LAND AND HOUSING

Some of these laws, while still technically in force, are primarily of historical interest.

Crown Lands (Trespass) Proclamation 7 of 1919.

**Summary:** This Proclamation ([OG 24](OG 24)) covers trespassing, removal of vegetation and the presence of animals on “crown lands in the protectorate”.

**Amendments:** This Proclamation is amended by Proc. 4/1937 ([OG 701](OG 701)), Proc. 31/1938 ([OG 770](OG 770)) and Proc. 18/1948 ([OG 1357](OG 1357)).

Crown Land Disposal Proclamation 13 of 1920.

**Summary:** This Proclamation ([OG 29](OG 29)) made the Crown Land Disposal Ordinance, 1903, of the Transvaal – as amended by the Crown Land Disposal Amendment Ordinance, 1906, of the Transvaal and by this Proclamation – applicable to South West Africa. According to one commentator (S Amoo): “This effectively gave the South African Administration the power to either extend the application of existing South African legislation on property to South-West Africa or to promulgate completely new legislation for the territory.” It also authorised the Administrator of South West Africa to set aside Crown Lands as reserves “for the use and benefit of aboriginal natives, coloured persons and Asians”, as well as for various public purposes.

**Amendments:** The Proclamation is amended by Proc. 54/1920 ([OG 41](OG 41)), SA Proc. 200 of 1950 ([SA GG 4435](SA GG 4435)), Ord. 7/1951 ([OG 1601](OG 1601)), Ord. 36/1958 ([OG 2153](OG 2153)) and Ord. 17/1965 ([OG 2634](OG 2634)).

It was repealed in respect of Walvis Bay, along with Ord. 7/1951, by RSA Proclamation 149 of 1982 ([RSA GG 8344](RSA GG 8344)).

Land Titles Proclamation 2 of 1921.

**Summary:** This Proclamation ([OG 50](OG 50)) makes provision for the issue of registered title to certain lands in the territory. It was extended to the Rehoboth Gebiet by Proc. 12/1930 ([OG 365](OG 365)).

**Amendments:** This Proclamation is amended by Proc. 14/1922 ([OG 84](OG 84)), Proc. 1/1937 ([OG 696](OG 696)), Proc. 6/1942 ([OG 939](OG 939)), Proc. 3/1949 ([OG 1406](OG 1406)) and the Registration of Deeds in Rehoboth Act 93 of 1976 ([RSA GG 5183](RSA GG 5183)).

Fencing Proclamation 57 of 1921.

**Summary:** This Proclamation ([OG 78](OG 78)) relates to the erection and maintenance of dividing fences between adjoining properties.

**Amendments:** This Proclamation is amended by Proc. 13/1923 ([OG 110](OG 110)), Proc. 18/1925 ([OG 177](OG 177)), Proc. 28/1925 ([OG 180](OG 180)), Ord. 4/1928 ([OG 279](OG 279)), Proc. 22/1935 ([OG 639](OG 639)), Proc. 14/1950 ([OG 1495](OG 1495)), Proc. 48/1950 ([OG 1548](OG 1548)), Ord. 44/1952 ([OG 1548](OG 1548))
Small Settlements Commonages Subdivision Proclamation 13 of 1926.

Summary: This Proclamation (OG 205) provides for the subdivision of commonages assigned to “Small Settlements” established by the German administration.

Control of Sites (Churches, Schools and Missions) Proclamation 31 of 1932.

Summary: This Proclamation (OG 491) empowers the Administrator to set aside portions of land designated as “reserves for natives or Coloured persons” as sites for churches, schools or missions.

Amendment of Execution (Mortgaged Properties) Proclamation 6 of 1933.

Summary: This Proclamation (OG 502) supplements the law relating to the execution of judgements in respect of immovable property, in order to provide assistance to mortgage debtors by providing for suspension periods “in view of the prevailing financial depression”. There is, however, no time limit on its application.

Town Planning Ordinance 18 of 1954.

