



Republic of Namibia
Annotated Statutes

Sale of Land on Instalments Act 72 of 1971 (RSA)

(RSA GG 3175)

brought into force in South Africa and South West Africa
on 1 January 1972 by RSA Proc. R.229/1971 (RSA GG 3270)
(see section 19 of Act)

APPLICABILITY TO SOUTH WEST AFRICA: Section 19 of the Act states “This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel.”

TRANSFER TO SOUTH WEST AFRICA: The administration of this Act was transferred to South West Africa by the Executive Powers (Commerce) Transfer Proclamation, AG 28 of 1978, dated 28 April 1978. The only amendment to the Act in South Africa after the date of transfer – the *Sale of Land on Instalment Amendment Act 74 of 1978* (RSA GG 6049) – was not made expressly applicable to South West Africa. The Act was repealed in South Africa by the *Alienation of Land Act 68 of 1981* (RSA GG 7789), which was not made expressly applicable to South West Africa.

Section 3(2)(b) of the transfer proclamation states that the reference to the “Minister” in section 2(b)(i) of the Act should be construed as including a reference to the Administrator-General (rather than being construed as referring to the Administrator-General only).

as amended by

Sale of Land on Instalments Amendment Act 72 of 1972 (RSA) (RSA GG 3571)

came into force on date of publication: 21 June 1972;

amendment effective as from 1 January 1972 (section 1 of Act 72 of 1972)

Sale of Land on Instalments Amendment Act 49 of 1975 (RSA) (RSA GG 4738)

brought into force on 1 January 1976 by RSA Proc. R.226/1975 (RSA GG 4847)

Sale of Land on Instalments Amendment Act 25 of 1976 (RSA) (RSA GG 5041)

came into force on date of publication: 31 March 1976

Executive Powers (Commerce) Transfer Proclamation,

AG 28 of 1978 (OG 3743)

came into force on date of publication: 28 April 1978

Native Laws Amendment Proclamation, AG 3 of 1979 (OG 3898)

deemed to have come into force in relevant part on 1 August 1978 (section 5 of AG 3 of 1979)

ACT

To regulate contracts of purchase and sale of certain kinds of land under which the purchase price is payable in instalments over a period of one year or longer, and to provide for matters incidental thereto.

(Afrikaans text signed by the State President)
(Assented to 11th June, 1971)

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

Definitions

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

“agreement” means any agreement for the sale, exchange, donation or other disposal of land, and includes a contract;

[definition of “agreement” inserted by Act 49 of 1975]

[definition of “cession” deleted by Act 49 of 1975]

“contract” means a written contract of purchase and sale of land under which the purchase price interest or any other charges is or are payable in more than two instalments over a period of one year or longer, whether or not such contract is subject to any suspensive or resolutive condition;

[definition of “contract” substituted by Act 49 of 1975]

“interest” means the aggregate of any valuable consideration, excepting the purchase price, in which, in the case of an intermediate transaction, the intermediary’s profit is included, and the costs referred to in section 6(3)(b) which by virtue of a contract have been paid or are payable by a purchaser directly or indirectly to a seller or to or on behalf of any person between himself and the seller;

[definition of “interest” substituted by Act 49 of 1975]

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“intermediary”, in relation to an intermediate transaction, means any person who purchased or purchases any land under a contract and who has, alienated or alienates that land under an agreement before it is transferred to him or who acquired or acquires under an agreement the right to claim transfer of any land and who has sold or sells that land under a contract before it is transferred to him;

[definition of “intermediary” inserted by Act 49 of 1975]

“intermediate transaction” means -

- (a) any agreement under which land purchased under a contract is alienated before it is transferred to the purchaser under the contract; or
- (b) any contract under which land, of which the right to claim transfer has been acquired under an agreement, is sold before it is transferred to the person who has acquired such right;

[definition of “intermediate transaction” inserted by Act 49 of 1975]

“land” means any land used or intended to be used mainly for residential purposes, including any undivided share in such land, and any land not exceeding twenty-three hectares in extent and forming part of an area contemplated in section 2(a)(ii) shall, for the purposes of this definition, unless the contrary is proved be deemed to be land used or intended to be used mainly for residential purposes;

