

DEEDS

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 It will be repealed by the Deeds Registries Act 14 of 2015 ([GG 5913](#)) when that Act comes into force.

Repeals: This Act replaced the Deeds Registry Proclamation 37 of 1939 as amended in SWA, subject to section 16(2) of the *Deeds Registries Amendment Act 3 of 1972* ([RSA GG 3404](#)), which made this Act applicable to SWA:

16. (1) Subject to the provisions of subsection (2), the laws mentioned in the Schedule are hereby repealed to the extent set out in the third column of the Schedule.

(2) The provisions of this Act -

(a) shall not apply to the registration in the Mining Titles Office at Windhoek of documents relating to rights granted or acquired under the Mines, Works and Minerals Ordinance, 1968 (Ordinance No. 20 of 1968), of the territory of South-West Africa, or any other law relating to mines or minerals and for the registration of which in the deeds registry mentioned in section 1 of the Deeds Registry Proclamation, 1939 (Proclamation No. 37 of 1939), of that Territory or in the said Mining Titles Office provision is made in that Proclamation or in the State President's Mining Titles Registration Proclamation, 1969 (Proclamation No. R.90 of 1969) or in any other law;

(b) shall not affect any power, function or duty of the Registrar of Mining Titles appointed in terms of the said Mining Titles Registration Proclamation, 1969,

and the provisions of the said Mining Titles Registration Proclamation, 1969, shall be administered as if this Act had not been enacted.

(3) This section shall also apply in the Eastern Caprivi Zipfel.

The RSA Mining Titles Registration Proclamation R.90 of 1969 and most of the Mines, Works and Minerals Ordinance 20 of 1968 were repealed in respect of Namibia by the Minerals (Prospecting and Mining) Act 33 of 1992 ([GG 564](#)), which remains in force.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.” Section 102 defines “Government,” “provincial administration,” “Republic,” “State,” and “Territory” accordingly.

The excluded sections listed in section 102A relate to mineral rights and prospecting contracts. Note that section 16 of the *Deeds Registries Amendment Act 3 of 1972*, which makes the principal Act applicable to South West Africa, repeals the Deeds Registry Proclamation 37 of 1939 *with the exception* of its applicability to certain mining titles.

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, 45bis, 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, 45bis, 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: Regulations are authorised by section 10 of the Act, which (as amended) states in subsection (7):

The regulations made under the Registration of Deeds Proclamation, 1939 (Proclamation 37 of 1939), of Namibia, and in force at the commencement of the Deeds Registries Amendment Act, 1972, shall be deemed to have been made under this section in respect of the deeds registry at Windhoek.

Pre-independence regulations have not been comprehensively 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 GN 110/1982 ([OG 4655](#)), AG GN 48/1983 ([OG 4750](#)) and AG GN 48/1986 ([OG 5184](#)).

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)

Kashela v Katima Mulilo Town Council & Others 2018 (4) NR 1160 (SC) (rights envisaged by Schedule 5(3) of the Constitution do not require registration under this Act to have legal force)

Tjihero & Another v Kauri & Another 2018 (3) NR 879 (SC) (an agreement does not confer ownership of immovable property until property is formally transferred via this Act, although it may confer a right to institute action to compel such registration)

Ex Parte Van Der Merwe & Another 2021 (2) NR 464 (HC) (sections 1(a), 17(6), 87, 102 and 102A, read together with Articles 66 and 140(1) and (3) of the Namibian Constitution, have the result that an ante-nuptial contract registered in South Africa prior to independence is deemed to have been registered in Namibia and is full force and effect in Namibia; for purposes of section 17(6)

of the Act, the legal consequences of such a marriage are not governed by the law of any country other than Namibia).

River View Estate CC & Others v DTA of Namibia 2022 (3) NR 715 (SC) (section 97(1) is directory and not peremptory).

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](#)).