Summary: This Ordinance (OG 1846) makes provision for town planning schemes. It was brought into operation by Proc. 66/1960 (OG 2276).


It is also substantially amended by Act 27/1993 (GG 761), which makes it consistent with an independent Namibia. It is further amended by Act 15/2000 (GG 2377) (sections 2, 4, 47).

Application of Act: The application of the Ordinance in Export Processing Zones is affected by section 5(e) of the Export Processing Zones Act 9 of 1995 (GG 1069).

Regulations: Regulations pertaining to fees are contained in GN 11/2008 (GG 3983).

Cases: Grobbelaar & Another v Walvis Bay Municipality & Another 1997 NR 259 (HC).
The following cases concern the Windhoek Town Planning Scheme prepared in terms of the Ordinance-

Ohlthaver & List Finance & Trading Corporation Ltd & Others v Minister of Regional and Local Government and Housing & Others 1996 NR 213 (SC)

Roland & Others v Chairperson of the Council of the Municipality of Windhoek & Others 2013 (1) NR 12 (HC) (to avoid anomalies, court reading proviso to Regulation 29B(1)(c) of Windhoek Building Regulations, which defines “ground storey” and so assists application of section 21(3) of Windhoek Town Planning Scheme, to read “any adjoining pavement” instead of “the adjoining pavement”).

Trespass Ordinance 3 of 1962.

Summary: This Ordinance (OG 2390) prohibits entry or presence upon land or in buildings without permission of the owner or lawful occupier.

Amendments: The Ordinance is amended by Act 20/1985 (OG 5140).

Cases: S v Mynhardt; S v Kuinab 1991 NR 336 (HC); S v Williams 2007 (2) NR 399 (HC).

Townships and Division of Land Ordinance 11 of 1963.

Summary: This Ordinance (OG 2487) relates to the establishment of townships.


The schedule to the Ordinance is amended by GN 63/1999 (GG 2083).

The application of the Ordinance in Export Processing Zones is affected by section 5(c) of the Export Processing Zones Act 9 of 1995 (GG 1069).

Regulations: Township Board Regulations are contained in GN 165/1973.

Regulations pertaining to fees are contained in GN 10/2008 (GG 3983).

Notices: Notices relating to specific townships have not been recorded.

Cases: Erongo Regional Council v Wlotzkasbaken Home Owners Association 2009 (1) NR 252 (SC) (discussion of township development process applied to Wlotzkasbaken).

Immovable Property (Removal or Modification of Restrictions) Act 94 of 1965.
Summary: This Act (RSA GG 1171) concerns restrictions imposed on land by wills and similar instruments.

Applicability to SWA: Section 10 states “This Act and any amendment thereof shall apply also in the territory of South West Africa, including that portion of the said territory known as the Eastern Caprivi Zipfel and referred to in sub-section 3 of section three of the South West Africa Affairs Amendment Act, 1951 (Act No. 55 of 1951), and also in relation to all immovable property in that portion of the said territory known as the ‘Rehoboth Gebiet’ and defined in the First Schedule to Proclamation No. 28 of 1923 of the Administration of the said territory.” Although amendments to the Act in South Africa would have been automatically applicable to SWA, there were no amendments to the Act in South Africa prior to Namibian independence.

Transfer of administration to SWA: Since the Act does not indicate what Minister administered the Act, it is not clear which transfer proclamation, if any, was applicable. However, the date of transfer is not relevant to the content of the statute, as there were no amendments to the law in South Africa prior to Namibian independence.


Summary: This Act (RSA GG 1554) establishes a Land Tenure Board and provides for the acquisition and development of land in connection with farming purposes.

Applicability to SWA: Section 10A, which was added by RSA Act 67 of 1970, states “This Act and any amendments thereof which may be made from time to time, with the exception of section 5, shall apply also in the territory”, which is defined as “the territory of South West Africa”. (Section 5 concerns the disposal of state land which is not required for or suitable for farming purposes in terms of the *State Land Disposal Act 48 of 1961*.)