[definition of “land” substituted by Act 49 of 1975]

“local authority” means any institution or body contemplated in section 84(1)(f) of the Republic of South Africa Constitution Act, 1961 (Act No. 32 of 1961), which has been established or constituted by or under any ordinance of a provincial council or in relation to which a provincial council may make ordinances, and any municipality or village management board established or constituted or deemed to have been established or constituted under the Municipal Ordinance, 1963 (Ordinance No. 13 of 1963), of the territory of South-West Africa, or the Village Management Boards Ordinance, 1963 (Ordinance No. 14 of 1963), of the territory of South-West Africa;

[The Republic of South Africa Constitution Act 32 of 1961 was South Africa's constitution from 1961 to 1984. Although this Act had implications for South-West Africa, it does not appear to have been directly applicable as a law of South West Africa. It was repealed on 3 September 1984 by the Republic of South Africa Constitution Act, 1983, although some provisions relating to provincial government were retained under the new name of the Provincial Government Act 32 of 1961. Local authorities in Namibia are governed by the Local Authorities Act 23 of 1992, which repealed the Municipal Ordinance 13 of 1963 and the Village Management Boards Ordinance 14 of 1963.]

“purchaser” includes the person in whom the rights and obligations of the purchaser under a contract are vested, or who has under an intermediate transaction acquired the right to claim transfer of land;

[definition of “purchaser” substituted by Act 49 of 1975]

“seller” includes the person in whom the rights and obligations of the seller under a contract are vested.

Application of Act

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2. This Act shall -

- (a) subject to the provisions of sections 11 and 14, apply to a contract under which the purchaser is a natural person or is the estate of the purchaser who has died or is insolvent, and which relates to land which -

[introductory phrase of paragraph (a) substituted by Act 49 of 1975]

- (i) is situated in the area of jurisdiction of the council of a municipality or a village management board, and land forming part of the area of jurisdiction of the Peri-Urban Development Board, established by section 2 of the Peri-Urban Development Board Ordinance, 1970 (Ordinance 19 of 1970).

[Subparagraph (i) is substituted by AG 28 of 1978. The full stop at the end of subparagraph (i) should be a semicolon. The Local Authorities Act 23 of 1992 repealed the Peri-Urban Development Board Ordinance 19 of 1970.]

- (ii) forms part of any other area subdivided into erven or plots, with or without public open spaces, and in streets bounded by such erven, plots or spaces;

(b) not apply in respect of a contract relating to land -

- (i) of which the State, including, for purposes of the application of this Act in the territory of South-West Africa, the Administration of that territory, is the seller or which is held in trust by the State or a Minister for any person;

[Section 3(2)(b) of the Executive Powers (Commerce) Transfer Proclamation, AG 28 of 1978 stated that the reference to "Minister" in section 2(b)(i) of the Act should be construed as including a reference to the Administrator-General (rather than being construed as referring to the Administrator-General only).]

- (ii) forming part of a scheduled Black area as defined in section 49 of the Development Trust and Land Act, 1936 (Act No. 18 of 1936), or of a released area referred to in section 2 of the said Act or of land or area which is reserved or set apart as contemplated in section 4 of the South West African Bantu Affairs Administration Act, 1954 (Act No. 56 of 1954);

[Subparagraph (ii) is amended by AG 3 of 1979. Act 56 of 1954 was originally enacted as the "South-West Africa Native Affairs Administration Act" (SA GG 5302). It became the "South-West Africa Bantu Affairs Administration Act" in South Africa by virtue of the Bantu Laws Amendment 42 of 1964 (RSA GG 801) read together with section 16(1) of the Native Laws Amendment Act 46 of 1962 (RSA GG 240). However, in South West Africa, the relevant sections of these two laws were repealed insofar as they were applicable to South West Africa by the Native Laws Amendment Proclamation, AG 3 of 1979 (OG 3898), with effect from 1 August 1978 (section 5 of AG 3 of 1979). Thus, Act 56 of 1954 was once again the "South-West Africa Native Affairs Administration Act" in South West Africa.

