

UPGRADING OF LAND TENURE RIGHTS ACT 112 OF 1991

[ASSENTED TO 27 JUNE 1991]

[DATE OF COMMENCEMENT: 1 SEPTEMBER 1991]

(Afrikaans text signed by the State President)

as amended by

General Law Amendment Act 139 of 1992
General Law Second Amendment Act 108 of 1993
Land Affairs General Amendment Act 11 of 1995
Development Facilitation Act 67 of 1995
Upgrading of Land Tenure Rights Amendment Act 34 of 1996
Land Affairs General Amendment Act 61 of 1998

also amended by

Transformation of Certain Rural Areas Act 94 of 1998
[with effect from a date to be proclaimed]

ACT

To provide for the upgrading and conversion into ownership of certain rights granted in respect of land; for the transfer of tribal land in full ownership to tribes; and for matters connected therewith.

1 Definitions

(1) In this Act, unless the context otherwise indicates-

'Administrator'

[Definition of 'Administrator' substituted by s. 30 (a) of Act 108 of 1993 and deleted by s. 8 (a) of Act 11 of 1995.]

'community' means a group of persons of which its members have or wish to have their rights to or in a particular piece of land determined by shared rules;

[Definition of 'community' inserted by s. 1 (a) of Act 34 of 1996.]

'community resolution' means any decision taken by a majority of the members of the community over the age of 18 years present or represented at a meeting convened for the purpose of considering the disposal of a right in land lawfully occupied by or allocated for the use of such community, of which they have been given sufficient notice, and in which they had a reasonable opportunity to participate;

[Definition of 'community resolution' inserted by s. 1 (a) of Act 34 of 1996.]

'Deeds Act' means the Deeds Registries Act, 1937 (Act 47 of 1937);

'deeds registry' means a deeds registry as defined in section 102 of the Deeds Act;

'erf', in relation to a township, means any surveyed or any informally demarcated unit in the township or, if a general plan has been prepared for the township, any unit indicated on such general plan as an erf, plot or stand;

'formalized township' means a township for which a general plan or general plans have been approved under a provision of any law and which-

(a) has been established or is deemed to have been established as a township under section 35 of the Black Communities Development Act, 1984 (Act 4 of 1984);

(b) has been established as a town under section 25 or 30 of the Black Administration Act, 1927 (Act 38 of 1927); or

(c) is for the purposes of Chapter 1 declared to be a formalized township under section 15 (1);

'general plan' means a plan representing the relative positions and dimensions of two or more pieces of land;

'land tenure right' means any leasehold, deed of grant, quitrent or any other right to the occupation of land created by or under any law and, in relation to tribal land, includes any right to the occupation of such land under the indigenous law or customs of the tribe in question;

'Minister' means the Minister of Land Affairs;

[Definition of 'Minister' substituted by s. 30 (b) of Act 108 of 1993 and by s. 8 (b) of Act 11 of 1995.]

'Official Gazette' means the *Official* or *Provincial Gazette* of the province concerned;

'putative holder' means the person who occupies an erf as if he or she is the holder of the land tenure right in respect of that erf but who is not formally recorded in the register of land rights as the holder of the right in question;

[Definition of 'putative holder' inserted by s. 1 (b) of Act 34 of 1996.]

'register of land rights'-

(a) in relation to a township in which a land tenure right mentioned in Schedule 1 or 2 has been granted in respect of any erf or other piece of land in the township in terms of a provision of any law, means the register compiled and written up in terms of a provision of any law as a record of the granting of such land tenure right in erven or other pieces of land in the township or, if such register has been compiled or updated for the township under section 18 (1), the register so compiled or updated;

(b) in relation to a township on tribal land in which a land tenure right has been granted in respect of any erf or other piece of land in the township under the indigenous law or customs of the tribe in question, means the register compiled under section 18 (2) as a record of the granting of such land tenure right in erven or other pieces of land in the township;

(c) in relation to a piece of land in respect of which a land tenure right mentioned in Schedule 1 or 2 has been granted under a provision of any law and which does not form part of a township, means the register compiled in terms of a provision of any law as a record of the granting of such land tenure right in such piece of land;

'title of land right', in relation to any erf or any other piece of land, means a deed executed under a provision of any law as proof of the registration of a land tenure right in respect of such erf or such piece of land in the name of a person;

'township' means-

(a) any piece of land which is subdivided into smaller units in such a manner that the units are accessible by means of streets or thoroughfares, whether the units have been surveyed or are informally demarcated; or

(b) any settlement, whether surveyed as such or established in any informal manner;

'township owner' means the person who, by virtue of his ownership of the land on which a township is situated, is the owner of the erven and other pieces of land in the township or, if any of such erven or pieces of land have been transferred, is the owner of the remaining erven or pieces of land;

'township register' means a register referred to in section 46 (1) of the Deeds Act;

'tribal land' means land-

(a) in respect of which a tribe is the owner;

(b) which is held in trust on behalf of a tribe; or

(c) which has been allocated for the use of a tribe to the tribe by the State or the South African Development Trust mentioned in section 4 of the Development Trust and Land Act, 1936 (Act 18 of 1936);

'tribal resolution', in relation to a tribe, means a resolution passed by the tribe democratically and in accordance with the indigenous law or customs of the tribe: Provided that for the purposes of this Act any decision to dispose of a right in tribal land may only be taken by a majority of the members of the tribe over the age of 18 years present or represented at a meeting convened for the purpose of considering such disposal, of which they have been given sufficient notice, and in which they had a reasonable opportunity to participate;

[Definition of 'tribal resolution' substituted by s. 1 (c) of Act 34 of 1996.]

'tribe' includes-

(a) any community living and existing like a tribe; or

(b) any part of a tribe living and existing as a separate entity.

(2) For the purposes of this Act, any piece of land within the borders of a township which is not registrable in the township register of such township or, if a township register has not yet been opened, will not be so registrable, shall not be deemed to form part of the township.

