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Government Notice

OFFICE OF THE PRIME MINISTER

No. 135

1996

PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 2 of 1996: Deeds Registries Amendment Act, 1996.

Act No. 2, 1996

**DEEDS REGISTRIES AMENDMENT
ACT, 1996****EXPLANATORY NOTE:**

- _____ Words underlined with solid line indicate insertions in existing enactments.
- [] Words in bold type in square brackets indicate omissions from existing enactments.

ACT

To amend the Deeds Registries Act, 1937, so as to further regulate the appointment of the registrar and deputy-registrar of deeds and members of the deeds registries regulations board; to provide for the registration of property forming part of the joint estate in the name of both spouses; to further regulate the endorsements of deeds where marriages are dissolved by death or divorce; to provide for endorsement of deeds where a spouse is entitled, as a result of an adjustment made in terms of section 8 of the Married Persons Equality Act, 1995, to immovable property forming part of the joint estate; to amend the definition of "Minister" and "owner"; to substitute certain expressions; and to provide for matters incidental thereto.

(Signed by the President on 28 May 1996)

BE IT ENACTED by the Parliament of the Republic of Namibia, as follows:-

Amendment of section 2 of Act 47 of 1937, as substituted by section 1 of Act 43 of 1962 and amended by section 1 of Act 87 of 1965, section 7 of Act 62 of 1973, section 2 of Act 61 of 1969, section 2 of Act 3 of 1972 and section 2 of Proclamation AG.32 of 1985.

1. Section 2 of the Deeds Registries Act, 1937 (hereinafter referred to as the principal Act), is hereby amended by the substitution for subsection (4) of the following subsection:

"(4) The [~~Administrator-General~~] Minister may delegate in writing any power conferred on him or her by [~~this section~~] subsection (3) to [~~the Secretary for Justice~~] a staff member in the Public Service."

Amendment of section 9 of Act 47 of 1937, as substituted by section 9 of Act 57 of 1975 and amended by section 3 of Proclamation AG.32 of 1985.

2. Section 9 of the principal Act is hereby amended by the substitution for paragraph (b) of subsection (2) of the following paragraph:

"(b) one shall be a staff member [~~in the head office of the Department~~] of the Ministry of Justice with experience or expertise in conveyancing matters, nominated for appointment by the Minister of Justice."

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Substitution of section 17 of Act 47 of 1937, as amended by section 1 of Act 15 of 1953, section 1 of Act 37 of 1953, section 8 of Act 43 of 1957, section 8 of Act 43 of 1962 and section 5 of Act 3 of 1972.

3. The following section is hereby substituted for section 17 of the principal Act:

"Registration of property in name of married persons

17. (1) From the commencement of the Deeds Registries Amendment Act, 1995, immovable property, real rights in immovable property and notarial bonds which would upon transfer, cession, or registration thereof form part of a joint estate shall be registered in the name of the husband and the wife, unless that transfer, cession, or registration takes place only in the name of a partnership, and the husband or wife is involved therein only in the capacity of partner in that partnership.

(2) Every deed or other document executed or attested by a registrar, or attested by a notary public and required to be registered in a deeds registry, and made by or on behalf of or in favour of any person, shall -

- (a) state the full names of the person concerned and whether he or she is married or unmarried;
- (b) where the marriage concerned is governed by the law in force in Namibia, state whether the marriage is in or out of community of property or is a marriage governed by the Recognition of Certain Marriages Act, 1991 (Act 18 of 1991);
- (c) where the marriage of the person concerned is in community of property or is governed by the Recognition of Certain Marriages Act, 1991, state the full names of his or her spouse; and
- (d) where the marriage concerned is governed by the law of any country other than Namibia, state that the marriage is governed by the law of that country and state the full names of his or her spouse.

(3) Where a marriage in community of property or governed by the Recognition of Certain Marriages Act, 1991, has been dissolved by the death of one of the spouses before property or a mortgage or notarial bond which on transfer or cession thereof would have formed part of the joint estate could be transferred or ceded, that property, mortgage, or notarial bond shall be transferred or ceded to the joint estate of the spouses, pending the administration thereof, and is, subject to the provisions of any disposition with regard to that property, deemed to be the joint property of the surviving spouse and of the estate of the deceased spouse.

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(4) If immovable property, a real right in immovable property, or a notarial bond forming part of a joint estate is registered in the deeds registry in the name of one of the spouses, the registrar shall on the written application of either of the spouses, or a conveyancer as his or her duly authorized agent, if the registrar is satisfied as to the relevant facts, endorse on the relevant deed or bond or, if such deed or bond cannot be produced to him or her due to the other spouse's refusal to produce such deed or bond in his or her possession or under his or her control, only on the registry duplicate thereof and in the appropriate registers -

- (a) the full name of such other spouse; and
- (b) that the spouses are married in community of property or, where applicable, that the marriage of the spouses is governed by the Recognition of Certain Marriages Act, 1991.

