



Republic of Namibia
Annotated Statutes

Removal of Restrictions Ordinance 15 of 1975

(OG 3492)

came into force on date of publication: 7 October 1975

REPEALED by the Urban and Regional Planning Act 5 of 2018 (GG 6631),
which was brought into force on 3 September 2020 by GN 222/2020 (GG 7327)

ORDINANCE

To empower the Executive Committee to alter, suspend or remove certain restrictions and obligations in respect of land in the Territory of South West Africa; and to provide for incidental matters.

(Assented to 2 October 1975)

(English text signed by the Administrator)

(Date of commencement 7 October 1975)

[The notations in italics appear above the long title in the *Official Gazette*. They have been placed in the usual position here, for consistency with the format of other legislation.]

ARRANGEMENT OF SECTIONS

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BE IT ORDAINED by the Legislative Assembly for the Territory of South West Africa, with the consent of the State President, in so far as such consent is necessary, previously obtained and communicated to the Assembly by message from the Administrator, as follows:-

Definitions

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

“Executive Committee” means the Administrator-in-Executive Committee referred to in section 6 of the South West Africa Constitution Act, 1968 (Act 39 of 1968);

“local authority” means the council of a municipality constituted or established in terms of the provisions of the Municipal Ordinance, 1963 (Ordinance 13 of 1963), a village management board constituted in terms of the provisions of the Village Management Boards Ordinance, 1963 (Ordinance 14 of 1963), and the Peri-Urban Development Board established in terms of the provisions of the Peri-Urban Development Board Ordinance, 1970 (Ordinance 19 of 1970);

[The Local Authorities Act 23 of 1992 repealed the Municipal Ordinance 13 of 1963, the Village Management Boards Ordinance 14 of 1963 and the Peri-Urban Development Board Ordinance 19 of 1970.]

“Secretary” means the Secretary for South West Africa or any officer acting on his behalf;

“town planning scheme” or “scheme” means a planning scheme operative, approved, prepared or in the course of preparation in accordance with the provisions of the Town Planning Ordinance, 1954 (Ordinance 18 of 1954), and includes a scheme supplementing, varying or revoking an approved scheme, and the map illustrating the scheme;

“township” means a township as defined in section 1 of the Townships and Division of Land Ordinance, 1963 (Ordinance 11 of 1963);

“Townships Board” means the Townships Board constituted under the provisions of section 2 of the Townships and Division of Land Ordinance, 1963 (Ordinance 11 of 1963).

Alteration, suspension or removal of restrictions or obligations in respect of land by the Executive Committee

2. (1) Whenever the Executive Committee is satisfied -

(a) that it is desirable to do so in the interest of the development of any township or in the interest of any area, whether it is situate in the area of jurisdiction of a local authority or not, or in the public interest; or

(b) that the land in question is required -

(i) for ecclesiastical purposes by the owner or purchaser thereof; or

(ii) for public purposes by the State or a local authority; or

(iii) for the use or erection of any building by the State or a local authority; or

(iv) for purposes incidental to any purpose mentioned in subparagraphs (i) to (iii), inclusive,

the Executive Committee may, subject to the provisions of this Ordinance, of its own accord or on application of any person in terms of section 3, by proclamation in the *Official Gazette*, alter, suspend or remove, either permanently or for a period specified in such proclamation, and either unconditionally or subject to any condition so specified, any restriction or obligation which is binding on the owner of the land by virtue of -

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[The word "Committee" is misspelt in the *Official Gazette*, as reproduced above.]

- (aa) a restrictive condition or servitude registered against the title deed of the land; or
- (bb) a provision of a law relating to the establishment of townships or to town planning; or
- (cc) a provision of a by-law or of a regulation or of a town planning scheme; or
- (dd) a provision of a town planning scheme and a restrictive condition or servitude registered against the title deed of the land; or
- (ee) a provision of a town planning scheme and a provision of a law relating to the establishment of townships or to town planning,

and which relates to -

- (aaa) the subdivision of the land; or
- (bbb) the purpose for which the land may be used; or
- (ccc) the requirements to be complied with or to be observed in connection with the erection of buildings or the use of the land.

(2) The provisions of subsection (1) shall not apply in respect of any condition of title specifically prohibiting or restricting the sale or supply of intoxicating liquor or the sale, lease or occupation of any land to or by a non-white person, except in so far as such condition relates to the occupation of land which is used or is intended to be used for public purposes by the State or a local authority.

(3) When a restriction or obligation which is binding on the owner of any land by virtue of a town planning scheme; altered in terms of subsection (1), the provisions of the Town Planning Ordinance, 1954 (Ordinance 18 of 1954), which relates to the payment of betterment money, shall apply as if such alteration were an alteration of the town planning scheme.