However, this provision uses the title "South West African Bantu Affairs Administration Act". This provision was never specifically amended in South West Africa. AG 3 of 1979 provides that "there is hereby substituted for the word 'Bantu' wherever it occurs in any law as a reference to a person or persons, the word 'Black' or 'Blacks', as the context in question may require". It is not clear if this directive would apply to the name of a law, and so the name "South West African Bantu Affairs Administration Act" has not been altered here. If AG 3 of 1979 did have the effect of altering the reference to the name of the Act to the South West Africa Black Affairs Administration Act 56 of 1954, then it must be noted that AG 3 of 1979 also amended section 3A(1) of Act 56 of 1954 to state "Any reference in any law in force in the territory, including the Eastern Caprivi Zipfel, or in any document, relating to any matter in such territory, to a Black, being a reference to a person, shall be construed as a reference to a native, and any word or expression in any such law or document connected with a Black shall be construed accordingly." This would mean that the name "South West Africa Black Affairs Administration Act" was to be construed as the "South West Africa Native Affairs Administration Act".

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Act 56 of 1954 was repealed by the Communal Land Reform Act 5 of 2002.]

- (iii) to which the provisions of the Rural Coloured Areas Act, 1963 (Act No. 24 of 1963), apply;

[The Rural Coloured Areas Act 24 of 1963 was not applicable to South West Africa.]

- (iv) of which the Community Development Board referred to in section 2 of the Community Development Act, 1966 (Act No. 3 of 1966), the Housing Commission referred to in section 5 of the National Housing Act, 1966 (Act No. 4 of 1966), or a local authority, is the seller;

[Neither of the laws referenced in this subparagraph appear to have been applicable to South West Africa.]

- (c) with the exception of the provisions of sections 10 to 14, inclusive, not apply in respect of a contract which was entered into before the commencement of this Act and which is still in force at the commencement thereof.

Language in which contract shall be drawn up

3. The purchaser shall be entitled to choose the official language in which a contract to which he is a party, shall be drawn up.

[The official language of Namibia is now English only (Namibian Constitution, Art 3(1)).]

Contents of contract

4. (1) A contract shall contain -
- (a) the names of the purchaser and the seller and their addresses in the Republic or the territory of South West Africa;
- [paragraph (a) substituted by Act 49 of 1975]**
- (b) the description, extent and situation of the land which is the subject of the contract;
- (c) if the seller is not the registered owner of the land, the name and address of the registered owner;
- (d) if the land is encumbered by a mortgage bond, the name and address of the person, or his representative, or, in the case of a participation bond, the name and address of the nominee company, or its representative, in favour of whom the mortgage bond over the land is registered at the time the contract is entered into;
- (e) the amount of the purchase price;
- (f) the annual rate of interest (if any) to be paid by the purchaser;
- (g) the date before which or the period within which payment of the purchase price with interest and all other charges shall be effected in full;
- (h) the amount (if any) payable by the purchaser before he may take possession or occupation of the land;

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- (i) the date on which the purchaser shall be entitled to take possession or occupation of the land;
- (iA) a reference to the right of the purchaser under section 10 to accelerate payments in terms of the contract and to claim transfer of the land against payment of the amounts referred to in section 4(1)(g);

[paragraph (iA) inserted by Act 49 of 1975]

- (iB) a reference to the limitation, in terms of section 13, of the right of the seller to take action by reason of any failure on the part of the purchaser to fulfil an obligation under the contract;

[paragraph (iB) inserted by Act 49 of 1975]

- (iC) a reference to the right of the purchaser under section 72 of the Insolvency Act, 1916, Amendment Act, 1926 (Act No. 29 of 1926), to demand transfer of the land after payment of not less than fifty per cent of the purchase price, on condition of registration of a mortgage bond over the land;

[Paragraph (iC) is inserted by Act 49 of 1975.