CHAPTER 1 CONVERSION OF LAND TENURE RIGHTS INTO OWNERSHIP (ss 2-14)

2 Conversion of land tenure rights mentioned in Schedule 1

(1) Any land tenure right mentioned in Schedule 1 and which was granted in respect of-

(a) any erf or any other piece of land in a formalized township for which a township register was already opened at the commencement of this Act, shall at such commencement be converted into ownership;

(b) any erf or any other piece of land in a formalized township for which a township register is opened after the commencement of this Act, shall at the opening of the township register be converted into ownership;

(c) any piece of land which is surveyed under a provision of any law and does not form part of a township, shall at the commencement of this Act be converted into ownership, and as from such conversion the ownership of such erf or piece of land shall vest exclusively in the person who, according to the register of land rights in which that land tenure right was registered in terms of a provision of any law, was the holder of that land tenure right immediately before the conversion.

(2) (a) In order to give effect to subsection (1), the registrar of deeds concerned shall make the necessary entries and endorsements in respect of his registers and other documents, as well as in respect of any relevant documents produced to him.

(b) No transfer duty, stamp duty or other fees shall be payable in respect of any such entries and endorsements.

(3) For the purposes of subsection (2), the registrar of deeds may supplement the township register of the township concerned in accordance with the entries in any relevant register of land rights: Provided that if he is satisfied that any relevant register of land rights is suitable for use as part of the township register of the township concerned and he has endorsed the register of land rights on the obverse with words to that effect and so dated it, such register of land rights shall be deemed to form part of the township register of the township.

(4) For the purposes of subsection (1) (c) and section 6, any piece of land in respect of which a land tenure right referred to in item 2 of Schedule 1 has been granted, shall be deemed not to form part of a township irrespective of its position.

[Sub-s. (4) added by s. 30 (1) of Act 139 of 1992.]

3 Conversion of land tenure rights mentioned in Schedule 2

(1) Subject to subsection (1B), any land tenure right mentioned in Schedule 2 and which was granted in respect of any erf or other piece of surveyed land shall, upon the submission by the owner of such erf or piece of land at the deeds registry of a deed of transfer on the form prescribed for that purpose under the Deeds Act and made out in the name of the person who is the holder of the relevant land tenure right, be converted into ownership by the registrar of deeds by the registration of such erf or piece of land in the name of such person: Provided that-

(a) where the State is the owner of an erf or piece of land situated outside a formalised township, the relevant land tenure right need not be converted into ownership, and a deed of transfer shall not be submitted unless-

(i) the Minister is satisfied, on the basis of a report by a person assigned or appointed by him or her, that the rights or interests of putative holders are being protected; and

(ii) where such land is lawfully occupied or has been allocated for the use of a tribe or community a tribal or community resolution has been obtained;

(b) where a tribe is the owner of the land, the decision to convert the relevant land tenure right into ownership shall be taken by way of a tribal resolution.

[Sub-s. (1) substituted by s. 68 of Act 67 of 1995 and by s. 2 (a) of Act 34 of 1996.]

(1A) For the purposes of an investigation referred to in subsection (1) (a), the designated or appointed person shall have all the rights and duties referred to in section 24D (7).

[Sub-s. (1A) inserted by s. 2 (b) of Act 34 of 1996.]

(1B) If an owner of an erf or piece of land is requested to submit a deed of transfer of land in terms of subsection (1), the Minister may on request of such owner, or if the State is the owner of such land, of his or her own accord-

(i) impose conditions in respect of the use of such land, but if the State is the owner of such land and it is lawfully occupied by or has been allocated for the use of a tribe or community, in consultation with such tribe or community;

(ii) from moneys appropriated by Parliament or at the cost of an affected person and on such conditions as he or she may determine, cause such land to be surveyed;

(iii) order that an amount to be determined by him or her be paid by an affected person to the owner of the erf or other piece of land, or if the erf or other piece of land falls within an area lawfully occupied or allocated for use by a tribe or community, to the tribe or community concerned;

(iv) provide for a method for determining the amount to be paid in terms of paragraph (iii).

[Sub-s. (1B) inserted by s. 2 (b) of Act 34 of 1996.]

(2) A deed of transfer referred to in subsection (1) shall be prepared by-

(a) a conveyancer; or

(b) if the owner of the erf or piece of land is the State or any local government body, any officer in the public service or person in the employ of such local government body, as the case may be, who has been designated for the purpose by the Minister, a Premier or a local government body, as the case may be.

[Sub-s. (2) substituted by s. 68 of Act 67 of 1995.]

(3) A deed of transfer referred to in subsection (1) shall be in the form prescribed under the Deeds Act and shall be signed by the owner of the erf or piece of land or his or her duly authorised agent in the presence of a conveyancer referred to in subsection (2) (a) or an officer or person referred to in subsection (2) (b) in the manner prescribed under that Act.

[Sub-s. (3) substituted by s. 68 of Act 67 of 1995.]

(4) An officer or person referred to in subsection (2) (b)-

(a) shall disclose the fact that the deed of transfer referred to in subsection (1), or any power of attorney, application or consent, which may be required by the registrar for the purposes of the registration of the transfer was prepared by him or her, by signing an endorsement to that effect on the deed of transfer, power of attorney, application or consent, as the case may be, and by virtue of such signing accepts, *mutatis mutandis*, in terms of section 15A (1) and (2) of the Deeds Act, responsibility for the correctness of the facts stated in any such document; and

(b) may, despite anything to the contrary contained in any other law, perform all of the functions of a conveyancer in relation to the registration of a deed of transfer as contemplated in this section.

[Sub-s. (4) substituted by s. 68 of Act 67 of 1995.]

(5) A conveyancer, officer or person referred to in subsection (2) shall lodge the deed of transfer together with the necessary supporting documents at a deeds registry in the manner prescribed under the Deeds Act.

[Sub-s. (5) substituted by s. 68 of Act 67 of 1995.]

(6) The registrar shall deal with a deed of transfer and the other documents referred to in subsection (5) as if such deed of transfer were executed in the presence of the registrar in terms of section 20 of the Deeds Act.

[Sub-s. (6) added by s. 68 of Act 67 of 1995.]

(7) Ownership of the erf or piece of land shall be deemed to have been transferred on the date of registration by the registrar of a deed of transfer referred to in subsection (1).

[Sub-s. (7) added by s. 68 of Act 67 of 1995.]

