

# DEEDS

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

**Summary:** This Act ([SA GG 2443](#)) regulates the registration of deeds. It replaced the Deeds Registry Proclamation 37 of 1939 in SWA. It will be repealed by the Deeds Registries Act 14 of 2015 ([GG 5913](#)) when that Act comes into force.

**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 South West Africa by the Executive Powers (Justice) Transfer Proclamation, AG 33 of 1979, dated 12 November 1979. Section 3(1)(b) of that Proclamation as originally enacted excluded section 2, section 103(2) and the references to the Republic in the Act from the operation of the Executive Powers Transfer (General Provisions) Proclamation, AG 7 of 1977 (the “General Proclamation”). Section 2(a)(i) of the original transfer proclamation provided that the references to the Government of the Republic in sections 3(1)(c) and (l) and in section 99 of the Act were to be construed as *including* a reference to the Administrator-General.

The Executive Powers (Justice) Transfer Amendment Proclamation, AG 32 of 1985 ([OG 5060](#)) – which was deemed to have come into force on 1 June 1984 and which amended both the Executive Powers (Justice) Transfer Proclamation and the *Deeds Registries Act 47 of 1937* – states in section 1(2): “In the application of the provisions of the Executive Powers Transfer (General Provisions) Proclamation, 1977 (Proclamation AG. 7 of 1977) (hereinafter referred to as the General Proclamation) in respect of sections 2, 9, 45, 45*bis*, 48 and 102 of the Deeds Registries Act, 1937 (Act 47 of 1937), this Proclamation shall be deemed to be a transfer proclamation as defined in section 1 of the General Proclamation, and the reference in section 5 of the General Proclamation to a law referred to in section 2 of that Proclamation, shall be construed as a reference to sections 2, 9, 45, 45*bis*, 48 and 102 of the said Deeds Registries Act, 1937”. All of the sections of the *Deeds Registries Act 47 of 1937* cited in AG 32 of 1985 were amended by that Proclamation.

Section 3(1)(b) of the Executive Powers (Justice) Transfer Proclamation, AG 33 of 1979, as amended by AG 32 of 1985, 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 – meaning that prior to independence these terms retained the meaning given to them in section 102 of the Act (both South Africa and South West Africa). Section 2(a)(i) of the transfer proclamation as amended continued to provide that the references to the Government of the Republic in sections 3(1)(c) and (l) and in section 99 of the Act were to be construed as *including* a reference to the Administrator-General.

Section 2, which provides for the appointment of registrars, was initially excluded from the operation of section 3(1) of the General Proclamation, but this exclusion was removed by AG

32 of 1985, which also substituted section 2 in its entirety. The provisions of the Act relating to the Deeds Registry Regulation Board were initially 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”. However, section 9 of the Act – which pertains to this Board – was explicitly transferred to South West Africa by AG 32 of 1985, which also amended the provisions of section 9 on the constitution of the Board. The purpose of citing other specific sections of the Act in AG 32 of 1985, after the administration of the Act as a whole had already been transferred to South West Africa, is not clear.

None of the amendments to the Act in South Africa after the date of transfer and prior to Namibian independence – the *Deeds Registries Amendment Act 44 of 1980* ([RSA GG 6991](#)), the *Deeds Registries Amendment Act 27 of 1982* ([RSA GG 8079](#)), the *Deeds Registries Amendment Act 62 of 1984* ([RSA GG 9241](#)), the *Matrimonial Property Act 88 of 1984* ([RSA GG 9322](#)), the *Black Communities Development Amendment Act 74 of 1986* ([RSA GG 10333](#)), the *Deeds Registries Amendment Act 75 of 1987* ([RSA GG 10952](#)), the *Marriage and Matrimonial Property Law Amendment Act 3 of 1988* ([RSA GG 11171](#)) and the *Deeds Registries Amendment Act 24 of 1989* ([RSA GG 11777](#)) – were applicable to South West Africa because none were made expressly so applicable.

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

- *Deeds Registries Amendment Act 15 of 1953* ([SA GG 5120](#))
- *Matrimonial Affairs Act 37 of 1953* ([SA GG 5170](#))
- *General Law Amendment Act 50 of 1956* ([SA GG 5703](#))
- *Deeds Registries Amendment Act 43 of 1957* ([SA GG 5887](#))
- *Deeds Registries Amendment Act 43 of 1962* ([RSA GG 236](#))
- *General Law Amendment Act 80 of 1964* ([RSA GG 829](#))
- *Deeds Registries Amendment Act 87 of 1965* ([RSA GG 1163](#))
- *Mining Titles Registration Act 16 of 1967* ([RSA GG 1670](#))
- *Deeds Registries Amendment Act 61 of 1969* ([RSA GG 2412](#))
- *Deeds Registries Amendment Act 3 of 1972* ([RSA GG 3404](#))
- *Land Survey Amendment Act 71 of 1972* ([RSA GG 3561](#))
- *General Law Amendment Act 62 of 1973* ([RSA GG 3947](#))
- *General Law Amendment Act 29 of 1974* ([RSA GG 4220](#))
- *General Law Amendment Act 57 of 1975* ([RSA GG 4760](#))
- *Expropriation Act 63 of 1975* ([RSA GG 4780](#))
- *Registration of Deeds in Rehoboth Act 93 of 1976* ([RSA GG 5183](#))
- *Deeds Registries Amendment Act 41 of 1977* ([RSA GG 5505](#))
- *Deeds Registries Amendment Act 92 of 1978* ([RSA GG 6074](#)).

