

BLACK COMMUNITIES DEVELOPMENT ACT 4 OF 1984

NOTE:

1. This Act, except for Chapters VI and VIA, has been repealed by s. 72 (1) (a) of the Abolition of Racially Based Land Measures Act 108 of 1993. Chapters VI and VIA are reproduced below. The rest of the Act appears in PRELEX 1991.

2. See Proclamation 74 in *Government Gazette* 17669 of 20 December 1996 concerning the extent of the assignment of the administration of this Act to the provinces.

[ASSENTED TO 22 FEBRUARY 1984]

[DATE OF COMMENCEMENT: 1 APRIL 1984]

(Afrikaans text signed by the State President)

as amended by

Black Communities Development Amendment Act 52 of 1985
Laws on Co-operation and Development Second Amendment Act 90 of 1985
Special Courts for Blacks Abolition Act 34 of 1986
Black Communities Development Amendment Act 74 of 1986
Abolition of Development Bodies Act 75 of 1986
Sorghum Beer Amendment Act 29 of 1987
Constitutional Laws Amendment Act 32 of 1987
Taxation Laws Amendment Act 86 of 1987
Black Communities Development Amendment Act 42 of 1988
Proclamation 117 of 1990
Black Communities Development Amendment Act 77 of 1991
Black Communities Development Amendment Proclamation R11 of 1994

ACT

To provide for the purposeful development of Black communities outside the national states; to amend and consolidate certain laws which apply with reference to such communities; and to provide for matters connected therewith.

CHAPTER VI LEASEHOLD (ss 52-57)

52 Granting of leasehold

(1) (a) Any Administrator, local authority, township developer or the State may, subject to the Upgrading of Land Tenure Rights Act, 1991 (Act 112 of 1991)-

(i) in the case of an Administrator, in respect of land which has been transferred to him under section 3 (2) (a) of the Abolition of Development Bodies Act, 1986 (Act 75 of 1986);

(ii) in the case of a local authority, in respect of land of which it is the registered owner or which vests in it or which has been made available to it in accordance with any repealed provision of this Act;

(iii) in the case of a township developer, in respect of land of which it is the registered owner or which has been made available to it in accordance with any repealed provision of this Act; and

(iv) in the case of the State, in respect of State land, on application made to him or it in the prescribed manner and on the conditions prescribed generally or approved by the Administrator in any particular case, or contained in conditions of title or township conditions contemplated in section 57B, grant to any person, including the State, a right of leasehold in the prescribed manner in respect of any leasehold site which is situate on such land.

[Para. (a) amended by s. 16 (a) of Act 52 of 1985 and substituted by s. 21 (a) of Act 74 of 1986 and by Proclamation R11 of 28 January 1994.]

(b)[Para. (b) deleted by Proclamation R11 of 28 January 1994.]

(2)[Sub-s. (2) amended by s. 16 (b) of Act 52 of 1985, substituted by s. 21 (b) of Act 74 of 1986 and deleted by Proclamation R11 of 28 January 1994.]

(3)[Sub-s. (3) deleted by s. 21 (c) of Act 74 of 1986, inserted by s. 2 (a) of Act 77 of 1991 and deleted by Proclamation R11 of 28 January 1994.]

(4) (a) Leasehold shall be granted against payment to the Administrator concerned or, where the right was granted by a local authority or any other person, to such local authority or person, of an amount in respect of that right and any improvement on the leasehold site in question, or against the furnishing of security to the satisfaction of such Administrator, local authority or person for the payment of the said amount upon registration.

[Para. (a) substituted by Proclamation R11 of 28 January 1994.]

(b) The amount referred to in paragraph (a) shall be determined and be payable in the manner prescribed, and such manner shall provide that payment of the amount may also be made by way of instalments.