(4) Before the Executive Committee issues any proclamation under this section of its own accord in any case in which the rights of any person may be adversely affected without such person's consent, the Executive Committee shall -

- (a) if the land is situate in the area of jurisdiction of a local authority cause a notice to be served on the said local authority informing it of the proposed alteration, suspension or removal, as the case may be, of the restriction or obligation specified in such notice, and calling for its comments and recommendation to be lodged with it within a period of twenty-one days after the date of such notice; and
- (b) cause a notice in both official languages to be published once in the *Official Gazette* and twice with an interval of one week in a newspaper circulating in the area in which the land is situate, of the proposed alteration, suspension or removal, as the case may be, of the restriction or obligation specified in such notice, and calling for objections to the proposal to be lodged with the Executive Committee within a period of twenty-one days after the date of the last publication of such

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notice, and the said Committee shall also cause, where possible, a copy of such notice to be served on every owner of land who in its opinion is directly affected by the proposal, such service to be effected by registered post addressed to such owner at his last known address; and

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

- (c) comply with the provisions of section 4(1) and (2), which shall apply *mutatis mutandis* as if application had been made for the proposed alteration, suspension or removal, as the case may be, of the restriction or obligation concerned.

Form and method of application

3. (1) Any person who wishes to apply to the Executive Committee for the alteration, suspension or removal of a restriction or obligation referred to in section 2(1), shall submit his application in the form prescribed by the Executive Committee, and the application shall be accompanied by such documents and particulars as the Executive Committee may require.

(2) If the land in question is situate in the area of jurisdiction of a local authority, the application shall be lodged with such local authority and the applicant shall simultaneously forward a copy of such application to the Secretary. The local authority shall transmit the application to the Secretary together with its comments and recommendations thereon.

(3) If the land in question is not situate in the area of jurisdiction of a local authority, or if the application is made by a local authority, the application shall be lodged with the Secretary.

(4) If the land in question is encumbered by a bond and the application is made by the owner of the land, the application shall be accompanied by the bondholder's consent to such application, and if any bond is registered against the land after the date of the application and before the publication of the relevant proclamation, the owner of the land shall furnish the Secretary with the consent of the holder of such bond to such application.

(5) The applicant (if he be a person other than the State) shall deposit with the Secretary such amount as the Executive Committee may consider sufficient to cover the expenses which will be incurred by the Administration of South West Africa in connection with the application, and shall also give an undertaking to defray any such expenses in excess of the amount so deposited.

(6) On receipt of an application the Secretary shall cause a notice in both official languages to be published once in the *Official Gazette* and twice with an interval of one week in a newspaper circulating in the area in which the land is situate, stating that such an application has been made, that it is open to inspection at the office of the Secretary and at any other place or places if any, mentioned in the notice, and that objections to the application may be lodged with the Secretary on or before a specified date, which shall not be less than twenty-one days after the date of the last publication of the notice, and the Secretary shall also cause, where possible, a copy of the notice to be served on every owner of land who in his opinion is directly affected by the application, such service to be effected by registered post addressed to such owner at his last known address.

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(7) A copy of every objection received by the Secretary shall be sent to the applicant by registered post.

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(8) If a local authority fails to transmit an application referred to in subsection (2) together with its comments and recommendation thereon, to the Secretary within a period of thirty days after the receipt thereof or within such further period as the Secretary may on request allow, the application may be dealt with and finalized without such comments and recommendation.

Consideration of application by Townships Board and Executive Committee

4. (1) On the expiration of the period within which objections may be lodged in terms of the notice referred to in section 3(6), the Secretary shall refer the application together with all objections and all relevant documents and particulars to the Townships Board for investigation and its recommendation, and the provisions of any law for the time being in force relating to the powers and procedure of the said Board in carrying out any investigation in connection with the establishment of a township, shall *mutatis mutandis* apply with reference to any investigation under this subsection.

(2) After consideration of the application, the recommendation of the Townships Board and the objections and other relevant documents and particulars, the Executive Committee may grant the application or refuse it.

(3) In addition to any other conditions, if any, it may impose, the Executive Committee may grant an application subject to the condition that the applicant shall pay to any objector specified in such condition, the value of whose land or real right in land will, in the opinion of the Executive Committee, be adversely affected materially by the granting of the application, compensation in an amount which, in the absence of agreement between such applicant and objector, shall be determined by the Executive Committee and be likewise specified.

Endorsements in connection with alterations, suspensions or removals of restrictions or obligations

5. (1) The Registrar of Deeds and Surveyor-General shall as soon as possible after the publication of a proclamation in terms of section 2(1) make, free of charge, such appropriate entries in and endorsements on any relevant register, title deeds, diagram or plan in his office or submitted to him, as may be necessary to reflect the effect of the proclamation.

(2) The Secretary shall in writing request the holder of any such title deed to deliver the title deed to him within a period of thirty days or, within such longer period as the Secretary may on request allow, for submission to the Registrar of Deeds for the purposes of subsection (1), and shall forward a copy of such written request to the Registrar of Deeds.

(3) After receipt of the copy of the said written request the Registrar of Deeds shall not register any further transactions relating to the land in question until the relevant entries and endorsements have been effected, and shall impound the title deed for the purpose of such entries and endorsements whenever it may for any reason be lodged in his office.

(4) If such holder fails to comply with such written request he shall be guilty of an offence, and liable on conviction to a fine not exceeding one hundred rand.

Short title

6. This Ordinance shall be called the Removal of Restrictions Ordinance, 1975.