

CONVERSION OF CERTAIN RIGHTS INTO LEASEHOLD OR OWNERSHIP ACT NO. 81 OF 1988

[ASSENTED TO 6 JULY, 1988]

[DATE OF COMMENCEMENT: 1 JANUARY, 1989]

(Afrikaans text signed by the State President)

as amended by

General Law Second Amendment Act, No. 108 of 1993
[with effect from 1 August, 1993]

Development Facilitation Act, No. 67 of 1995

GENERAL NOTE

In terms of Proclamation No. 41 of 26 July, 1996, the administration of Act No. 81 of 1988 has been assigned to this Province.

ACT

To provide for the conversion of certain rights of occupation into leasehold or ownership and for matters connected therewith.

ARRANGEMENT OF SECTIONS

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[Long title substituted by s. 22 of Act No. 108 of 1993.]

1. Definitions.—In this Act, unless the context otherwise indicates—

“**Administrator**”, in relation to any matter referred to in this Act, means the Administrator-in-executive committee of the province in which that matter is to be dealt with;

“**affected site**” means a site which is or purports to be occupied by virtue of a site permit, a certificate, a trading site permit, or a permit issued by the local authority concerned conferring upon the holder thereof rights which in the opinion of the secretary concerned are similar to the rights which are held by the holder of a site permit, certificate or trading site permit;

“**certificate**” means a certificate of occupation issued under regulation 8 (1) of Chapter 2 of the regulations;

“**competent person**”

[Definition of “competent person” deleted by s. 15 (b) of Act No. 108 of 1993.]

“**development area**”

[Definition of “development area” deleted by s. 15 (b) of Act No. 108 of 1993.]

"Director-General" means the director-general of the provincial administration in question;
[Definition of "Director-General" inserted by s. 15 (a) of Act No. 108 of 1993.]

"formalized township" means a formalized township as defined in section 1 (1) of the Upgrading of Land Tenure Rights Act, 1991 (Act No. 112 of 1991);
[Definition of "formalized township" inserted by s. 15 (c) of Act No. 108 of 1993.]

"local authority" means a local authority established under the Black Local Authorities Act, 1982 (Act No. 102 of 1982), and includes an Administrator or public authority referred to in section 3 or 5 of the Abolition of Development Bodies Act, 1986 (Act No. 75 of 1986);

"prescribed" means prescribed by regulation under section 9;

"principal Act" means the Black Communities Development Act, 1984 (Act No. 4 of 1984);

"publish", in relation to a notice, means the publication of the notice—

(a) by publishing it either in the *Official Gazette* of the province concerned or in an Afrikaans and in an English newspaper circulating in the area concerned; and

(b) by affixing it at a prominent place at the office of the local authority concerned and at such other public buildings in the area concerned as the Director-General may determine;

[Definition of "publish" substituted by s. 15 (d) of Act No. 108 of 1993.]

"registrar" means a registrar as defined in section 102 of the Deeds Registries Act, 1937 (Act No. 47 of 1937);

"right of leasehold" means a right of leasehold as defined in section 1 of the principal Act, and **"leasehold"** has a corresponding meaning;

"secretary"

[Definition of "secretary" deleted by s. 15 (e) of Act No. 108 of 1993.]

"site" means a leasehold site as defined in section 1 of the principal Act, and includes premises referred to in section 52 (5) of that Act;

"site permit" means a permit issued under regulation 6 (1) of Chapter 2 of the regulations;

"the regulations" means the regulations referred to in the Schedule;

"this Act" includes the regulations made under section 9;

"township register" means a register referred to in section 46 (1) of the Deeds Registries Act, 1937;

[Definition of "township register" inserted by s. 15 (f) of Act No. 108 of 1993.]

"trading site" means a site set apart under the regulations for allotment to a trader for trading, business or professional purposes, the building upon which site has been erected or acquired by the holder of the trading site permit in respect of the site;

"trading site permit" means a permit issued by a local authority allowing the person named therein to occupy a trading site.