(5) Leasehold may, notwithstanding the provisions of subsection (1) but subject to the provisions of subsections (6) and (7), be granted in respect of premises situated within a development area although such premises have not been surveyed by a land surveyor or, if such premises have so been surveyed, although such premises are not yet shown on a diagram or a general plan, and such leasehold may be registered and hypothecated, provided-

(a) the premises concerned are shown on an aerial photograph or a plan showing the relative situation of such premises and such photograph or plan is certified in accordance with the prescribed requirements by a land surveyor as relating to such premises;

(b) the Administrator, local authority or township developer, as the case may be-

(i) causes the premises concerned, so certified, to be surveyed by a land surveyor; and

(ii) causes the relevant diagram or general plan to be lodged with a Surveyor-General for approval,

[Para. (b) amended by Proclamation R11 of 28 January 1994.]

within a period of four years from such grant: Provided that the Administrator may by proclamation in the *Official Gazette* declare that, as from a date specified in the proclamation, no leasehold shall be granted in the province concerned in respect of premises contemplated in this subsection.

[Sub-s. (5) substituted by s. 21 (d) of Act 74 of 1986 and by s. 27 (a) of Act 32 of 1987 and amended by Proclamation R11 of 28 January 1994.]

(6) If the premises in respect of which leasehold has been granted, have not been surveyed by a land surveyor, or the relevant diagram or general plan has not been lodged with the Surveyor-General, such leasehold shall not be disposed of except by way of a sale in execution or a sale in respect of an insolvent estate or transfer from a deceased estate, whether by virtue of a sale or otherwise.

[Sub-s. (6) amended by s. 21 (j) of Act 74 of 1986 and substituted by s. 27 (b) of Act 32 of 1987 and by s. 2 (b) of Act 77 of 1991.]

(7) If the Administrator, local authority or township developer who granted a leasehold referred to in subsection (5), fails to have the relevant diagram or general plan lodged with the Surveyor-General within the period referred to in subsection (5) (b), the holder of the leasehold concerned may, if the premises concerned are not yet surveyed by a land surveyor, cause the premises to be so surveyed and cause that diagram or general plan to be lodged with the Surveyor-General, and in any such case such Administrator, local authority or township developer shall pay the prescribed part of the costs incurred by such holder.

[Sub-s. (7) substituted by s. 21 (e) of Act 74 of 1986 and by s. 27 (c) of Act 32 of 1987 and amended by Proclamation R11 of 28 January 1994.]

(8) If the boundaries of premises in respect of which leasehold has been granted, when surveyed by a land surveyor appear not to be substantially the same as the boundaries of those premises as identified in terms of this section-

(a) the holder of such leasehold may without prejudice to any other claim as to damages which he may have against the Administrator, local authority or township developer, cause such right to be cancelled and claim any payments made by him, prior to such cancellation, consequential to such right, from the Administrator, local authority or township developer;

[Para. (a) amended by Proclamation R11 of 28 January 1994.]

(b) the Administrator, local authority or township developer shall compensate the mortgagee in respect of any loss which may have been suffered by such mortgagee as a result of such cancellation.

[Para. (b) amended by Proclamation R11 of 28 January 1994.]
[Sub-s. (8) amended by s. 21 (j) of Act 74 of 1986.]

(9) When leasehold is granted in terms of this section in respect of premises which have not been surveyed by a land surveyor, the registrar of deeds shall endorse the deed of leasehold in the prescribed manner.

[Sub-s. (9) amended by s. 21 (j) of Act 74 of 1986 and substituted by s. 2 (d) of Act 77 of 1991.]

(9A) If a right of leasehold in respect of a leasehold site has been registered with reference to an existing general plan which was not signed by a land surveyor as having been surveyed by him, but in respect of which site a land surveyor issued a verification certificate, a Surveyor-General may approve a new general plan on which such site is shown and which has been surveyed by a land surveyor in accordance with the physical features recognized as being or which are indicative of the boundaries of such site notwithstanding the fact that the resulting dimensions and area of such site differ from the data shown on the existing general plan with reference to which they were registered: Provided that the Surveyor-General shall-

(a) endorse the relevant portion of the existing general plan as having been superseded by the new general plan; and

(b) inform the registrar concerned accordingly, who shall thereafter effect the necessary alterations, references or endorsements to or on the relevant title deeds and registers in his registration office.

[Sub-s. (9A) inserted by s. 21 (f) of Act 74 of 1986.]

(10) If leasehold is granted in respect of any premises, such leasehold shall take effect only when the leasehold is registered in the appropriate deeds registry in the prescribed manner.