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Agricultural Credit and Land Tenure) Transfer Proclamation (AG 13/1977), dated 18 November 1977. There were no amendments to the Act in South Africa after the date of transfer. The Act was repealed in South Africa by the *Second Community Development Amendment Act 68 of 1982* (RSA GG 8206), which was not made expressly applicable to SWA.

Section 3(2) of the General Proclamation excluded from transfer the provisions of any transferred law which “provide for or relate to the institution, constitution or control of any juristic person or any board or other body of persons that may exercise powers or perform other functions in or in respect of both the territory and the Republic”. This would appear to exclude from transfer the provisions of this Act relating to the Land Tenure Board.

Amendments: The following pre-independence South African amendments were applicable to SWA –

- *Land Tenure Amendment Act 67 of 1970* (RSA GG 2862)
- *Land Tenure Amendment Act 16 of 1972* (RSA GG 3458)

Summary: This Act controls the subdivision of agricultural land. Generally, subdivision is prohibited unless the Minister of Agriculture has given his consent.

Applicability to SWA: Section 14 states “This Act and any amendment thereof shall apply also in the territory of South West Africa”. Section 1 defines “agricultural land”, “executive committee” and “scheme” accordingly.

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Agricultural Technical Services) Transfer Proclamation (AG 11/1978), dated 2 March 1978. None of the amendments to the Act in South Africa after the date of transfer and prior to Namibian independence – the Subdivision of Agricultural Land Amendment Act 12 of 1979 (RSA GG 6345), the Subdivision of Agricultural Land Amendment Act 18 of 1981 (RSA GG 7447) and the Subdivision of Agricultural Land Amendment Act 33 of 1984 (RSA GG 9170) – were made expressly applicable to SWA.

Amendments: The following pre-independence South African amendments were applicable to SWA –

- Subdivision of Agricultural Land Amendment Act 55 of 1972 (RSA GG 3531)
- Subdivision of Agricultural Land Amendment Act 19 of 1974 (RSA GG 4210)
- Subdivision of Agricultural Land Amendment Act 18 of 1977 (RSA GG 5450).

Certain terminology is amended by the 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).

The Act and two of its amending Acts (the Subdivision of Agricultural Land Amendment Act 55 of 1972 and the Subdivision of Agricultural Land Amendment Act 19 of 1974) were repealed in respect of Rehoboth by the Agricultural Land Act 5 of 1981 (Rehoboth) (Official Gazette 37 of Rehoboth), brought into force on 1 September 1981 by an unnumbered notice (Official Gazette 41 of Rehoboth, dated 23 September 1981), which provides a substituted law on the topic in respect of Rehoboth.

Note that this Gazette appears to have been mis-numbered as Official Gazette 38 of Rehoboth; it bears a handwritten notation altering it to Official Gazette 37 of Rehoboth.

Cases: Theron & Another v Tegethoff & Others 2001 NR 203 (HC).

Removal of Restrictions Ordinance 15 of 1975.

Summary: This Ordinance (OG 3492) provides for the alteration, suspension or removal of restrictions on the usages of land.

Expropriation Act 63 of 1975.
Summary: This Act (RSA GG 4780) deals with the expropriation of land. It commenced on 1 January 1977, in terms of RSA Proc. 273 of 1976. The Act applied to SWA only in respect of expropriations by the Railway Administration.

Applicability to SWA: Section 4(4) of the Act states: “The provisions of this section, and the other provisions of this Act, in so far as they are connected with the application of this section, shall also apply in the territory of South West Africa, including the Eastern Caprivi Zipfel”. Section 4 makes sections 7-24 of the Act applicable to expropriations by the Railway Administration in terms of the Railways and Harbours Control and Management (Consolidation) Act 70 of 1957 (which is no longer in force in Namibia).

Applicability to SWA: The Act was originally administered by the Minister of Agriculture. The administration of this Act was apparently transferred to SWA by the Executive Powers (Community Development) Transfer Proclamation (AG 8/1978), dated 10 February 1978.

