



Republic of Namibia  
Annotated Statutes

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## Registration of Deeds in Rehoboth Act 93 of 1976 (RSA)

(RSA GG 5183)

brought into force in South Africa and South West Africa  
on 26 November 1976 by RSA Proc. 255/1976 (RSA GG 5341)  
(applies by its own terms to the Rehoboth Gebiet)

**APPLICABILITY TO SOUTH WEST AFRICA:** This Act applies specifically to the Rehoboth Gebiet, as described in section 6 of the *Rehoboth Self-Government Act 56 of 1976*.

**TRANSFER TO SOUTH WEST AFRICA:** The administration of this Act was transferred to South West Africa by the Executive Powers Transfer Proclamation, AG 3 of 1977, dated 28 September 1977. There were no amendments to the Act in South Africa prior to Namibian independence.

### Registration of Deeds in Rehoboth Amendment Act 8 of 1981 (Kaptein's Council and Legislative Council of Rehoboth)

(Official Gazette of Rehoboth 55)

came into force on date of publication: 7 April 1982

### Registration of Deeds in Rehoboth Amendment Act 35 of 1994 (GG 995)

came into force on date of publication: 13 December 1994

### Registration of Deeds in Rehoboth Amendment Act 8 of 1996 (GG 1352)

brought into force on 15 July 1996 by GN 184/1996 (GG 1353)

This Act was initially **REPEALED** by the Deeds Registries Act 14 of 2015 (GG 5913), which was brought into force on 23 April 2021 by GN 81/2021 (GG 7514). However, GN 81/2021 was set aside by an order in the case *Bank Windhoek Limited v The Minister of Agriculture, Water and Land Reform, The Registrar of Deeds and The Attorney-General* (Case Number HC-MDCIV-MOT-GEN-2021/00218), with the result that the replacement Act is not yet in force and this Act remains the operative law. See GN 131/2021 (GG 7561):

"Pursuant to a court order granted in the matter *Bank Windhoek Limited v. The Minister of Agriculture, Water and Land Reform, The Registrar of Deeds and The Attorney-General* (Case Number HC-MDCIV-MOT-GEN-2021/00218), I give notice that with effect from 23 April 2021, anything that was done pursuant to the Deeds Registries' Act, 2015 (Act No. 14 of 2015) and the regulations published under Government Notice No. 83 of 2021 of 23 April 2021, is deemed to have been done under a corresponding provision of the Deeds Registries Act, 1937 (Act No. 47 of 1937) and the regulations applicable thereunder and the Registration of Deeds in Rehoboth Act, 1976 (Act No. 93 of 1976) and the regulations applicable thereunder, as the case may be.

C. HG SCHLETTWEIN  
MINISTER OF AGRICULTURE, WATER AND LAND REFORM  
Windhoek, 17 June 2021"

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**ACT**

**Registration of Deeds in Rehoboth Act 93 of 1976 (RSA)**

**To provide for the registration of deeds in the Rehoboth Gebiet, in the territory of South West Africa.**

*(English text signed by the State President)  
(Assented to 18 June 1976)*

## ARRANGEMENT OF SECTIONS

1. Definitions
2. Deeds registry
3. Registrar of deeds
4. Duties of registrar
5. Powers of registrar
6. Transfer of certain documents to registry and issue of land titles
7. Land title may be issued to one person only and in respect of one piece of land only

### REGISTRATION

8. Registration of deeds to follow the sequence of the respective causes
9. Registration of land in terms of order issued after holding of enquiry in terms of section 54
10. Registration of property in name of married persons
- 10bis. Endorsement of deeds where a spouse is entitled in terms of section 8 of Married Persons Equality Act, 1996, to immovable property forming part of the joint estate
11. Land title to correct error in registration
12. Limitation of registration of rights in immovable property

### TRANSFER OF LAND

13. Transfer of land right to undivided share or real right in land
14. Transfer of land from joint estate
15. Prohibition of registration of certain undivided share
16. Transfer of undivided shares in defined portion of certain land
17. Partition of land
18. Requirements where share in land partitioned is mortgaged
19. Partition of land which is subject to certain rights
20. Legal effect of completion of certain acts in terms of sections 18 and 19
21. Partition of land subject to *fideicommissum*
22. Certificate of consolidated land title of two or more pieces of land
23. Issue of land title in respect of defined portion of piece of land
24. Rectification of land title
25. Prohibition of certain cancellations except on authority of certain order

### TOWNSHIPS

26. Subdivision of land into erven in case of townships

### BONDS

27. Registration of bonds
28. Cession of bond to secure future advances
29. Prohibition of registration of certain mortgage bonds and notarial bonds
30. Prohibition of passing of bond in favour of agent

**Registration of Deeds in Rehoboth Act 93 of 1976 (RSA)**

---

31. Bonds passed in favour of two or more persons

RIGHTS OF MORTGAGEES

32. Transfer of mortgaged immovable property  
 33. Substitution of debtor in respect of bond  
 34. Consent of mortgagee to registration of merger of rights of mortgagor

NOTARIAL BONDS

35. Registration of notarial bond  
 36. Where notarial bond is to be registered  
 37. Mortgage bond or notarial bond intended to secure future debts

PERSONAL SERVITUDES

38. Registration of personal servitudes  
 39. Joint transactions by fiduciary and fideicommissary

PRAEDIAL SERVITUDES

40. Creation, registration and cancellation of praedial servitudes

LEASES

41. Registration of lease and sublease  
 42. Registration of termination of registered lease or sublease  
 43. Prohibition of registration of cessions of unregistered lease or sublease  
 44. Hypothecation of lease or sublease  
 45. Notarial bond hypothecating lease or sublease

ANTENUPTIAL CONTRACTS

46. Registration of antenuptial contracts

MISCELLANEOUS PROVISIONS

47. Inspection of documents and furnishing of information  
 48. Proof of payment of taxes and other moneys  
 49. Payment of certain amounts to registrar for benefit of State Revenue Fund  
 50. Notice to registrar of application to court  
 51. Issue of copy of lost land title or other document  
 52. Limitation of liability  
 53. Formal defects  
 54. Enquiry  
 55. Compliance with provisions of laws  
 56. Regulations  
 57. Repeal of sections 1(d) and *1bis* of Proclamation 2 of 1921 of South West Africa  
 58. Substitution of section 102A of Act 47 of 1937, as inserted by section 13 of Act 3 of 1972  
 59. Amendment of Second Schedule to Act 47 of 1937, as amended by section 40 of Act 43 of 1957, section 37 of Act 43 of 1962, section 8 of Act 61 of 1969 and section 14 of Act 3 of 1972  
 60. Short title and commencement

**Registration of Deeds in Rehoboth Act 93 of 1976 (RSA)**

BE IT ENACTED by the State President, the Senate and the House of Assembly of the Republic of South Africa, as follows:-

**Definitions**

I. In this Act, unless the context otherwise indicates -

“court” means the South West Africa division of the Supreme Court of South Africa or the Basterhof in the Gebiet;

“deed” includes any antenuptial contract, notarial bond, mortgage bond, deed of servitude, land title or other document which confers a real right in land;

“diagram” means any diagram which has been signed by a person who when he signed it was recognized in terms of any law then in force in the Gebiet as a land surveyor, and which has been approved or certified by a surveyor-general or any other officer competent to approve or certify a diagram, and includes a diagram or copy thereof prepared in a surveyor-general’s office and approved or certified as aforesaid, and any diagram which has at any time before the commencement of this Act been accepted for registration in a deeds registry or surveyor-general’s office;

“erf” means any piece of land registered as an erf or stand in the registry and includes any defined portion, not intended as a public place, of a piece of land laid out as a township;

“Gebiet” means the Rehoboth Gebiet as described in section 6 of the Rehoboth Self-Government Act, 1976;

**[The Rehoboth Self-Government Act is Act 56 of 1976.]**

“general plan” means a plan which represents the relative positions and dimensions of two or more pieces of land which 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 a surveyor-general or other officer competent so to approve or certify a general plan, and includes a general plan or copy thereof prepared in a surveyor-general’s office and approved or certified as aforesaid;

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

“land” includes an undivided share in land;

“land title” includes a partition land title, certificate of consolidated land title and any other document issued in terms of this Act which serves as proof of the ownership of any person in land;

“magistrate” means the magistrate for the district of Rehoboth;

“Minister” means the Minister of Lands, Resettlement and Rehabilitation;

**[definition of “Minister” amended by Act 35 of 1994]**

“mortgage bond” means any document attested by the registrar under which immovable property is specially hypothecated;

**Registration of Deeds in Rehoboth Act 93 of 1976 (RSA)**

“notarial bond” means any document attested by a notary under which movable property is hypothecated generally or specially or generally and specially;