(11)[Sub-s. (11) amended by s. 16 (c) of Act 52 of 1985 and by s. 21 (g) of Act 74 of 1986 and deleted by Proclamation R11 of 28 January 1994.]

(12)[Sub-s. (12) deleted by Proclamation R11 of 28 January 1994.]

(13)[Sub-s. (13) deleted by s. 21 (h) of Act 74 of 1986.]

(14) The provisions of the Alienation of Land Act, 1981 (Act 68 of 1981), shall apply *mutatis mutandis* with respect to any alienation of a leasehold, and any reference to 'land', 'erf' or 'unit' in the said Act shall be construed as a reference to the relevant leasehold.

[Sub-s. (14) substituted by s. 21 (i) of Act 74 of 1986 and by s. 27 (d) of Act 32 of 1987.]

(15) No money, other than such money as may be prescribed, shall be payable in respect of any transaction entered into or the performance of any act in terms of this Act.

(16) Notwithstanding anything to the contrary contained in any law, any leasehold granted by an Administrator or by a local authority, whether before or after the commencement of the Constitutional Laws Amendment Act, 1988, in respect of any land owned by the one or the other of them and in respect of which the register in terms of section 46 of the Deeds Registries Act, 1937 (Act 47 of 1937), had not been opened at the time of such grant, shall be deemed to be validly granted for all purposes under this Act, notwithstanding that that leasehold was so granted by the Administrator or local authority while the other one of them was the owner of the land concerned.

[Sub-s. (16) added by s. 6 of Act 42 of 1988.]
[Date of commencement of s. 52: 1 November 1985.]

53 Registration of leasehold and legal effect of such registration

(1) Subject to the provisions of sections 56 and 57 a leasehold shall be registered in accordance with the provisions of the Deeds Registries Act, 1937 (Act 47 of 1937).

(2) Any person to whom a leasehold has been granted shall be entitled to a certificate in the prescribed form, issued by the registrar at the time of such registration or at any prescribed time thereafter, stating the fact of registration of the leasehold in respect of the leasehold site in question.

[Sub-s. (2) amended by Proclamation R11 of 28 January 1994.]

(3) The certificate referred to in subsection (2) shall serve as proof in favour of the registered holder thereof-

(a) of registration of the leasehold in question;

(b)[Para. (b) deleted by Proclamation R11 of 28 January 1994.]

(c) subject to section 52 (6), of the granting of the rights and powers referred to in section 4 (1) of the Upgrading of Land Tenure Rights Act, 1991 (Act 112 of 1991).

[Para. (c) substituted by Proclamation R11 of 28 January 1994.]

(4)[Sub-s. (4) deleted by s. 7 of Act 42 of 1988.]

(5)[Sub-s. (5) amended by s. 22 of Act 74 of 1986 and by s. 3 (1) of Act 77 of 1991 and deleted by Proclamation R11 of 28 January 1994.]

(6) No provision of the Stamp Duties Act, 1968 (Act 77 of 1968), shall apply and no transfer duty shall be payable with reference to any document executed or any transaction entered into or any other act performed in terms of this section or section 54.

[Sub-s. (6) substituted by s. 17 of Act 52 of 1985 and amended by Proclamation R11 of 28 January 1994.]
[Date of commencement of s. 53: 1 November 1985.]

54 Grant or transfer of leasehold

(1) A registered leasehold in respect of a leasehold site may be transferred by means of a deed as prescribed or by an endorsement as provided in the Deeds Registries Act, 1937 (Act 47 of 1937), or any other law.

(2) No grant or transfer of any leasehold shall be effected until proof is furnished to the registrar-

a) that no charge, fee or other due is at the date of such grant or transfer owing in respect of the site in question by the holder of such leasehold to the Administrator or local authority concerned; or

[Para. (a) amended by Proclamation R11 of 28 January 1994.]

(b) that the said Administrator or local authority has granted written consent to the said grant or transfer.

[Para. (b) amended by Proclamation R11 of 28 January 1994.]

[S. 54 substituted by s. 4 (1) of Act 77 of 1991 (date of commencement: 1 November 1985).]

55[S. 55 amended by s. 18 of Act 52 of 1985 and repealed by Proclamation R11 of 28 January 1994.]