Amendments: The National Transport Corporation Act 21 of 1987 (which was repealed by the National Transport Services Holding Company Act 28 of 1998 (GG 1961) with effect from 1 April 1999) repeals section 4 of the Act – which includes the subsection that made the Act applicable to SWA.

Section 139 of the Minerals (Mining and Prospecting) Act 33 of 1992 (GG 564) repeals sections 74 and 75 of the Act, although it is not clear that these sections were ever applicable to Namibia.

Housing Levy Ordinance 18 of 1976.

Summary: This Ordinance (OG 3580) establishes a housing levy fund to be used for the provision of housing for employees in “declared housing areas”, using a levy obtained from employers.

Expropriation Ordinance 13 of 1978.

Summary: This Ordinance (OG 3796) deals with the expropriation of land for public purposes. It replaces the Expropriation Ordinance 32 of 1967.

Appointments: Proc. 8/2005 (GG 3456) assigns the administration of this Ordinance to the minister responsible for works, transport and communication.

Amendments: This Ordinance is amended by the National Transport Corporation Act 21 of 1987 (OG 5439) (which was repealed by the National Transport Services Holding Company Act 28 of 1998 (GG 1961) with effect from 1 April 1999).

Application: The Ordinance is referenced by the Powers of the SWA Water and Electric Corporation Act 14 of 1980 (OG 4225), which makes sections 5-18 of the Ordinance applicable to expropriations by the Corporation.

The application of the Ordinance in Export Processing Zones is affected by section 5(c) of the Export Processing Zones Act 9 of 1995 (GG 1069), and referenced in and section 16 of that Act.
Section 13 of the Airports Company Act 25 of 1998 (**GG 1958**) (which came into force on 5 February, GN 19/1999, **GG 2045**) affects the application of the Ordinance with respect to that Act.

**Promotion of the Density of Population in Designated Areas Act 18 of 1979.**

**Summary:** This Act (**OG 4052**) provides for the designation of certain areas for the promotion of population density and farming activities. It was brought into operation on 1 January 1980 by AG 38/1979 (**OG 4059**).

**Amendments:** The Act is amended by AG 30/1985 (**OG 5060**).

**Notices:** A designated area is declared in terms of the Act in AG 39/1979 (**OG 4062**); there may have been other such designations.

**Agricultural Land Act 5 of 1981 (Rehoboth).**

**Summary:** This Act (**Official Gazette 37 of Rehoboth**) controls the subdivision of agricultural land in Rehoboth. It was brought into force on 1 September 1981 by an unnumbered notice (**Official Gazette 41 of Rehoboth**, dated 23 September 1981) and has not been amended.

Note that **Official Gazette 37 of Rehoboth** was misprinted as **Official Gazette 38 of Rehoboth**. Some copies bear a handwritten correction showing the correct number, which was **Official Gazette 37 of Rehoboth**.

**Squatters Proclamation, AG 21 of 1985.**

**Summary:** This Proclamation (**OG 5047**) provides for the removal of persons unlawfully present on land or in buildings, and for the demolition of structures which are unlawfully erected.

Sections 1, 5, 8, 14, 15, 16 and 17 of the Proclamation came into force on date of publication (30 May 1985) by virtue of section 16 of the Proclamation. Sections 2, 3, 4, 6, 7, 9, 10 and 13 came into force in the territory of South West Africa on 15 November 1986, by virtue of section 16 of the Proclamation read together with AG 28/1986 (**OG 5273**).

Sections 11 and 12 of the Proclamation do not appear to have come into force

**Cases:** *Shaanika & Others v Windhoek City Police & Others* 2011 (1) NR 64 (HC), 2013 (4) NR 1106 (SC) (declaring sections 4(1) and (3) of the Proclamation unconstitutional, on the grounds that they violate Art 12 of the Constitution on the right of access to courts).