(8) Sections 17 (1) and (2) of the Deeds Act shall not apply to and no transfer duty or stamp duty shall be payable in respect of the transfer of ownership of any erf or piece of land in terms of this section.

[Sub-s. (8) added by s. 68 of Act 67 of 1995.]

4 Contents of land tenure rights mentioned in Schedule 1 pending conversion

(1) Notwithstanding anything to the contrary contained in any law but subject to subsections (2) and (3), a land tenure right mentioned in Schedule 1 and which has been granted in respect of any erf or any other piece of land in a formalized township for which a township register has not yet been opened shall bestow, pending the conversion thereof into ownership in terms of section 2 (1) (b) as soon as a township register is opened, on the person who is, according to a register of land rights of the township, the holder thereof, all rights and powers as if he is the owner of the erf or the land in respect of which the land tenure right has been granted.

(2) The provisions of subsection (1) shall not affect-

(a) any condition, servitude, mortgage bond or other right registered against the title of the land on which the township concerned is situated;

(b) any condition, servitude, mortgage bond or other right registered against the title of land right of the relevant erf or other piece of land; and

(c) any condition in force in respect of the township concerned.

(3) No provision, irrespective of whether it is contained in any law or registered against the title or title of land right referred to in subsection (2), shall be of force in respect of any land tenure right referred to in subsection (1), in so far as such provision-

(a) has placed any restriction on the period for which the land tenure right concerned was granted;

(b) has placed any restriction, other than by virtue of an agreement to which the holder of such land tenure right was a party, on the capacity of the holder to alienate, bequeath, let, hypothecate or otherwise deal with such land tenure right as if he is the owner;

(c) has placed any restriction on the transfer of such land tenure right to, or on the possession, use or occupation of the relevant erf or other piece of land by, any person of a particular population or ethnic group or who is not of a particular population or ethnic group; or

(d) has imposed any obligation on the holder of such land tenure right to pay any royalty or similar periodic levy to the township owner for the continued existence of such land tenure right.

5 Continuation of title conditions, servitudes, mortgage bonds, etc.

(1) Ownership vested in any erf or any piece of land by virtue of any conversion in terms of section 2 or 3 shall, subject to subsections (2) and (3), be subject to-

(a) any condition, servitude, mortgage bond or other right registered immediately before such conversion-

(i) in the case of any erf or any other piece of land in a township, against the title of the land on which the township is situated;

(ii) in the case of any piece of land which does not form part of a township, against the title of that land; and

(b) any condition, servitude, mortgage bond or other right registered immediately before such conversion against the title of land right of such erf or piece of land.

(2) Ownership vested in any erf or any piece of land by virtue of any conversion in terms of section 2 or 3, shall not be subject to a provision of any condition, servitude, mortgage bond or other right referred to in subsection (1), in so far as such provision-

(a) placed any restriction on the period for which the land tenure right concerned was granted;

(b) placed any restriction, other than by virtue of an agreement to which the holder of such land tenure right was a party, on the capacity of the holder to alienate, bequeath, let, hypothecate or otherwise deal with such land tenure right;

(c) placed any restriction on the transfer of such land tenure right to, or on the possession, use or occupation of such erf or piece of land by, any person of a particular population or ethnic group or who is not of a particular population or ethnic group; or

(d) imposed any obligation on the holder of such land tenure right to pay any royalty or similar periodic levy to the person who was the owner of such erf or piece of land for the continued existence of such land tenure right.

(3) (a) If a mortgage bond has been registered over the land on which a formalized township referred to in section 2 (1) (a) or (b) or 3 (1) (a) is situated, the mortgage bond shall lapse in respect of those erven and other pieces of land in the township in respect of which ownership is vested by virtue of any conversion in terms of section 2 or 3.

(b) Paragraph (a) shall not affect the continuation of such mortgage bond in respect of erven and other pieces of land in the township concerned which are not affected by any conversion in terms of section 2 or 3.

6 Effect of Act

(1) The provisions of any law governing the registration and transfer of any land tenure right mentioned in Schedule 1 shall-

(a) as from the commencement of this Act, no longer apply in respect of any township referred to in section 2 (1) (a) or in respect of any erf or any other piece of land in such township;

(b) as from the opening of a township register for a township referred to in section 2 (1) (b), no longer apply in respect of the township for which the township register is opened or in respect of any erf or any other piece of land in such township; or

(c) as from the commencement of this Act, no longer apply in respect of any land which does not form part of a township.

(2) As from the discontinuation of the provisions of any law in terms of subsection (1) relating to any township or piece of land referred to in that subsection, any authorization in any such law for the granting of any land tenure right mentioned in Schedule 1 in respect of any erf or other piece of land in such township or in respect of such piece of land, shall be construed as authorization for the granting of ownership in respect of any such erf or piece of land.

(3) Property transactions in any township referred to in section 2 (1) (a) or (b) shall-

(a) in the case of the transfer of any erf or any other piece of land of which the township owner is immediately after the commencement of this Act or the opening of the township register, as the case may be, still the owner, be disposed of in accordance with section 3 (1) (a), if any land tenure right mentioned in Schedule 2 has been granted in respect thereof, or in accordance with section 13, if any such land tenure right has not been granted in respect thereof; and

(b) in the case of any other transfer of erven and other pieces of land in any such township, be disposed of in accordance with the Deeds Act.

(4) Property transactions with reference to any land which does not form part of a township shall-

(a) in the case of the transfer of such piece of land in respect of which any land tenure right referred to in Schedule 2 has been granted, be disposed of in accordance with section 3 (1) (b); or

(b) in the case of any other transfer, be disposed of in accordance with the Deeds Act section

(5) (a) Notwithstanding anything to the contrary contained in the Rural Areas Act (House of Representatives), 1987 (Act 9 of 1987), no grazing rights shall as from the commencement of this Act be granted to any owner or registered occupier as defined in section 1 of the said Act.

(b) The provisions of paragraph (a) shall not affect any grazing rights granted to any owner or registered occupier prior to the commencement of this Act.

[NB: Sub-s. (5) has been repealed by s. 10 of the Transformation of Certain Rural Areas Act 94 of 1998, a provision which will be put into operation by proclamation.]