(5) A transfer, cession, or registration referred to in subsection (1) in the name of a husband and wife shall not constitute in the case of agricultural land referred to in section 3 of the Subdivision of Agricultural Land Act, 1970 (Act 70 of 1970), an act to which that section is applicable.

(6) A person married in terms of a marriage the legal consequences of which are governed by the law of any country other than Namibia -

- (a) shall be assisted by his or her spouse in executing any deed or other document required or permitted to be executed or registered in the deeds registry or required or permitted to be produced in connection with any such deed or document; or
- (b) shall produce the consent of his or her spouse to such execution, registration, or production,

unless the assistance or consent of such spouse is in terms of this Act or on any other grounds considered by the registrar to be unnecessary."

Amendment of section 25 of Act 47 of 1937, as amended by section 10 of Act 43 of 1962.

4. Section 25 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) When the identity of all such children has been established the registrar shall make an endorsement on the title deed or bond setting out their names, whereupon the title deed or bond shall be deemed to be to and in favour of such children in the same manner as if the transfer or cession had originally been passed to them by name notwithstanding the provisions of **[subsection (3) of section seventeen]** section 17(1)."

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Amendment of section 45 of Act 47 of 1937, as amended by section 29 of Act 43 of 1957, section 19 of Act 43 of 1962 and section 4 of Proclamation AG.32 of 1985.

5. Section 45 of the principal Act is hereby amended -

(a) by the substitution for subsection (1) of the following subsection:

"(1) If immovable property or a lease under any law [**relating to land settlement**] or a bond is registered in a deeds registry in the name of the survivor of two spouses who were married in community of property or whose marriage is governed by the Recognition of Certain Marriages Act, 1991 (Act 18 of 1991), or the deceased spouse of such spouses, or in the name of the joint estate of such spouses, or in the name of both such spouses, and [**such survivor**] the surviving spouse has lawfully acquired the share of the deceased spouse in the property, lease, or bond, the registrar shall on written application by the executor in the estate of the deceased spouse and by [**such survivor**] the surviving spouse, save where [**such survivor**] the surviving spouse has signed as executor, accompanied by such other documents as may be prescribed, endorse on the title deeds of the property or on the deed of lease or on the bond that the [**survivor**] surviving spouse is entitled to deal with such property, lease, or bond, and thereupon such [**survivor**] surviving spouse shall be entitled to deal therewith as if he or she had taken formal transfer or cession into his or her own name of the share of the deceased spouse in the property, lease, or bond.";

(b) by the substitution for paragraph (c) of subsection (2) of the following paragraph:

"(c) the said bond has been passed by the [**survivor**] surviving spouse alone or by both spouses who were married in community of property or whose marriage is governed by the Recognition of Certain Marriage Act, 1991, and a written consent (which shall be in duplicate, in the prescribed form and signed by the [**survivor**] surviving spouse and the legal holder of the bond) to the release of the estate of the deceased spouse from liability under the bond and to the substitution of the [**survivor**] surviving spouse as sole debtor in respect thereof, is produced to the registrar together with the bond.";

(c) by the substitution for subsection (4) of the following subsection:

"(4) As from the date of the endorsement on the title deeds of the property in terms of subsection (1), the estate of the deceased spouse shall be absolved from any obligation secured by the bond and the [**survivor**] surviving spouse shall become sole debtor in respect thereof in the same manner as if he or she had passed the

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bond at that date and, if the bond is a bond to secure future debts, the immovable property thereby mortgaged will secure any further or future advances which are made by the mortgagee of the bond to the surviving spouse."; and

- (d) by the substitution for subsection (5) of the following subsection:

"(5) Any reference in this section to a bond shall include a charge in favour of the [Land and Agricultural Bank of South Africa, the Land and Agricultural Bank of South West Africa] Agricultural Bank of Namibia or [any Department of] the State.".

Substitution of section 45bis, as inserted by section 21 of Act 43 of 1957 and amended by section 20 of Act 43 of 1962 and section 5 of Proclamation AG.32 of 1985.

6. The following section is hereby substituted for section 45bis:

"Endorsement of deeds on divorce

45 bis (1) If immovable property or a lease under any law [relating to land settlement] or a bond is registered in a deeds registry in the name of one of two spouses or in the name of both such spouses who were married in community of property or whose marriage was governed by the Recognition of Certain Marriages Act, 1991 (Act 18 of 1991), but who have been divorced, and the person in whose name such property, lease, or bond is registered or, where such property, lease, or bond is registered in the name of both spouses, one of them has lawfully acquired the share of his or her former spouse in the property, lease, or bond, the registrar may, on written application by that person, accompanied by such documents as the registrar deems necessary, endorse on the title deeds of the property or on the lease or the bond that such person is entitled to deal with such property, lease, or bond, and thereupon such person shall be entitled to deal therewith as if he or she had taken formal transfer or cession into his or her own name of the share of the former spouse or his or her spouse, as the case may be, in the property, lease, or bond.