**Land Survey Act 33 of 1993.**

**Summary:** This Act (**GG 770**) regulates the survey of land. It replaces the *Land Survey Act 9 of 1927* and came into force on 1 June 1994 (GN 84/1994, **GG 863**).
**Regulations:** Regulations made under the previous legislation survive in terms of section 46(3). Such regulations are contained in RSA GN R.1814 of 1962. Not all the amendments to these regulations are listed here. Just prior to independence, the regulations were amended by AG GN 68/1989 and AG GN 24/1990. Since independence, the regulations have been amended by GN 50/1993 (GG 636) and GN 270/1996 (GG 1425).

New regulations pertaining to the manner in which land surveys shall be conducted are contained in GN 58/2002 (GG 2723).

Official co-ordinated values to be used by land surveyors are contained in GN 107/2008 (GG 4044).

A scale of fees is published in GN 249/2004 (GG 3323), which replaced GN 286/1999 (GG 2253), as amended by GN 134/2002 (GG 2778).

**Agricultural (Commercial) Land Reform Act 6 of 1995.**

**Summary:** This Act (GG 1040) provides for the acquisition of agricultural land by the Namibian government for the purposes of land reform, and for its redistribution to Namibian citizens “who do not own or otherwise have the use of agricultural land or adequate agricultural land, and foremost to those Namibian citizens who have been socially, economically or educationally disadvantaged by past discriminatory laws or practices”. It also establishes a Land Reform Advisory Commission and a Lands Tribunal.

Part VI (Restriction on Acquisition of Agricultural Land by Foreign Nationals) came into force on the date of publication, 3 March 1995 (section 81(3) of the Act). The remainder of the Act, with the exception of Parts II, III, IV and V, came into force on 6 December 1995 (GN 230/1995, GG 1214). All the remaining sections came into force on 17 October 1996 (GN 271/1996, GG 1426).

**Amendments:** Act 16/2000 (GG 2378) amends sections 1, 4, and 12, and inserts a new Part establishing a Land Acquisition and Development Fund and a new section 37A. It was brought into force on 29 December 2001 (GN 258/2001, GG 2678).

Act 2/2001 (GG 2523) amends section 1, substitutes section 13B, section 18 and certain headings, inserts section 75A, amends section 76 and inserts sections 76A, 76B and 79A. It was brought into force on 29 December 2001 (GN 257/2001, GG 2678). (Note that the short title of this amending Act is amended by Act 13/2002.)


Act 14/2003 (GG 3096) amends sections 1, 14, 19, 20, and 78.

Act 19/2003 (GG 3116) amends sections 18 and 76. It came into operation on 1 April 2004 (GN 56/2004, GG 3181).


Act 1/2014 (GG 5428) amends section 1, 17, 20 and 62, and substitutes section 9.
Regulations: Regulations relating to the acquisition of land by foreign nationals are contained in GN 257/1996 (GG 1411).

GN 120/2014 (GG 5530) says that it is amending the Regulations relating to the Acquisition of Land by Foreign Nationals contained in GN 257/1996, but this statement seems to be an error. The Regulations relating to the Acquisition of Land by Foreign Nationals contained in GN 257/1996 contain only one form, which has no number. GN 120/2014 inserts a Form 1A and a Form 4 after Form 3. The General Regulations in GN 272/1996 contain a Form 1 and a Form 2, but no Form 3. Thus, the numbers of the forms in GN 120/2014 do not fit correctly with either of these sets of regulations. However, the forms in GN 120/2014 appear to concern sale and waiver in general rather than being relevant only to foreigner nationals.

There are other errors in GN 120/2014. It states “In these regulations “the Regulations” means the regulations in relation to Acquisition of Agricultural Land by foreign nationals, published under Government Notice No. 257 of 19 September 1996 as amended by Government Notice Nos. 272 of 17 October 1996, 243 of 15 December 2001, 259 of 29 December 2001, 128 of 1 June 2004, 181 of 15 December 2005, 120 of 3 July 2007, 143 of 1 August 2007, and 241 of 6 September 2013.” This statement is incorrect. Regulations relating to the Acquisition of Agricultural Land by Foreign Nationals were published in GN 257/1996, but all of the other Government Notices referred to concern other sets of regulations issued under the Act – with the exception of GN 143/2007, which is not a regulation but a notice issued under regulation 3 of the Land Valuation and Taxation Regulations concerning the dates for a general valuation of agricultural land.