Section 72 of the *Insolvency Act, 1916, Amendment Act 29 of 1926 (SA GG 1557)* does not appear to have been made applicable to South West Africa. It was repealed in South Africa by the *Alienation of Land Act 68 of 1981 (RSA GG 7789)*, which was not made applicable to South West Africa. For reference purposes, section 72 stated:

“Rights of purchaser of immovable property who has paid part of the purchase price

72. (1) Every purchaser of immovable property who has under agreement of purchase undertaken to pay the purchase price thereof in instalments at specified periods and who has paid to the vendor of the property in such instalments not less than fifty per cent of the agreed purchase price shall be entitled to demand from the vendor transfer of that property on condition that, simultaneously with the registration of transfer, there shall be registered in favour of the vendor a first mortgage bond over the said property to secure the balance of the purchase price and interest in terms of the agreement of purchase.

(2) If the seller is unable or fails or refuses to give such transfer as soon as may be and in any case not later than three months after receiving such demand, the purchaser may treat the contract as cancelled and may recover the purchase price paid by him together with such damages as he may have sustained.

(3) The provisions of this section shall not apply to an agreement for the purchase of property entered into before the commencement of this Act or to any agreement for such purchase whenever entered into, if the vendor is the Government of the Union.”]

- (j) the amount of each payment in respect of capital and interest (if any) which is to be paid under the contract;
- (k) the due date or the method of determining the due date of each payment;
- (l) the place where payments shall be made;
- (m) the date on which the risk, profit and loss of the land shall pass to the purchaser;
- (n) a statement of the obligation (if any) imposed by the seller on the purchaser in respect of the insurance of the subject matter of the contract;
- (o) an indication of the party who shall be liable for the payment of the costs incurred in connection with the drafting of the contract and the transfer of the land;

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- (p) if the seller is unable at the time the contract is entered into to give transfer of the land against payment of the purchase price, the date or event after which he will be able to give transfer.

(2) The address which is stated in a contract in terms of subsection (1)(a) in respect of the purchaser, shall not be the same as the address which is stated therein in respect of the seller, or his agent, unless the lastmentioned address is the address where the purchaser is ordinarily resident.

(3) The date which is stated in a contract in terms of subsection (1)(m), shall not be earlier than the date which is stated therein in terms of subsection (1)(i).

Copy of contract to purchaser and default of seller to furnish copy

5. (1) Within one month after the conclusion of a contract, the seller shall hand to the purchaser or send to him by prepaid registered post, a copy thereof and the seller shall not be entitled to make any charge for the making of such copy or for complying with the provisions of this subsection.

[subsection (1) substituted by Act 49 of 1975]

(2) If the seller fails to comply with the provisions of subsection (1) and if he remains in default for more than fourteen days to furnish a copy of the contract to the purchaser after the purchaser has requested him in writing therefor, the purchaser shall not be liable for the payment of interest under the contract from the date of the conclusion thereof to the date of the receipt of a copy thereof by the purchaser.

Calculation of interest and limitation of sum recoverable from purchaser

6. (1) When interest is payable under a contract, it shall be calculated, not more often than monthly and not less often than quarterly, on the outstanding balance which is then owing under the contract.

(2) No seller shall in connection with a contract stipulate for, demand or receive interest at a rate which is higher than the rate prescribed by the Minister of Economic Affairs by regulation from time to time for the purposes of this subsection.

[subsection (2) substituted by Act 49 of 1975]

(3) No seller shall in connection with a contract obtain judgment for or recover from a purchaser an amount exceeding the sum of -

- (a) the purchase price and interest owing to him by the purchaser in terms of the contract;
- (b) the costs for the payment of which the purchaser is liable in terms of an express provision in the contract and which have actually been incurred by the seller -
 - (i) in connection with the drafting of the contract;
 - (iA) in connection with the transfer of the land to the purchaser, including stamp duty, provided that such transfer has already taken place or is tendered against payment by the purchaser of the amount due; and

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- (ii) after the date stated in the contract in terms of section 4(1)(m), in respect of maintenance and repair of improvements on the land, rates and taxes in respect of the land, and premiums on an insurance policy relating to the subject matter of the contract; and

[paragraph (b) amended by Act 72 of 1972, with effect from 1 January 1972]

- (c) all costs which are actually incurred by him in connection with the recovery of the amount referred to in this subsection and are recoverable in terms of any provision of law from the purchaser.

(4) When the purchaser has paid in full the amounts referred to in section 4(1)(g), no interest shall be payable in terms of the contract in respect of any period after the date of such payment.