(1A) If immovable property or a lease under any law or a bond is registered in the deeds registry in the name of both spouses who were married in community of property or whose marriage was governed by the Recognition of Certain Marriages Act, 1991, but who have been divorced, and such property, lease, or bond accrues to both the former spouses in undivided shares in terms of the division of the joint estate, the registrar may on written application by any of the spouses, accompanied by such documents as the registrar deems necessary, endorse on the title deeds of such property, or on the lease or bond or, if such deed, lease, or bond cannot be produced by such spouse due to the other spouse's refusal to produce the deed, lease, or bond in his or her possession or under his or her control, only on the registry duplicate

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thereof, that such spouses are entitled to deal with such property, lease, or bond, and thereupon such spouses shall be entitled to deal therewith as if they had taken formal transfer or cession into their names of their respective shares in such property, lease, or bond.

(2) (a) If immovable property referred to in subsection (1) is hypothecated under a registered mortgage bond, the provisions of subsections (3) and (4) of section 45 shall *mutatis mutandis* apply.

(b) If immovable property referred to in subsection (1A) is hypothecated under a registered mortgage bond, the endorsement provided for in the said subsection shall not be made unless -

(i) such bond is cancelled; or

(ii) the said property or the share of the other spouse therein is released from the bond; or

(iii) the former spouses jointly and severally assume liability in writing (in the prescribed form and signed by both such spouses and the legal holder of the bond) for all the indebtedness and renounce the exception de duobus vel pluribus reis debendi.

(3) The reference in subsection (2) to a bond shall include a charge in favour of the [Land and Agricultural Bank of South Africa or the Land and Agricultural Bank of South West Africa] Agricultural Bank of Namibia or [any Department of] the State."

Insertion of section 45ter in Act 47 of 1937

7. The following section is hereby inserted in the principal Act after section 45bis:

"Endorsement of deeds where a spouse is entitled in terms of section 8 of the Married Persons Equality Act, 1995, to immovable property forming part of the joint estate.

45ter. Where during the subsistence of the marriage of a spouse is entitled, as a result of a settlement made to such spouse in terms of section 8 of the Married Persons Equality Act, 1995, to immovable property forming part of the joint estate, the registrar shall on the written application of that spouse, accompanied by such documents as the registrar deems necessary and if the registrar is satisfied as to the relevant facts, endorse on the relevant title deed or, if such deed cannot be produced by such spouse due to the other spouse's refusal to produce the deed in his or her possession or under his or her control, only the registry duplicate thereof and in the relevant registers, that the spouse to whom the settlement in question

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was made is entitled to deal with such immovable property, and thereupon such spouse shall, subject to subsection (5) of the said section 8, be entitled to deal therewith as if he or she had taken formal transfer in his or her name of such property."

Repeal of section 94 of Act 47 of 1937

8. Section 94 of the principal Act is hereby repealed.

Amendment of section 102 of Act 47 of 1937, as amended by section 12 of Act 3 of 1972, section 7 of Proclamation AG.32 of 1985 and section 13 of Act 26 of 1985.

9. Section 102 of the principal Act is hereby amended -

(a) by the substitution for the definition of "Minister" of the following definition:

"'Minister' means the Minister of Lands, Resettlement and Rehabilitation;"; and

(b) by the substitution for the definition of "owner" of the following definition:

"'owner' means, in relation to -

(a) immovable property, real rights in immovable property and notarial bonds, subject to paragraph (b), the person registered as the owner or holder thereof and includes the trustee in an insolvent estate, the liquidator of a company or a close corporation which is an owner or a holder and the representative recognized by law of any owner or holder who has died or who is a minor or of unsound mind or is otherwise under disability, provided such trustee, liquidator, or legal representative is acting within the authority conferred on him or her by law;

(b) immovable property, real rights in immovable property and notarial bonds -

(i) which are registered under section 17 in the name of both spouses, either one of the spouses acting with the consent of the other spouse; and

(ii) which are registered in the name of only one spouse and which form part of the joint estate of both spouses, either one of the spouses acting with the written consent of the other spouse;".

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**DEEDS REGISTRIES AMENDMENT
ACT, 1996****Substitution of certain expressions in Act 47 of 1937.**

- 10.** The principal Act is hereby amended -
- (a) by the substitution for the expression "Administrator-General", wherever it occurs, of the expression "Minister"; and
 - (b) by the substitution for the expressions "the Territory", "the territory of South West Africa" and "the Republic", wherever they occur, of the expression "Namibia".

Short title and commencement.

11. This Act shall be called the Deeds Registries Amendment Act, 1995, and shall come into operation on a date to be determined by the Minister of Lands, Resettlement and Rehabilitation by notice in the *Gazette*.