General regulations are contained in GN 272/1996 (GG 1426), as amended by GN 243/2001 (GG 2663) (Form 1) and GN 181/2005 (GG 3555) (Form 1). They are also apparently amended by GN 120/2014 (GG 5530) (see the note above).

Land Valuation and Taxation Regulations were initially contained in GN 259/2001 (GG 2678), as amended by GN 128/2004 (GG 3214). These Land Valuation and Taxation Regulations were repealed and replaced by GN 120/2007 (GG 3870), as amended by GN 210/2011 (GG 4833) and GN 185/2015 (GG 5809).

Regulations on Procedure to Sublease Portion of Farming Unit are contained in GN 241/2013 (GG 5279).

Regulations relating to the exemption of certain agricultural land from section 17 of the Act are contained in GN 233/2014 (GG 5613).


Notices: Bodies and associations are designated to appoint members to the Land Reform Commission in GN 98/1995 (GG 1090).

A pro forma lease agreement for farming units in terms of section 37 of the Act is contained in GN 50/1999 (GG 2075) which is withdrawn by GN 179/2009 (GG 4337).

Certain land is excluded from the definition of “agricultural land” by GN 248/2009 (GG 4403) and GN 161/2012 (GG 4978).

Certain agricultural land is excluded from the land tax imposed in terms of section 76 of the Act by GN 68/2015 (GG 5728).

Farming units offered for allotment are periodically announced in the Government
Gazette but have not been listed here. Rates of land tax have also been omitted.

Notices concerning specific valuations, valuation rolls and the sittings of specific valuation courts have not been recorded here.

Cases:

Müller v Schweiger 2005 NR 98 (HC) (summary of key provisions of Act; contract contravening section 58(1)(b) void ab initio; Schweiger v Müller 2013 (1) NR 87 (SC) (finding of illegality of contract confirmed on appeal)

Schacht v Schweiger & Another 2005 NR 130 (HC) (obiter discussion of section 58(1))

Bahlsen v Nederloff & Another 2006 (2) NR 416 (HC) (sections 1, 58 and 59)

Kessl v Ministry of Lands Resettlement & Others, and Two Similar Cases 2008 (1) NR 167 (HC) (detailed discussion of Act’s requirements for expropriation and constitutionality of expropriation procedure; includes guidelines on correct procedure for expropriation under the Act)

Marot & Others v Cotterell 2012 (1) NR 365 (HC) (purchase of shares in a close corporation does not give the members rights of occupation of immovable property by virtue of their membership but rather by agreement, and is thus void ab initio because of non-compliance with section 58(1)(b))

Strauss & Another v Laubuscagne 2012 (2) 460 (SC) (meaning of “alienate” in section 1; contractual agreement in fraudem legis because simulated to circumvent Act)

Commentary:


**National Housing Enterprise Act 5 of 1993.**

**Summary:** This Act (GG 687) provides for the continued existence of a corporation to provide for the housing needs of the inhabitants of Namibia, changes its name from the “National Building and Investment Corporation” to the “National Housing Enterprise” and sets forth its powers, duties and functions. It replaces the National Building and Investment Corporation of South West Africa Proclamation (AG 60/1978).

**Amendments:** Act 32/2000 (GG 2463) (which came into force on 5 March 2001 - GN 37/2001, GG 2492) amends sections 1, 4, 5, 6, 8, 9, 10, 14, 15, 18, 20, 22, 23 and 26.

The State-owned Enterprises Governance Act 2 of 2006 (GG 3698), which was brought into operation on 1 November 2006 by Proc. 13/2006 (GG 3733) and which has since been re-named the Public Enterprises Governance Act 2 of 2006, amends section 5, 6, 8 and 10.