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), amends certain terminology.

The Executive Powers (Justice) Transfer Amendment Proclamation, AG 32/1985 ([OG 5060](#)), amends sections 2, 9, 45, 45*bis*, 48 and 102 of the Act.

Act 26/1985 ([OG 5146](#)), which is brought into force by AG 21/1986 ([OG 5184](#)), makes substantial amendments to the Act.

Act 2/1996 ([GG 1323](#)), 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 ([GG 1465](#)) amends sections 17 and 45*ter* of the Act, as well as the short title of the Deeds Registries Amendment Act 2 of 1996 (which initially gave itself the short title of the “Deeds Registries Amendment Act, 1995” instead of the “Deeds Registries Amendment Act, 1996”).

**Regulations:** Pre-independence regulations have not been researched. However, a comprehensive new set of regulations was promulgated in GN 180/1996 ([GG 1343](#)), as corrected by GN 193/1996 ([GG 1361](#)) and by GN 312/1996 ([GG 1457](#)) and amended by GN 36/2004 ([GG 3155](#)), GN 77/2007 ([GG 3824](#)) (Annexure I), GN 137/2009 ([GG 4278](#)) (Regulation 8) and GN 408/2019 ([GG 7085](#)) (Annexures I and II). The Government Notice which issues the 1996 regulations repeals the regulations published in RSA GN 225/1964, RSA GN 207/1967, RSA GN R.437/1973, RSA GN R.2578/1978, RSA GN R.127/1979, AG 110/1982, AG 48/1983 and AG 48/1986.

**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)

*Grobler v Commercial Bank of Namibia Ltd* 2010 (1) NR 313 (SC) (discusses section 16, as amended by the *RSA General Law Amendment Act 80 of 1964*)

*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 not *ultra vires* section 10(1)(c) of Act and not in violation of Art 21(1)(j) or Art 18 of Constitution).

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

**Summary:** This Act ([RSA GG 5183](#)) makes special provision for the registration of deeds in the Rehoboth Gebiet. It will be repealed by the Deeds Registries Act 14 of 2015 ([GG 5913](#)) when that Act comes into force.

**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), 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:** Act 8/1981 of the Kaptein's Council and Legislative Council of Rehoboth (*Official Gazette of Rehoboth* No. 55, dated 7 April 1982) amends section 10 by inserting subsection (3)*bis*.

Act 35/1994 ([GG 995](#)) amends sections 1, 13, 48, 49 and 52.

Act 8/1996 ([GG 1352](#)), 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 10*bis* (endorsement of deeds forming part of joint estate of marriage).

**Regulations:** Pre-independence regulations have not been comprehensively researched. However, regulations are contained in RSA GN R.2372/1976 (RSA GG 5347), as amended by AG GN 28/1978 (OG 3785) 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)).

## **\*Deeds Registries Act 14 of 2015**

**Summary:** This Act ([GG 5913](#)) regulates the registration of deeds. It repeals the *Deeds Registries Act 47 of 1937* and the *Registration of Deeds in Rehoboth Act 93 of 1976*. It will be brought into force on a date set by the Minister by notice in the *Government Gazette*.

**Regulations:** Regulations issued under the repealed Acts survive in terms of section 95(11). Pre-independence regulations issued under the repealed Acts have not been comprehensively researched. However, regulations were issued under the *Deeds Registries Act 47 of 1937* in GN 180/1996 ([GG 1343](#)), as corrected by GN 193/1996 ([GG 1361](#)) and by GN 312/1996 ([GG 1457](#)) and amended by GN 36/2004 ([GG 3155](#)), GN 77/2007 ([GG 3824](#)) (Annexure I) and GN 137/2009 ([GG 4278](#)) (Regulation 8). Regulations were also issued under the *Registration of Deeds in Rehoboth Act 93 of 1976* 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:**

These cases concern the *Deeds Registries Act 47 of 1937* –

*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)

*Grobler v Commercial Bank of Namibia Ltd* 2010 (1) NR 313 (SC) (discusses section 16, as amended by the *RSA General Law Amendment Act 80 of 1964*)

*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 not *ultra vires* section 10(1)(c) of Act and not in violation of Art 21(1)(j) or Art 18 of Constitution).

These cases concern the *Registration of Deeds in Rehoboth Act 93 of 1976* –

*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)).

See also **LAND AND HOUSING**.

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**).