“notary”, in relation to -

- (a) a deed or document by virtue of which a real right is vested in land, means a person practising as a notary in the Republic or South West Africa;
- (b) any other deed or document, means a person practising as a notary at the place where the deed or document was signed;

“officer” means any person appointed under the Public Service Act, 1957 (Act No. 54 of 1957), to the Public Service;

**[The “Administration of South West Africa” and the “Secretary for South West Africa” were removed from the coverage of the Public Service Act 54 of 1957 by RSA Proc. R 112/1980 (RSA GG 7097). The public service in South West Africa was then governed by the Government Service Act 2 of 1980 (OG 4116), which was re-named the Public Service Act 2 of 1980 and replaced by the Public Service Act 13 of 1995.]**

“owner” means, in relation to -

- (a) immovable property, real rights in immovable property and notarial bonds, subject to paragraph (b), the person registered as the owner or holder thereof and includes the trustee in an insolvent estate, the liquidator of a company or a close corporation which is an owner or a holder and the representative recognized by law of any owner or holder who has died or who is a minor or of unsound mind or is otherwise under disability, provided such trustee, liquidator or legal representative is acting within the authority conferred on him or her by law;
- (b) immovable property, real rights in immovable property and notarial bonds -
  - (i) which are registered under section 10 in the name of both spouses, either one of the spouses acting with the written consent of the other spouse; and
  - (ii) which are registered in the name of only one spouse and which form part of the joint estate of both spouses, either one of the spouses acting with the written consent of the other spouse;

**[definition of “owner” substituted by Act 8 of 1996]**

“register”, in relation to any matter, means the register prescribed in respect of such matter;

“registered” means registered in the registry;

“registrar” means the person appointed in terms of section 3(1) or (2);

“registry” the deeds registry established by section 2;

“registry duplicate”, in relation to a deed or other document, the copy of such deed or document kept or intended to be kept in the registry;

“regulation” any regulation made in terms of section 56;

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

**Registration of Deeds in Rehoboth Act 93 of 1976 (RSA)**

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“this Act” includes the regulations made in terms of section 56;

“township” includes -

- (a) any group of pieces of land or any group of subdivisions of a piece of land which are combined with public places and are used mainly for residential, industrial or similar purposes or are intended for such use;
- (b) any combination of such groups of land;

“transfer”, in relation to land, means the transfer of the ownership in land;

“transfer endorsement” means an endorsement effected by the registrar on any land title by virtue of which the ownership or a real right in the piece of land in question is transferred;

**Deeds registry**

- 2. There is hereby established a registry for the registration of deeds in the Gebiet.

**Registrar of deeds**

3. (1) The Minister shall subject to the laws governing the Public Service appoint a registrar of deeds in respect of the registry who shall perform such functions and duties and shall exercise such powers imposed upon or assigned to him by or in terms of this Act.

(2) When the registrar is absent or unable to perform or exercise the duties, functions or powers referred to in subsection (1), or his office becomes vacant, the Minister may appoint an officer to perform or exercise such duties, functions or powers during such absence or until the vacancy is filled.

(3) The Minister may delegate to any officer any duty or power imposed upon or assigned to him by subsection (1) or (2).

**Duties of registrar**

- 4. The registrar shall -
  - (a) keep all documents referred to in subsection 6(1) as well as all documents which may become records of the registry after the commencement of this Act;
  - (b) examine all deeds and other documents submitted to him for signing or registration, and after examination thereof reject such deed or document if this Act or any other rule of law does not permit the registration thereof or if there exists any other valid objection to such signing or registration thereof;
  - (c) issue land titles to persons entitled thereto;
  - (d) register transfers of land;
  - (e) register mortgage bonds;
  - (f) register cessions of registered mortgage bonds or other real rights, including cessions made as security and register cancellations of such cessions, if made as security;

**Registration of Deeds in Rehoboth Act 93 of 1976 (RSA)**

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- (g) register cancellations of mortgage bonds, releases of any part of the property hypothecated thereby, or of all such property if the debt is further secured by a collateral bond, the release of any joint debtor or of any surety in respect of such bond, the substitution for a debtor in respect of such bond of any other person, reductions of cover in respect of any such bond intended to secure future debts, and part payments of the capital amount due in respect of any such bond other than a bond intended to secure future debts;
- (h) register waivers of preference in respect of registered mortgage bonds and notarial bonds in respect of the whole or any part of the property hypothecated thereby in favour of other such 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 on any registered mortgage bond or notarial bond any amendment of the terms of that bond, agreed upon by the mortgagor and mortgagee;
- (k) register notarial bonds and cancellations and cessions thereof, including cessions made as security, and cancellations of such cessions, if made as security;
- (l) register antenuptial contracts and register such notarial deeds of donation, including donations held in trust, and such other notarial deeds relating to persons and property in the Gebiet as are required or permitted to be registered;
- (m) register leases and subleases of land, cessions of such leases and subleases, amendments, renewals and cancellations of such leases and subleases and releases of any part of the land leased;
- (n) register real rights in land not specifically mentioned in this section and the transfer, cession, amendment or extinction of such rights which have been registered;
- (o) register general plans of erven or subdivisions of land, open registers of the erven or subdivisions of land represented on such general plans and record in such registers the conditions subject to which the erven or subdivisions have been laid out or made;
- (p) record every notice, return, statement or order of a court which has been lodged with him in terms of any rule of law;
- (q) keep the prescribed registers and make such entries therein as may be necessary in order to comply with the provisions of this Act and, in order to promote certainty of the law and to facilitate reference to registered deeds, establish and maintain an efficient system of registration;
- (r) register all personal and praedial servitudes and record of registered servitudes;
- (s) register releases of any part of the property hypothecated by a registered notarial bond 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, reductions of cover in respect of any such bond intended to secure future debts and part payments in respect of the capital amount due in respect of any such bond other than a bond intended to secure future debts;

**Registration of Deeds in Rehoboth Act 93 of 1976 (RSA)**

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- (t) register general powers of procuration;
- (u) generally, perform such functions as may be prescribed from time to time or as may be necessary in order to give effect to the provisions of this Act.

**Powers of registrar**

5. (1) The registrar may -
- (a) demand the production of proof, whether by way of affidavit or otherwise, of any fact required to be proved in connection with any act the performance of which is desired in the registry;
  - (b) whenever it is in his opinion necessary or desirable to rectify or supplement in any deed or other document registered or kept in the registry, any error or omission in the name or description of any person, land or right mentioned therein or the conditions applicable to such land or right, rectify or supplement the error or omission: Provided that -
    - (i) every person appearing from the deed or other document to have an interest in the rectification or supplement has consented thereto in writing;
    - (ii) if any such person refuses to consent to the rectification or supplement, such rectification or supplement may be effected by virtue of an order issued in terms of section 54;
    - (iii) if the error or omission appears in two or more deeds or other documents, including any register in the registry, the error or omission shall be rectified or supplemented in all such deeds or other documents;
    - (iv) such rectification or supplement shall not be effected if it would have the effect of transferring or cancelling any right;
  - (c) issue, subject to the prescribed conditions, certified copies of deeds or other documents registered or kept in the registry;
  - (d) if in his opinion any deed or other document submitted to him has become illegible or unserviceable, require that a certified copy thereof be obtained to replace the illegible or unserviceable deed or other document;
  - (e) on payment of the prescribed amounts, prepare deeds and other documents.

(2) The registrar may authorize any officer or other person to perform any function referred to in subsection (1)(e).

**Transfer of certain documents to registry and issue of land titles**

6. (1) (a) All deeds and other documents kept by the Registrar of Deeds at Windhoek and which relate to land in the Gebiet shall at the commencement of this Act be transferred to the registry.
- (b) Any deed or document transferred in terms of paragraph (a) shall with effect from the date of transfer be deemed to be registered in the registry.



**Registration of Deeds in Rehoboth Act 93 of 1976 (RSA)**

(2) The registrar shall not later than a date fixed by the Minister by notice in the *Gazette* issue a land title to every owner of land in respect of which -

- (a) any deed of transfer, certificate of registered title or other title deed has been transferred in accordance with subsection (1);
- (b) an entry appears in the registers of the office of the Rehoboth Baster Community.

(3) The registrar shall effect on every land title issued in respect of any deed of transfer, certificate or title deed transferred in terms of this section an endorsement indicating every mortgage bond, servitude, lease or other right existing in relation to the land in question at the time of such transfer.

(4) A land title issued under subsection (2) shall replace the deed of transfer, certificate of registered title or other title deed in respect of which it was issued.

