grant or transfer or other title shall have more than one diagram annexed thereto.

(3) Only the piece of land described in the diagram annexed to a deed of grant or transfer or other title shall be included in such deed.

22 Necessity for diagrams despite issue of dispensation certificate

Where a dispensation certificate has been issued in respect of any land, no subdivision of that land and no registration over that land of a real right which is defined on a diagram shall be registered unless a diagram of that land is annexed to the title deed of that land, and upon such registration the registrar shall endorse upon that title deed a reference to such diagram.

23 Transfer from joint estate

In any transfer lodged in a deeds registry relating to land which is an asset in a joint estate, the surviving spouse shall be joined in his personal capacity with the executor of the estate of the deceased spouse except—

- (a) where the executor is only dealing with the share of the deceased spouse; or
- (b) where the land has 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.

24 Transfer of two or more pieces of land by one deed

(1) Where two or more persons each own a different piece of land, transfer of such pieces of land to one or more persons by the same deed of transfer shall not be effected unless such transfer is authorized by an order of court.

(2) Subject to the provisions of section *twenty-one*, two or more pieces of land may be transferred by one deed by one person or by two or more persons holding such pieces of land in undivided shares, to one person or two or more persons acquiring such pieces of land in undivided shares, if each piece of land is described in a separate paragraph.

25 Transfer of undivided shares in land by one deed

(1) Land held by one person may be transferred by one deed from that person to two or more persons in undivided shares.

(2) Land held by two or more persons in undivided shares may be transferred by one deed from those persons to any one of them or to two or more of them in undivided shares or to any other person, or to two or more other persons in undivided shares.

(3) Where a piece of land is transferred by separate deeds of transfer in undivided shares the registrar shall require to be affixed to one of such separate deeds stamps of the value which would in law be necessary if the land had been transferred by one and the same deed.

(4) No further or other stamps or fees, except a registration fee, shall be payable, but the registrar shall endorse upon each of the other separate deeds a note that the said deed so endorsed shall be regarded as fully and completely stamped according to law.

26 Special provisions relating to transfer of undivided shares

(1) No transfer of an undivided share in land which is intended or calculated to represent or purports to represent a defined portion of land shall be capable of being registered.

(2) If a piece of land is owned by two or more persons in undivided shares and one or more of such persons acquires the share or shares of the remaining owner or owners in a defined portion of that piece of land, all the owners jointly, including the owner or owners acquiring the share or shares, may transfer such portion to the person or persons acquiring it.

27 Special provisions relating to undivided shares with exclusive right of occupation

(1) Subject to the provisions of this section, if—

- (a) the owner of a piece of land in an urban area wishes to transfer to one or more persons an undivided share in the land coupled with an exclusive right of occupation; or
- (b) two or more persons who own by separate title deed undivided shares in a piece of land in an urban area wish to assign to the owner or owners of each such share, in conjunction with the undivided share, an exclusive right of occupation;

the owner or owners, as the case may be, shall register against the title to the land concerned a notarial deed which—

- (i) specifies the number of undivided shares created or to be created which will be coupled with an exclusive right of occupation; and
- (ii) clearly indicates which buildings or portions of any building erected or to be erected on the land concerned, either with or without any area of ground, shall be subject to an exclusive right of occupation; and
- (iii) clearly indicates by means of distinctive numbers which shares referred to in subparagraph (i) are coupled with which buildings or portions of a building referred to in subparagraph (ii); and
- (iv) defines the reciprocal rights and obligations applicable to the owners of the undivided shares; and
- (v) provides for the administration and maintenance of the land concerned and buildings thereon and the liability for rates, expenses and charges relating thereto; and
- (vi) subject to subsection (3), provides for the manner in which the notarial deed may be amended.

(2) The provisions of a notarial deed registered in terms of subsection (1), as amended from time to time, shall be binding on all owners of undivided shares in the land concerned and on their successors in title.

(3) A notarial deed registered in terms of subsection (1) may be amended from time to time by further notarial deed in accordance with the provisions thereof referred to in subparagraph (vi) of subsection (1):

Provided that—

- (i) subparagraph (vi) shall not be construed as authorizing any amendment the effect of which would be to alter the number of undivided shares in the land concerned which are coupled with an exclusive right of occupation, unless—
 - (a) the owner of each such share has consented to the alteration in the number of such shares; and
 - (b) the Director of Physical Planning has approved the alteration in the number of such shares.;

[Paragraph substituted by section 2 of Act 5 of 1998]

- (ii) no such amendment shall be of force or effect until it has been registered.

(4) Where an undivided share in land such as is referred to in subsection (1) is coupled with an exclusive right of occupation—

- (a) they shall be dealt with as one entity and the undivided share and the exclusive right of occupation shall not be capable of being registered separately; and
- (b) they may not at any time be held by virtue of more than one title deed; and
- (c) the exclusive right of occupation shall constitute a real right in the land.

(5) Where the share of a co-owner of an undivided share in land such as is referred to in subsection (1) which is coupled with an exclusive right of occupation is transferred—

- (a) the deed relating to the transfer of such share shall be registered in the names of the new co-owner and of the remaining co-owners; and
- (b) it shall not be necessary for the remaining co-owners to join in the passing of transfer.

(5a) No transfer of an undivided share in land such as is referred to in subsection (1) shall be registered unless there is produced to the Registrar a certificate which—

- (a) is signed by or on behalf the person responsible for the administration and maintenance of the land concerned and any buildings thereon; and
- (b) certifies that, in respect of the share concerned, there are no levies due and payable to the person referred to in paragraph (a) or arrangements for the payment of any such levies have been made to the person's satisfaction:

Provided that, where the conveyancer deposes in an affidavit submitted to the Registrar that he has, in writing, requested the person responsible for the administration and maintenance of the land concerned and any buildings thereon to state in writing, within thirty days of the request, whether or not all such levies have been paid or whether or not satisfactory arrangements for their payment have been made, and that he has had no response for thirty days thereafter, the Registrar may pass transfer without the production of the certificate referred to in this subsection.

[Subsection inserted by section 2 of Act 5 of 1998]

(6) Undivided shares in land such as are referred to in subsection (1) which are coupled with an exclusive right of occupation shall not be regarded as subdivisions of the land concerned for the purposes of the Regional, Town and Country Planning Act [*Chapter 29:12*] or any other enactment.

(7) A notarial deed—

- (a) such as is referred to in subsection (1), may not be registered in respect of any land which is hypothecated under a registered mortgage bond unless the consent in writing, signed by the holder of such bond, to the registration of the notarial deed is produced to the registrar; or
- (b) which amends a notarial deed that is registered in terms of subsection (1) in respect of any land which is hypothecated or an undivided share in which is hypothecated under a registered mortgage bond, may not be registered unless the consent in writing, signed by the holder of such bond, to the registration of the notarial deed is produced to the registrar.

(8) In this section—

“exclusive right of occupation”, in relation to an undivided share in a piece of land in an urban area, means the right of the owner of that undivided share to occupy, to the exclusion of every other owner of an undivided share in the land concerned, a specific building or part of any building on the land concerned, either with or without any area of ground;

“urban area” means—

- (a) any township; and
- (b) any area which is declared by the Minister, by statutory instrument, to be an urban area for the purposes of this section.

28 Transfer to unascertained children

(1) If land is donated or bequeathed to the children born or to be born of any person or of any marriage, transfer of the land on behalf of such children may be passed, in the case of children born or to be born of a person, to that person and, in the case of children born or to be born of a marriage, to the person who would be the natural guardian of those children during their minority.

(2) If land is donated to the children born or to be born of any person or of any marriage, the person to whom transfer may be passed in terms of subsection (1) may, for the purposes of such transfer, accept the donation.

(3) When the identity of all such children has been established the registrar shall make an endorsement on the transfer deed setting out their names, whereupon the transfer deed shall be deemed to be to and in favour of such children in the same manner as if the transfer had originally been passed to them by name.

29 Deeds of partition transfer

(1) If two or more persons who own in undivided shares the whole of any piece or pieces of land have agreed to partition that land, the registrar shall, on production to him of a power of attorney by such persons authorizing the passing of deeds of partition transfer of such land in accordance with the agreement of partition, which agreement shall be embodied in the power of attorney or annexed thereto, and on compliance with the further provi-

sions of this section, attest deeds of partition transfer which shall be as nearly as practicable in the prescribed form, conveying to the respective owners the land or shares therein awarded to them under the said agreement.