2. Inquiry as to rights of leasehold.—(1) The Director-General shall conduct an inquiry in the prescribed manner in respect of affected sites within his province in order to determine who shall be declared to have been granted a right of leasehold or, in the case where the affected sites are situated in a formalized township for which a township register has been opened, ownership with regard to such sites.

[Sub-s. (1) substituted by s. 16 (a) of Act No. 108 of 1993.]

(2) Before the commencement of such inquiry the Director-General shall, after satisfying himself as to the identity of the affected site and of the person appearing from the records of the local authority concerned to be the occupier of that site, and, in respect of premises referred to in section 52 (5) of the principal Act, is in possession of an aerial photograph or plan of the premises concerned, certified as provided in section 52 (5) (a) of that Act, publish a notice indicating that such inquiry is to be conducted.

(3) For the purposes of the declaration under subsection (1) the Director-General may—

(a) give effect to any agreement or transaction in relation to the rights of a holder contemplated in subsection (4) (a) or (b) in respect of the site concerned, between such holder and any other person;

[Para. (a) substituted by s. 16 (b) of Act No. 108 of 1993.]

(b) give effect to any such agreement or transaction, or to any settlement or testamentary disposition in respect of such rights, entered into or made before the death of the last such holder;

(c) consider any intestate heir of the last such holder to have been granted a right of leasehold or, in the

case where that site is situate in a formalized township for which a township register has been opened, ownership in respect of the site concerned;

[Para. (c) substituted by s. 16 (c) of Act No. 108 of 1993.]

- (d) give effect to any court order or sale in execution in relation to the site concerned,

notwithstanding that such agreement, transaction, settlement, testamentary disposition or intestate succession could not by virtue only of the provisions of the regulations have been entered into or made or was entered into or made without the approval of any person whose approval would have been required under the regulations, and notwithstanding that the site permit, certificate or trading site permit concerned had lapsed upon the death of such holder.

[Sub-s. (3) amended by s. 16 (d) of Act No. 108 of 1993.]

(4) At the conclusion of the inquiry and after having considered any relevant claim or objection, the Director-General shall, if he is satisfied that the person concerned is, subject to the provisions of subsection (3), in respect of the site concerned—

- (a) the holder of a site permit, certificate or trading site permit; or
(b) the holder of rights which in the opinion of the Director-General are similar to the rights of the holder of a site permit, certificate or trading site permit,

determine whom he intends to declare to have been granted a right of leasehold or, in the case where that site is situate in a formalized township for which a township register has been opened, ownership in respect of the site concerned.

[Sub-s. (4) substituted by s. 16 (e) of Act No. 108 of 1993.]

(5) Whenever he has made a determination as contemplated in subsection (4), the secretary shall publish a notice stating—

- (a) that such a determination has been made in respect of the site stated in the notice;
[Para. (a) substituted by s. 16 (f) of Act No. 108 of 1993.]
(b) that the prescribed particulars of that determination are open to inspection for a period of 14 days as from the date of the publication of the notice at the prescribed place;
[Para. (b) substituted by s. 16 (g) of Act No. 108 of 1993.]
(c) that that determination shall be subject to appeal to the Administrator concerned in the prescribed manner; and
(d) that, subject to any decision of the Administrator concerned on appeal, the person concerned shall be declared to have been granted a right of leasehold or, in the case where that site is situate in a formalized township for which a township register has been opened, ownership in respect of the site concerned.

[Para. (d) substituted by s. 16 (h) of Act No. 108 of 1993.]

3. Appeals.—(1) Any person who considers himself aggrieved by any determination contemplated in section 2 (4) may, within such period and in such manner as may be prescribed, appeal against that determination to the Administrator concerned, who may, after investigation of the appeal and with due regard to the provisions of section 2 (3) and (4), confirm, set aside or vary the determination or make such other determination as in his opinion should have been made.