**Regulations:** Regulations are contained in GN 62/2001 (GG 2513).

**Application of law:** The Financial Intelligence Act 13 of 2012 (GG 5096) places certain duties on the National Housing Enterprise.

**National Housing Development Act 28 of 2000.**

**Summary:** This Act (GG 2459) establishes a National Housing Advisory Committee to advise on housing programmes, and provides for Housing Revolving Funds to be established by regional and local authorities to be used for low-cost housing. It further provides for the establishment of Decentralised Build Together Committees for each region, to deal with applications for assistance from the Housing Revolving Funds. The Act replaces the Native Housing Levy and Contributions Ordinance 22 of 1961 and the Housing Ordinance of the Administration of Coloureds 4 of 1983. The Act came into force on 5 March 2001 (GN 36/2001, GG 2492).

**Regulations:** Regulations contained in GN 44/2001 (GG 2492) are revoked by GN 57/2001 (GG 2507).

**Appointments:** The National Housing Advisory Committee is announced in GN 188/2001 (GG 2615). Committee members are appointed in GN 155/2003 (GG 2507).
Communal Land Reform Act 5 of 2002.

Summary: This Act provides for the allocation of rights in respect of communal land. It establishes Communal Land Boards and provides for the rights and powers of traditional leaders and Communal Land Boards in relation to communal land. The Act came into operation on 1 March 2003 (GN 33/2003, GG 2926). This is also the relevant date in respect of section 18 (on fencing), and section 28(2) and (3) (the date which begins the three-year period for application for recognition of existing customary land rights and fences) (GN 34-36/2003, GG 2926).


Amendments: Act 11/2005 (GG 3550) amends section 1 and Schedule 1 of the Act. Its effect is to add and amend certain definitions, to incorporate certain portions of unalienated State land into existing communal land areas and to replace an incorrect reference in the description of the Damaraland Communal Land Area.

Proc. 9/2013 (GG 5150) and Proc. 27/2013 (GG 5264) amend Schedule 1 of the Act.

Act 13/2013 (GG 5385), which will come into force on a date set by the Minister in the Gazette, amends sections 1, 23, 28, 31, 44 and inserts section 17B and Part 3.

Regulations: Regulations are contained in GN 37/2003 (GG 2926), as amended by GN 120/2003 (GG 2994), GN 15/2014 (GG 5412) and GN 100/2015 (GG 5760). These regulations repeal those contained in RSA Proclamation R. 188 of 11 July 1969 (RSA GG 2486).

Alteration of communal land areas: Proc. 9/2013 (GG 5150) incorporates certain unalienated state land into the existing communal land areas of Damaraland and Namaland. Proc. 27/2013 (GG 5264) incorporates certain unalienated state land into the existing communal land areas of Damaraland.

Designation of areas for leasehold: Areas are designated for leasehold for agricultural purposes as follows:

Caprivi Communal Land Board - GN 126/2007 (GG 3878)
Kavango East Communal Land Board – GN 37/2014 (GG 5433)

Note that there are two Government Gazettes numbered 3878 and dated 16 July 2007. The correct version states at the top: “This Gazette replaces Government Gazette No. 3878 of 16 July 2007.”

Oshikoto Communal Land Board – GN 156/2011 (GG 4787), which is withdrawn by GN 218/2011 (GG 4834); GN 219/2011 (GG 4834), which is withdrawn by GN 227/2011 (GG 4843); GN 228/2011 (GG 4843).
Recognition of existing land rights: GN 44/2006 (GG 3591) requires all persons issued with a right to occupy communal land (other than a right under customary law) to apply for recognition of that right and the grant of a leasehold, and for authorisation to retain any existing fences, within three years of the date of publication of the notice (15 February 2006); the effective date for applying for the recognition of existing rights was extended to the end of February 2012 by GN 18/2009 (GG 4210) and then to the end of February 2014 by GN 104/2012 (GG 4929).