(2) In the power of attorney or agreement of partition referred to in subsection (1) there shall be described—

- (a) the land to be partitioned; and
- (b) the share or shares registered in the name of each joint owner; and
- (c) the land or share therein awarded to each of the owners and
- (d) the conditions, if any, affecting any land or share therein so awarded; and
- (e) the consideration, if any, given for the purpose of equalizing the partition.

(3) There shall also be produced to the registrar the title deeds of the land to be partitioned and the necessary diagrams, but no new diagram need be produced in respect of the whole or remaining extent of any of the pieces of land to be partitioned.

(4) Subject to this section, sections *nineteen, twenty, twenty-one, twenty-three, twenty-four* and *twenty-five* shall apply, *mutatis mutandis*, in respect of deeds of partition transfer.

(5) Any deed of partition transfer attested under subsection (1) shall, in respect of the land therein described, take the place of the deed or deeds by which it was previously held, but the partition transfer shall not vary or affect the conditions of tenure of the said land or any conditions imposed under any law or any other conditions affecting the said land generally, save in so far as such last-mentioned conditions may be varied, defined or limited by the agreement of partition or the consents of the interested parties.

(6) This section shall apply, *mutatis mutandis*, to a partition of land ordered by the court or determined by an award of arbitrators.

30 Requisites where share in land partitioned is mortgaged

(1) If the share or shares owned by any of the parties to a partition are mortgaged. the partition transfers shall not be attested unless the bond is produced to the registrar, together with the written consent of the legal holder of the bond to the partition and to the substitution of the land awarded on partition to the mortgagor for the share or shares mortgaged.

(2) In registering the transfer, the registrar shall—

- (a) endorse on the bond that the land awarded to the mortgagor has been substituted for the share or shares mortgaged; and
- (b) make an entry of the substitution in the registers; and
- (c) endorse on the transfer that the land described therein is, in accordance with this section, mortgaged by the bond.

(3) If only a fraction of the share or shares owned by any of the parties to a partition is mortgaged, the substitution referred to in this section shall only take place in respect of the fraction so mortgaged, if from the agreement of partition or from other evidence it appears that a defined portion or share therein has been separately awarded in respect of such mortgaged fraction.

(4) Where more than one property is partitioned by the same partition and the whole of any one or more of the properties affected is awarded to an owner, such property or properties may be substituted under that owner's bond, if the bond is over his share in all the properties partitioned.

31 Requisites where share in land partitioned is subject to other rights

(1) If the share or shares owned by any of the parties to a partition appear from the title deeds of the land partitioned to be subject to a lease, personal servitude or real right, the written consent of the holder thereof, together with the deed, if any, by which the lease, servitude or real right is held, shall be produced to the registrar.

(2) The land described in the deeds of partition transfer shall be made subject to the lease, servitude or real right, to the same extent as the share or shares for which it is substituted, and the deed, if any, by which the lease, servitude or real right is held, shall be endorsed by the registrar in the same manner as the bond mentioned in section *thirty*.

(3) If there exists any bond by which the lease, servitude or real right is itself mortgaged, that bond shall also be produced to the registrar, together with the written consent of the legal holder thereof, and the registrar shall make the endorsements and entries mentioned in section *thirty* on the bond and the deeds concerned and in the registers.

32 Effect of compliance with sections 30 and 31

Upon completion of the endorsements and entries mentioned in sections *thirty* and *thirty-one* the land described in the deeds of partition transfer, and the lease, personal servitude or real right, if any, shall be deemed as fully and effectually mortgaged as if they had been hypothecated by the bond at the time of its execution, and the said land shall be deemed to be as fully and effectually encumbered by the said lease, personal servitude or real right as if it had been encumbered thereby at the time of the registration thereof.

33 Partition of land subject to *fidei commissum*

(1) Any piece of land, the whole or any share of which is subject to a *fidei commissum*, may, where partition has not been prohibited, be partitioned on production—

(a) where the *fidei* commissary heirs are ascertained—

(i) of the written consent of those who are majors and otherwise competent;

(ii) of the written consent of the trustees, curators or other legal representatives of those who respectively have been declared insolvent or are under curatorship or otherwise under disability;

(b) where the *fidei* commissary heirs or successors are not ascertained or where they cannot be found, of proof to the satisfaction of the registrar that the land awarded in the agreement of partition to the owner of any share subject to the *fidei commissum* is an equivalent of that share.

(2) The land so awarded shall, in the deed of partition transfer, be made subject to the *fidei commissum* in the same manner as the corresponding share was in its title deed made subject thereto before partition.

Substituted Title Deeds

34 Certificate of registered title of undivided share

(1) Any person who is the joint owner of a piece of land, the whole of or shares in which is or are held by such person and others under one title deed, may, subject to the provisions of section *thirty-five*, obtain a certificate of registered title of his undivided share in such land, and no transfer of a fraction only of his undivided share or hypothecation or lease of the whole or any fraction of his undivided share in the land shall be registered in a deeds registry unless a certificate of registered title of such undivided share is produced to the registrar:

Provided that all the joint owners so holding under one title deed may together transfer an undivided share in the land or a fraction of the share held under such deed or hypothecate or effect the registration of a lease of the whole of such land or share without the production of such a certificate.

(2) If the title deed under which land is, or shares therein are, held in joint ownership is lost or destroyed, any joint owner may, upon compliance with the prescribed requirements, obtain a certificate of registered title in respect of his share in the land without obtaining a certified copy of the deed which has been lost or destroyed.

(3) The provisions of subsections (1) and (2) shall apply also where two or more pieces of land or shares therein are held in joint ownership by the same title deed, but all the pieces of land or the shares therein shall be included in the certificate of registered title and shall be described in separate paragraphs.

(4) The provisions of this section shall not apply in relation to an undivided share in land such as is referred to in subsection (1) of section *twenty-seven* which is coupled with an exclusive right of occupation as defined in subsection (8) of that section.

35 Certificate of registered title of aggregate share

(1) Any person who is, by virtue of more than one title deed, the owner of undivided shares in one or more than one piece of land may, subject to the provisions of section *thirty-seven*, obtain a certificate of registered title in respect of his aggregate shares in the land, and if there are two or more pieces of land the several pieces of land or shares therein shall be described in separate paragraphs.

(2) The provisions of subsection (1) shall not apply in relation to an undivided share such as is referred to in subsection (1) of section *twenty-seven* which is coupled with an exclusive right of occupation as defined in subsection (8) of that section.

36 Certificate of registered title of one or more properties held under one deed

(1) Any person who holds two or more pieces of land, or undivided shares therein, by one title deed may, subject to the provisions of section *thirty-seven*, obtain a certificate of registered title in respect of one or more of such pieces of land or of the undivided share or shares held by him therein if at least one of the pieces of land or the share therein held by such deed remains held thereby.

(2) Subsection (1) shall not apply in relation to an undivided share such as is referred to in subsection (1) of section *twenty-seven* which is coupled with an exclusive right of occupation as defined in subsection (8) of that section.

37 Conditions governing issue of certificates of registered title

(1) A certificate of registered title mentioned in section *thirty-four*, *thirty-five* or *thirty-six* may be obtained upon written application by the owner to the registrar accompanied, save as provided in subsection (2) of section *thirty-four*, by the title deed of the land, and shall be as nearly as practicable in the prescribed form.

(2) If the property concerned is subject to a registered mortgage bond or to any registered deed of lease or other registered deed whereby any real rights in the land are held by other persons, that bond or other deed shall be produced to the registrar by the holder thereof upon the request and at the expense of the applicant for the certificate of registered title.

(3) Before issuing any such certificate the registrar shall cause to be made upon the title deed or deeds in question and the registry duplicates thereof or, in the case referred to in subsection (2) of section *thirty-four*, upon the registry duplicate only, and upon the mortgage bond or other deed, if any, an endorsement that a certificate of

registered title has, in accordance with the appropriate section of this Act, been substituted for the said title deed or deeds in respect of the property in question. The registrar shall further make entries in the registers of the issue of the certificate and shall, if the property is mortgaged, endorse that fact upon the certificate.