(2) Any person who feels aggrieved by a decision of the Administrator under subsection (1), may within a period of 30 days from the date upon which he has been informed of the Administrator's decision, appeal to a competent court against that decision by lodging with the registrar of that court a notice of appeal setting out in full his grounds of appeal.

(3) Any person who appeals in terms of subsection (2) shall, when lodging such notice of appeal, deposit with the registrar concerned an amount of R200 as security for the costs of the appeal and shall on the same day deliver or send to the secretary a copy of the notice of appeal.

(4) The Director-General shall, within a period of 30 days from the date upon which he has received the notice of appeal referred to in subsection (2), send to the registrar referred to in that subsection in respect of the enquiry concerned—

- (a) the documentary evidence admitted at the enquiry;
(b) a statement of the decision of the Administrator and the reasons for such decision;
(c) any observations which the Administrator may wish to make.

(5) An appeal in terms of subsection (2) shall be prosecuted as if it were an appeal from a judgment of a magistrate's court in a civil matter, and all rules applicable to the hearing of such appeal shall *mutatis mutandis*

apply to an appeal under this section.

(6) The court hearing an appeal under this section may confirm or set aside the decision or make such other determination as in its opinion should have been made by the Administrator.

(7) The registrar shall without delay furnish the Director-General with a copy of the order of court.

4. Granting of leasehold or ownership.—(1) The Director-General shall upon the expiry of the period specified for appeal under section 3 (1) or, in the case of such appeal, on the confirmation, variation or substitution of the determination referred to in section 2 (4), in the prescribed manner declare the person concerned to have been granted—

- (a) a right of leasehold in respect of the affected site concerned under section 52 (1) of the principal Act, whereupon that person shall be deemed for all purposes to have been granted a right of leasehold under the said section 52 (1); or
- (b) in the case where the affected site is situate in a formalized township for which a township register has been opened, ownership in respect of the affected site concerned.

(2) The provisions of section 52 (4) of the principal Act shall not apply in respect of any leasehold contemplated in subsection (1).

[S. 4 substituted by s. 17 of Act No. 108 of 1993.]

5. Registration of leasehold or transfer of ownership.—(1) Whenever the Director-General has made a declaration—

- (a) in terms of section 4 (1) (a), he shall lodge such declaration and every deed and other document necessary for the registration of the right of leasehold concerned with the registrar concerned, who shall—
 - (i) for the purposes of registration, accept that the particulars contained in the declaration are correct; and
 - (ii) without the production of any certificate to the effect that the levies or charges in respect of the affected site concerned have been paid to the local authority, register the right of leasehold in favour of the person mentioned in the declaration;
- (b) in terms of section 4 (1) (b), he shall lodge such declaration and a deed of transfer, on the form prescribed for that purpose under the Deeds Registries Act, 1937 (Act No. 47 of 1937), and made out in the name of the person mentioned in the declaration, with the registrar concerned.

[Para. (b) substituted by s. 68 of Act No. 67 of 1995.]

(1A) (a) A deed of transfer referred to in subsection (1) (b) shall be prepared by—

- (i) a conveyancer; or
- (ii) if the owner of the affected site is the State or any local government body, any officer in the public service or person in the employ of such local government body, as the case may be, who has been designated for the purpose by the Minister of Land Affairs, a Premier or a local government body, as the case may be.

(b) A deed of transfer referred to in subsection (1) (b) shall be in the form prescribed under the Deeds Registries Act, 1937, and shall be signed by the owner of the affected site or his or her duly authorised agent in the presence of a conveyancer referred to in paragraph (a) (i) or officer or person referred to in paragraph (a) (ii) in the manner prescribed under that Act.

(c) An officer or person referred to in paragraph (a) (ii)—

- (i) shall disclose the fact that the deed of transfer referred to in subsection (1) (b), or any power of attorney, application or consent, which may be required by the registrar for the purposes of the registration of the transfer was prepared by him or her, by signing an endorsement to that effect on the deed of transfer, power of attorney, application or consent, as the case may be, and by virtue of such signing accepts, *mutatis mutandis*, in terms of section 15A (1) and (2) of the Deed Registries Act, 1937, responsibility for the correctness of the facts stated in any such document; and
- (ii) may, despite anything to the contrary contained in any other law, perform all of the functions of a conveyancer in relation to the registration of a deed of transfer as contemplated in this section.