7 Cancellation of certain servitudes and restrictive conditions relating to formalized townships

(1) The Minister may by notice in the *Official Gazette* cancel-

(a) any servitude registered against the title of the land on which a formalized township is situated and which in his opinion is not being utilized beneficially or, as a result of the township situated on such land, cannot be utilized; or

(b) any restrictive condition so registered or otherwise operative in respect of such land,

if he is of the opinion that any such servitude or condition is inconsistent with, or undesirable with reference to, the use or occupation or the further development or subdivision of such land as a township.

[Sub-s. (1) amended by s. 12 (a) (i) of Act 11 of 1995.]

(2) A cancellation under subsection (1) shall take effect-

(a) in the case of any township for which a township register has been opened, 60 days after the date of publication of the notice; or

(b) in the case of any township for which a township register has not yet been opened, 60 days after the date of publication of the notice or, if the township register is not yet opened after the expiry of the said period, at the opening of the township register.

(3) The Minister may at any time before any cancellation is effected in terms of subsection (2) withdraw by notice in the *Official Gazette* a notice under subsection (1), or the cancellation of any particular servitude or condition specified therein.

[Sub-s. (3) amended by s. 12 (a) (i) of Act 11 of 1995.]

(4) A notice under subsection (1) shall specify the fact that a cancellation specified in the notice shall take effect 60 days after the date of publication of the notice or at the opening of the township register, as the case may be, as well as that such cancellation may be withdrawn prior to the expiry of the said period or prior to the opening of the register, as the case may be.

(5) Subsection (1) shall not be construed as authorizing the cancellation of any registered right to minerals over the land concerned.

(6) The cancellation of a servitude or condition registered against the title of the land on which a township is situated under this section shall, in the case of a township for which a township register has been opened, also be effectual in respect of any title of an erf or other piece of land in the township against which such servitude or condition is registered.

(7) (a) In order to give effect to subsections (1) and (6), the registrar of deeds concerned shall make the necessary entries and endorsements in respect of his registers and other documents, as well as in respect of any relevant documents produced to him.

(b) No stamp duty or other fees shall be payable in respect of any such entries and endorsements.

8 Compensation in respect of cancelled servitudes and conditions

(1) Any person who has suffered any damage as a result of the cancellation of a servitude or restrictive condition under section 7 (1) or (6) may, within a period of three years after such cancellation has taken effect, claim compensation for his damage from the Minister.

(2) The Minister shall compensate the claimant for his damage, if any, in the amount agreed upon by the Minister and the claimant, or failing such agreement, in the amount determined by arbitration, in which case the provisions of the Arbitration Act, 1965 (Act 42 of 1965), shall apply *mutatis mutandis*.

(3) If any person other than the State was the township owner at the time of the relevant cancellation and the Minister exercises his powers under subsection (2) after consultation with such person, the Minister may recover from such person any amount paid by him as compensation to any claimant in terms of that subsection.

[S. 8 amended by s. 12 (a) (i) of Act 11 of 1995.]

9 Opening of township registers in respect of certain formalized townships

(1) (a) The Minister may in respect of any formalized township for which a township register has not been opened at the commencement of this Act or any township which is declared to be a formalized township under section 15 (1) apply to the registrar of deeds for the opening of a township register for any such township.

(b) If the land on which the township is situated is not State-owned land, the person who is the owner of the land on which the township is situated may make an application referred to in paragraph (a) to the registrar of deeds.

[Sub-s. (1) amended by s. 12 (a) (i) of Act 11 of 1995.]

(2) The registrar of deeds shall open a township register in respect of a township referred to in subsection (1) if he is satisfied that all relevant legal and other requirements for the opening of the register have been complied with.

(3) At the opening of a township register of a township referred to in section 15 (1), the ownership of portions indicated on the general plan as public places shall vest-

(a) in a case where the township is situated within the area of jurisdiction of a local authority, in the local authority; and

(b) in other cases, in the Premier in trust for a local authority until a local authority is established for the township or the township is incorporated in the area of jurisdiction of a local authority, whereupon it shall vest in such local authority,

and the registrar of deeds shall make an entry of such vesting in the documents under his control or which are produced to him, in such manner as he may deem necessary.

[Sub-s. (3) amended by s. 12 (a) (ii) of Act 11 of 1995.]

10 Arrangements by Minister to facilitate opening of township registers

(1) The Minister shall take all steps necessary to enable the registrar of deeds to open a township register in respect of any formalized township for which a township register has not been opened.

(2) The steps referred to in subsection (1) shall include steps-

(a) to comply on behalf of a township owner or person referred to in section 11 (1) (a) or (b), and with or without the consent or authorization of such township owner or person, with the provisions of that section;

(b) to apply on behalf of the relevant township owner, and with or without the consent or authorization of that township owner, for the opening of a township register in terms of section 9 (1), or to comply with any relevant legal or other requirement for the opening of the township register; and

(c) to require the relevant township owner or other person to deliver to the Minister any relevant title deed, diagram or other document in the possession or under the control of that township owner or person.

(3) The Minister may recover any costs incurred by him in connection with anything done by him on behalf of a township owner or person under subsection (2), from that township owner or person.

[S. 10 amended by s. 12 (a) (i) of Act 11 of 1995.]

11 Directions as to opening of township registers

(1) The registrar of deeds shall not open any township register in respect of a township referred to in section 9 (1), unless a certificate of rights to minerals has been taken out in favour of-

(a) the township owner, in respect of all rights to minerals held by him under the same title as the title by which he is the registered owner of the land on which the township is situated;

(b) any person who is the holder of, or who is entitled to, the rights to minerals referred to in section 71 (2) *bis* (a) of the Deeds Act, if such certificate has not yet been issued.

(2) For the purposes of section 9 (2)-

(a) any general plan approved by or under any law other than the Land Survey Act, 1927 (Act 9 of 1927), shall be deemed to be a general plan approved under the Land Survey Act, 1927; and

(b) the township owner or the person in whom the rights to minerals in respect of the land vests, if that township owner or person is not the Premier, shall be deemed to have consented to the opening of the township register.

[Para. (b) amended by s. 12 (a) (ii) of Act 11 of 1995.]