(4) Any such certificate when issued shall, in respect of the property described therein, take the place of the title deed or deeds by which such property was previously held, and the issue of the certificate shall not in any manner affect any right or obligation in connexion with such property.

38 Certificate of registered title taking place of lost or destroyed deed

(1) If the title deed of any land has been lost or destroyed and the registry duplicate of such title deed has also been lost or destroyed, the registrar shall, on written application by the owner of the land, accompanied by a diagram of the land, if no diagram thereof is filed in the registry or in the office of the Surveyor-General, execute a certificate of registered title in respect of such land in accordance with the diagram of the land.

Provided that, where a dispensation certificate has been issued in respect of the land concerned, a diagram of that land shall not be required.

(2) Before issuing the certificate the registrar shall, at the expense of the applicant, publish in the prescribed form notice of intention to issue the certificate in two consecutive ordinary issues of the *Gazette* and in two consecutive issues of a newspaper circulating in the district in which the land is situate.

(3) A draft of the proposed certificate and a copy of the diagram, if any, accompanying the application, shall be open for inspection in the registry free of charge by any interested person for a period of six weeks after the date of the first publication of the notice in the *Gazette*, during which period any person interested may object to the issue of the certificate.

(4) Any person who has lodged with the registrar an objection to the issue of the certificate may, in default of any arrangement between him and the applicant, apply to the court within one month after the last day upon which an objection may be lodged, for an order prohibiting the registrar from issuing the certificate, and the court may make such order on the application as it may deem fit.

(5) A certificate of registered title issued under this section shall be as nearly as practicable in the prescribed form and shall take the place of the lost or destroyed title deed and shall embody or refer to every condition, servitude, bond, lease or other encumbrance which, according to the records of the registry, was embodied or referred to in the lost or destroyed title deed or in any endorsement thereon.

39 Certificate of registered title to correct error in registration

(1) If by reason of an error the same land has been registered in the names of different persons, the registrar may, upon transfer of the land being made to one of them by the other or others, issue to the person to whom transfer is so given a certificate of registered title of the land held by him under the various title deeds.

(2) Section *thirty-five* shall apply, *mutatis mutandis*, in respect of the issue of such certificate.

40 Certificate of consolidated title of two or more pieces of land

(1) If a diagram has been framed and approved under the provisions of the Land Survey Act [*Chapter 20:12*], and such diagram represents two or more pieces of land which are—

- (a) contiguous to each other; and
- (b) owned by the same person or by two or more persons in the same undivided shares in each such piece of land; and
- (c) situate wholly within one of the areas defined in the Schedule;

the title deed or deeds of the said pieces of land may, on compliance with the requirements of this section and subject to the provisions of Part VI of the Regional, Town and Country Planning Act [*Chapter 29:12*] be superseded by a certificate of consolidated title issued by the registrar in the prescribed form.

(2) Every such certificate shall be in accordance with the new diagram and shall be issued on written application by the owner or owners of the pieces of land concerned. Every such application shall be accompanied by the title deed or deeds under which he or they hold the land, together with the diagram deeds thereof, unless a dispensation certificate has been issued which relates to the land concerned, (or in the event of the loss or destruction of such diagram deeds he or they shall satisfy the registrar of the fact), any bond thereon and any registered deed of lease or other registered deed whereby any real right in the land is held by any other person, together with the written consent of the holder of any such bond, lease or right.

(3) In registering the certificate the registrar shall endorse on the title deed or deeds that they have, in respect of the land described in the certificate, been superseded by the certificate, and on the certificate that the land therein described or the share thereof referred to in such endorsement is mortgaged by such bond or subject to such lease or right, unless this appears from the certificate itself, and shall make such endorsements on the bond or other deed and such entries in the registers as shall clearly indicate that the land is now owned by virtue of the certificate and that the land or such share thereof is subject to such bond, lease or right.

(4) If portion only of the land represented on the new diagram is mortgaged or if different portions of such land are mortgaged under different bonds, the certificate may not be issued unless the bonds are cancelled:

Provided that on the written application of the owner and with the written consent of—

(a) the mortgagee; or
(b) where different portions of land are mortgaged under different bonds, the mortgagees and their written agreement as to the order of preference of their mortgage bonds after consolidation of the land;
the certificate may be issued subject to the bond or bonds and all the land included in the new diagram may be substituted for the land originally mortgaged under the bond or bonds.

(5) If portion only of the said land is subject to any registered deed of lease or other registered deed other than a bond, whereby any real right in the land is held by any other person, the certificate shall not be issued unless a diagram of such portion is already annexed to the said registered deed, or if no such diagram is so annexed, unless a diagram in duplicate (or triplicate if required by the registrar) of such portion is produced:

Provided that it shall not be necessary to produce a diagram of such portion if the diagram of the consolidated land shows that portion by dotted lines or in such other way as to identify it.

(6) The diagram mentioned in subsection (5) shall be annexed to the registered deed referred to in that subsection and the registered duplicate thereof, and shall be mentioned in any endorsement made on or reference made in the certificate concerning such registered deed.

41 Certificate of registered title of portion of piece of land

(1) If a defined portion of a piece of land has been surveyed, the registrar may, on the application in writing by the owner of the land and subject to Part VI of the Regional, Town and Country Planning Act [*Chapter 29:12*] issue a certificate of registered title in respect of such portion of land as nearly as practicable in the prescribed form.

(2) An application in terms of subsection (1) shall be accompanied by—

- (a) the title deed of the land concerned; and
- (b) a diagram which has been framed and approved under the Land Survey Act [*Chapter 20:12*] representing the portion of land concerned:

Provided that no diagram shall be required if a dispensation certificate has been issued in respect of the land and the certificate of registered title contains a reference to the general plan on which the defined portion of the piece of land is represented; and

- (c) any registered bond, registered deed of lease or other registered deed whereby any real right in the land concerned is held by any person together with the written consent of the holder of any such bond, lease or right.

(3) In registering the certificate the registrar shall endorse on the title deed that it has been superseded by the certificate in respect of the land described in the certificate, and on the certificate that the land described therein is mortgaged by the bond or that it is subject to such lease or right, unless this appears from the certificate itself, and shall make such endorsements on the bond and other deed and such entries in the registers as shall clearly indicate that the land is now owned by virtue of the certificate and is subject to such bond, lease or right.

(4) No defined portion of a piece of land shall be mortgaged until the owner thereof has obtained a certificate of registered title in respect of such portion in accordance with the provisions of this section.

Rectification of Title by Endorsement

42 Rectification of title by endorsement

(1) If rectification of title is required in respect of any piece of land in consequence of any survey or re-survey or the correction of any error in the diagram thereof under the Land Survey Act [*Chapter 20:12*], the registrar may, on written application by the owner of the land accompanied by—

- (a) the title deed; and
- (b) the new or the corrected diagram thereof; and
- (c) any bond thereon; and
- (d) any registered deed of lease or other registered deed whereby any real right therein is held by any other person; and
- (e) the written consent of the holder of such bond, lease or right;

endorse on the title deed a description of the land according to the new or corrected diagram, which description shall supersede the description already appearing in the title deed.

(2) If a new diagram is produced, the registrar shall, in making the said endorsement, substitute the new diagram for the old one.

43 Transfer or cession by means of endorsement

(1) If immovable property or a bond is registered in a deeds registry in the name of the survivor of two spouses who were married in community of property or in the name of the joint estate of such spouses and such survivor has lawfully acquired the share of the deceased spouse in the property or bond, the registrar shall, on written application by such survivor and by the executor in the estate of the deceased spouse, accompanied by such other documents as may be prescribed, endorse on the title deeds of the property or on the bond that the survivor is entitled to deal with such property or bond, and thereupon such survivor shall be entitled to deal

therewith as if he had taken formal transfer or cession into his own name of the share of the deceased spouse in the property or bond.

(2) If the immovable property mentioned in subsection (1) is hypothecated under a registered mortgage bond, the endorsement provided for in that subsection shall not be made unless—

- (a) such bond is cancelled; or
- (b) the estate of the deceased spouse is released from liability under the bond; or
- (c) the said bond has been passed by the survivor alone and a written consent (which shall be in duplicate, in the prescribed form and 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.