(5) As from the date fixed under subsection (2) the registrar shall not issue any land title by virtue of any writing issued by the office of the Rehoboth Baster Community and purporting to be proof of ownership in land.

**Land title may be issued to one person only and in respect of one piece of land only**

7. (1) A particular land title shall not be issued -
- (a) to more than one person; or
  - (b) in respect of more than one piece of land.

(2) If a piece of land is owned by more than one person in undivided shares, the registrar shall issue a land title to every such person in which the share of such person is mentioned: Provided that it shall not be necessary to mention in such land title the names of the co-owners.

## REGISTRATION

**Registration of deeds to follow the sequence of the respective causes**

8. Subject to the provisions of this Act or any other law -
- (a) transfers of land and cessions of real rights therein shall follow the sequence of the successive juristic acts in pursuance of which they are made, and if made in terms of a will or intestate succession, they shall follow the sequence in which the right to the ownership of or other real right in the land accrued to the persons successively becoming vested with such right;
  - (b) such sequence shall not be departed from in the recording in the registry of any change in the ownership of such land or real right: Provided that -
    - (i) if the land or right has passed in accordance with a will or intestate succession from a deceased person to his descendants and any of the descendants has died intestate and no executor has been appointed in respect of the estate of such descendant, transfer or cession of the land or right 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;

**Registration of Deeds in Rehoboth Act 93 of 1976 (RSA)**

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[The word “passed” is misspelt in the *Government Gazette*, as reproduced above.]

- (ii) if in the liquidation and distribution of the estate of a deceased person any redistribution of the whole or any portion of the assets in such estate takes place among the heirs and legatees, including ascertained fideicommissary heirs and legatees of the deceased, or between such heirs and legatees and the surviving spouse, the executor in the estate may transfer or cede the land or the real rights therein direct to the persons entitled thereto in terms of such redistribution;
- (iii) in a redistribution mentioned in paragraph (ii) of this proviso moveable property not forming part of the estate may be introduced for the purpose of effecting an equal division;
- (iv) the provisions of paragraph (ii) of this proviso shall apply *mutatis mutandis* in respect of the redistribution of assets in the joint estate of spouses who were married in community of property and have been divorced or judicially separated, and in respect of a redistribution of assets of a partnership on dissolution of the partnership;
- (v) if a fiduciary interest in land or a real right terminates before transfer or cession of the land or right has been registered in favour of the fiduciary, the land or real right may be transferred or ceded direct to the fideicommissary;
- (vi) if the right of any person to claim transfer or cession of such land or real right has been vested in any third person in terms of any judgment or order of any court or in terms of a sale in execution held in pursuance of such judgment or order, such land or real right may be transferred or ceded direct to such third person by the person against whom such right is enforceable.

**Registration of land in terms of order issued after holding of enquiry in terms of section 54**

9. Immovable property which is the subject of an order referred to in section 54(8)(b) shall notwithstanding anything to the contrary contained in this Act, be registered in accordance with the provisions of such order in the name of the person concerned.

**Registration of property in name of married persons**

10. (1) From the commencement of the Registration of Deeds in Rehoboth Amendment Act, 1996, immovable property, real rights in immovable property and notarial bonds which would upon transfer, cession, or registration thereof form part of a joint estate shall be registered in the name of the husband and the wife, unless that transfer, cession, or registration takes place only in the name of a partnership, and the husband or wife is involved therein only in the capacity of partner in that partnership.

(2) Every deed or other document executed or attested by a registrar, or attested by a notary public and required to be registered in a deeds registry, and made by or on behalf of or in favour of any person, shall -

- (a) state the full names of the person concerned and whether he or she is married or unmarried;

**Registration of Deeds in Rehoboth Act 93 of 1976 (RSA)**

- (b) where the marriage concerned is governed by the law in force in Namibia, state whether the marriage is in or out of community of property or is a marriage governed by the Recognition of Certain Marriages Act, 1991 (Act 18 of 1991);
- (c) where the marriage of the person concerned is in community of property or is governed by the Recognition of Certain Marriages Act, 1991, state the full names of his or her spouse; and
- (d) where the marriage concerned is governed by the law of any country other than Namibia, state that the marriage is governed by the law of that country and state the full names of his or her spouse.

(3) Where a marriage in community of property or governed by the Recognition of Certain Marriages Act, 1991, has been dissolved by the death of one of the spouses before property or a mortgage or notarial bond which on transfer or cession thereof would have formed part of the joint estate could be transferred or ceded, that property, mortgage, or notarial bond shall be transferred or ceded to the joint estate of the spouses, pending the administration thereof, and is, subject to the provisions of any disposition with regard to that property, deemed to be the joint property of the surviving spouse and of the estate of the deceased spouse.

(4) If immovable property, a real right in immovable property, or a notarial bond forming part of a joint estate is registered in the deeds registry in the name of one of the spouses, the registrar shall on the written application of either of the spouses, or a conveyancer as his or her duly authorized agent, if the registrar is satisfied as to the relevant facts, endorse on the relevant deed or bond or, if such deed or bond can not be produced to him or her due to the other spouse's refusal to produce such deed or bond in his or her possession or under his or her control, only on the registry duplicate thereof and in the appropriate registers -

[The word "cannot" appears as two words in the *Government Gazette*, as reproduced above.]

- (a) the full name of such other spouse; and
  - (b) that the spouses are married in community of property or, where applicable, that the marriage of the spouses is governed by the Recognition of Certain Marriages Act, 1991.
- (5) A person married in terms of a marriage the legal consequences of which are governed by the law of any country other than Namibia -
- (a) shall be assisted by his or her spouse in executing any deed or other document required or permitted to be executed or registered in the deeds registry or required or permitted to be produced in connection with any such deed or document; or
  - (b) shall produce the consent of his or her spouse to such execution, registration, or production,

unless the assistance or consent of such spouse is in terms of this Act or on any other grounds considered by the registrar to be unnecessary.

[section 10 amended by Act 8 of 1981 of Rehoboth and substituted by Act 8 of 1996]

**Endorsement of deeds where a spouse is entitled in terms of section 8 of Married Persons Equality Act, 1996, to immovable property forming part of the joint estate**

**Registration of Deeds in Rehoboth Act 93 of 1976 (RSA)**

**10bis.** Where during the subsistence of the marriage a spouse is entitled, as a result of a settlement made to such spouse in terms of section 8 of the Married Persons Equality Act, 1996, to immovable property forming part of the joint estate, the registrar shall on the written application of that spouse, accompanied by such documents as the registrar deems necessary and if the registrar is satisfied as to the relevant facts, endorse on the relevant title deed or, if such deed cannot be produced by such spouse due to the other spouse's refusal to produce the deed in his or her possession or under his or her control, only the registry duplicate thereof and in the relevant registers, that the spouse to whom the settlement in question was made is entitled to deal with such immovable property, and thereupon such spouse shall, subject to subsection (5) of the said section 8, be entitled to deal therewith as if he or she had taken formal transfer in his or her own name of such property.

[Section 10bis is inserted by Act 8 of 1996. The Married Persons Equality Act is Act 1 of 1996.]

**Land title to correct error in registration**

**11.** If by reason of an error the same piece of land has been registered in the names of different persons, the registrar may, upon transfer of the land being given to one of them by the other person or persons, replace all the land titles in question by one land title.

**Limitation of registration of rights in immovable property**

**12.** (1) No deed or condition in a deed purporting to create any personal right in connection with immovable property and no condition which does not restrict the exercise of the ownership of immovable property shall be registered: Provided that any deed containing any such condition may be registered if in the opinion of the registrar such condition is complementary or otherwise ancillary to any right or other condition which is contained in the deed and which is capable of being registered in terms of this Act.

(2) The provisions of subsection (1) shall not apply in respect of any condition contained in any mortgage bond or lease or in any deed referred to in section 4(m).

## TRANSFER OF LAND

**Transfer of land right to undivided share or real right in land**

**13.** (1) Subject to the provisions of this Act, land, any right to an undivided share or any real right in land shall be transferred by way of an endorsement in the prescribed form effected in the prescribed manner on the land title relating to the land in question.

- (2) Land shall not be transferred -
- (a) unless there is submitted to the registrar a certificate in the prescribed form signed by the transferor and transferee -
- (i) stating the names, dates of birth and status of the persons concerned;
- (ii) stating that all amounts (if any) due to the transferor in respect of the land in question have been paid or that provision to the satisfaction of the transferor has been made for the payment thereof;
- (iii) stating that the prescribed requirements have been complied with; and
- (b) unless such certificate is accompanied by -

## Registration of Deeds in Rehoboth Act 93 of 1976 (RSA)

(i)

**[subparagraph (i) deleted by Act 35 of 1994]**

(ii) if the transferor is a deceased estate, a document issued by the magistrate stating that there is no objection to the transfer and stating whether the transfer is subject to any usufruct or any other condition imposed by the will of the deceased or any other person and, if so, the provisions of those conditions.