In terms of section 28 of the Act, GN 45/2006 (GG 3591) similarly requires all persons with existing customary land rights to apply for the recognition and registration of such rights and for authorisation to retain any existing fences, within three years of the date of publication of the notice (15 February 2006); the effective date was extended to the end of February 2012 by GN 19/2009 (GG 4210), then to the end of February 2014 by GN 140/2012 (GG 4958) and then extended indefinitely by GN 19/2014 (GG 5416).

GN 19/2014 states: “Under subsection (3) of section 28 of the Communal Land Reform Act, 2002 (Act No. 5 of 2002), I, further extend the period within which an application may be made for recognition of existing customary land rights in terms of subsection (2) of that section, as notified by Government Notice No. 140 of 1 June 2012, with effect from 1 March 2014 until further notice.”

Establishment of Communal Land Boards: Twelve communal land boards are established by GN 203/2003 (GG 3060), which is replaced by GN 18/2014 (GG 5416) to take into account the split of the Kavango Region into two new regions (Kavango East and Kavango West) and the renaming of two regions (Caprivi to Zambezi and Karas to //Karas).

Cases: Shingenge v Hamunyela 2004 NR 1 (HC) (whilst not dealing with the statute, this case is relevant to communal land; it concerns an actio rei vindictio in respect of fencing material used in a fence erected on communal land); Uvhungu-Vhungu Farm Development CC v Minister of Agriculture, Water and Forestry 2009 (1) NR 89 (HC) (whilst not dealing with the statute, this case is relevant to communal land; it concerns a successful application for mandament van spolie by a party occupying communal land in terms of an agreement with government).

Commentary:
Ministry of Lands and Resettlement, More Security for All, 2007 (a guide to communal land registration with an accompanying film)
Sectional Titles Act 2 of 2009.

Summary: This Act (GG 4259) provides for the division of buildings into sections and common property, and the acquisition of separate ownership in sections coupled with joint ownership in common property. It replaces the Sectional Titles Act 66 of 1971. It was brought into force on 15 December 2014 by GN 252/2014 (GG 5633).

Regulations: Regulations made under the previous Act survive in terms of this Act, but GN 223/2014 (GG 5604) repealed all the regulations made under the previous Act and their amendments (if any).

Rules: Rules for sectional titles are contained in GN 224/2014 (GG 5604).

Cases: The following case deals with the Sectional Titles Act 66 of 1971 - Trustco Insurance Ltd t/a Legal Shield Namibia & Another v Deeds Registries Regulation Board & Others 2010 (2) NR 565 (HC), 2011 (2) NR 726 (SC) (regulations setting tariff of fees under section 40 of Act not in violation of Art 21(1)(j) or Art 18 of Constitution).

Flexible Land Tenure Act 4 of 2012.

Summary: This Act (GG 4963) creates new forms of land title designed to be simpler and cheaper to administer than existing forms of land title, and creates mechanisms for the registration of these new form of title. They include “starter title” and “land hold title”. The Act will come into force on a date set by the Minister in the Government Gazette.

Commentary:


SELECTED COMMENTARY
Legal Assistance Centre, A Place We Want to Call Our Own: A study on land tenure policy and securing housing rights in Namibia, 2005, available at www.lac.org.na/projects/lead/Pdf/aplaceweanttocallourown.pdf

See also Reservation of State Land for Natives Ordinance 35 of 1967 (reservation of land for “natives”) and Namaland Consolidation and Administration Act 79 of 1972 (reservation of land for Namas) (“BLACKS”).

See also Vagrancy Proclamation 25 of 1920 (trespass) (CRIMINAL LAW AND PROCEDURE).

See also DEEDS.

See also Soil Conservation Act 76 of 1969 and Mountain Catchment Areas Act 63 of 1970 (ENVIRONMENT).

See also Namibia Qualifications Authority Act 29 of 1996 (occupational standards for surveyors) (EDUCATION).

See also LANDLORD AND TENANT.

See also Formalities in Respect of Contracts of Sale of Land Act 71 of 1969 and Sale of Land on Instalments Act 72 of 1971 (PURCHASE AND SALE).

See also Transfer Duty Act 14 of 1993 (REVENUE).