12 Conditions of land use

(1) If a township is declared to be a formalized township under section 15 (1), the Minister may by notice in the *Official Gazette* impose conditions in respect of such township for the regulation of the use of the erven and other pieces of land in the township.

[Sub-s. (1) amended by s. 12 (a) (i) of Act 11 of 1995.]

(2) Conditions imposed under subsection (1)-

(a) shall not be registered against the title of the land on which the township is situated or against the title of any erf or other piece of land in the township;

(b) may be amended or withdrawn by the Minister by like notice prior to or after the opening of a township register for the township.

[Para. (b) amended by s. 12 (a) (i) of Act 11 of 1995.]

(3) The Minister shall exercise the powers conferred upon him by this section after consultation with the relevant community in such manner as he may deem the most suitable.

[Sub-s. (3) amended by s. 12 (a) (i) of Act 11 of 1995.]

(4) Any condition referred to in this section shall lapse as from the date on which a town planning scheme or a zoning scheme becomes applicable in respect of the township concerned.

13 Shortened registration procedures relating to certain erven and land transferred by township owner

(1) If a township owner, with reference to any formalized township, intends to transfer ownership in respect of any erf or any other piece of land in respect of which no land tenure right has been granted, he may do so by lodging a deed of transfer on the form prescribed for that purpose under the Deeds Act and made out in the name of the transferee, at the deeds registry for the registration of such erf or piece of land in the name of the transferee.

[Sub-s. (1) substituted by s. 68 of Act 67 of 1995.]

(2) Ownership in respect of any erf or any piece of land registered in terms of subsection (1) shall be subject to any condition, servitude or other right registered upon such registration against the title of the land on which the township concerned is situated.

(3) A deed of transfer referred to in subsection (1) shall be prepared by-

(a) a conveyancer; or

(b) if the owner of the erf or piece of land is the State or any local government body, any officer in the public service or person in the employ of such local government body, as the case may be, who has been designated for the purpose by the Minister, a Premier or a local government body, as the case may be.

[Sub-s. (3) substituted by s. 68 of Act 67 of 1995.]

(4) A deed of transfer referred to in subsection (1) shall be in the form prescribed under the Deeds Act, and shall be signed by the owner of the erf or piece of land or his or her duly authorised agent in the presence of a conveyancer referred to in subsection (3) (a) or an officer or person referred to in subsection (3) (b) in the manner prescribed under that Act.

[Sub-s. (4) substituted by s. 68 of Act 67 of 1995.]

(5) An officer or person referred to in subsection (3) (b)-

(a) shall disclose the fact that the deed of transfer referred to in subsection (1), or any power of attorney, application or consent, which may be required by the registrar for the purposes of the registration of the transfer was prepared by him or her, by signing an endorsement to that effect on the deed of transfer, power of attorney, application or consent, as the case may be, and by virtue of such signing accepts, *mutatis mutandis*, in terms of section 15A (1) and (2) of the Deeds Act, responsibility for the correctness of the facts stated in any such document; and

(b) may, despite anything to the contrary contained in any other law, perform all of the functions of a conveyancer in relation to the registration of a deed of transfer as contemplated in this section.

[Sub-s. (5) substituted by s. 68 of Act 67 of 1995.]

(6) A conveyancer, officer or person referred to in subsection (3) shall lodge the deed of transfer together with the necessary supporting documents at a deeds registry in the manner prescribed under the Deeds Act.

[Sub-s. (6) added by s. 68 of Act 68 of 1995.]

(7) The registrar shall deal with a deed of transfer and the other documents referred to in subsection (6) as if such deed of transfer were executed in the presence of the registrar in terms of section 20 of the Deeds Act.

[Sub-s. (7) added by s. 68 of Act 68 of 1995.]

(8) Ownership of the erf or piece of land shall be deemed to have been transferred on the date of registration by the registrar of a deed of transfer referred to in subsection (1).

[Sub-s. (8) added by s. 68 of Act 68 of 1995.]

(9) Section 17 (1) and (2) of the Deeds Act shall not apply to and no transfer duty or stamp duty shall be payable in respect of the transfer of ownership of any erf or piece of land in terms of this section.

[Sub-s. (9) added by s. 68 of Act 68 of 1995.]

14 Correction of township registers by registrar of deeds

(1) If any entry in a township register of any formalized township is manifestly incorrect, the registrar of deeds having custody and control of that township register may correct the error upon application by any interested person.

(2) The provisions of section 2 (2) shall *mutatis mutandis* apply in respect of any such correction.

CHAPTER 2 FORMALIZING OF TOWNSHIPS (ss 15-18)

15 Declaration of townships to be formalized townships

(1) The Minister may by notice in the *Official Gazette* declare a township specified in the notice to be a formalized township for the purposes of Chapter 1.

[Sub-s. (1) substituted by s. 31 of Act 108 of 1993.]

(2) The Minister shall not declare any township to be a formalized township under subsection (1) unless-

(a) a general plan in respect of any such township has been approved under the relevant provision of any law;

(b) a land tenure right mentioned in Schedule 1 or 2 has been granted in respect of any erf or any other piece of land in any such township; and

(c) if any such township is situated on tribal land, the tribe in question has requested the Minister by means of a tribal resolution to take steps to declare any such township to be a formalized township with a view to converting the land tenure rights granted to individuals in respect of erven and other pieces of land in any such township into ownership.

[Sub-s. (2) amended by s. 35 of Act 108 of 1993.]

[S. 15 amended by s. 12 (a) (i) of Act 11 of 1995.]

16 Assistance by Minister to formalize townships

(1) Subject to the provisions of subsection (2) and the availability of moneys and personnel, the Minister may in respect of a township in which land tenure rights mentioned in Schedule 1 or 2 have been granted in erven or other pieces of land, take in conjunction with the community residing in such township such steps as may be necessary to declare such township to be a formalized township.

[Sub-s. (1) substituted by s. 3 of Act 34 of 1996.]

(2) Subsection (1) shall not be applicable in respect of any township situated on tribal land unless the tribe in question has requested the Minister by means of a tribal resolution to take steps to declare any such township to be a formalized township with a view to converting the land tenure rights granted to individuals in respect of erven and other pieces of land in any such township into ownership.

[S. 16 amended by s. 35 of Act 108 of 1993 and by s. 12 (a) (i) of Act 11 of 1995.]