(3) If land or any real right therein is transferred by virtue of an agreement, the transfer thereof shall not be registered unless the document containing such agreement has been submitted to the registrar.

(4) If land registered in the name of a firm or partnership is acquired by any member or partner of such firm or partnership in his individual capacity, the certificate referred to in subsection (2) shall be signed by all the members or partners constituting such firm or partnership.

(5) If on the dissolution of a firm or partnership any land owned by such firm or partnership is awarded to all the members or partners, the registrar shall on written application signed by all the members or partners constituting such firm or partnership, accompanied by proof of the dissolution and such other documents as may be required by the registrar or as may be prescribed, transfer the land in the manner mentioned in subsection (1).

(6) (a) If the land referred to in subsections (4) and (5) is subject to a registered mortgage bond, such land shall not be transferred unless such bond has been cancelled or the holder thereof consents in writing to the substitution of the individual members or partners as debtors under the bond: Provided that such substitution shall not be valid unless -

- (i) the individual members or partners apply in writing to be substituted, jointly and severally, as debtors under the bond;
- (ii) the individual members or partners are competent to mortgage the land;
- (iii) where applicable, the individual members or partners renounce the exception *de duobus vel pluribus reis debendi*.

(b) Any consent or application referred to in paragraph (a) shall be in duplicate.

(7) If a real right registered in the name of a firm or partnership is acquired by any member or partner of such firm in his individual capacity or if on the dissolution of such firm or partnership, that real right is awarded to all the members or partners, the provisions of subsections (4), (5) and (6) shall apply *mutatis mutandis*.

(8) (a) If land is transferred to two or more persons in undivided shares or if any right to an undivided share in land is transferred to two or more persons, the registrar shall issue each transferee with a land title stating the share of such transferee.

(b) Land titles issued in terms of paragraph (a) shall replace the land title which applied to that land immediately before the transfer.

**Transfer of land from joint estate**

**Registration of Deeds in Rehoboth Act 93 of 1976 (RSA)**

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**14.** In a transfer 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 dealing only with the share of the deceased spouse;
- (b) where the land has been sold to pay the debts of the joint estate;
- (c) where there has been a massing of the joint estate and the surviving spouse has adiated;
- (d) where such transfer is in favour of the surviving spouse; or
- (e) where the surviving spouse has signed as executor the procuration to pass such transfer.

**Prohibition of registration of certain undivided share**

**15.** A transfer of an undivided share in land which is intended or calculated to represent a defined portion of the land, shall not be registered.

**Transfer of undivided shares in defined portion of certain land**

**16.** If any piece of land is owned by two or more persons in undivided shares and such persons have agreed to transfer to one or more of them the share or shares of the other owner or owners in a defined portion of that piece of land, all such owners (including the owner or owners to whom the share or shares are to be transferred) may transfer that portion jointly and in accordance with the prescribed requirements to the person or persons acquiring that portion.

**Partition of land**

**17.** (1) If the whole of one or more than one piece of land is owned by two or more persons in undivided shares, and

- (a) such persons have agreed to partition such land; or
- (b) an order has been issued under section 54 in terms of which the partition of such land among such persons is directed,

the registrar shall, after the provisions of subsection (2) have been complied with, issue partition land titles conveying to the respective owners the land or the portions thereof awarded to them by virtue of such agreement or order.

(2) A partition land title shall not be issued in terms of subsection (1) unless the registrar is furnished with the following, namely -

- (a) (i) in the case of a partition in terms of an agreement referred to in subsection (1)(a), a written agreement which shall as far as practicable be in the prescribed form and which shall have been signed by the owners concerned; or
- (ii) in the case of a partition in terms of an order referred to in subsection (1)(b), that order;
- (b) all the land titles relating to the land being partitioned; and

**Registration of Deeds in Rehoboth Act 93 of 1976 (RSA)**

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- (c) diagrams representing the particular portions of the land to which such agreement or order relates: Provided that it shall not be necessary to furnish a diagram of the whole or the remaining portion of any of the pieces of land being partitioned.

(3) The provisions of section 14 shall subject to the provisions of this section apply in respect of partition land titles.

(4) Any partition land title issued in terms of subsection (1) shall in respect of the land described therein replace the land title or land titles under which the land was previously held, but the partition land title shall not amend or affect the conditions of tenure of such land or any other conditions applying to such land.

(5) The provisions of this section shall *mutatis mutandis* apply to a partition of land by order of the court.

**Requirements where share in land partitioned is mortgaged**

**18.** (1) If the share or shares owned by one of the parties to a partition of land is mortgaged, the partition land titles shall not be issued unless the bond is submitted to the registrar together with a document in which the mortgagee consents to the partition and to the substitution for the share or shares mortgaged of the land awarded to the mortgagor by virtue of the partition.

(2) In registering the partition land title issued to a party referred to in subsection (1), the registrar shall -

- (a) endorse on the bond that the land awarded to the mortgagor has been substituted for the share or shares mortgaged;
- (b) make an entry of the substitution in the relevant registers;
- (c) endorse on the partition land title that the land described therein has in accordance with this section been burdened with 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 take place only in respect of the fraction so mortgaged, if from the partition agreement or 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 piece of land is partitioned by virtue of the same partition and the whole of any one or more of the pieces in question is awarded to one of the owners, such piece or pieces may be substituted in the bond of such owner if the bond has been registered in respect of his share in all the pieces of land partitioned.

**Partition of land which is subject to certain rights**

**19.** (1) If the share or shares owned by one of the parties to a partition of land appear from the land title in question to be subject to a lease, personal servitude or other real right (except any right to minerals), the registrar shall be furnished with -

- (a) the deed (if any) in terms of which such lease, servitude or right was granted; and
- (b) the written consent of the lessee, holder of the servitude or other right to -

**Registration of Deeds in Rehoboth Act 93 of 1976 (RSA)**

- (i) the partition of the land; and
- (ii) the allocation of the land which shall be subject to such lease, servitude or other right.

(2) The land described in the partition land title shall be made subject to the lease, servitude or other real right to the same extent as the share or shares for which such land is substituted, and the registrar shall make an endorsement on the deed (if any) under which that lease, servitude or right is held to the effect that the land described in the partition land title has been substituted for such share or shares.

(3) If any share or shares in land which constitute the subject matter of a partition are subject to a lease, personal servitude or other real right and such lease, servitude or right has been mortgaged, the written consent of the holder of the bond to -

- (i) the partition of the land; and
- (ii) the allocation of the land which shall be subject to such lease, servitude or right,

shall be submitted to the registrar together with the deed in terms of which such lease, servitude or other right was conferred, and the registrar shall make the endorsements and entries mentioned in section 18 on the bond and in the appropriate register.

**Legal effect of completion of certain acts in terms of sections 18 and 19**

**20.** Upon completion of the endorsements and entries mentioned in sections 18 and 19 the land described in the partition land title and the lease, servitude or other real right (if any) shall be deemed to be mortgaged to the same extent as if they had been burdened with the bond at the time when such bond was signed, and such land shall be deemed to be burdened with such lease, servitude or other real right as if it had been burdened therewith at the time of the registration thereof.

**Partition of land subject to *fideicommissum***

**21.** (1) If a piece of land or a share therein is subject to a *fideicommissum* and the partition of such land is not prohibited, it may be partitioned -

- (a) if the fideicommissary heirs or successors are known and can be found, with their consent;
- (b) if one or more of the fideicommissary heirs or successors are unknown or cannot be found, if proof is submitted to the satisfaction of the registrar that the land awarded in terms of the partition agreement is the result of a just partition.

(2) The consent contemplated in subsection (1) shall be given in the case of a fideicommissary heir or successor -

- (a) who is a major and otherwise competent, by himself;
- (b) who is a minor, by the magistrate;
- (c) who has been declared insolvent, or has been placed under curatorship or whose legal capacity is otherwise limited, by his curator or representative.



## Registration of Deeds in Rehoboth Act 93 of 1976 (RSA)

(3) Land partitioned in terms of this section shall be subject to the *fideicommissum* to the same extent as the corresponding share had been subject thereto before the partition.

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

**22.** (1) If a diagram has been prepared and approved under the provisions of the Land Survey Act, 1927 (Act No. 9 of 1927), in this section referred to as the new diagram, and such diagram represents two or more pieces of land which are -

- (a) contiguous to each other;
- (b) owned by the same person or by two or more persons in the same undivided shares in each such piece of land;
- (c) registered in the registry,

the land title or land titles of such pieces of land may, subject to the provisions of this section, be replaced by a certificate or certificates of consolidated land title issued by the registrar in the prescribed form.