[subsection (4) inserted by Act 49 of 1975]

Invalidity of certain provisions

7. (1) Subject to the provisions of subsection (2), no contract entered into after the commencement of the Sale of Land on Instalments Amendment Act, 1975, shall contain a provision whereby -

- (a) any person who acted on behalf of the seller in connection with the conclusion of the contract or the negotiations which preceded the conclusion of the contract, is appointed or deemed to have been appointed as the agent of the purchaser; or
- (b) the purchaser, if he fails to fulfil any obligation in terms of the contract, forfeits any claim in respect of necessary expenditure he has incurred, with or without the authority of the registered owner or seller of the land, in regard to the preservation of the land or any improvement thereon or in respect of any improvement which enhances the market value of the land and was effected by him on the land with the express or implied consent of the said registered owner or seller; or
- (c) the liability of the seller to indemnify the purchaser against eviction is restricted or excluded; or

[The "(c)" is omitted in the English text in the *Government Gazette*.]

- (d) the purchaser is obliged to take transfer of the land before the date or the expiry of the period stated in the contract in terms of section 4(1)(g); or
- (e) the purchaser is obliged to accept a mortgage bond over the land for the payment of the outstanding balance of the purchase price plus interest and any of the costs referred to in section 6(3)(b), which is arranged on his behalf by the seller or his agent, on conditions as to the rate of interest and redemption which are more onerous than the terms which at the time when transfer is to be taken, apply in respect of a loan, secured by a first mortgage bond over land, which is granted by a building society.

(2) The provisions of subsection (1)(d) shall not apply if the seller has arranged for a mortgage bond to be granted to the purchaser on conditions as to the rate of interest and redemption which are not more onerous than the terms which at the time when transfer is or is to be taken, apply in respect of a loan, secured by a first mortgage bond over land, which is granted by a building society, to secure payment of the unpaid balance of the amounts referred to in section 4(1)(g).

[section 7 substituted by Act 49 of 1975]**Cession or hypothecation of and authority to collect periodical income**

8. (1) Subject to the provisions of subsection (2) -
- (a) a cession or hypothecation of a right to claim payment of an amount payable periodically under a contract of service or towards the maintenance of any person, to secure any payment under a contract, shall be null and void; and
 - (b) an authority to receive or collect an amount referred to in paragraph (a) or any portion of such an amount, to secure a payment under a contract, shall at all times be revocable.

(2) The provisions of subsection (1) shall not apply to any cession, hypothecation or authority by an employee to or in favour of his employer to secure payments in respect of housing which is provided by the employer to the employee.

Statements of account

9. (1) While a contract is in force the seller shall once during every period of twelve months calculated from the date of the contract, furnish the purchaser with a statement of account free of charge in which shall be indicated, in the case of the first statement, the purchase price and other costs separately which were owing in terms of the contract at the date of the contract, or, in the case of any other statement, the outstanding balance which was owing in terms of the contract at the date of the previous statement, and, in the case of all statements, the interest and other costs which accrued in terms of the contract during the period covered by the statement and the allocation, in respect of capital, interest and other costs separately, of amounts paid during that period.

(2) If in respect of any statement of account the seller fails to comply with the provisions of subsection (1) and if he remains in default for more than one month to furnish that statement of account to the purchaser after the purchaser has in writing asked him therefor, the purchaser shall not be liable for the payment of interest under the contract from the date on which the said one month expires to the date of the receipt by the purchaser of the statement of account concerned.

Right of purchaser to accelerate payments, and claim transfer of land

10. (1) The purchaser shall at all times be purchaser to entitled -
- (a) to make a payment before the due date on which it has to be made in terms of the contract; or
 - (b) to make larger payments than the payments for which the contract provides; or
 - (c) to claim transfer of land against payment of the amounts referred to in section 4(1)(g) and, if applicable, after the date or event referred to in section 4(1)(p).

(2) If in terms of a contract the seller is to transfer land to the purchaser against payment of the amounts referred to in section 4(1)(g), a banker's guarantee or a guarantee by a building society furnished by the purchaser for payment of the said amounts against transfer for the purpose of performing the contract, shall be deemed to be payment of such amounts: Provided that

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this subsection shall not be construed so as to absolve the purchaser from the payment of interest in terms of the contract up to the date of the implementation of the guarantee.