17 Surveying

(1) If a township in which land tenure rights mentioned in Schedule 1 or 2 have been granted in erven or other pieces of land has not been surveyed, the Minister may-

(a) in conjunction with the community residing in such township, cause the layout of such township to be rearranged and cause such adjustments to be effected to the layout thereof as he may deem necessary;

(b) cause the land on which such township is situated, including such township itself, to be surveyed and cause a diagram or general plan to be prepared; and

[Para. (b) substituted by s. 4 (b) of Act 34 of 1996.]

(c) cause such diagram and general plan to be submitted to the surveyor-general for his approval.

[Sub-s. (1) amended by s. 4 (a) of Act 34 of 1996.]

(2) If the land on which the township is situated is not State-owned land, the Minister may take the steps contemplated in subsection (1) with or without the consent or authorization of the owner of the land.

[S. 17 amended by s. 35 of Act 108 of 1993 and by s. 12 (a) (i) of Act 11 of 1995.]

18

[S. 18 amended by s. 35 of Act 108 of 1993 and by s. 12 (a) (i) of Act 11 of 1995 and repealed by s. 5 of Act 34 of 1996 .]

CHAPTER 2A RURAL SETTLEMENTS (ss 18A-18I)

[Chapter 2A inserted by s. 32 of Act 108 of 1993, amended by s. 12 (a) (i) of Act 11 of 1995 and by s. 68 of Act 67 of 1995 and repealed by s. 6 of Act 34 of 1996.]

CHAPTER 3
MISCELLANEOUS (ss 19-26)

19 Legal capacity of tribe to obtain property

- (1) Any tribe shall be capable of obtaining land in ownership and, subject to subsection (2), of selling, exchanging, donating, letting, hypothecating or otherwise disposing of it.
- (2) Land obtained by any tribe by virtue of section 20 shall not during a period of ten years as from the commencement of this Act be sold, exchanged, donated, let or otherwise allocated by that tribe to any person who is not a member of that tribe, except on the authority of consent granted by a competent court.
- (3) Consent in terms of subsection (2) shall not be granted unless the court is satisfied-
- (a) that the relevant disposal is authorized by a tribal resolution;
 - (b) that the relevant disposal is not in conflict with the interests of the members of the tribe; and
 - (c) that satisfactorily alternative residence is available for persons residing on the land concerned, if the relevant disposal results in those persons waiving their right to the occupation of such land.

20

- (1) A tribe may request the Minister to transfer tribal land the control of which vests in the tribe to the tribe in ownership.
- (2) If the land has been surveyed the Minister may take steps to transfer the land concerned to the tribe in question.
- (3) If the land has not been surveyed the Minister may designate any person to investigate the feasibility of the request and to submit a report and recommendation to him or her in regard thereto.
- (4) Any person designated under subsection (3) may for the purposes of his or her investigation-
- (a) gather such information as he or she may deem necessary;
 - (b) hear or receive representations from any person;
 - (c) question any person who in his or her opinion may have relevant information available;
 - (d) by agreement between interested parties, settle any difference as to the land which forms the subject of the investigation, or the boundaries of such land;
 - (e) if requested by the interested parties determine the boundaries of such land or, if they cannot be determined, establish them in consultation with interested parties;
 - (f) on the authority of a warrant issued by a magistrate or a judge having jurisdiction at any reasonable time enter upon such land or any contiguous land.
- (5) Any person designated under subsection (3) may in the performance of his or her functions be accompanied by such persons as he or she under the circumstances of any particular case may deem necessary.

(6) The Minister shall issue to a person designated under subsection (3) proof in writing of his or her designation, and such person shall in the performance of his or her functions under this section produce, at the request of any person affected by such functions, such proof to the latter person.

(7) After receipt of a report and recommendation referred to in subsection (3), the Minister may cause the land to be surveyed, if such land or any portion thereof has not been surveyed, and take steps to transfer such land or such portion to the tribe in question.

(8) If the Minister does not proceed in terms of subsections (2) or (7) he or she shall cause the tribe in question to be notified in writing of the reasons for his or her decision not to accede to such request.

(9) No transfer duty, stamp duty or other fees shall be payable in respect of any transfer in terms of subsection (2) or (7).

(10) For the purposes of this section 'surveyed' means surveyed under a provision of any law.

[S. 20 substituted by s. 7 of Act 34 of 1996.]

21 Legal presumptions

(1) Whenever in any judicial proceedings the question arises-

(a)[Para. (a) deleted by s. 8 of Act 34 of 1996.]

(b) whether a person with a particular name is the holder of a land tenure right mentioned in Schedule 1 or 2 in respect of a particular erf or piece of land, a certificate signed or purporting to have been signed by any person who alleges therein that he is lawfully in control of the register of land rights in which such land tenure right is registered and that a person with a name specified in the certificate is entered in such register as the holder of such land tenure right in respect of that particular erf or piece of land shall, on production of such certificate at any such proceedings by any person, be accepted as *prima facie* proof of the facts alleged therein.

22 Transfer of certain offices to Department [sic] Land Affairs

(1) Any office for the registration of land tenure rights-

(a) mentioned in Schedule 1; or

(b) similar to the rights mentioned in Schedule 1, as contained in laws which by virtue of section 229 of the Constitution of the Republic of South Africa, 1993 (Act 200 of 1993), continue to be in force in any area of the Republic,

and which has been established in the Department of Development Aid or in any department under the control of the government of a territory, which after the commencement of that Constitution, forms part of the national territory, is hereby transferred to the Department of Land Affairs.

(2) As from the date of the commencement of the Upgrading of Land Tenure Rights Amendment Act, 1996 -

(a) the control of such an office and all registers, books, plans, diagrams, records and other documents relating to the affairs of such office, shall vest in the Director-General: Land Affairs; and

(b) the officers and employees attached to such office shall, subject to subsection (3), perform their functions as if they were seconded to the Department of Land Affairs.

(3) Any officer or employee referred to in subsection (2) and who is an officer or employee in the public service may be dealt with in accordance with the Public Service Act, 1994.

[S. 22 amended by s. 12 (b) of Act 11 of 1995 and substituted by s. 9 of Act 34 of 1996.]