**[The Land Survey Act 9 of 1927 has been replaced by the Land Survey Act 33 of 1993.]**

(2) A certificate of consolidated land title referred to in subsection (1) shall correspond with the new diagram, shall be issued on the written application of the owner or owners of the pieces of land in question and shall be accompanied by the land titles thereof, any mortgage bond thereon and the written consent of the mortgagee in question.

- (3) In issuing a certificate of consolidated land title, the registrar shall -
  - (a) endorse on the land titles in question that they have been replaced by such certificate; and
  - (b) if the land in question, or any share therein, is burdened with a bond, make an endorsement on such certificate that the land described therein, or the share referred to in such endorsement, is burdened with the bond, and make such endorsement on such bond and such entries in the registers as may indicate that the land is now held under such certificate and that the land or such share therein is burdened with the bond in question.
- (4) (a) If a portion only of the land to which the new diagram relates is mortgaged, a certificate of consolidated land title shall not be issued unless the bond has been cancelled: Provided that on the written application of the owner and with the consent of the mortgagee, all land to which the new diagram relates may be burdened with such bond in the place of the land originally mortgaged.
- (b) If different portions of the land to which the new diagram relates are burdened with different bonds, a certificate of consolidated land title shall not be issued unless the bonds have been cancelled.
- (5) (a) If a portion only of the land to which the new diagram relates is subject to a registered lease or other registered deed (other than a bond) by virtue of which any other person holds a real right in the land, and a diagram of such portion has not been annexed to such registered lease or deed, a certificate of consolidated land title shall not be issued unless a diagram of such portion in duplicate or, if required by the registrar, in triplicate, is submitted: Provided that it shall not be necessary to

**Registration of Deeds in Rehoboth Act 93 of 1976 (RSA)**

submit a diagram of such portion if the new diagram shows that portion by dotted lines or in such other manner that it can be identified.

- (b) Such diagram shall be annexed to the said registered lease or deed and to the registry duplicate thereof, and shall be mentioned in any endorsement on or reference in the certificate of consolidated land title which relates to such registered lease or deed.

(6) No diagram representing a combination of portions of two or more pieces of land shall be accepted for the purposes of a transfer unless a certificate of consolidated land title has been issued in respect of the land represented by such diagram.

**Issue of land title in respect of defined portion of piece of land**

23. (1) (a) If a defined portion of a piece of land has been surveyed and a diagram thereof has been approved by the surveyor-general, the registrar shall, subject to the provisions of this section, on the written application of the owner of that land issue a separate land title in the prescribed form in respect of such portion.

- (b) Such application shall be accompanied by a diagram of the portion concerned of such piece of land, the land title under which such piece of land is held and if such piece of land is mortgaged, the bond and the consent of the mortgagee.

(2) In issuing a separate land title in terms of subsection (1), the registrar shall -

- (a) effect an endorsement on the land title under which the piece of land in question is held, that a separate land title has been issued;
- (b) (i) effect an endorsement on such separate land title that the land to which it relates is mortgaged; and
- (ii) effect on the bond in question an endorsement and make entries in the register in question that the land is now held under a separate land title and is burdened with that bond.

(3) A defined portion of a piece of land shall not be mortgaged unless the owner thereof has obtained a separate land title in respect of that portion in accordance with this section.

(4) Save in the case of a transfer of a whole erf, the owner of a township in whose land title the individual erven are not separately described, shall not deal separately in any way with an individual erf in such township or any portion of such erf or portion therein, unless he has obtained a separate land title in accordance with this section.

**Rectification of land title**

24. (1) If in terms of the Land Survey Act, 1927 (Act No. 9 of 1927), a piece of land has been surveyed or resurveyed or any error in the diagram relating to that land has been rectified, the registrar shall, subject to the provisions of subsection (2), on application of the owner of that land correct any error in the description of such land appearing in the land title in question, any bond on such land, any registered lease or any deed conferring a real right in such land, and shall substitute the new or corrected diagram for the existing diagram.

[The Land Survey Act 9 of 1927 has been replaced by the Land Survey Act 33 of 1993.]

**Registration of Deeds in Rehoboth Act 93 of 1976 (RSA)**

- (2) An application referred to in subsection (1), shall be accompanied by -
- (a) the land title in question;
  - (b) the new or corrected diagram; and
  - (c) if such piece of land is mortgaged or is subject to any registered lease or other real right, the bond, lease or deed under which such real right was conferred, as well as the written consent of the mortgagee, lessee or holder of such right.

(3) The registrar shall when substituting a new or corrected diagram for the existing diagram in terms of subsection (1), effect an endorsement on the existing diagram that it has been substituted.

**Prohibition of certain cancellations except on authority of certain order**

**25.** (1) Subject to the provisions of this Act or any other law, the registrar shall not cancel -

- (a) any transfer endorsement or deed (other than a bond) conferring a real right in land; or
- (b) any cession of a registered bond not made as security, unless an order has been issued under section 54 in terms of which such cancellation is directed.

(2) When any transfer endorsement or deed is cancelled in terms of an order referred to in subsection (1) -

- (a) the transfer endorsement or deed under which the real right in question was held immediately before the registration of the transfer endorsement or deed thus cancelled, shall be revived to the extent of such cancellation;
- (b) the registrar shall cancel any endorsement appearing on any deed and evidencing the registration of the cancelled transfer endorsement or deed.

**TOWNSHIPS****Subdivision of land into erven in case of townships**

**26.** (1) If land has been subdivided into erven which are represented on a general plan, a copy of the general plan shall be submitted to the registrar and the registrar shall after the provisions of this section and any other law have been complied with register such plan and open a register in which all juristic acts which are in terms of this Act capable of being registered in respect of such erven, shall be registered.

(2) For the purposes of the registration of such general plan the land title of the land subdivided and the diagram thereof shall be submitted to the registrar as well as any bond endorsed on the land title and the consent of the mortgagee to the making of an endorsement on such bond to the effect that it applies to the land described in the general plan.

(3) If the subdivided land as represented on the general plan constitutes the whole of a registered piece of land held under the land title in question, the registrar shall effect on that land title and on the registry duplicate thereof an endorsement in the prescribed form indicating that the land has been laid out as a township in accordance with such plan and that the erven represented on such plan shall be registered in the relative register.

## Registration of Deeds in Rehoboth Act 93 of 1976 (RSA)

- (4) (a) If the subdivided land as represented on the general plan constitutes a portion only of a registered piece of land held under the land title, the registrar shall issue to the owner of the land on his written application a certificate of township title in respect of such portion.
- (b) Such certificate shall be issued in accordance with a diagram of the portion in question and as far as practicable in the prescribed form.
- (5) (a) If the subdivided land as represented on the general plan comprises two or more registered pieces of land wholly or in part, the registrar may require the owner to obtain a certificate of consolidated land title contemplated in section 22 in respect of the subdivided land.
- (b) The registrar shall effect on a certificate of consolidated land title the endorsement referred to in subsection (3).
- (6) The provisions of section 22(3) to (6) shall apply *mutatis mutandis* in respect of -
- (a) the certificate of township title referred to in subsection (4); and
- (b) the certificate of consolidated land title referred to in subsection (5).

(7) If a general plan has been registered in terms of subsection (1), any erf represented on such plan may be transferred without it being necessary to submit a diagram thereof to the registrar: Provided that if a diagram is not submitted, the land title or other document in question shall contain a reference to the general plan.

## BONDS

**Registration of bonds**

27. (1) A mortgage bond shall be prepared in the prescribed form, shall be signed in the presence of the registrar by the owner of the immovable property described therein and shall be attested by the registrar.

(2) A mortgage bond or notarial bond may be registered in order to secure an existing debt or a future debt or both an existing and a future debt.

(3) A mortgage bond or notarial bond registered to secure a building loan, shall be deemed to be a bond to secure an existing debt.

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

(5) Debts or liabilities to more than one creditor arising from different causes of action shall not be secured under one mortgage bond or notarial bond except if authorized by any other law or an order of court.

**Cession of bond to secure future advances**

28. A cession of a mortgage bond or notarial bond passed in order to secure future advances may be registered and the registration of such cession shall not affect the provisions of

**Registration of Deeds in Rehoboth Act 93 of 1976 (RSA)**

the mortgage bond or notarial bond relating to future advances up to the amount mentioned in such mortgage bond or notarial bond or the amount as reduced.