[section 10 substituted by Act 49 of 1975]

Transfer of land to purchaser under intermediate transaction

11. (1) Any purchaser of land under an intermediate transaction shall, after the commencement of the Sale of Land on Instalments Amendment Act, 1975, notwithstanding the provisions of any law to the contrary but subject to the provisions of subsection (2) of this section and section 12 of the Transfer Duty Act, 1949 (Act No. 40 of 1949), be entitled to claim transfer of the land from the registered owner direct to himself.

[The Transfer Duty Act 40 of 1949 has been replaced by the Transfer Duty Act 14 of 1993.]

(2) No land shall, by virtue of the provisions of subsection (1), be transferred from the registered owner direct to a purchaser thereof under an intermediate transaction, except where -

- (a) the purchaser to whom transfer is to be effected has fulfilled his obligations in terms of the agreement under which he has acquired the right to claim transfer of the land; and
- (b) a final order of sequestration or liquidation has been given in respect of the estate of any intermediary entitled to claim transfer of the land before it is transferred to the said purchaser or the circumstances contemplated in section 14(3) or (4) exist.

(3) The specification in the deed of transfer concerned of any relevant intermediate transaction or final order of sequestration or liquidation, and of any particulars thereof, shall, if certified to be correct by a conveyancer, be deemed to be correct unless the contrary is proved.

(4) Any person who has acquired from an intermediary or an intermediary's successor in title the right to claim transfer of land, may dispose of such right as he may dispose of any other asset.

(5) Any purchaser of land under an intermediate transaction shall inform the registered owner of such intermediate transaction.

(6) When the right to claim transfer of land has been or is acquired under an intermediate transaction and the intermediary has not assigned to the purchaser the obligations coupled with the right to claim transfer of the land -

- (a) the purchaser may, as from the date of the intermediate transaction or the commencement of the Sale of Land on Instalments Amendment Act, 1975, as the case may be, if the intermediary fails to fulfil his obligations under the agreement under which he acquired the right to claim transfer of the land, perform the said obligations of the intermediary to the registered owner or other creditor, and such performance by the purchaser of the obligations of the intermediary to the registered owner or other creditor shall be deemed to be a valid performance by the intermediary of his said obligations to the registered owner or other creditor and to the same extent by the purchaser of his obligations to the intermediary; and
- (b) the intermediary or the estate of the intermediary who has died or is insolvent, shall not be entitled to recover from the purchaser again any payment made in good faith by the purchaser on behalf of the intermediary to the registered owner or other creditor.

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(7) Within one month after the conclusion of any intermediate transaction, the intermediary concerned shall hand to the purchaser or send to him by prepaid registered post the receipt for transfer duty payable in respect of the transaction by which the intermediary acquired and any other preceding intermediary concerned had acquired the right to claim transfer of the land.

(8) If an intermediary fails to comply with the provisions of subsection (7) and if, after the purchaser has requested him in writing to furnish the purchaser with the said receipts for transfer duty, he remains in default to do so for more than fourteen days, the purchaser shall, in respect of the period from the conclusion of the intermediate transaction under which he acquired the right to claim transfer of the land from the intermediary, to the date of the receipt of the transfer duty receipts by the purchaser, not be liable for payment of interest in terms of such intermediate transaction.

(9) The purchaser who, in order to obtain transfer of land, pays the transfer duty and transfer costs which are payable by the intermediary or any predecessor of the intermediary, may recover the amounts so paid from the intermediary or the predecessor concerned.

[subsection (9) substituted by Act 25 of 1976]

[section 11 substituted by Act 49 of 1975]

Cession and assignment by the seller of rights and obligations under a contract

12. (1) If the seller with the consent of the purchaser cedes and assigns his rights and obligations under a contract to another person, hereinafter referred to as the assignee, such cession and assignment shall be deemed to be a power of attorney to the assignee to transfer the land in accordance with the conditions of the contract to the purchaser, and the assignee may appoint a conveyancer to execute the deed of transfer.