(d) A conveyancer, officer or person referred to in paragraph (a) shall lodge the deed of transfer together with the necessary supporting documents at a deeds registry in the manner prescribed under the Deed Registries Act, 1937.

(e) The registrar shall deal with a deed of transfer and the other documents referred to in paragraph (d) as if such deed of transfer were executed in the presence of the registrar in terms of section 20 of the Deed Registries Act, 1937.

Act, 1937.

(f) Ownership of the affected site shall be deemed to have been transferred on the date of registration by the registrar of a deed of transfer referred to in subsection (1) (b).

(g) Section 17 (1) and (2) of the Deed Registries Act, 1937, shall not apply to and no transfer duty or stamp duty shall be payable in respect of the transfer of ownership of the affected site in terms of this section.

(h) Sections 4 (2) and 5 (1) (a) (ii) shall *mutatis mutandis* apply in respect of a deed of transfer referred to in subsection (1) (b).

[Sub-s. (1A) inserted by s. 68 of Act No. 67 of 1995.]

(2) If the occupier of a site is not the holder of the right of leasehold or the owner in respect of it, the Director-General shall not act in terms of subsection (1) unless he is satisfied that the amount of any *bona fide* improvements on the site that have been effected by that occupier has been assessed in the prescribed manner and paid to that occupier, or that security to the satisfaction of the Director-General has been furnished for the payment of that amount.

(3) (a) Sections 10 (1) (q) and 16A of the Deeds Registries Act, 1937, shall apply in respect of the said right of leasehold as if it were a right of leasehold referred to in those sections.

(b)

[Para. (b) deleted by s. 68 of Act No. 67 of 1995.]

(4) The Director-General shall for the purposes of any registration in terms of this section be deemed to be the duly authorized representative of the local authority concerned.

[S. 5 substituted by s. 18 of Act No. 108 of 1993.]

6. Certain persons to be lessees.—(1) The holder—

(a) of a residential permit or hostel permit referred to in the regulations, or of a permit issued by a local authority allowing the person mentioned therein to occupy a site set apart under those regulations for allotment to a trader for trading, business or professional purposes, the building upon which site is leased to that holder by the local authority, shall from the commencement of this Act;

(b) of a site permit, certificate or trading site permit or of rights referred to in section 2 (4) (b) who has not prior to a date to be determined by the Administrator concerned in respect of a particular area (which date shall not be earlier than the date upon which the Director-General has completed the inquiry contemplated in section 2 (1) to the satisfaction of the Administrator) become the holder of a right of leasehold or an owner, shall from such date; or

[Para. (b) substituted by s. 19 (a) of Act No. 108 of 1993.]

(c) of a site permit, certificate or trading site permit or of rights referred to in section 2 (4) (b) in respect of a site in an area defined in a proclamation under section 2 (2) of the principal Act, shall from the commencement of this Act, or if such a proclamation is issued after the commencement of this Act, from the date of such proclamation,

[Para. (c) substituted by s. 19 (b) of Act No. 108 of 1993.]

and subject to the provisions of subsection (2), be the lessee, and the local authority concerned shall be the lessor, of the site or accommodation concerned: Provided that nothing in this subsection contained shall be construed as derogating from any right that the holder of a site permit, certificate, trading site permit or rights contemplated in section 2 (4) (b) might have acquired by virtue of the provisions of the regulations.

[Sub-s. (1) amended by s. 19 (c) of Act No. 108 of 1993.]

(2) Subject to any by-laws relating to letting that may apply to the site or accommodation concerned, a lease contemplated in subsection (1)—

(a) may be terminated by the lessee on three months' written notice;

(b) shall be subject to the payment of rental by the lessee to the lessor in an amount equal to the amount paid by the lessee immediately before the commencement of this Act in respect of the site or accommodation concerned unless such amount is varied by agreement.