**Prohibition of registration of certain mortgage bonds and notarial bonds**

- 29.** (1) Subject to the provisions of any other law the registrar shall not register any -
- (a) mortgage bond purporting to burden movable property or which contains a general clause;
  - (b) notarial bond purporting to burden immovable property.

(2) No mortgage bond shall be passed by two or more mortgagors unless the immovable property of each mortgagor is burdened: Provided that notwithstanding the provisions of section 27(1), if land is held subject to a condition that on the happening of a certain event, such land shall revert to a person mentioned in the condition, such land may be mortgaged -

- (a) by means of a bond passed jointly and severally by the owner of such land and such person; or
- (b) by such owner with the consent of such person.

(3) For the purposes of subsection (1) "general clause" shall mean a clause which purports to mortgage all the immovable or movable property of a debtor or both such immovable and such movable property.

**Prohibition of passing of bond in favour of agent**

**30.** A mortgage bond shall not be passed in favour of any person as agent of a principal.

**Bonds passed in favour of two or more persons**

**31.** (1) If a mortgage bond or notarial bond is passed in favour of two or more mortgagors, no release from the bond -

- (a) of any mortgagor and his property, or of any portion of the property of a mortgagor, shall be registered without the written consent of the other mortgagor or mortgagors; or
- (b) of all the property of any mortgagor shall be registered, unless such mortgagor is also released.

(2) If any mortgage bond or notarial bond is passed by two or more mortgagors, no waiver of preference by the mortgagee in favour of any further mortgage bond or notarial bond on the property of one of the mortgagors shall be registered without the written consent of the other mortgagor or mortgagors.

(3) No mortgage bond or notarial bond shall be passed in favour of two or more persons if it is stipulated therein that the share or shares of one of the mortgagees shall be given preference over the share of any other, and no juristic act shall be registered which would have the effect of giving preference to one share in such property over any other share.

**Registration of Deeds in Rehoboth Act 93 of 1976 (RSA)**

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**Transfer of mortgaged immovable property**

**32.** (1) No transfer of mortgaged land shall be registered by the registrar and no cession of a mortgaged lease of immovable property or of any mortgaged real right in land shall be registered unless the bond has been cancelled or the land, lease or right has been released from the bond with the written consent of the mortgagee or unless, in the case of such bond having been lost or destroyed, the registrar has, on the application of the registered holder thereof, cancelled in the relevant register the entry in respect of such bond: Provided that no such cancellation shall be necessary if the transfer or cession is made -

- (a) in the execution of an order of a court;
- (b) by the trustee of an insolvent estate, an executor administering and distributing an estate in terms of section 9 of the Administration of Estates (Rehoboth *Gebiet*) Proclamation, 1941 (Proclamation No. 36 of 1941), of South West Africa, or the liquidator of any company which is unable to pay its debts and which is wound up by or under the supervision of the court; or
- (c) in any other circumstances expressly provided for by this Act or any other law.

(2) Any consent to the release from any 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 consent to the cancellation of such bond.

**Substitution of debtor in respect of bond**

**33.** (1) If the owner (in this section referred to as the transferor) of land mortgaged under a registered bond, other than a bond to secure the obligations of a surety, and who is not a person referred to in section 32(1)(b), transfers to any other person (in this section referred to as the transferee) the whole of the land mortgaged thereunder and does not reserve any real right in such land, the registrar may, if he is satisfied that the applicable provisions of this Act or any other law have been complied with, register the transfer and substitute the transferee for the transferor as debtor in respect of the bond: Provided that there shall be produced to the registrar the written consent, in duplicate and in the prescribed form, of the mortgagee and the transferee to the substitution for the transferor of the transferee as debtor in respect of the bond, for the amount mentioned therein.

- (2) In registering the transfer referred to in subsection (1) the registrar shall -
  - (a) make an entry to that effect in the relevant register;
  - (b) annex one copy of the written consent referred to in subsection (1) to the bond and file the other with the registry duplicate of the bond;
  - (c) endorse the following on the bond -
    - (i) the name of the transferee;
    - (ii) the date of transfer;
    - (iii) a reference to the written consent referred to in subsection (1);
    - (iv) that the transferee has been substituted for the transferor as debtor in respect of the bond; and

**Registration of Deeds in Rehoboth Act 93 of 1976 (RSA)**

- (d) effect an endorsement of the bond on the land title stating the date and number of the bond and the amount due under the bond.

(3) As from the date of the substitution of the debtor under the bond the transferor shall be absolved from any obligation secured under the bond and the transferee shall be substituted for the transferor as debtor under the bond, and the transferee shall be bound by the provisions thereof in the same manner as if he had himself passed the bond and had renounced therein the benefit of all the relevant exceptions.

(4) The provisions of this section shall not apply if the mortgaged land is to be transferred -

- (a) to any person who would not be competent to mortgage such land; or
- (b) to two or more persons, unless they take transfer of the land in undivided shares and renounce in the written consent referred to in subsection (1) the exception *de duobus vel pluribus reis debendi*.

(5) The provisions of subsections (1) to (4) shall apply *mutatis mutandis* in respect of immovable property other than land which is mortgaged under a registered bond.

**Consent of mortgagee to registration of merger of rights of mortgagor**

34. If -

- (a) the lessee of land whose lease has been mortgaged or the holder of a mortgaged real right in land, acquires the ownership of such land;
- (b) the lessee of a real right in land whose lease has been mortgaged, acquires such right;
- (c) the owner of mortgaged land which is entitled to a right of servitude in other land, acquires such other land,

the acquisition of such land or right shall not be registered unless the mortgagee has consented in writing to the registration.

**NOTARIAL BONDS****Registration of notarial bond**

35. (1) Any notarial bond signed before or after the commencement of this Act shall be registered in the registry within a period of three months after the date of its signing or within such period as the court or a magistrate's court may allow on application.

(2) A notarial bond shall state -

- (a) the place at and the date on which it was executed as well as the place where the notary practices; and
- (b) the place where the debtor resides and the place or places (if any) where he carries on business.

**Where notarial bond is to be registered**

## Registration of Deeds in Rehoboth Act 93 of 1976 (RSA)

36. A notarial bond shall be registered in the registry if the debtor resides or carries on business in the Gebiet.

### Mortgage bond or notarial bond intended to secure future debts

37. (1) No mortgage bond or notarial bond for purpose of giving preference or priority in respect of a debt incurred after the registration of such mortgage bond or notarial bond shall be valid, unless -

- (a) it is expressly stipulated in the mortgage bond or notarial bond that such bond is intended to secure future debts generally or some particular future debts mentioned therein; and
- (b) an amount is fixed in the mortgage bond or notarial bond as the amount beyond which future debts shall not be secured by such bond.

(2) If a mortgage bond or notarial bond purports to secure payment by the mortgagor of the costs of preserving and realizing the security or of fire insurance premiums or of the costs of any notice or of a bank guarantee, such costs shall not be deemed to be future debts for the purposes of subsection (1).

## PERSONAL SERVITUDES

### Registration of personal servitudes

38. (1) (a) A personal servitude shall be created by means of a written agreement which shall be prepared as far as practicable in the prescribed form and which shall be signed by the owner of the land burdened therewith and the person in whose favour the servitude is created.

(b) A personal servitude shall be registered -

- (i) by effecting an endorsement on the land title of the land burdened therewith; and
- (ii) if the land is mortgaged, on production of the written consent of the mortgagee.

(2) No -

- (a) personal servitude of usufruct *usus* or *habitatio* intended to expire after the death of the person in whose favour it is created;
- (b) transfer of such personal servitude to any person other than the owner of the land burdened therewith,

shall be registered.

(3) If a personal servitude has lapsed, the registrar shall on the written application in the prescribed form by the owner of the land burdened therewith, accompanied by proof of the lapse of the servitude, the land title in question and the document (if any) containing proof of the existence of the servitude, endorse the lapse of the servitude on the land title and cancel such document, if it was produced.



## Registration of Deeds in Rehoboth Act 93 of 1976 (RSA)

(4) The cancellation of the registration of a personal servitude in pursuance of an agreement shall be effected on submission to the registrar of a written application for the cancellation of the servitude signed by the holder thereof and the owner of the land burdened therewith: Provided that if the servitude is mortgaged, it shall not be cancelled unless the mortgagee has consented in writing to the cancellation of the bond or the release of the servitude from the bond.

(5) If the owner of land burdened with a personal servitude and the holder of such servitude transfer such land or a portion thereof together with the rights of servitude to any other person, such owner and holder may jointly transfer such land and rights to such person.

(6) The owner of land burdened with a personal servitude and the holder of the servitude may jointly mortgage the land and servitude to the full extent of their respective rights therein.