(1A) Such consent shall not be granted except with specific reference to a particular assignee and shall not be unreasonably withheld.

[subsection (1A) inserted by Act 49 of 1975]

(2) The assignee to whom the rights and obligations of the seller under a contract have been ceded and assigned, shall immediately notify the purchaser of such cession and assignment.

(3) The assignee who fails to comply with the provisions of subsection (2), shall not be entitled to recover from the purchaser again any payment made in good faith by the purchaser to the seller.

Limitation of right of seller to take action

13. (1) No seller shall, by reason of any failure on the part of the purchaser to fulfil an obligation under a contract, be entitled to enforce any provision of the contract for the acceleration of the payment of any instalment of the purchase price, to terminate the contract or to institute an action for damages, unless he has by letter handed over to the purchaser and for which an acknowledgement of receipt has been obtained, or sent by registered post to him at his address required to be stated in the contract in terms of section 4(1)(a), or at his changed address of which notice is required to be given in terms of section 16, as the circumstances may require, informed the purchaser of the failure in question and made demand to the purchaser to carry out the obligation in question within a period stated in such demand, not being less than thirty days, and the purchaser has failed to comply with such demand: Provided that if the seller in the same

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calendar year has so handed over or sent to the purchaser two such notices at intervals of more than thirty days, he may in any subsequent notice so handed over or sent in such calendar year, make demand to the purchaser to carry out his obligation within a period of not less than seven days.

[Subsection (1) is substituted by Act 49 of 1975 and amended by Act 25 of 1976 to add the proviso; a colon has been added accordingly.]

(2) Subsection (1) shall not be construed in such a manner as to prevent the seller from taking steps to protect the land and improvements thereon or, after notice as required by the said subsection, from claiming specific performance.

Sale in execution of land which has been sold under a contract, and death or insolvency of registered owner of such land

14. (1) If land which has been sold under a contract, is sold by the trustee or liquidator of the insolvent estate of the registered owner of the land, or is sold in execution to meet one or more claims against that owner or his estate, the person who acquired under an agreement the right to claim transfer of that land from that owner or the estate of that owner who has died or is insolvent or, if such person is deceased or insolvent, his deceased or insolvent estate, shall, apart from any other claim which he or his deceased or insolvent estate may prove against the said owner or his deceased or insolvent estate, also be entitled to prove a claim against the said owner or his deceased or insolvent estate which shall be met from the proceeds of the land and which shall rank in preference directly after a claim which is secured by a mortgage bond over the land in question, for the portion of the purchase price which such person or his deceased or insolvent estate has paid under the agreement plus interest calculated at five per cent per annum on the said portion in respect of the period from the conclusion of the agreement to the date upon which the land is so sold by the trustee or liquidator or in execution.

(2) Subject to the provisions of any law or the common law under which certain juristic acts which an insolvent has entered into before the sequestration or liquidation of his estate, may be rescinded by a court of law, the trustee or liquidator of the estate of an insolvent who is the registered owner of land which has been sold under a contract, or the judgment creditor of a registered owner who has by virtue of a writ in execution against the immovable property of the registered owner attached land which has been sold under a contract, shall call upon the purchaser, or upon the intermediary or upon both, as the case may be, by written notice if the address of the purchaser or of the intermediary is known, or by two consecutive notices in a newspaper circulating in the district in which the address referred to in section 16 is situate and by notice in the *Gazette*, if such address is not known, to take transfer of the land, and if such purchaser or intermediary does not so take transfer of the land, it shall be sold by the trustee or liquidator or in execution, subject to the claim of the person referred to in subsection (1).

(3) When land sold under a contract is attached by virtue of a writ of execution against the immovable property of the registered owner or when land sold under a contract is registered in the name of any person in respect of whose estate a final order of sequestration or liquidation has been given, and that land is not encumbered by a mortgage bond, that land shall without prejudice to the rights of any person who purchased it from an intermediary, if any, be transferred into the name of the person who has the right to claim transfer of the land and who makes arrangements to the satisfaction, as the case may be, of the deputy sheriff or the messenger of the court, before the land is sold in execution, or of the Master of the Supreme Court under whose supervision the liquidation of the estate of the insolvent is taking place, within six months after the purchaser or the intermediary, or both, as the case may be, has or have been called upon in terms of subsection (2) to take transfer, for the payment of the outstanding balance under the agreement plus interest to the date of the registration of transfer.