These regulations were initially repealed by the regulations contained in GN 83/2021 ([GG 7514](#)), but the repealing regulations were set aside by an order in the case *Bank Windhoek Limited v The Minister of Agriculture, Water and Land Reform, The Registrar of Deeds and The Attorney-General* (Case Number HC-MDCIV-MOT-GEN-2021/00218), meaning that the regulations remain in force.

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)

Bank Windhoek Limited v The Minister of Agriculture, Water and Land Reform, The Registrar of Deeds and The Attorney-General (Case Number HC-MDCIV-MOT-GEN-2021/00218).

***Deeds Registries Act 14 of 2015**

Summary: This Act ([GG 5913](#)) regulates the registration of deeds. It was initially brought into force on 23 April 2021 by GN 81/2021 ([GG 7514](#)). However, GN 81/2021 was set aside by the High Court in the case *Bank Windhoek Limited v The Minister of Agriculture, Water and Land Reform, The Registrar of Deeds and The Attorney-General* (Case Number HC-MDCIV-MOT-GEN-2021/00218), along with GN 83/2021 ([GG 7514](#)) which contained the regulations made in terms of the Act.

A problem with the commencement date of the regulations led to this decision. According to section 93(2) of the Act, any regulations issued in terms of section 93 may not commence less than 30 days after

their publication in the *Government Gazette* – but the regulations in question were purportedly brought into force together with the Act *on the same day* that the regulations were published in the *Gazette*. The court order thus set aside GN 83/2021 ([GG 7514](#)) containing the regulations with immediate effect. Accepting the argument that the Act could not be implemented in the absence of its accompanying regulations, the court order also set aside GN 81/2021 ([GG 7514](#)) which had brought the Act into force.

The court order further stated that the laws set to be repealed by this Act – the *Deeds Registries Act 47 of 1937* and the regulations made under that Act, and the *Registration of Deeds in Rehoboth Act 93 of 1976* and the regulations made under that Act – remain in force as the operative laws, and ordered the Minister to publish a notice in the *Government Gazette* stating that, with effect from 23 April 2021, any action or decision taken pursuant to the Deeds Registries Act 14 of 2015 and its regulations is deemed to have been done under the corresponding provisions of these two Acts and their regulations.

GN 131/2021 ([GG 7561](#)) was published to comply with this order:

Pursuant to a court order granted in the matter *Bank Windhoek Limited v. The Minister of Agriculture, Water and Land Reform, The Registrar of Deeds and The Attorney-General* (Case Number HC-MDCIV-MOT-GEN-2021/00218), I give notice that with effect from 23 April 2021, anything that was done pursuant to the Deeds Registries' Act, 2015 (Act No. 14 of 2015) and the regulations published under Government Notice No. 83 of 2021 of 23 April 2021, is deemed to have been done under a corresponding provision of the Deeds Registries Act, and the regulations applicable thereunder and the Registration of Deeds in Rehoboth Act, 1976 (Act No. 93 of 1976) and the regulations applicable thereunder, as the case may be.

C. HG SCHLETTWEIN
MINISTER OF AGRICULTURE, WATER AND LAND REFORM
Windhoek, 17 June 2021

Repeals: The Act repeals the *Deeds Registries Act 47 of 1937* (which replaced the Deeds Registry Proclamation 37 of 1939 in SWA) and the *Registration of Deeds in Rehoboth Act 93 of 1976*.

Regulations: Regulations issued under the two Acts which are to be repealed will survive in theory in terms of section 95(11). (There is no longer chain of surviving regulations to consider: The *Deeds Registries Act 47 of 1937* had no savings clause for regulations made in terms of the one law it repealed, and the *Registration of Deeds in Rehoboth Act 93 of 1976* did not repeal any prior laws in their entirety.)

