

REGULATIONS MADE IN TERMS OF

Communal Land Reform Act 5 of 2002

section 45

**Regulations relating to Occupational Land Rights**

Government Notice 278 of 2016

(GG 6177)

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**Definitions**

**1.** In these regulations, a word or an expression to which a meaning has been assigned in the Act has that meaning, and unless the context otherwise indicates -

“Ministry” means the ministry administering land affairs; and

“the Act” means the Communal Land Reform Act, 2002 (Act No. 5 of 2002).

**Application for occupational land rights**

**2.** (1) An application for an occupational land right is made in the form of Form E as set out in Annexure 1 to the communal land board and must be made in triplicate.

(2) All the information required in Form E must be furnished fully in that form or be attached to the form.

(3) Before the granting of an occupational land right, the board must display for a period of at least seven days on a notice board at its offices, a notice -

(a) stating the -

(i) name of the applicant;

(ii) approximate size of the land applied for;

(iii) geographic location of the land applied for; and

(iv) land use for the occupational land right applied for; and

(b) inviting interested parties to lodge with the communal land board within a period of seven days any objections regarding the application.

(4) A board may cause the information contained in the notice referred to in subregulation (3) to be published in a newspaper circulating in its region or to be broadcasted on a radio station broadcasting in its region.

**Determination of amount payable in respect of occupational land right and improvements**

**3.** (1) An amount payable in respect of an occupational land right and improvements, if any, on a portion of land as contemplated in section 36C of the Act, is determined by the board with regard to the -

(a) particular use or purpose for which the right is required;

(b) value of the improvement, if any, on the portion of land;

(c) size of the portion of land in respect of which the right has been granted; and

(d) period for which the right of occupational land right has been granted.

(2) A board may in the determination of the amount referred to in subregulation (1) use the services of valuators.

(3) For purposes of this regulation “valuator” means -

(a) an estate agent registered as that under the Estate Agents Act, 1976 (Act No. 112 of 1976);

(b) a quantity surveyor or architect, registered as that under the Architects’ and Quantity Surveyors’ Act, 1979 (Act No. 13 of 1979); or

(c) a person appointed by the Minister in writing for that purpose.

**Conditions applicable to occupational land rights**

**4.** (1) The following conditions apply to an occupational land right -

(a) the holder of an occupational land right or a person in his or her employment may not use the land for a purpose -

(i) other than that for which its occupation is authorised without the prior written approval of the board;

(ii) in contravention of the Liquor Act, 1998 (Act No. 6 of 1998) or any regulations made in terms of that Act; or

(iii) in contravention of a law relating to the cultivation, possession, disposal of or dealing in dependence-producing drugs;

(b) the Minister or a person duly authorised by him or her in writing may at a reasonable time enter in and inspect the land and any buildings for the purpose of ensuring compliance by the holder with a regulation or condition, or to determine or re-determine the boundaries of the land;

(c) the holder of an occupational land right must preserve and maintain beacons by which the land is demarcated and is liable for the cost of repairing or rebuilding a similar beacon which has become dilapidated or damaged, and for replacing a similar beacon which has been demolished, lost or misplaced, in such position as the board directs;

(d) roads or thoroughfares which exists on or over the land may not be closed or otherwise obstructed to prevent free passage of persons, animals or traffic, unless that closure or obstruction is authorised by a competent authority;

(e) the board may cancel an occupational land right if -

(i) the right was granted in error;

(ii) an occupational land right was obtained by fraud or misrepresentation;

(iii) the institution or an authentic representative withdraws in writing or shows the intention to have the right cancelled;

(iv) that institution ceases to exist;

(v) the holder of that right -

(aa) fails to comply with any of the conditions subject to which that right was granted; or

(bb) fails to pay two consecutive instalments referred to in section 36C(1)(c) of the Act in respect of the land;

(cc) defaults in paying an amount in respect of the periodical rental payable as determined by valuators, within 30 days after having been given a written demand for the payment by the board;

[The word “or” should appear at the end of subparagraph (bb) instead of subparagraph (aa).]

(vi) the board is satisfied that the land is no longer used for the purpose for which it has been granted; or

(vii) the holder of an occupational land right has been convicted of an offence of treason or sedition;

(f) the Minister may cancel an occupational land right granted in respect of land for agricultural purposes in accordance with section 27 of the Act; and

(g) any business for the purpose of which an occupational land right is granted must be personally conducted by the holder of an occupational land right, or in the case of company or a close corporation, by a director or a member, unless the board or Minister has in writing approved that any other person may so conduct the business.

(2) If a board has determined that the portion of land in respect of which an occupational land right has been granted, must be surveyed, that board may determine the manner in which the survey must be conducted that must be done in the particular case.

**Registration and certificate of occupational land right**

**5.** (1) The board must keep a register, referred to in section 36D(1)(a) of the Act, in respect of allocated occupational land rights which are ratified by the board and enter the following particulars in respect of each occupational land right into the register the -

[There should be a comma or some other punctuation preceding   
the word “the” at the end of the introductory phrase.]

(a) particulars of the institution or representative to whom the right is granted;

(b) land use for the occupational land right granted;

(c) geographical location of the portion of land in respect of which the occupational land right has been granted;

(d) size in square metres or hectares of the portion of land in respect of which an occupational land right is granted;

(e) period for which an occupational land right has been granted;

(f) name of communal area and the region in which the land is situated; and

(g) particulars of every mortgage bond, servitude or similar right registered over land in terms of the Deeds Registries Act, 2015 (Act No. 14 of 2015), or any other law;

(2) A certificate of registration of an occupational land right must be in the form and manner as determined by the Minister and the original certificate must be issued to the holder at the time of the registration of occupational land right.