23

Any person who-

(a) wilfully hinders or obstructs any person designated under section 18 (1) or (2) or 20 (3) in the performance of his or her functions under this Act;

(b) fails to comply with an order in terms of section 18 (6A), except an order for costs, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months.

[S. 23 amended by s. 33 of Act 108 of 1993 and substituted by s. 10 of Act 34 of 1996.]

24 Amendment of Schedules 1 and 2

(1) Subject to the provisions of section 25, the President may by proclamation in the *Gazette*-

(a) amend Schedule 1 by the addition of any leasehold, deed of grant or quitrent created by any law of a self-governing territory and specified in the proclamation;

(b) amend Schedule 2 by the addition of any land tenure right specified in the proclamation.

(2) If the President adds to Schedule 1 any leasehold, deed of grant or quitrent under subsection (1) (a), a reference in this Act to its commencement, with reference to any such leasehold or deed of grant or quitrent, shall, except where it is clearly inappropriate, be construed as a reference to the commencement of the relevant proclamation under that subsection.

[S. 24 amended by s. 12 (b) of Act 11 of 1995.]

24A Delegation of powers and assignment of functions

(1) The Minister may, either in general or in a particular case or in cases of a particular nature, in writing delegate to-

(a) a Premier or a member of the Executive Council of a province; or

(b) any officer in the service of the national government or a local government body contemplated in section 1 of the Local Government Transition Act, 1993 (Act 209 of 1993),

any power conferred upon him or her by or under this Act.

(2) Any person to whom any power has been delegated under subsection (1) shall exercise that power subject to the directions of the Minister.

(3) The Minister may at any time revoke such delegation in writing and the delegation of any power shall not prevent the Minister from exercising that power himself or herself.

(4) The Premier or a member of the Executive Council of a province to whom any power has been delegated under subsection (1) (a) may, subject to any directions contemplated in subsection (2) and such further conditions and periods of time as he or she may determine, delegate any such power in writing to-

(a) the Director-General of that province; or

(b) any officer in the service of the provincial government concerned.

(5) The President may, by proclamation in the *Gazette*-

(a) assign the administration of this Act or any provision of this Act to a Premier of a province; or

(b) reassign the administration of this Act or any provision as assigned in terms of paragraph (a) to a Minister referred to in section 88 of the Constitution,

either generally or to the extent specified in the proclamation, and subject to such conditions, amendments, adaptations, modifications, and periods of time as the President may determine.

(6) When the President assigns the administration of this Act under subsection (5), or at any time thereafter, and to the extent that he or she considers it necessary for the efficient carrying out of the assignment, he or she may regulate any matter which is necessary or expedient as a result of the assignment, including matters relating to the transfer or secondment of persons (subject to the provisions of sections 236 and 237 of the Constitution) and relating to the transfer of assets, liabilities, rights and obligations, including funds, to or from the national or a provincial government or any department of state, administration, force or other institution.

(7) The transfer of any asset, liability, right or obligation contemplated in subsection (6) shall be done subject to the provisions of the relevant applicable Exchequer Act.

(8) The transfer or secondment of persons as contemplated in subsection (6) shall be done after consultation with the Public Service Commission and the relevant provincial service commission, if applicable.

(9) The Premier of a province may, subject to such conditions and periods of time as he or she may determine, in writing authorise-

(a) any member of the Executive Council of that province;

(b) any member of such Executive Council and the Director-General of the province jointly;

(c) the said Director-General;

(d) any officer in the service of the provincial government concerned;

(e) any local government body contemplated in section 1 of the Local Government Transition Act, 1993,

to exercise or perform in general or in a particular case or in cases of a particular nature, any power, duty or function which the Premier is in terms of a proclamation under subsection (5) authorised to exercise or perform, except the power to make regulations.

(10) The provisions of section 10 (5) and (5A) of the Interpretation Act, 1957 (Act 33 of 1957), shall apply *mutatis mutandis* to the administration of this Act or any provision of this Act assigned under subsection (5) (a) or reassigned to a Minister under subsection (5) (b).

[S. 24A inserted by s. 34 of Act 108 of 1993 and substituted by s. 9 of Act 11 of 1995 and by s. 11 of Act 34 of 1996.]

24B Payment of costs of upgrading

The holder of a land tenure right shall be responsible for the payment of all costs connected with the upgrading of such right including the costs of surveying: Provided that the Minister may assist such person with the payment of such costs.

[S. 24B inserted by s. 12 of Act 34 of 1996.]

24C Regulations

The Minister may make regulations regarding-

(a) any matter required or permitted to be prescribed by regulation in terms of this Act; and

(b) generally, all matters which are necessary or expedient to be prescribed in order to achieve the objects of this Act.

[S. 24C inserted by s. 12 of Act 34 of 1996.]

24D Updating and compilation of registers of land rights

(1) If the Minister is of the opinion that a register of land rights in respect of which land tenure rights mentioned in Schedule 1 or 2 have been granted in erven or other pieces of land has not been written up or properly written up, there is an incorrect entry therein or that it reflects the names of persons who are not the putative holders of the relevant land tenure right, he or she may designate any person to investigate and compile a register of land rights for the area or to update the existing register and to rectify errors or supplement omissions.

(2) If the Minister receives a request from a tribe or community in respect of any area on land lawfully occupied by or has been allocated for use by such tribe or community, in which the individual erven or other pieces of land are occupied or utilized by individuals and their families under the rules or customs of that tribe or community, he or she may designate any person to compile a register of land rights in respect of such area.

(3) If an area referred to in subsection (1) or (2) has not been surveyed, the Minister may determine that the functions contemplated in that subsection shall not be performed before the survey of such area has commenced.

(4) Any register of land rights compiled or updated under subsection (1) or (2) shall, as to its shape, form and contents, be compiled or updated in accordance with the legal and administrative requirements applicable to a township or other relevant register.