(3) The registrar shall, in any case of release and substitution in terms of paragraph (c) of subsection (2), when he endorses on the title deeds of the property that the survivor is entitled to deal therewith—

- (a) make in the appropriate register an entry setting forth that the estate of the deceased spouse is released from liability in respect of the obligation secured by the bond and that the survivor has become sole debtor in respect of the bond; and
- (b) annex one duplicate of the written consent referred to in the said paragraph to the bond and file the other with the registry duplicate of the bond; and
- (c) endorse on the bond that the estate of the deceased spouse is released from liability in respect of the obligation secured thereby and that the survivor has become sole debtor in respect of the bond.

(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.

PART V

BONDS

General Provisions

44 Execution of bonds

(1) A mortgage bond shall be executed in the presence of the registrar—

- (a) by the owner of the immovable property therein described; or
- (b) by a notary public duly authorized by such owner by power of attorney; or
- (c) in the case of a mortgage bond intended to secure a loan or advance made—
 - (i) in terms of subparagraph (i) of paragraph (a) of subsection (1) of section 20 of the Agricultural Finance Act [*Chapter 18:02*], or
 - (ii) from a fund administered under section 23 of the said Act; or
 - (iii) in terms of the Agricultural Assistance Scheme set out in the Third Schedule to the said Act or any Scheme established in terms of Part VII of the said Act;

by any person appointed for the purpose by the Corporation, as defined in terms of section 2 of the said Act, who is duly authorized by the owner of the immovable property by power of attorney; and shall be attested by the registrar.

[Subsection amended by section 29 of Act 14 of 1999]

(2) A bond may be registered to secure an existing debt or a future debt or both existing and future debts.

(3) Bonds intended to secure loans for building purposes shall be deemed to be bonds to secure existing debts.

(4) If in a bond purporting to secure a future debt the amount of an existing debt is mentioned, such existing debt shall be deemed to be secured as part of the maximum amount intended to be secured by the bond.

(5) Save as authorized by any other enactment or an order of the court, debts or obligations to more than one creditor arising from different causes shall not be secured by one bond.

45 Requirements in case of bonds intended to cover future advances

No deed or instrument of hypothecation, whether general or special, shall be of any force or effect to give any preference or priority to the payment of any advances, debts or demands made or accruing after the date of the registration of such deed or instrument unless it is expressed in such deed or instrument that it is meant or intended to cover or secure future advances, debts or demands generally, or some particular description thereof to be in the said deed or instrument described, and unless also some certain sum is expressed in such deed or instrument as a sum beyond which such future advances, debts or demands shall not be deemed to be covered or secured by the hypothecation made or created by such deed or instrument.

46 Cession of bond to secure future advances

A cession of a bond passed to secure future advances may be registered and the registration of such a cession shall not affect the provisions of the bond relating to future advances up to the amount stated in the bond.

47 Exclusion of general clause in mortgage bonds

(1) The registrar shall not attest any mortgage bond which purports to bind movable property or which contains the clause, commonly known as the general clause, purporting to bind generally all the immovable or movable property of the debtor or both, and shall not register any notarial bond which purports to bind immovable property.

(2) No mortgage bond shall be passed by two or more mortgagors unless it purports to bind immovable property of each mortgagor.

48 Passing of bonds in favour of agents

(1) Subject to this section, no mortgage bond or notarial bond shall be passed in favour of any person as the agent of a principal.

(2) A company, other than a foreign company as defined in section 2 of the Companies Act [*Chapter 24:03*], may apply to a registrar to record in a register kept for such purpose that the company is a bond-holding company and such register shall be available to the public on payment of the prescribed fee.

(3) A bond-holding company may hold a participation bond as the representative of the participants therein.

(4) A bond-holding company shall keep at its registered office a record in relation to each participation bond held by it of the name of each person entitled to a participation in the bond.

(5) The real rights conferred by the registration of a participation bond shall be deemed to be held by each participant to the extent of his participation, whether the bond was a participation bond at the time of its registration or not:

Provided that the bond-holding company shall exercise the rights of the participant under the participation bond on his behalf.

(6) This section shall apply to any participation bond, whether registered before, on or after the 31st December, 1971.

(7) In this section—

“bond-holding company” means a company whose name is recorded in the register referred to in subsection (2);

“participant”, in relation to a participation bond, means a person who is specified in the record kept by a bond-holding company in terms of subsection (4) as being entitled to a participation in a participation bond;

“participation” means a share of or all the rights secured under a participation bond;

“participation bond” means a mortgage bond or notarial bond, whether described as a participation bond or not, which is held by a bond-holding company as representative of the persons entitled to participations therein.

49 Requirements in case of bonds passed by or in favour of two or more persons

(1) If a bond is passed by two or more mortgagors, no release of one mortgagor or of his property from the bond may be registered without the written consent of the other mortgagor or mortgagors.

(2) No bond may be passed in favour of two or more persons in which it is stipulated that the share of one holder shall rank prior in order of preference to the share of another, nor may any transaction be registered which would have the effect of giving preference to one share in a bond over another share.

Rights of Mortgagees

50 Transfer of hypothecated property

(1) No transfer of mortgaged land shall be attested or executed by the registrar, and no cession of a mortgaged lease of immovable property, or of any mortgaged real right in land, shall be registered until the bond has been cancelled or the land, lease or right has been released from the operation of the bond with the consent in writing of the holder thereof:

Provided that no such cancellation or release shall be necessary if the transfer or cession is made—

(a) in execution of the judgment of any court by the competent officer; or

(b) by—

(i) the trustee of an insolvent estate; or

(ii) the assignee of an estate under assignment where the deed of assignment has been registered in terms of subsection (2) of section 157 of the Insolvency Act [*Chapter 6:04*]; or

(iii) the liquidator of a company which is unable to pay its debts and which is being wound up by the court;

or

(c) in any other circumstances in this Act provided or as ordered by the court.

(2) In the case of any transfer or cession made in the circumstances set out in the proviso to subsection (1), the bond shall be produced to the registrar for endorsement of the circumstances of the transfer or cession unless

the notary public causing transfer or cession to be made certifies that he has been unable to obtain possession of the bond.

(3) A consent to the release from the operation of a bond of all the property mortgaged thereunder shall, except where the debt secured by such bond is further secured by a collateral bond, be deemed to be a consent to the cancellation of that bond.

51 Substitution of debtor in respect of bond

(1) If the owner (in this section referred to as the transferor) of land which is hypothecated under a registered mortgage bond, not being a person referred to in paragraph (b) of the proviso to subsection (1) of section *fifty*, has agreed to transfer to another person the whole of the land and has not reserved any real right in such land, the registrar may register the transfer and substitute the transferee for the transferor as debtor in respect of the bond if there is produced to him, in duplicate, the written consent of the holder of the bond and the transferee to the substitution of the transferee for the transferor as the debtor in respect of the bond.

(2) In registering the transfer the registrar shall—

(a) make in the appropriate register—

(i) an entry setting forth that the debt of the transferor secured by the bond is cancelled; and

(ii) an entry setting forth that the transferee has become the debtor in respect of the bond;

and

(b) annex one duplicate of the written consent referred to in subsection (1) to the bond and file the other with the registry duplicate thereof; and

(c) endorse upon the bond—

(i) the name of the transferee; and

(ii) the date and number of the transfer; and

(iii) a reference to the said written consent; and

(iv) that the transferee has been substituted for the transferor as debtor in respect of the bond;

and

(d) make on the transfer deed an endorsement of mortgage containing the date and number of the bond and the amount due in terms thereof.

(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 the exceptions stated therein.

(4) Subsections (1) to (3) shall apply, *mutatis mutandis*, to a real right in land, other than the ownership thereof, which is hypothecated under a registered mortgage bond.

52 Notice by Master in connection with insolvent estates and further provisions relative to insolvent estates

(1) If it appears from the liquidation account of any estate which has been sequestrated or from the vouchers relating thereto that a final payment has been made to any creditor on account of a registered bond, the Master shall notify the payment thereof to the registrar and shall submit such bond to the registrar for cancellation. The holder of the bond shall, when requested to do so by the Master, deliver the bond to the Master.

