

REPUBLIC OF SOUTH AFRICA

ABOLITION OF CERTAIN TITLE CONDITIONS BILL

(As introduced in the National Assembly as a section 75 Bill; explanatory summary of Bill published in Government Gazette No. 20216 of 25 June 1999) (The English text is the official text of the Bill)

(MINISTER FOR AGRICULTURE AND LAND AFFAIRS)

[B 40—99]

REPUBLIEK VAN SUID-AFRIKA

WETSONTWERP OP DIE AFSKAFFING VAN SEKERE TITELVOORWAARDES

*(Soos ingedien in die Nasionale Vergadering as 'n artikel 75-wetsontwerp; verduidelikende opsomming van Wetsontwerp in Staatskoerant No. 20216 van 25 Junie 1999 gepubliseer)
(Die Afrikaans teks is die amptelike vertaling van die Wetsontwerp)*

(MINISTER VIR LANDBOU EN GRONDSAKE)

BILL

To provide for the abolition of certain conditions in terms of which the consent or permission of the holder of an office under the Republic, the former Union of South Africa or any of its constituent colonies or republics, is required for the alienation or transfer of immovable property from one person to another; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Abolition of conditions

1. (1) Notwithstanding anything to the contrary contained in any law, but subject to section 2, any condition registered against any title before the commencement of this 5 Act, whereby the consent or permission of the holder of an office under the Republic, the former Union of South Africa or any of its constituent colonies or republics is required for the alienation or transfer of immovable property from one person to another, is hereby abolished.

(2) The registrar of deeds concerned must, in respect of each such condition, make 10 such entries and endorsements in his or her registers or other documents as may be necessary to give effect to the provisions of subsection (1).

Exclusions from application of Act

2. Section 1 does not apply to any condition registered against a title, if such condition— 15

- (a) is imposed under any town planning scheme;
- (b) is imposed under a land use control mechanism having the effect of a town planning scheme;
- (c) affects rights to minerals;
- (d) determines a period during which a piece of land may not be alienated or 20 transferred, if such period has not expired;
- (e) determines that the ownership of a piece of land will revert to the State if that condition is breached;
- (f) determines that the State may resume ownership of a piece of land for public purposes; 25
- (g) establishes a right of pre-emption in favour of the State;
- (h) was imposed as a condition of a permit or authorisation issued in terms of the Water Act, 1956 (Act No. 54 of 1956), before the repeal of that Act by the National Water Act, 1998 (Act No. 36 of 1998):
- (i) relates to land owned by the State; or 30
- (j) relates to land of which the holder of the office in question is the nominal owner, holding it in a fiduciary capacity.

Short title

3. This is the Abolition of Certain Title Conditions Act, 1999.

MEMORANDUM ON THE OBJECTS OF THE ABOLITION OF CERTAIN TITLE CONDITIONS BILL

The Department of Land Affairs has received numerous requests from the public and from local authorities for the Minister of Land Affairs either to give consent to the transfer of land which is subject to a restrictive title condition in favour of the State, or to consent to the cancellation of the condition itself.

In terms of these conditions, the consent of the President (or one of his or her predecessors such as the Governor-General) or the Minister is required for the alienation or transfer of a piece of land from one person to another. Examples of such conditions are:

‘that the land hereby granted or any part thereof shall not be transferred to any owner or owners thereof except with the permission in writing of the Governor of Natal’; and

“that the land hereby granted shall not be alienated or transferred to any person unless the consent of the Governor-General shall have been first had and obtained”.

In relation to some of the enquiries it is also not clear whether the Minister of Land Affairs is in law the competent authority to grant such consent. In many cases it is virtually impossible to establish who is the current successor to the functionary mentioned in the title deed (eg the Governor of Natal). This not only involves a lot of time-consuming research, but also creates legal uncertainty.

In certain categories of cases, the requirement of consent is no more than the relic of an historical situation which is no longer relevant. In these cases, the granting of consent is a pure technicality. However, complying with this technicality takes a good deal of the time of staff in the Departments concerned, and delays the development and use of the land. The Bill has thus been prepared to provide for the abolition of those types of conditions.

The intention is not to derogate from other legislation making provision for the cancellation, amendment or suspension of conditions, such as the Removal of Restrictions Act, 1967 (Act No. 84 of 1967), or section 2A of the State Land Disposal Act, 1961 (Act No. 48 of 1961), hence the need for clause 2 of the Bill which contains certain exclusions. These address conditions regarding the change of land use, town planning scheme restrictions, rights to minerals, periods during which land may not be alienated or transferred, and rights of resumption by the State (in which cases the consent or permission of the President or relevant Minister must still be obtained).

The Bill does not in any way affect the usual requirement that land can not be transferred without the consent of the registered owner. In those cases where the Minister of Land Affairs holds land registered in the name of the State (eg former SADT land or State land in the former homelands) or where he or she is the nominal owner of land (eg land held in trust for a community or tribe), the consent or permission of the Minister will still be required for the alienation or transfer of such land. The same applies to land owned by the State through other Department, for example the Department of Public Works.

DEPARTMENTS/BODIES/PERSONS CONSULTED

Chief Registrar of Deeds
Department of Agriculture
Department of Housing
Department of Public Works
Department of Water Affairs and Forestry

IMPLICATIONS FOR PROVINCES

None.

IMPLICATIONS FOR MUNICIPALITIES

None

FINANCIAL IMPLICATIONS FOR THE STATE

None.

PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department of Land Affairs are of the opinion that the Bill must be dealt with in accordance with section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.