All prior regulations which still survived appeared to have been repealed by new regulations issued in GN 81/2021 ([GG 7514](#)), which came into force on the same date as the current Act,¹⁰⁸ but these regulations were set aside by the court order in *Bank Windhoek Limited v The Minister of Agriculture, Water and Land Reform, The Registrar of Deeds and The Attorney-General* (Case Number HC-MDCIV-MOT-GEN-2021/00218) which is discussed above.

Notices: GN 82/2021 ([GG 7514](#)), issued in terms of section 2 of the Act, establishes two deeds registries:

- (a) the Rehoboth registry situated in the town of Rehoboth whose area of jurisdiction is described in the Schedule to GN 82/2021; and
- (b) the deeds registry of Namibia situated in Windhoek whose area of jurisdiction is the whole of Namibia *except* the area mentioned in paragraph (a).

¹⁰⁸ (1) 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 as 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). GN 81/2021 ([GG 7514](#)), which contains the regulations issued under the current Act, repeals GN 180/1996 and “all amendments thereof”, which it lists as being the regulations published under GN 36/2004, GN 77/2007 and GN 408/2019. It omits to list GN 137/2009, but this amendment even if not repealed would have no further effect.

GN 180/1996 repealed 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 GN 110/1982, AG GN 48/1983 and AG GN 48/1986.

(2) Regulations were issued under the *Registration of Deeds in Rehoboth Act 93 of 1976* in RSA GN R.2372/1976 ([RSA GG 5347](#)), as amended by AG GN 28/1978 ([OG 3785](#)) and GN 75/2007 ([GG 3824](#)). GN 81/2021 ([GG 7514](#)), which contains the regulations issued under the current Act, repeals all of these.

GN 131/2021 ([GG 7561](#)) contains the following “Notice to Comply with a Court Order”:

Pursuant to a court order granted in the matter *Bank Windhoek Limited v. The Minister of Agriculture, Water and Land Reform, The Registrar of Deeds and The Attorney-General* (Case Number HC-MDCIV-MOT-GEN-2021/00218), I give notice that with effect from 23 April 2021, anything that was done pursuant to the Deeds Registries’ Act, 2015 (Act No. 14 of 2015) and the regulations published under Government Notice No. 83 of 2021 of 23 April 2021, is deemed to have been done under a corresponding provision of the Deeds Registries Act, 1937 (Act No. 47 of 1937) and the regulations applicable thereunder and the Registration of Deeds in Rehoboth Act, 1976 (Act No. 93 of 1976) and the regulations applicable thereunder, as the case may be.

Cases: *Bank Windhoek Limited v The Minister of Agriculture, Water and Land Reform, The Registrar of Deeds and The Attorney-General* (Case Number HC-MDCIV-MOT-GEN-2021/00218), which included the following provisions in the court order:

2. The First Respondent's decision to commence the Deeds Registries Regulations published in the Government Gazette No. 7514 of 23 April 2021 under Government Notice No. 83 is hereby set aside with immediate effect.

3. The First Respondent's decision to commence the Deeds Registries Act, 2015 (Act No. 14 of 2015) published in Government Gazette No. 7514 of 23 April 2021, under Government Notice No. 81 is hereby set aside with immediate effect.

4. It is declared that the Deeds Registries Act, 1937 (Act No. 47 of 1937) and the Regulations applicable thereunder and the Registration of Deeds in Rehoboth Act, 1976 (Act No. 93 of 1976) and the Regulations applicable thereunder, shall be of full force and effect, with effect from 23 April 2021.

5. The First Respondent is ordered, not later than 1 July 2021, to cause to be published a notice in the Government Gazette to the effect that, with effect from 23 April 2021, any action or decision of the respondents pursuant to the Deeds Registries Act, 2015 (Act No. 14 of 2015) and the Regulations made thereunder is deemed to have been done under the corresponding provisions of the Deeds Registries Act, 1937 (Act No. 47 of 1937) and the Regulations applicable thereunder as well as the Registration of Deeds in Rehoboth Act, 1976 (Act No. 93 of 1976) and the Regulations applicable thereunder.

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**).