(5) Any person designated under subsection (1) or (2) shall in the compilation or updating of a register of land rights-

(a) satisfy himself or herself that if a general plan for an area exists the property descriptions in the register or which he or she makes in the register correspond with those descriptions on the general plan of the area concerned;

(b) ascertain the identity of the person who at the relevant time is the *de jure* holder of the land tenure right in each relevant erf or other piece of land in the area as well as the identity of any putative holder of the relevant land tenure right in each such erf or piece of land;

(c) consider any representations made to him or her either orally or in writing by any person who lays claim to be registered in the register as the holder of a land tenure right;

(d) take reasonable steps to ensure that persons affected or likely to be affected by the investigation and compilation receive effective notice of the investigation, are given an opportunity of making representations with regard thereto and are informed of the result thereof;

(e) if it is just and equitable, make a recommendation to the Minister regarding such arrangements as are appropriate and necessary to protect other rights and interests, if any, in that erf or piece of land, including the rights and interests of putative holders.

(6) In order to gather information which is necessary or expedient in compiling or updating a register of land rights for the area concerned, any person designated under subsection (1) or (2) may-

(a) subject to any law governing privilege, question any person who in his or her opinion may have relevant information available;

(b) subject to any law governing privilege, require any person to deliver to him or her forthwith, or to submit to him or her at such time and place as may be determined by him or her, any register, permit, certificate, title of land right or other document in the possession or under the control of any such person and which in his or her opinion contains relevant information;

(c) examine any such register, permit, certificate, title of land right or document or make an extract therefrom or a copy thereof;

(d) if it is necessary for the purposes of paragraph (a), (b) or (c), at any reasonable time, on the authority of a warrant issued by a magistrate or judge having jurisdiction, enter upon any erf or other land in the area concerned.

(7) If any person refuses to answer a question put to him or her under subsection (6) (a) or to deliver or submit anything required under subsection (6) (b), the person acting under subsection (6) (a) or (b) may apply to the magistrate's court for the district in which the erf or piece of land in question is situated for an order compelling the former person to answer the question or deliver or submit the thing and the court may make such order as it deems fair and just under the circumstances, including an order for costs, having regard to the public interest and the right to privacy of the respondent.

(8) Any person designated under subsection (1) or (2) may in the performance of his or her functions be accompanied by such persons as he or she under the circumstances of any particular case may deem necessary.

(9) The Minister shall issue to a person designated under subsection (1) or (2) proof in writing of his or her designation, and such person shall in the performance of his or her functions under this section produce, at the request of any person affected by such functions, such proof to the latter person.

(10) (a) Any person aggrieved by an entry made by a person designated under subsection (1) or (2) in a register of land rights, may within 30 days after he or she became aware of the entry, but not more than a year after the entry was made, appeal in writing against such entry to the Minister.

(b) The Minister may, after he or she has considered the grounds of the appeal and the reasons of the person designated under subsection (1) or (2) for such entry-

(i) either in whole or in part, allow the appeal, and-

(aa) direct such person to alter such entry or to substitute for it any other entry which such person in the Minister's opinion ought to have made; or

(bb) order that such arrangements be made as are appropriate and necessary to protect the rights and interests of the appellant as well as other rights and interests, if any, in that erf or piece of land; or

(ii) dismiss the appeal.

(c) The Minister shall cause a person who lodged an appeal with him or her to be notified in writing of his or her decision on the appeal.

(11) The Minister may from monies appropriated by Parliament for that purpose, after receiving a recommendation in terms of subsection (5) (e) or an order made in terms of subsection (10) (b) (i) (bb), provide assistance to persons having rights and interests in such erf or piece of land, including assistance to obtain rights in such erf or piece of land or alternative land.

(12) The designation of a person in terms of subsections (1) and (2) and section 3 (1) (a) and assistance in terms of subsection (11) shall be subject to the availability of personnel and funds.

(13) This section shall apply throughout the Republic.

[S. 24D inserted by s. 12 of Act 34 of 1996.]

25

[S. 25 repealed by s. 10 of Act 11 of 1995.]

25A Application of Act

As from the coming into operation of the Land Affairs General Amendment Act, 1998, the provisions of this Act, excluding sections 3, 19 and 20, shall apply throughout the Republic.

[S. 25A inserted by s. 1 of Act 61 of 1998.]

26 Short title and commencement

This Act shall be called the Upgrading of Land Tenure Rights Act, 1991, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

[S. 26 amended by s. 12 (b) of Act 11 of 1995.]

Schedule 1 LEASEHOLDS, DEEDS OF GRANT AND QUITRENTS

1. Any deed of grant or any right of leasehold as defined in regulation 1 of Chapter 1 of the Regulations for the Administration and Control of Townships in Black Areas, 1962 (Proclamation R293 of 1962).
2. Any quitrent title as defined in regulation 1 of the Black Areas Land Regulations, 1969 (Proclamation R188 of 1969).
3. Any right of leasehold as defined in section 1 (1) of the Black Communities Development Act, 1984 (Act 4 of 1984).
4. Any right of leasehold within the meaning of the Conversion of Certain Rights to Leasehold Act, 1988 (Act 81 of 1988).
5. Deed of grant rights or rights of leasehold as defined in regulation 1 (1) of the Regulations concerning Land Tenure in Towns, 1988 (Proclamation R29 of 1988).
6. Deed of grant rights or rights of leasehold within the meaning of the Regulations for the Disposal of Trust Land in Towns, 1988 (Government Notice R402 of 1988).

[Schedule 2 amended by s. 10 of Act 94 of 1998.]

Schedule 2
RIGHTS TO THE OCCUPATION OF LAND

[NB: Schedule 2 has been amended by s. 10 of the Transformation of Certain Rural Areas Act 94 of 1998, a provision which will be put into operation by proclamation.]

1. Any permission granted in terms of regulation 5 (1) of the Irrigation Schemes Control Regulations, 1963 (Proclamation R5 of 1963), to occupy any irrigation and residential allotment.
2. Any permission to occupy any allotment within the meaning of the Black Areas Land Regulations, 1969 (Proclamation R188 of 1969).
3. Any right of occupation granted to any registered occupier as defined in section 1 of the Rural Areas Act (House of Representatives), 1987 (Act 9 of 1987).

[NB: Para. 3 has been repealed by s. 10 of the Transformation of Certain Rural Areas Act 94 of 1998, a provision which will be put into operation by proclamation.]

4. Any right to the occupation of tribal land granted under the indigenous law or customs of the tribe in question.