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(4) When in the circumstances referred to in subsection (3) the land sold under a contract is encumbered by a mortgage bond, the land shall, failing any other arrangement relating to the transfer thereof to the purchaser, be transferred, without prejudice to the rights of any purchaser who purchased the land from any intermediary, if any, to the person who has the right to claim transfer of the land and who makes arrangements to the satisfaction, as the case may be, of the deputy sheriff or messenger of the court, as contemplated in the said subsection, or of the Master concerned, within thirty days after the purchaser or intermediary, or both, as the case may be, has or have been called upon in terms of subsection (2) to take transfer, for the payment of the outstanding balance under the mortgage bond plus interest to the date of the registration of transfer and such costs of sequestration and administration and such other amounts as rank in preference prior to the claim secured by the mortgage bond, or of the outstanding balance under the agreement plus interest to the date of the registration of transfer, whichever of the two amounts may be the larger and all other costs in connection with transfer, as well as for the signing of all the documents required in connection with transfer: Provided that if the holder of a mortgage bond over the land has taken out a writ of execution in respect of the land, the person who takes transfer shall also pay the actual amount paid by the mortgagee or for which he is liable in respect of the attachment of the land, before he is entitled to transfer of the land.

(5) If a person referred to in subsection (4) has, by virtue of the arrangements he was required to make under that subsection, paid more than the outstanding balance under the agreement plus interest to the date of the registration of transfer, he may recover the difference between the two said amounts from the person from whom he acquired the right to claim transfer of the land.

[section 14 substituted by Act 49 of 1975]

Waiver of rights by purchaser

15. The waiver by any person who has bought land under a contract, of a right which is conferred upon him by this Act, shall be null and void.

Addresses of purchaser and seller

16. The addresses stated in any contract in terms of section 4(1)(a) shall serve as *domicilium citandi et executandi* of the parties for all purposes of the contract, and notice of a change of such an address shall be given in writing and shall be delivered or sent by prepaid registered post by one party to the other, in which case such changed address shall serve as such *domicilium citandi et executandi* of the party who has given such notice.

[section 16 substituted by Act 49 of 1975]

Relief that court may grant in regard to contracts

17. (1) Notwithstanding the provisions of any law to the contrary but subject to any other powers that any court may have, if a contract does not substantially comply with any one of the provisions of section 3, 4, 6, 7(1), 10, 12 or 13, a court within whose area of jurisdiction the land referred to in the contract is situated, shall, if appropriate proceedings are instituted by the purchaser within a period of two years from the date upon which the contract was entered into, be competent -

- (a) to reduce the rate of interest payable by the purchaser in terms of the contract to such rate as it may deem just and equitable in the circumstances;
- (b) to grant an order for rectification of the contract;

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- (c) to declare the contract to be void *ab initio*; or
- (d) to grant such alternative relief as it may deem fit.

(2) A court within whose area of jurisdiction land sold under a contract is situated, may, on the application of the purchaser who, by reason of the fact that any person failed to sign a document relating to the payment of transfer duty in respect of or transfer of such land, is unable to obtain transfer of such land, order the deputy sheriff or messenger of the court concerned, as the case may be, to sign on behalf of any such person any such document, subject to such conditions as the court may determine.

(3) A magistrate's court shall have jurisdiction to grant any relief contemplated in subsection (1) or (2).

[section 17 substituted by Act 49 of 1975 and amended by Act 25 of 1976]

Evidence

18. If in any proceedings it is alleged that land sold under a contract is used or is intended to be used mainly for residential purposes, it shall be presumed that the said land is so used or is intended to be so used until the contrary has been proved.

Application of Act to South-West Africa

19. This Act and any amendment thereof shall apply also in the territory of South-West Africa, including the Eastern Caprivi Zipfel.

Short title and commencement

20. This Act shall be called the Sale of Land on Instalments Act, 1971, and shall come into operation on a date to be fixed by the State President by proclamation in the *Gazette*.