(7) If the owner of land burdened with a personal servitude or the holder of such servitude mortgages as principal debtor the land of which he is the owner or the servitude of which he is the holder, the other one of them may in the same bond as surety mortgage the land of which he is the owner or the servitude of which he is the holder.

#### Joint transactions by fiduciary and fideicommissary

**39.** (1) If the owner of land which is subject to a *fideicommissum* and the fideicommissary (if he is competent to do so) have disposed of the land or any portion thereof together with the fideicommissary rights to any other person, they may jointly transfer such land or portion and such rights to such person.

(2) The owner of land which is subject to a *fideicommissum* and the fideicommissary (if he is competent to do so) may jointly mortgage the land to the full extent of their respective rights therein.

#### PRAEDIAL SERVITUDES

##### Creation, registration and cancellation of praedial servitudes

**40.** (1) A praedial servitude for a specified or unspecified period shall be created by means of a written agreement which shall be as far as practicable in the prescribed form and which shall be signed by the owners of the dominant and servient pieces of land.

(2) A praedial servitude shall be registered by effecting an endorsement thereof on the land titles of the servient as well the dominant pieces of land, and if the servient piece of land is burdened with any bond or other real right which may conflict with the servitude, the written consent of the mortgagee or holder of such real right, as the case may be, shall be submitted to the registrar.

(3) Cancellation of a mortgaged real right may only be effected on submission of the bond in question and the written consent of the mortgagee.

(4) If a real right has lapsed for any reason, the registrar shall on written application in the prescribed form by the owner of the land burdened therewith and on production of -

- (a) the land titles of the dominant and servient pieces of land;
- (b) the deed of servitude; and

**Registration of Deeds in Rehoboth Act 93 of 1976 (RSA)**

- (c) proof of the lapse of the servitude,

cancel the servitude by effecting an endorsement on the land title of the dominant and servient pieces of land and on the deed of servitude.

## LEASES

**Registration of lease and sublease**

**41.** (1) Subject to the provisions of any other law, any lease or sublease of land and any cession of such lease or sublease intended or required in terms of any rule of law to be registered in the registry -

- (a) shall be prepared as far as practicable in the prescribed form;
- (b) shall be signed in the presence of the registrar by the lessor and lessee or by the cedent and cessionary (as the case may be); and
- (c) shall be attested by the registrar:

Provided that such lease shall be registered for the full term thereof, including the periods of renewal,

(2) If a cession of a lease is to be registered in respect of any portion of the land leased, a copy of the lease, certified by the registrar, shall be attached to such cession and after registration such cession, with such certified copy of the lease attached thereto, shall be deemed to be the title to the portion of the lease thus ceded and for any subsequent registration in respect thereof it shall be part of the title.

(3) If the land or right leased or subleased is mortgaged or subject to the rights of any other person, it shall not be necessary for the purposes of the registration of the lease or sublease or any cession thereof to submit the bond or the other deed under which such rights are held or the consent of the mortgagee or the holder of such other right.

**Registration of termination of registered lease or sublease**

**42.** (1) (a) When a registered lease or sublease has been terminated, the registrar shall on written application of the owner of the land in question (in the case of the termination of a lease) or the lessee (in the case of the termination of a sublease) record such termination in accordance with subsection (3).

- (2) An application mentioned in subsection (1) shall be accompanied by -

- (a) proof of the termination of the lease or sublease;
- (b) in the case of the termination of a lease, the land title in question; and
- (c) if available, the deed embodying the lease or the deed embodying the sublease, or both, as the case may be.

- (3) The termination -

- (a) of a lease shall be endorsed on the land title in question and, if submitted, on the deed embodying the lease;

**Registration of Deeds in Rehoboth Act 93 of 1976 (RSA)**

- (b) of a sublease shall be recorded on the deeds embodying the lease and the sublease, if such deeds have been submitted.

(4) The registrar shall not register any juristic act which purports to effect a registered lease or sublease after the full term thereof, including periods of extension, has expired.

**Prohibition of registration of cessions of unregistered lease or sublease**

43. No cession of a lease or sublease shall be registered unless such lease or sublease has been registered.

**Hypothecation of lease or sublease**

44. No hypothecation of a lease or sublease shall be registered unless such hypothecation is effected by means of -

- (a) a mortgage bond, if the lease or sublease is in respect of immovable property; or  
 (b) a notarial bond, if the lease or sublease is not in respect of immovable property.

**Notarial bond hypothecating lease or sublease**

45. (1) For the purposes of the registration of a notarial bond specially hypothecating a registered lease or sublease, the deed of lease or sublease shall be submitted to the registrar.

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

(3) The provisions of section 32 shall *mutatis mutandis* apply in respect of a lease or sublease so hypothecated.

## ANTENUPTIAL CONTRACTS

**Registration of antenuptial contracts**

46. (1) An antenuptial contract executed in the Gebiet and intended to be registered in the registry, shall be attested by the registrar and shall as soon as practicable after the execution thereof be registered in the registry.

(2) An antenuptial contract executed outside the Gebiet shall not be registered in the registry unless it has been attested by a notary and unless it is registered within a period of six months after the date of its execution or within such extended period as the court may on application allow.

(3) The registration of any antenuptial contract in the registry shall be valid as registration for the Republic and South West Africa: Provided that if in any other deeds registry any act is performed in connection with which proof of the antenuptial contract is required, a copy of the antenuptial contract certified by the registrar shall be recorded and filed in such other deeds registry.

## MISCELLANEOUS PROVISIONS

**Inspection of documents and furnishing of information**

**Registration of Deeds in Rehoboth Act 93 of 1976 (RSA)**

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47. The registrar shall on payment of the prescribed amount and subject to the prescribed conditions allow any person to inspect the public registers and documents kept in the registry and to make copies of or extracts from such registers or documents.

**Proof of payment of taxes and other moneys**

48. The registrar shall not -
- (a) register the transfer of any land;
  - (b) issue any land title; or
  - (c) register any document which relates to land,

unless the person who applies therefor submits a document issued by a person designated by the Permanent Secretary: Regional and Local Government and Housing for that purpose in which it is stated that all taxes and other moneys payable to the State Revenue Fund in respect of the land in question have been paid.

[section 48 amended by Act 35 of 1994]

**Payment of certain amounts to registrar for benefit of State Revenue Fund**

49. Any amount payable in terms of this Act in respect of the performance of any act shall be paid to the registrar for the benefit of the State Revenue Fund.

[section 49 amended by Act 35 of 1994]

**Notice to registrar of application to court**

50. Before any application is made to the court for any authority or order contemplating the performance of any act in the registry, the applicant shall give to the registrar at least seven days' notice before the hearing of such application and the registrar may submit to the court such report thereon as he may deem fit.

**Issue of copy of lost land title or other document**

51. (1) If a copy of a land title or other document is issued to replace any land title or other document which has been lost or is presumed to have been destroyed, the original land title or other document, if it still exists, shall become void.

(2) If any land title or other document in respect of which a copy has been issued as contemplated in subsection (1), comes into the possession of any person who knows that such copy has been issued, such person shall forthwith deliver or send such land title or document to the registrar.

**Limitation of liability**

52. No act or omission of the registrar or of any officer employed in the registry shall render the registrar or such officer liable for any damage suffered by any person as a result of such act or omission: Provided that if such act or omission is *mala fide* or if the registrar or such officer has not exercised reasonable care or diligence in the carrying out of his or her duties in connection with such act or omission, the State shall be liable for such damage: Provided further that 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*.

**[section 52 amended by Act 35 of 1994]****Formal defects**

**53.** No act in connection with any registration in the 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 connection with the passing or registration of such deed, unless a substantial injustice has, according to a finding in an enquiry held in terms of the provisions of section 54, occurred and such injustice cannot be remedied by virtue of an order issued in such enquiry.

**Enquiry**

**54.** (1) If -

- (a) in the opinion of the registrar it is necessary or desirable to rectify or supplement any error or omission referred to in paragraph (b) of section 5(1), and any person referred to in subparagraph (i) of that paragraph refuses to consent to such rectification or supplement, the registrar may apply to the officer referred to in subsection (2) (in this section referred to as the “investigating officer”) for the issue of an order by virtue of which the rectification or supplement is authorized;
- (b) any person claims to be entitled to be registered as the owner of immovable property registered in the name of any other person, but is unable to obtain registration thereof in the ordinary manner and in accordance with the sequence of the successive juristic acts or hereditary successions in pursuance of which such ownership devolved upon him, he may apply to the investigating officer to make a finding as to his claim;

**[The word “hereditary” is misspelt in the *Government Gazette*, as reproduced above.]**

- (c) the whole of one or more pieces of land is owned by two or more persons and one of such persons desires a partition of such land but such persons are unable to agree on the partition, any of such persons may apply to the investigating officer for the issue of an order relating to the manner in which the land in question shall be partitioned;
- (d) if any person is of the opinion that he has suffered a substantial injustice in consequence of a formal defect referred to in section 53, he may apply to the investigating officer for the issue of an order by virtue of which such injustice is remedied.