**Application for recognition of right referred to in section 36F of Act and for granting of occupational land right under Act**

**6.** (1) Every application in terms of section 36F of the Act for the recognition of an occupation land right, where applicable, for authorisation, must be made in form of Form E as set out in Annexure 1 and submitted in triplicate.

(2) All information in Form E must be furnished fully in that form or be attached to the form.

(3) The consent of the Traditional Authority referred to in section 36A(6) of the Act should contain information relating to -

(a) whether or not the application is supported by the Traditional Authority; and

(b) any other information which the Traditional Authority wish to bring to the attention of the board.

(4) Before the recognition and granting of occupational land right referred to in subregulation (1), the board must display for a period of at least seven days on a notice board at its offices a notice -

(a) stating the -

(i) name of the applicant;

(ii) approximate size of the land in respect of which the recognition of the right is applied for;

(iii) geographical location of the land in respect of which the recognition of the right is applied for; and

(iv) land use to be recognised over the right granted, and

(b) inviting interested parties to lodge with the board within a period of seven days any objections regarding the application.

(5) The board may cause the information contained in the notice referred to in subregulation (3) to be published in a newspaper circulating in its region or to be broadcasted on a radio station broadcasting in its region.

(6) If an application referred to in subregulation (1) has been granted, the board must issue the applicant a certificate and enter the particulars in the register.

**Hearing regarding application for occupational land right referred to in section 36F of Act**

**7.** (1) If the board in terms of section 36F(10) of the Act determines that a hearing referred to in that section must be held, the secretary of the board must in writing inform the applicant -

(a) the reason for the holding of the hearing;

(b) of the date, time and place of the hearing;

(c) to bring at the hearing any documentary evidence or to lead verbal evidence in support of his or her claim; and

(d) to ensure that any witness he or she intends to call in support of his or her claim is present at the hearing.

(2) At the hearing the chairperson of the board -

(a) must give particulars of any conflicting claims in relation to the land or the reason why the claim of the applicant is doubted; and

(b) may produce any documentary evidence or call witnesses to testify on any matter relevant to the subject matter of the hearing.

(3) The applicant may -

(a) interrogate any person who has given verbal evidence or who has submitted documentary evidence as referred to subregulation (2)(b); and

(b) give and lead evidence, including documentary evidence, in support of his or her claim or in rebuttal of any document or evidence referred to in paragraph (a).

(4) The Chairperson of the board must administer an oath or affirmation to a witness appearing before the board.

(5) The chairperson and other members of the board may put questions to a person giving evidence.

(6) After all evidence has been given, the applicant must be afforded the opportunity to address the board on the evidence and whether or not the application must granted.

(7) On conclusion of the hearing, the board must make a decision in accordance with section 36F(10)(a) and (b) of the Act, which must be -

(a) reduced to writing;

(b) signed by the chairperson of the board; and

(c) made known at the hearing.

(8) The board may at any time adjourn any hearing to be resumed at the date, time and place as the board may determine or as the secretary of the board may by registered post communicate to all parties.

**Deed of occupational land right**

**8.** If -

(a) an occupational land right has been granted to an applicant for a period exceeding 10 years and above 100 hectares, that applicant must in respect of that right, enter into a deed of occupational land right with the board or Minister;

(b) The Minister and the board may determine the manner and form of deed of occupational land right to be entered into with the applicant.

[Regulation 8 is reproduced as it appears in the *Government Gazette*, but there is some error as paragraph (b) does not fit with the introductory phrase at the beginning of regulation 8.].

**Applications by foreign nationals for authorisation to apply for customary or leasehold land rights**

**9.** (1) An application by a foreign national for authorisation to apply for a customary land right or leasehold land right must be made in the form of Form F to the Minister as set out in Annexure 2 and must be made in triplicate.

(2) All information required in Form F must be furnished fully or be attached thereto.

(3) Upon receiving the authorisation of the Minister, the applicant may submit an application in terms section 22 or section 33 of the Act.

**Prescribed fees**

**10.** (1) Fees payable for applications, certificates and appeals are as prescribed in terms of section 45 of the Act and regulation 37 of the regulations made in terms of the Communal Land Reform Act, 2002 (Act No. 5 of 2002) published under Government Notice No. 37 of 01 March 2003.

[The subregulation number (1) must be in error as there are no additional subregulations   
in regulation 10. The regulations cross-referenced are contained   
in GN 37/2003 ([GG 2926](http://www.lac.org.na/laws/2003/2926.pdf)), as amended.]

**Appeal procedures**

**11.** (1) Any one aggrieved by the decision of the communal land board on the granting of an occupational land right may appeal as prescribed in terms of regulation 25 of the Regulations made in terms of the Communal Land Reform Act, 2002 (Act No. 5 of 2002) published under Government Notice No. 37 of 1 March 2003.

[The subregulation number (1) must be in error as there are no additional subregulations   
in regulation 11. The regulations cross-referenced are contained   
in GN 37/2003 ([GG 2926](http://www.lac.org.na/laws/2003/2926.pdf)), as amended.]

ANNEXURES

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