7. Director-General's powers of investigation.—(1) For the purposes of the application of this Act a Director-General may, after due notice, at all reasonable times enter such premises where any record, book or document which relates to or is suspected to relate to matters dealt with in this Act by any local authority, is kept, and may examine or make copies of or extracts from any such record, book or document and require from any person who has control over such record, book or document an explanation of any entry in any such record, book or document.

(2) Any person who hinders or obstructs a Director-General in the performance of his functions in terms of subsection (1), or who refuses or fails to comply to the best of his ability with such requirement made by a Director-

General, shall be guilty of an offence and liable on conviction to a fine not exceeding R500 or to imprisonment for a period not exceeding six months.

8. Limitation of liability.—No person, including the State, shall be liable in respect of anything done in good faith in the exercise or performance of a power or duty conferred or imposed by or under this Act.

9. Regulations.—An Administrator may in relation to his province make regulations as to—

- (a) any matter which in terms of this Act is required or permitted to be prescribed;
- (b) the form of any notice or document relating to a matter referred to in this Act;
- (c) the manner of hearing of any appeal referred to in section 3;
- (d) the procedure to be followed in the service of any document or notice under this Act; and
- (e) in general, any other matter which he considers necessary or expedient to prescribe in order that the purposes of this Act may be achieved.

10. Delegation of powers.—(1) An Administrator may delegate any power conferred upon him by or under this Act, other than the power under section 9 to make regulations, to an officer in the provincial administration concerned.

(2) The Director-General may, with the approval of the Administrator, delegate any power conferred upon him by or under this Act to an officer in his provincial administration or to any person appointed by him under the authority of this subsection for the purpose.

(3) A delegation under subsection (1) or (2) shall not prevent the exercise of the relevant power by the Administrator or the Director-General himself, as the case may be.

11. Retention of rights.—(1) The holder of a site permit, certificate, trading site permit or rights contemplated in section 2 (4) (b) shall, notwithstanding the repeal of the regulations by this Act but subject to the provisions of any other law, and until a right of leasehold or the transfer of ownership in respect of the site concerned has been registered or until he has become a lessee under section 6 (1) (c), as the case may be, have the same rights that he would have had in respect of that site in terms of the regulations as if they were not repealed by this Act.

[Sub-s. (1) substituted by s. 20 of Act No. 108 of 1993.]

(2) Nothing in this Act contained shall be construed as prohibiting any person from acquiring of his own accord a right of leasehold or ownership in respect of a site.

(3) Any *bona fide* act purporting to have been done in terms of the regulations in an area where those regulations did not apply, shall be deemed to have been validly done.

12. Repeal of certain Government Notices.—Notwithstanding the provisions of section 66 (3) of the principal Act, the Government Notices set out in the Schedule are hereby repealed.

12A. Duration of Act.—This Act shall cease to have effect on a date fixed by the State President by proclamation in the *Gazette*.

[S. 12A inserted by s. 21 of Act No. 108 of 1993.]

13. Short title and commencement.—This Act shall be called the Conversion of Certain Rights into Leasehold or Ownership Act, 1988, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

[S. 13 substituted by s. 24 of Act No. 108 of 1993.]

SCHEDULE

GOVERNMENT NOTICES REPEALED (SECTION 12)