(2) Immovable property which has vested in a trustee in accordance with the provisions of the law relating to insolvency and which has not, in terms of that law, been re-vested in the insolvent, may, whether before or after rehabilitation of the insolvent, be transferred only by the trustee, and may not after such rehabilitation be transferred, mortgaged or otherwise dealt with by the insolvent until it has been transferred to him by the trustee:

Provided that if after rehabilitation the trustee has been discharged or there is no trustee in existence, the Master shall, if satisfied that the rehabilitated insolvent is entitled to the property, give him transfer thereof in such manner as may be prescribed.

(3) If by virtue of the provisions of the law relating to insolvency an insolvent has been re-invested with the ownership of any property, such property may not be transferred, mortgaged or otherwise dealt with by the insolvent until an endorsement, in the manner prescribed, that the property has been restored to him, has been made by the registrar on the title deed of the property.

(4) Nothing in this section contained shall be construed as modifying any provision of the law relating to insolvency.

(5) The provisions of this section shall apply, *mutatis mutandis*, in respect of—

(a) insolvent deceased estates; and

(b) companies which are unable to pay their debts and are liquidated or wound up by or under the supervision of the court under the law relating to companies.

53 Endorsement of bond after sale of execution

Whenever any mortgaged immovable property has been sold in execution of a judgment of a competent court or under express authority contained in a special enactment, to satisfy any debt due in respect of a registered bond

or otherwise, and the proceeds of the sale have been paid to the legal holder of the bond, the deputy sheriff or messenger concerned or the person acting under the authority of any such special enactment shall notify the registrar of any such sale and shall transmit the bond to the registrar for cancellation or release in the event of there being other properties mortgaged by the bond. The holder of the bond shall, when requested to do so by the deputy sheriff or messenger or person acting under the authority of such special enactment, deliver the bond to the deputy sheriff, messenger or person, as the case may be.

54 Consent of bond holder to registration of merger of rights of mortgagor

If the holder of a mortgaged lease of land or of mortgaged real rights in land acquires the ownership of that land, or if the holder of a mortgaged lease of real rights in land acquires those rights, or if the owner of mortgaged land which is entitled to rights of servitude over other land acquires the ownership of that other land, such acquisition of the additional land or rights shall not be registered without the consent in writing of the holder of the bond.

Notaries Bonds

55 Where notarial bond to be registered

(1) Every notarial bond executed before, on or after the 31st December, 1971, shall be registered in a deeds registry within the period of three months after the date of its execution or within such extended period as the court may on application allow.

(2) A signed original for filing in the registry as the registry duplicate, together with two further originals or grosses or copies of the bond certified by a notary public shall be tendered for registration. The registrar who registers such bond shall transmit to the registrar in charge of the other deeds registry one such original, grosse or copy of the bond for registration by him.

PART VI

RIGHTS IN IMMOVABLE PROPERTY

General

56 Restriction on registration of rights in immovable property

(1) No deed, or condition in a deed, purporting to create or embodying any personal right in respect of immovable property shall be capable of registration.

(2) No condition imposed after the 2nd January, 1960, purporting to restrict the exercise of any right of ownership in respect of immovable property shall be included in any title deed of such property tendered for registration in any deeds registry unless such condition is capable of being enforced by some person who is mentioned in or, if not mentioned therein, is ascertainable from, the said title deed or from other evidence available to the registrar.

(3) Subject to subsection (4), no condition imposed after the 1st November, 1976, which imposes in respect of immovable property—

- (a) restrictions on the subdivision of the property; or
- (b) restrictions on the purposes for which the property may be used; or
- (c) any requirements to be complied with or to be observed in connection with the erection of any building on the property; or
- (d) any restriction or requirement to be observed, not referred to in paragraph (a), (b) or (c), which is the subject of control under an approved scheme, operative master plan or operative local plan as defined in the Regional, Town and Country Planning Act [Chapter 29:12] that relates to the area in which that property is situated;

shall be included in any title deed to such property tendered for registration in any deeds registry.

(4) Subsection (3) shall not preclude the registration of any condition—

- (a) referred to in paragraph (c) of subsection (3) which is imposed by a person other than the State, a city or municipal council, a town council, a rural district council or a local board; or
- (b) which provides for rights of access or similar matters.

(5) Subsection (3) shall not be construed as precluding the imposition of any condition such as is referred to in that subsection in any agreement relating to the acquisition of any property.

Servitudes

57 Creation of servitudes

(1) Save as is provided in any other law, a servitude in perpetuity or for a limited period may, subject to subsections (2), (3) and (4), be created—

- (a) by a deed prepared in accordance with section *fifty-nine*; or
- (b) in a deed of grant or transfer of land where it encumbers—
 - (i) the land transferred; or
 - (ii) other land of which the transferor is the owner in favour of the land transferred.

(2) Before registering a servitude which is being created in terms of paragraph (b) of subsection (1), a registrar shall, where the servitude which is being created encumbers the land transferred, require the acceptance in writing of the owner of the land in favour of which or the person in whose favour that servitude is being created if that owner or person is not the transferor:

Provided that, where the servitude is being created in favour of the public or of all or some of the owners or occupiers of stands or lots in a township, the registrar may, if in his opinion it is impracticable for such persons to signify their acceptance of the servitude, dispense with such acceptance.

(3) In registering any servitude which is being created in terms of subsection (1), a registrar shall—

(a) where the servitude is being created in terms of paragraph (a) of subsection (1), endorse the title deed of—

- (i) the land encumbered thereby; and
- (ii) any land in favour of which that servitude is being created;

or

(b) where the servitude is being created in terms of paragraph (b) of subsection (1) and the title deed in which the servitude is being created relates to—

- (i) the land in favour of which that servitude is being created, endorse the title deed of the land encumbered thereby; or
- (ii) the land encumbered thereby, endorse the title deed of any land in favour of which that servitude is being created.

(4) If the land which is to be encumbered by a servitude created in terms of subsection (1) is mortgaged or subject to any other real right with which the servitude may conflict, the registrar shall require the written consent of the holder of the right and the production of the bond or other registered deed in which the right is registered or recorded.

58 Requirements for preparation and submission of deed of servitude

(1) A deed of servitude shall—

(a) contain a full description of any land against or in favour of which the servitude is to be registered or endorsed, including the numbers and dates of the title deeds, and the full names of the grantor and, where practicable, the grantee of the servitude; and

(b) be executed by the owner of the land encumbered by the servitude and the owner of the land in favour of which or the person in whose favour the servitude is being created:

Provided that, where the servitude is being created in favour of the public or of all or some of the owners or occupiers of stands or lots in a township, the registrar may, if in his opinion it is impracticable for such persons to execute the deed, dispense with such execution of the deed; and

(c) be attested by a notary public:

Provided that this paragraph shall not apply to a deed of servitude such as is referred to in section *sixty-three* if the signature of each person executing the deed is witnessed by two competent witnesses or by a commissioner of oaths and the signature of each witness or the commissioner of oaths, as the case may be, has been affixed thereto in the presence of that person.

(2) Two signed originals or a signed original and a copy certified by notary public shall be submitted to the registrar for registration.

59 Restriction on registration of certain personal servitudes

No personal servitude of usufruct, *usus* or *habitatio* or any transfer or cession thereof purporting to extend beyond the lifetime of the person in whose favour it is created shall be registered.

60 Cancellation of registration of servitude

(1) Subject to subsections (2) and (3), cancellation of the registration of a servitude in pursuance of an agreement between the owner of the land encumbered thereby and the holder of the servitude shall be effected by notarial deed.

(2) If a servitude is mortgaged or the dominant tenement is mortgaged, the consent in writing of the holder of the bond to the cancellation of the registration of the servitude shall be produced to the registrar.

(3) Cancellation of the registration of a personal servitude may, subject to the agreement constituting the servitude, be effected by lodging with the registrar a written consent by the holder of that servitude for the cancellation of the servitude.

(4) If for any reason a servitude has lapsed, the registrar shall, on written application by the owner of the land encumbered thereby, accompanied by proof to his satisfaction of the lapse of the servitude and by all the deeds affected thereby, note on such deeds that the servitude has lapsed.

61 Transfer and mortgage of land with personal servitude thereon

(1) If the owner of land subject to a personal servitude and the holder of that servitude have disposed of the land or any portion thereof together with the rights of servitude to another person, they may together give transfer thereof to that person.