56 Special provisions in respect of registration of leasehold

(1) Notwithstanding the provisions of section 3 (1) (p), 16 and 77 of the Deeds Registries Act, 1937 (Act 47 of 1937), no document relating to the registration or transfer or cession of a right of leasehold need be attested by a notary, and such document shall be executed and registered in the manner prescribed.

(2) Notwithstanding the provisions of section 6 of the Deeds Registries Act, 1937, a registrar may cancel a leasehold if the Administrator, local authority or township developer and the holder of the leasehold, the mortgagee concerned and the holder of any real right over the leasehold (if any) agree thereto.

[Sub-s. (2) substituted by s. 19 of Act 52 of 1985 and by s. 5 (a) of Act 77 of 1991 and amended by Proclamation R11 of 28 January 1994.]

(3) Notwithstanding the provisions of section 43 (5) of the Deeds Registries Act, 1937, the State or a Administrator, local authority or township developer may grant a leasehold without first obtaining a certificate of registered title in respect of the leasehold site or premises concerned.

[Sub-s. (3) substituted by s. 23 of Act 74 of 1986 and by s. 5 (b) of Act 77 of 1991 and amended by Proclamation R11 of 28 January 1994.]

(4) Unless it is otherwise provided in this Act or the regulations, or the context otherwise indicates, the provisions of the Deeds Registries Act, 1937, shall *mutatis mutandis* apply in relation to all documents registered or filed or intended for registration or filing in a registration office, and any reference to any right in respect of land in the said Act shall be construed as a reference to a right of leasehold.

[Sub-s. (4) substituted by s. 5 (c) of Act 77 of 1991.]

(5) (a) From the commencement of section 53 and this section all certificates of leasehold and mortgage bonds registered in terms of the Blacks (Urban Areas) Consolidation Act, 1945 (Act 25 of 1945), in respect of leasehold sites shall be deemed to have been registered in terms of this Act.

(b) As soon as practicable after such commencement a registrar contemplated in section 6B of the Blacks (Urban Areas) Consolidation Act, 1945, shall hand all books, documents, registers and records held by him and relating to such rights, over to the registrar concerned.

(c) As from such commencement any document issued or act done in the office of the first-mentioned registrar shall be deemed to have been issued or done at the office of the last-mentioned registrar.

[Date of commencement of s. 56: 1 November 1985.]

57 Regulations in respect of leasehold

(1) The Minister shall, before he makes regulations concerning the registration of leaseholds and related matters, consult with the deeds registries regulations board contemplated in section 9 of the Deeds Registries Act, 1937 (Act 47 of 1937).

[Sub-s. (1) substituted by s. 20 of Act 52 of 1985.]

(2) A regulation in respect of a matter referred to in subsection (1) made under any law repealed by this Act, shall be deemed to have been made under this Act.

[Date of commencement of s. 57: 1 November 1985.]

**CHAPTER VIA
MATTERS INCIDENTAL TO OWNERSHIP (ss 57A-57D)**

[Heading inserted by s. 24 of Act 74 of 1986.]

57A

[S. 57A inserted by s. 24 of Act 74 of 1986, amended by s. 26 of Act 86 of 1987 and by s. 6 of Act 77 of 1991 and repealed by Proclamation R11 of 28 January 1994.]

57B Registration of conditions

Notwithstanding the provisions of this Act or of any other law, the State, Administrator, local authority or township developer may impose and register such conditions of title or township conditions in a deed of grant referred to in section 18 of the Deeds Registries Act, 1937 (Act 47 of 1937), or in the first deed of transfer of ownership to any person in respect of any erf situated in a township, or in a certificate as referred to in section 53 (2), as may be prescribed and which have as far as possible been incorporated by reference in such deed of grant, deed of transfer or certificate: Provided that the provisions of any town planning scheme which become applicable after the registration of such conditions of title or township conditions in respect of that township and which apply to that erf, shall upon the coming into force of that town planning scheme replace such registered conditions of title or township conditions, after which those conditions shall be of no force or effect.

[S. 57B inserted by s. 24 of Act 74 of 1986 and amended by Proclamation R11 of 28 January 1994.]

57C and 57D

[Ss. 57C and 57D inserted by s. 24 of Act 74 of 1986 and repealed by Proclamation R11 of 28 January 1994.]