	<i>Subject matter</i>
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Government Notice No. R.1036 of 14 June 1968	Regulations Governing the Control and Supervision of an Urban Black Residential Area and Relevant Matters
Government Notice No. R.1153 of 28 June 1968	Amendment of the Regulations Governing the Control and Supervision of an Urban Black Residential Area and Relevant Matters
Government Notice No. R.1267 of 26 July 1968	Regulations Governing the Control and Supervision of an Urban Black Residential Area and Relevant Matters
Government Notice No. R.1306 of 31 July 1968	Regulations Governing the Control and Supervision of an Urban Black Residential Area and Relevant Matters
Government Notice No. R.1830 of 8 October 1971	Regulations Governing the Control and Supervision of an Urban Black Residential Area and Relevant Matters
Government Notice No. R.2081 of 19 November 1971	Amendment of the Regulations Governing the Control and Supervision of an Urban Black Residential Area and Relevant Matters
Government Notice No. R.2083 of 19 November 1971	Amendment of the Regulations Governing the Control and Supervision of an Urban Black Residential Area and Relevant Matters
Government Notice No. R.891 of 26 May 1972	Amendment of the Regulations Governing the Control and Supervision of an Urban Black Residential Area and Relevant Matters
Government Notice No. R.2486 of 28 December 1973	Regulations Governing the Control and Supervision of an Urban Black Residential Area and Relevant Matters
Government Notice No. R.764 of 7 May 1976	Amendment of the Regulations Governing the Control and Supervision of an Urban Black Residential Area and Relevant Matters
Government Notice No. R.1265 of 23 July 1976	Amendment of the Regulations Governing the Control and Supervision of an Urban Black Residential Area and Relevant Matters
Government Notice No. R.1660 of 26 August 1977	Amendment of the Regulations Governing the Control and Supervision of an Urban Black Residential Area and Relevant Matters
Government Notice No. R.2292 of 4 November 1977	Amendment of the Regulations Governing the Control and Supervision of an Urban Black Residential Area and Relevant Matters
Government Notice No. R.2321 of 11 November 1977	Regulations Governing the Control and Supervision of an Urban Black Residential Area and Relevant Matters
Government Notice No. R.2488 of 2 December 1977	Amendment of the Regulations Governing the Control and Supervision of an Urban Black Residential Area and Relevant Matters
Government Notice No. R.2612 of 30 December 1977	Amendment of the Regulations Governing the Control and Supervision of an Urban Black Residential Area and Relevant Matters
Government Notice No. R.1922 of 22 September 1978	Amendment of the Regulations Governing the Control and Supervision of an Urban Black Residential Area and Relevant Matters
Government Notice No. R.1071 of 25 May 1979	Amendment of the Regulations Governing the Control and Supervision of an Urban Black Residential Area and Relevant Matters
Government Notice No. R.1072 of 25 May 1979	Amendment of the Regulations Governing the Control and Supervision of an Urban Black Residential Area and Relevant Matters
Government Notice No. R.1258 of 15 June 1979	Amendment of the Regulations Governing the Control and Supervision of an Urban Black Residential Area and Relevant Matters
Government Notice No. R.1417 of 29 June 1979	Amendment of the Regulations Governing the Control and Supervision of an Urban Black Residential Area and Relevant Matters
Government Notice No. R.195 of 1 February 1980	Amendment of the Regulations Governing the Control and Supervision of an Urban Black Residential Area and Relevant Matters
Government Notice No. R.1866 of 12 September 1980	Amendment of the Regulations Governing the Control and Supervision of an Urban Black Residential Area and Relevant Matters
Government Notice No. R.1970 of 26 September 1980	Amendment of the Regulations Governing the Control and Supervision of an Urban Black Residential Area and Relevant Matters
Government Notice No. R.1975 of 18 September 1981	Amendment of the Regulations Governing the Control and Supervision of an Urban Black Residential Area and Relevant Matters
Government Notice No. R.133 of 29 January 1982	Amendment of the Regulations Governing the Control and Supervision of an Urban Black Residential Area and Relevant Matters
Government Notice No. R.1239 of 25 June 1982	Amendment of the Regulations Governing the Control and Supervision of an Urban Black Residential Area and Relevant Matters
Government Notice No. R.1999 of 17 September 1982	Amendment of the Regulations Governing the Control and Supervision of an Urban Black Residential Area and Relevant Matters

Government Notice No.
R.2733 of 17 December
1982

Amendment of the Regulations Governing the Control and
Supervision of an Urban Black Residential Area and
Relevant Matters