(2) The deed of transfer of land referred to in subsection (1) shall describe the owner of the land and the holder of the servitude as the transferors.

(3) The owner of land subject to a personal servitude and the holder of that servitude may—

- (a) together mortgage the land to the full extent of their respective rights therein; or
- (b) either of them as principal debtor mortgage the land or the servitude, as the case may be, and the other of them in the same bond mortgage the servitude or the land as surety.

62 Joint transactions by fiduciary and *fidei* commissary

(1) If the owner of land subject to a *fidei commissum* and the *fidei* commissary, if the latter is competent so to do, have disposed of the land or any portion thereof together with the *fidei* commissary rights to another person, they may together give transfer thereof to that person.

(2) The deed of transfer of land referred to in subsection (1) shall describe the owner of the land and the holder of the *fidei* commissary rights as the transferors.

(3) The owner of land subject to a *fidei commissum* and the *fidei* commissary, if the latter is competent so to do, may together mortgage the land to the full extent of their respective rights therein.

63 Certain restrictive conditions to be of no force and effect and certain alienations, etc., of property not to be invalid on certain grounds

(1) No conditions in a title deed which prohibits the ownership, occupation or use of any property on the grounds of race, tribe or colour shall be of any force or effect and the Registrar shall require any such condition in any title deed to any property to be omitted from any subsequent title deed to that property.

(2) No voluntary or involuntary alienation of any property or any disposition of any property whether by way of lease or servitude or otherwise or any contract therefor shall be invalid solely on the grounds that such alienation or disposition or contract therefor was in conflict with any condition referred to in subsection (1).

64 Sale of land on instalments

(1) Where land is sold in terms of a written contract whereby the purchase price is payable in three or more instalments, the registrar shall, upon the lodging with him in terms of this section of the written consent of the registered owner and the purchaser, endorse on the title deed of the land concerned that such land is subject to the contract.

(2) The endorsement in terms of subsection (1) against the title deed of any land shall confer on the purchaser of the land concerned, subject to this section and to any prior real rights attaching to the land, the following rights—

(a) in the event of the insolvency, assignment or liquidation of the seller's estate or the vesting of the seller's estate in a trustee or assignee in terms of the law relating to insolvency or a proposed sale in execution of the land, and upon him notifying his election thereof within three months of the insolvency, assignment, liquidation or attachment of the land, as the case may be, to the trustee, assignee, liquidator or officer charged with the sale of the land, either—

- (i) a charge over the land in favour of the purchaser for the amount of any instalments and deposit paid by him to the seller and for the value of any improvements effected upon the land by the purchaser and valued in terms of subsection (4) less the amount, if any, referred to in paragraph (d) of subsection (5); or
- (ii) a right to take transfer of the land subject to the payment of the outstanding balance of the purchase price under the contract or, if the land is encumbered under a prior real right securing a monetary obligation, to the payment of the outstanding balance under the prior real right, whichever is the greater:

Provided that where the land sold under the contract is a portion of land the whole of which is subject to such a prior real right, the purchaser shall be entitled to take transfer of the land upon payment of the sum referred to in subsection (3) or the balance of the purchase price under the contract, whichever is the greater;

or

(b) where the provisions of paragraph (a) do not apply or he has not made an election in terms of that paragraph, the right enforceable against all persons whatsoever to abide by the contract and to take transfer of the land upon fulfilment of the conditions of the contract.

(3) In the case of a sale of a portion of land, the whole of which is subject to a prior real right securing a monetary obligation, the registrar shall refuse to make an endorsement in terms of subsection (1) unless there is lodged with him a written statement signed by the purchaser and the holder of the prior real right setting out the amount which is deemed to represent, for the purposes of this section, the outstanding balance of the monetary obligation secured by the prior real right in respect of the land sold.

(4) For the purposes of paragraph (a) of subsection (2), the value of any improvements effected upon the land by the purchaser shall be such value as may be agreed by the persons concerned or, failing agreement, as may be determined by a valuator appointed by the officer charged with the duty of selling the property in execution or, in

the event of the insolvency, assignment or liquidation of the estate of the seller or the vesting of the seller's estate in a trustee or assignee in terms of the law relating to insolvency, by the trustee, assignee or liquidator concerned.

- (5) A consent referred to in subsection (1) shall be prepared by a notary public and shall—
- (a) identify the registered owner and the purchaser as is required in terms of this Act in respect of documents lodged for registration; and
 - (b) describe the land concerned and specify the number and date of the title deed of the registered owner; and
 - (c) state the purchase price and the amount of the deposit, if any, and of each instalment payable in terms of the contract in respect of capital and interest, if any; and
 - (d) state what amount, if any, of each instalment shall, in the event of the sale of the land pursuant to the insolvency, assignment or liquidation of the seller's estate or the vesting of the seller's estate in a trustee or assignee in terms of the law relating to insolvency or the sale in execution of the property, be deemed to be rent in respect of the occupation of the property by the purchaser; and
 - (e) have annexed thereto the contract or a copy thereof certified by a notary public; and
 - (f) be accompanied by the title deed of the registered owner.

(6) The rights conferred upon a purchaser in terms of this section shall rank from the date of the endorsement referred to in subsection (1).

(7) The registrar shall cancel an endorsement referred to in subsection (1) upon the lodging with him of the written consent thereto of the registered owner and the purchaser concerned.

(8) This section shall apply to a contract referred to in subsection (1) whether it was entered into before, on or after the 19th January, 1973.

Leases

65 Registration of leases and sub-leases

(1) Save where provision to the contrary is made in any enactment, any lease or sub-lease of land and any cession of such a lease or sub-lease intended or required to be registered in a deeds registry shall be executed by notarial deed by the lessor and the lessee or by the lessee and the sub-lessee or by the cedent and the cessionary, as the case may be.

(2) If the land leased or sub-leased is mortgaged or subject to the rights of any other person, it shall be necessary for the purposes of registration of the lease or sub-lease or any cession thereof to produce the consent of the legal holder thereof.

66 Termination of registered lease

When a registered lease or sub-lease has terminated, the registrar shall, on a written application by the owner of the land affected thereby and the registered holder of the lease, accompanied by all deeds affected by such termination, note on all such deeds that such lease or sub-lease, as the case may be, has terminated.

67 Where lease to be registered

Any lease of immovable property which is registered in the name of the lessor in a deeds registry shall be registered in that registry, and any sub-lease of any lease so registered shall be registered in that registry.

68 Cessions of leases and sub-leases

No cession of a lease or sub-lease shall be registered in any deeds registry unless the lease or sub-lease has been registered therein.

69 No hypothecation of leases and sub-leases

No hypothecation of a lease or sub-lease shall be registered in a deeds registry unless such hypothecation is effected by means of—

- (a) a mortgage bond, if the lease or sub-lease is immovable property; or
- (b) a notarial bond, if the lease or sub-lease is not immovable property.

70 Bonds hypothecating leases or sub-leases

(1) For the registration of a bond specially hypothecating a registered lease or sub-lease the deed of the lease shall be produced to the registrar.

(2) In registering such bond the registrar shall endorse on the deed that the lease or sub-lease has been hypothecated by the bond.

(3) Section *fifty* shall apply, *mutatis mutandis*, in respect of any lease or sub-lease so hypothecated.

PART VII

GENERAL

71 Cancellation of registration on lapse of certain registered rights

- (1) If it is expressly provided in—
 - (a) a registered lease of land; or

(b) a registered deed creating or evidencing a servitude; that it shall lapse upon the happening of certain events, the registrar shall, upon written application accompanied by an affidavit by the lessor or grantor of the registered right, as the case may be, that those events have happened, cancel the registration of the lease or servitude:

Provided that—

- (i) if the address of the lessee or grantee is stated in the registered document, or the address or any change thereof has been notified to the registrar, notice shall be given to such lessee or grantee by the applicant by prepaid registered letter that cancellation of the registration of the document is sought on the ground of the happening of certain events mentioned therein and that unless written objection to the cancellation specifying the grounds of objection is lodged with the registrar within one month, if the address is in Zimbabwe, or within three months or such further period as the registrar may in special circumstances determine, if the address is outside Zimbabwe, application will be made to the registrar for cancellation of the registration of the said document;
- (ii) if the address of the lessee or grantee is not stated in the document or has not been notified to the registrar as aforesaid, the applicant shall publish the notice aforesaid once in the *Gazette* and twice in a newspaper published in the district in which the land in question is situated (or if there be no such newspaper then in any newspaper circulating in such district) and in a newspaper (to be indicated by the registrar) circulating in the district of the lessee's or grantee's last known address which shall be disclosed by the applicant in an affidavit;
- (iii) if any objection is lodged which, in the registrar's opinion, discloses reasonable grounds for refusing cancellation of the registration, he shall not cancel it until the objection is withdrawn or falls away or cancellation is ordered by the court;
- (iv) if any of the rights to be cancelled are mortgaged, notice in writing shall be given by the applicant by prepaid registered letter to the mortgagee of the intention to cancel such rights, before the cancellation is effected.