(2) The Minister shall for the purposes of applications made under subsection (1) designate an officer and such designation may either be made generally or in respect of a particular application.

(3) The investigating officer -

(a) shall -

- (i) conduct such enquiry as he may deem necessary in order to enable him to make a finding on any application made to him in terms of subsection (1);

**Registration of Deeds in Rehoboth Act 93 of 1976 (RSA)**

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- (ii) inform all interested persons, where they are known, and the registrar of the time when and the place where such enquiry is to be conducted;
- (b) may -
- (i) direct any person who is entitled to practise as a land surveyor in South West Africa to assist him at the enquiry and to advise him;
  - (ii) direct any person to give evidence at the enquiry or to produce any book, writing or document which is in his possession or custody or under his control and which in the opinion of the investigating officer relates to the subject matter of the enquiry;
  - (iii) call and examine any person present at the enquiry, whether or not he has been directed in terms of this section to attend, and may inspect and retain for a reasonable period any book, writing or document the production of which was directed in terms of subparagraph (ii): Provided that in connection with the examination of any such person or the production of any such book, writing or document the law relating to privilege which applies in the case of a person subpoenaed to give evidence or to produce any book, writing or document before a court of law, shall apply;
  - (iv) direct any person to furnish for the purposes of the enquiry any information in such form as he may indicate;
  - (v) at any reasonable time enter upon the land constituting the subject matter of the enquiry, either alone or accompanied by the land surveyor or any other person attending the enquiry;
  - (vi) when he deems it necessary to do so, direct any person to give his evidence on oath or affirmation and may administer the oath to or accept an affirmation from such person.

(4) The registrar may submit to the investigating officer a report relating to the subject matter of the enquiry.

(5) Any person who in the opinion of the investigating officer has a substantial interest in the subject matter of an enquiry in terms of this section, shall have the right to appear before the investigating officer or to be represented by his legal representative, to question persons who gave evidence before the investigating officer relating to the matter in question and to give or adduce evidence.

(6) Any person who has been summoned to give evidence at an enquiry in terms of this section shall be entitled to receive as witness fees from moneys appropriated by the competent authority for the purpose an amount equal to the amount which he would have received as witness fees if he had been summoned to attend at a criminal trial held at the place where the enquiry was held.

- (7) Any person who -
- (a) having been directed to give evidence at an enquiry in terms of this section, without sufficient cause (the onus of proof whereof shall rest upon him), fails to attend at the time and place specified in the direction, or fails to remain in attendance until the conclusion of the enquiry or until excused by the investigating

**Registration of Deeds in Rehoboth Act 93 of 1976 (RSA)**

officer, or fails to produce any book, writing or document in his possession or custody or under his control, which he has been directed to produce; or

- (b) having been called in terms of this section, without sufficient cause (the onus of proof whereof shall rest upon him), refuses to be sworn or to make affirmation as a witness after he has been directed in terms of this section to do so, or refuses or fails to testify, or refuses or fails to answer fully and satisfactorily to the best of his knowledge and belief any question lawfully put to him,

shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred rand or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(8) Upon conclusion of the enquiry the investigating officer shall make a finding in relation to the application and shall, in the case of an application -

- (a) referred to in subsection (1)(a), issue an order authorizing the rectification or supplement of the error or omission in question;
- (b) referred to in subsection (1)(b), if he finds that the claim is well founded, issue an order directing the registration of the immovable property in question in the name of the applicant;
- (c) referred to in subsection (1)(c), if the finding is that the land in question is to be partitioned in a certain manner, issue an order directing the partitioning of the land accordingly;
- (d) referred to in subsection (1)(d), if the finding is that a substantial injustice has occurred and if in the opinion of the investigating officer such injustice is capable of being remedied by the issue of an order, issue an appropriate order.

**Compliance with provisions of laws**

**55.** No deed or document shall be registered unless the registrar is satisfied that the provisions of any applicable law have been complied with.

**Regulations**

- 56.** The Minister may make regulations relating to -
- (a) the procedure to be followed by the registrar in the carrying out of his duties and functions and the exercise of his powers;
  - (b) the amount payable in respect of the performance of any act in the registry, including the furnishing of a report to the court or an officer conducting an enquiry in terms of section 54, in connection with an application or any proceedings to which the registrar is not a party;
  - (c) the manner and form in which endorsements or entries required to be effected or made in terms of this Act or any other law on deeds or other documents or in the registers, shall be effected or made;
  - (d) the particular documents which, when produced in the registry, shall be signed or countersigned by a witness and the manner in which such documents shall be signed or countersigned by a witness;

**Registration of Deeds in Rehoboth Act 93 of 1976 (RSA)**

- (e) the manner and form in which particulars which are required to be furnished to the registrar, shall be recorded in the registry, and the manner and form in which particulars which the registrar is in terms of this Act permitted to furnish to the public, shall be furnished, the manner in which the identity of persons shall be established and the form which shall be used in connection therewith;
- (f) the manner and form in which erven in townships or portions of such erven may be registered;
- (g) the precautions to be taken in order to prevent the damaging of deeds and other documents in the registry through mishandling or otherwise;
- (h) the conditions on which copies of deeds and other documents registered in the registry may be issued for judicial purposes or as information or in substitution for lost, destroyed, damaged or defaced deeds or other documents and the conditions on which extracts from or copies of registers, deeds or documents kept or registered in the registry, may be furnished;
- (i) the manner and the form in which permission shall be granted for -
  - (i) the cancellation, cession, part payment or amendment of or release from any registered mortgage bond or other document;
  - (ii) the cancellation, cession or amendment of or release from any other juristic act which is capable of being registered and which relates to such bond or other document;
- (j) the conditions on which the registrar may accept a copy of any procuration in the place of the procuration itself;
- (k) the registers which the registrar shall open and keep and the particulars contained in any land title or other document which shall be entered in a particular register or registers;
- (l) the manner and form in which the documents kept in the registry shall be bound;
- (m) any matter which in terms of this Act is required or permitted to be prescribed; and
- (n) generally, any other matter which he may deem necessary or expedient to prescribe in order to ensure an efficient application of the provisions of this Act.

**Repeal of sections 1(d) and 7bis of Proclamation 2 of 1921 of South West Africa**

57. Section 1(d) of the Land Titles Proclamation 1921 of South West Africa, in so far as it relates to land in the Gebiet, and section 7bis of the said proclamation are hereby repealed.

**Substitution of section 102A of Act 47 of 1937, as inserted by section 13 of Act 3 of 1972**

58. The following section is hereby substituted for section 102A of the Deeds Registries Act, 1937:

**“Application of this Act to South West Africa**



**Registration of Deeds in Rehoboth Act 93 of 1976 (RSA)**

**58.** This Act and any amendment thereof, save sections 70 to 74*bis*, inclusive, and sections 84 and 85, shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel, but excluding the Rehoboth Gebiet as described in section 6 of the Rehoboth Self-Government Act, 1976.”

[The section number “58” in the substituted section is incorrect; it should be “102A”.]

**Amendment of Second Schedule to Act 47 of 1937, as amended by section 40 of Act 43 of 1957, section 37 of Act 43 of 1962, section 8 of Act 61 of 1969 and section 14 of Act 3 of 1972**

**59.** The Second Schedule to the Deeds Registries Act, 1937, is hereby amended by the substitution for paragraph (i) of the following paragraph:

“(i) by the deeds registry at Windhoek, the territory of South West Africa, excluding the Rehoboth Gebiet as described in section 6 of the Rehoboth Self-Government Act, 1976.”.

**Short title and commencement**

**60.** This Act shall be called the Registration of Deeds in Rehoboth Act, 1976, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

[Act 35 of 1994 contains the following transitional provision in section 6:

“Any transfer of land effected in the deeds registry referred to in section 2 of the principal Act [Act 93 of 1976] since the date of Namibia’s independence, and before the commencement of this Act [Act 35 of 1994], shall not be invalid by reason only that such transfer was effected without the submission of -

- (a) the document referred to in subparagraph (i) of paragraph (b) of subsection (2) of section 13 of that Act [Act 93 of 1976], before the deletion of that subparagraph by section 2 of this Act [Act 35 of 1994]; or
- (b) the document referred to in section 48 of the principal Act [Act 93 of 1976], before the substitution of that section by section 3 of this Act [Act 35 of 1994].”]