

DEEDS

Deeds Registries Act 47 of 1937, as amended in South Africa to November 1979.

Summary: This Act regulates the registration of deeds.

Applicability to SWA: Section 102A states “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 excluded sections relate to mineral rights and prospecting contracts.) Section 102 defines “Government,” “provincial administration,” “Republic,” “State,” and “Territory” accordingly.

Section 16 of the *Deeds Registries Amendment Act 3 of 1972*, which makes the principal Act applicable to South West Africa, repeals a number of SWA laws relating to the registration of deeds. This amending Act also specifically excludes certain mining titles from its coverage.

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Justice) Transfer Proclamation (AG 33/1979, as amended), dated 12 November 1979.

Section 3(1)(b) of the transfer proclamation excluded section 103(2), all the references to the “Republic” and all the references to the “State” in the Act from the operation of section 3(1) of the General Proclamation. However, the references to “the Government of the Republic” in sections 3(1)(c) and (l) and section 99 of the Act were to be construed as including a reference to the Administrator-General.

The provisions of the Act relating to the Deeds Registry Regulation Board were excluded from transfer by section 3(2)(b) of the General Proclamation, which exempted from the operation of section 3(1) of the General Proclamation “those provisions of any law ... which provide for or relate to the institution, constitution or control of any juristic person or any board or any other body of persons that may exercise powers or perform other functions in or in respect of both the territory and the Republic”.

Only one of the amendments to the Act in South Africa after the date of transfer and prior to Namibian independence -- the *Deeds Registries Amendment Act 27 of 1982* -- was made expressly applicable to SWA.

Amendments: The Executive Powers (Justice) Transfer Proclamation (AG 33/1979 as amended by AG 32/1985) amends sections 2, 9, 45, 45*bis*, 48 and 102 of the Act.

Act 26/1985, which is brought into operation by AG 21/1986, makes substantial amendments to the Act.

Act 2/1996, which was brought into force on 15 July 1996 by GN 155/1996 (GG 1340), amends several sections of the Act, inserts section 45*ter*, repeals section 94 and substitutes certain expressions.

Act 22/1996 amends sections 17 and 45ter of the Act, as well as the short title of the Deeds Registries Amendment Act 2 of 1996 (which incorrectly titled the amending act as the “Deeds Registries Amendment Act 1995”).

Regulations: A comprehensive new set of regulations was promulgated in GN 180/1996 (GG 1343), as corrected by GN 193/1996 (GG 1361) and GN 312/1996 (GG 1457). GN 36/2004 (GG 3155) substantially amends the regulations contained in GN 180/1996 (GG 1343). They are further amended by GN 77/2007 (GG 3824) (Annexure 1) and GN 137/2009 (GG 4278) (Regulation 8).

Cases: *Vaatz v Registrar of Deeds, Namibia: In re Grootfontein Municipality; Vaatz v Registrar of Deeds, Namibia: In re Nöckel's Estate* 1993 NR 171 (HC); *Vaatz v Law Society of Namibia & Others* 1996 NR 272 (HC); *Oshakati Tower (Pty) Ltd v Executive Properties CC & Others (2)* 2009 (1) NR 232 (HC).

Registration of Deeds in Rehoboth Act 93 of 1976, as amended in South Africa to September 1977.

Summary: This Act makes special provision for the registration of deeds in the Rehoboth Gebiet.

Applicability to SWA: This Act applies specifically to the Rehoboth Gebiet, as described in section 6 of the *Rehoboth Self-Government Act 56 of 1976*.

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers Transfer Proclamation (AG 3/1977, as amended), dated 28 September 1977. There were no amendments to the Act in South Africa after the date of transfer and prior to Namibian independence.

Amendments: The Act is amended by Act 8/1991 (Rehoboth). Act 35/1994 amends sections 1, 13, 48, 49 and 52. Act 8/1996, which was brought into force on 15 July 1996 by GN 184/1996 (GG 1353), amends sections 1 (definition of “owner”) and 10 (registration of property in the name of married persons) and inserts section 10bis (endorsement of deeds forming part of joint estate of marriage).

Regulations: Regulations are contained in RSA GN R.2372 of 3 December 1976, as amended by AG GN 28 of 7 July 1978 and GN 75/2007 (GG 3824).

Cases: *Eksteen v Registrar of Deeds for Rehoboth & Others* 1994 NR 217 (HC) (section 10(3)); *Beukes & Others v Engelbrecht & Others* 2005 NR 305 (HC (section 53)).