(2) For the purposes of subsection (1), the lessor or grantor means the person who, from the records in the deeds registry, appears to be the owner of the land concerned.

72 Transfer and cession not to be passed as security

No transfer of land and no cession of any registered lease or sub-lease or other real right in land, except a mortgage, made as security for a debt or other obligation shall be attested by a registrar or registered in a deeds registry.

73 Transfer of immovable property by executor

An executor who desires to effect a transfer of land or a cession of real rights therein or a cession of a notarial bond in pursuance of a sale or cession for value by such executor shall lodge with a registrar—

- (a) an affidavit stating—
 - (i) that no objection to such transfer or cession exists; and
 - (ii) whether or not the estate is a joint estate; or
- (b) an account to which he is obliged to give effect in terms of subsection (10) of section 52 of the Administration of Estates Act [*Chapter 6:01*];

and the registrar shall be entitled to pass transfer or register the cession accordingly.

74 Transfer duty to be paid before transfer

If any land or real right in land has been settled upon or donated to an intended spouse in terms of an antenuptial con. tract, or if in consequence of a division of a joint estate in terms of a notarial deed executed under the provisions of section 3 of the Married Persons Property Act [*Chapter 5:11*], one spouse obtains more than a half share in any land or real right in land, no transfer or cession of such land or real right in land by the donor or spouse in whose name such land or right is registered to any person other than the donee or the spouse who obtains such share under such division of the joint estate, and no mortgage of such land or right by the donor or the spouse in whose name the land or right is registered, shall be executed, attested or registered by the registrar unless the duty, if any, payable on the donation or division has been paid.

75 Registration of change of name

(1) If the name of any person or partnership appears in any registered deed or other document and such name has been changed, such person or partnership may apply in writing to the registrar to endorse on the said deed or other document that the name of such person or partnership has been changed to the name stated in the application.

(2) Every such application shall be accompanied by the deed or other document requiring amendment and by the consent in writing of every other person interested in such deed or other document or in the rights created, conveyed or evidenced thereby and if the old name appears in another deed or other document that deed or document shall likewise be forwarded to the registrar for endorsement.

(3) If the name of the person or partnership concerned has been changed in accordance with the provisions of any law and the registrar is satisfied that no change of person in law is implied in such change of name, the registrar shall endorse on the said deed or other document that the name of the person or partnership has been changed to the name stated in the application and, if the old name of such person or partnership appears in any other deed or document registered in that registry, the registrar shall likewise endorse that deed or other document and in either case make corresponding entries in the appropriate registers.

(4) If the name of the person or partnership concerned has not been changed in accordance with the provisions of any law, or the registrar is not satisfied that no change of person in law is implied in such change of name, the registrar shall, at the expense of the applicant, publish a notice of the application once in the *Gazette* and three times in a newspaper approved by him.

(5) If any objection to the endorsement being made is lodged with the registrar not later than one week after the last publication in the *Gazette* or newspaper, whichever may be the later, and such objection is in the opinion of the registrar *bona fide* and sufficiently material, the registrar may refuse to make the endorsement except upon the authority of an order of court, and the court shall have jurisdiction to make such order in the matter as it may deem just.

(6) If no such objection is lodged within the period mentioned in subsection (5), or if in the opinion of the registrar such objection is not *bona fide* or is not sufficiently material, the registrar shall make the endorsement and entries as provided in subsection (3).

(7) Subject to sections *forty-two* and *seventy-six*, no change in the name of any immovable property shall be recorded in a deeds registry.

76 Renumbering of properties

(1) If, after he has received a report from the Surveyor-General and the registrar that the numbering or descriptions of registered properties in any district have become complicated, the Minister is satisfied that in the public interest the properties in that district should be renumbered, he may authorize the amendment of the relevant general plans and diagrams by the Surveyor-General.

(2) As soon as a diagram or general plan has been amended by the Surveyor-General in accordance with authority granted in terms of subsection (1), the registrar shall enter the new number assigned to each registered property in that district against the relevant folio in the registers kept in the deeds registry and shall, by notice in the *Gazette* and in a newspaper circulating in the district in which the registered properties are situate, call upon all affected owners of registered properties in the district to submit the title deeds under which they hold the land, together with the diagram deeds and all other documents relating thereto, for amendment within three months of the date of publication of such notice. The registrar shall note, free of charge, upon the title deeds and all other documents submitted to him and upon the relevant registry duplicates, the new number assigned to the registered property and the Surveyor-General shall amend the diagrams thereof, but no amendment shall be made which would have the effect of amending any rights of ownership.

(3) any owner fails to submit his title deed and other documents for amendment within the period mentioned in subsection (2), the registrar shall impound such title deed and other documents when they are presented to him for any act of registration and may retain such deed and other documents until the amendments authorized by this section have been made and until such owner has paid such fee as may be prescribed in respect thereof.

77 Deletion of conditions of title

(1) Notwithstanding anything to the contrary in this Act, if a registrar is of the opinion that—

- (a) any condition subject to which an application for a township has been granted in terms of Part III of the Town and Country Planning Act [*Chapter 213 of 1974*] or the Town Planning Act [*Chapter 103 of 1939*] is no longer of any force or effect, he may, after consultation with the Director of Physical Planning, delete that condition in the conditions of establishment of the township concerned and any stand in that township which is thereafter transferred shall not be subject to the condition so deleted; or
- (b) any condition registered in the title deed to any immovable property should not have been so registered or is no longer of any force or effect, he shall delete that condition from the said title deed or require it to be omitted from any subsequent title deed to that immovable property or any portion thereof.

(2) If a registrar is of the opinion that the rights of any person may be affected by any action taken in terms of subsection (1), he shall publish, in the *Gazette* and in a newspaper circulating in the area, notice of the proposed deletion calling upon any person affected who has any objection to the proposed deletion to lodge his objections in writing with the registrar not later than such date, being not less than one month of the date of the publication of the notice in the *Gazette*, as may be specified in that notice.

(3) Where notice has been given in terms of subsection (2) of any proposed deletion, the registrar shall consider all objections lodged with him in terms of that subsection and shall, subject to section *eighty-three*, make such decision as he deems fit and notify the objector of the decision so made.

78 Attestation of powers of attorney

Powers of attorney to pass deeds or to do any act in connection with a deeds registry shall—

- (a) if executed within Zimbabwe, be accepted if witnessed by two competent witnesses or by a justice of the peace or commissioner of oaths and the signature of each such witness, the justice of the peace or commissioner of oaths, as the case may be, has been affixed thereto in the presence of the person executing it;
- (b) if executed outside Zimbabwe, be accepted if authenticated—
 - (i) by a legal practitioner, mayor or person holding judicial office; or
 - (ii) in the case of a country or territory in which Zimbabwe has its own diplomatic or consular representative, by the head of a Zimbabwean diplomatic mission, the deputy or acting head of such mission or a counsellor, first, second or third secretary, consul-general, consul or vice-consul.

79 Notice to registrar of application to court

Before any application is made to the court for authority or an order involving the performance of any act in a deeds registry, the applicant shall give the registrar concerned reasonable notice before the hearing of such application, and such registrar may submit to the court such report thereon as he may deem desirable to make.

80 Production of documents in evidence

(1) No original document kept in a deeds registry shall be produced in any legal proceedings save in exceptional circumstances and upon an order of the court before which such proceedings are being brought.

(2) Where the original document is produced upon an order of court as in subsection (1) provided, it shall not be necessary in any legal proceedings for the registrar himself, or for any officer under him, to produce such original document, but it shall be sufficient if such document is produced by some person authorized by him to do so.

(3) Except where the original document is produced upon an order of court as in subsection (1) provided, a copy of or extract from any document kept in a deeds registry, certified to be a true copy under the hand of the registrar, shall in all legal proceedings be admissible in evidence, as of equal validity with the original document. Certified copies or extracts may be handed into court by the party who desires to avail himself of them.

(4) Where the original document has been destroyed and such original document was, before its destruction, photographed in accordance with the provisions of any regulations, the photographic copy of that document kept in accordance with those regulations shall, for the purposes of this section, be deemed to be the original document.

81 Penalty for false citement in affidavit

Every affidavit required to be produced to the registrar under the provisions of paragraph (a) of subsection (1) of section *six* shall set forth that it is made for the purposes of that paragraph; and any person who makes any such affidavit knowing it to be untrue in any material particular shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Section amended by section 4 of Act 22 of 2001]

82 Substituted copy of lost deed supersedes original which must be surrendered on recovery

(1) If a copy of a registered deed or other document has been issued in manner prescribed by regulation in substitution for a deed or other document which has been lost or is believed to have been destroyed, the original deed or other document, if still in existence, shall thereupon become void.

(2) If a deed or other document, which has become void as aforesaid, comes into the possession or custody of any person who knows that a copy has been issued in substitution therefor, he shall forthwith deliver or transmit such deed or other document to the registrar concerned.

83 Appeals to Planning Appeals Board

(1) Any person who—

- (a) is the owner of immovable property and is aggrieved by the refusal of a registrar to register a condition on the grounds that such condition may not be registered in terms of subsection (3) of section *fifty-six*; or
- (b) is aggrieved by any decision of a registrar in terms of subsection (3) of section *seventy-six*;

may, within one month of being notified of the refusal or decision of the registrar, as the case may be, or such longer period as the President of the Administrative Court may in writing authorize, appeal to the Administrative Court which may confirm the refusal or decision of the registrar or issue such other order as it deems fit.

(2) Part X of the Regional, Town and Country Planning Act [*Chapter 29:12*] shall apply, *mutatis mutandis*, in relation to an appeal in terms of subsection (1).

84 Exemption from law for acts or omissions in deeds registry

No act or omission of any registrar or of any officer employed in a deeds registry shall render the State or such registrar or officer liable for damage sustained by any person in consequence of such act or omission:

Provided that—

- (i) if such act or omission is *mala fide* or if such registrar or officer has not exercised reasonable care and diligence in carrying out his duties in connexion with such act or omission, the State shall be liable for the damage aforesaid;
- (ii) the registrar or officer guilty of such act or omission shall be liable to make good any loss or damage resulting therefrom to the State if such act or omission was *mala fide*.

85 Fees of office not chargeable in certain cases

No fee of office shall be charged in respect of the preparation or issue in terms of the Regional, Town and Country Planning Act [*Chapter 29:12*] of a title deed to any land which is acquired by a local authority in terms of that Act for public purposes or which vests in a local authority in terms of that Act.

86 Formal defects

No act in connexion with any registration in a deeds registry shall be invalidated by any formal defect, whether such defect occurs in any deed passed or registered, or in any document upon the authority of which any such deed has been passed or registered or which is required to be produced in connexion with the passing or registration of such deed, unless a substantial injustice has by such act been done which in the opinion of the court cannot be remedied by any order of the court.

87 Regulations

- (1) The Minister may make regulations prescribing—
 - (a) the fees of office to be charged in respect of any act, matter or thing required or permitted to be done in or in relation to a deeds registry, including any report made to the court by the registrar in connexion with any application or action to which he is not a party;
 - (b) the steps to be taken for the protection and preservation of the records of any deeds registry (including the photographing of such records and the protection and preservation of the photographic copies) and the destruction or disposal of any records other than current deeds, diagrams and other documents;
 - (c) the manner and form in which any deed or other document required or permitted to be lodged, registered or filed in a deeds registry shall be prepared, lodged, executed, registered, filed or delivered;
 - (d) the manner and form in which endorsements or entries required by this Act or any other enactment to be made on registered deeds or other documents or in the registers shall be made thereon or therein;
 - (e) the particular documents which, when produced in a deeds registry, shall be attested or witnessed, the manner in which any such document shall be attested or witnessed and the number of copies of a document which shall be lodged in a deeds registry when such document is registered;
 - (f) the divisions, districts or other areas within the area served by a deeds registry, which shall be adopted in numbering, for the purposes of registration, the farms or other pieces of land situate therein;
 - (g) the method according to which farms or other pieces of land in any such division, district or other area shall be numbered;
 - (h) the manner and form in which stands or lots or portions of land or lots in townships or similar areas may be registered;
 - (i) the manner and form in which information which is required by law to be furnished to a registrar shall be recorded in his deeds registry, the manner and form in which information permitted by law to be furnished by a registrar to the public shall be furnished and the manner and form in which the identity of persons shall be established;
 - (j) the conditions upon which conveyancers, legal practitioners, surveyors and other persons may conduct any search in a deeds registry and the precautions which shall be taken to ensure preservation of the records from damage by improper handling or otherwise;
 - (k) the conditions under which copies of deeds and other documents registered in a deeds registry may be issued for judicial purposes or purposes of information or in substitution for deeds or other documents which have been lost, destroyed, defaced or damaged, and the conditions under which extracts from registers or from any documents registered or filed in a deeds registry may be furnished;
 - (l) the manner and form in which consent shall be signified to any cancellation, cession, part payment, release or amendment of or other registrable transaction affecting any bond or other document registered in a deeds registry;
 - (m) the conditions under which a copy of a power of attorney may be accepted by a registrar in lieu of the original;
 - (n) the forms of deeds which shall be used in circumstances not provided for in this Act;
 - (o) any matter which under this Act is required or permitted to be prescribed.

(2) Any regulations made under paragraph (f) or (g) of subsection (1) shall come into operation within the area served by a deeds registry upon such dates as the Minister may, by statutory instrument, fix.

88 Special jurisdiction of magistrates courts

Notwithstanding anything to the contrary contained in the Magistrates Court Act [*Chapter 7:10*], an application in terms of subsection (7) of section *sixty-three* for an order for the ejectment of any person who occupies any

property in contravention of the restrictive condition may be heard by a court presided over by a senior magistrate, provincial magistrate or regional magistrate, irrespective of the value of the right of occupation of the property concerned.

SCHEDULE (Sections 3 and 38)

AREAS OF DEEDS REGISTRIES

The area served by the deeds registry at Harare shall be the area lying to the north and east of the line drawn from the intersection of the Zimbabwe/Zambia international boundary by the former course of the Sanyati River and generally southwards along this former course to the present mouth of the Sanyati River on the southern bank of Lake Kariba; thence up the Sanyati and Munyati Rivers to the eastern boundary of Moreena Ranch and generally southwards along the eastern boundary of Moreena Ranch, the eastern and southern boundaries of Mazuri Ranch and the eastern boundaries of Pavlova, Twin Springs Ranch and Mvurachena to the Sebakwe River; thence up the Sebakwe River to the north-western boundary of Central Estates and generally southwards along the north-western, south-western and south-eastern boundaries of Central Estates and the south-western boundaries of Pela, Pansi and Ensimoen to the Ngezi River; thence down the Ngezi River to its last intersection by the eastern boundary of Gamwa Purchase Land and southwards and westwards along the eastern and southern boundaries of Gamwa Purchase Land to its south-western beacon; thence westwards direct to the south-eastern beacon of Kismet Ranch and westwards along the southern boundary of Kismet Ranch to the Musavezi River; thence down the Musavezi and Runde Rivers to the confluence of the Runde and Mapwe Rivers and south-westwards along the north-western boundary of Nuanetsi Ranche A to the Mwenezi River; thence up the Mwenezi River to the eastern boundary of Wedza Block and south-westwards along the eastern and southern boundaries of Wedza Block to the Buby River; thence down the Buby River to its confluence with the Limpopo River.

The area served by the deeds registry at Bulawayo shall be the remainder of Zimbabwe.

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