

PRESIDENT'S OFFICE

No. 598.
12 April 1996

NO. 11 OF 1996: DEEDS REGISTRIES AMENDMENT ACT, 1996.

It is hereby notified that the President has assented to the following Act which is hereby published for general information:-

GENERAL EXPLANATORY NOTE:

** ** Words between asterisks indicate omissions from existing enactments.

<< >> Words between pointed brackets indicate insertions in existing enactments.

ACT

To amend the Deeds Registries Act, 1937, so as to further regulate the registration of notarial deeds; to further regulate the registration of immovable property in the name of married persons; to further regulate transfer or cession by endorsement; to delete a provision which provides that certain provisions of the Deeds Registries Act, 1937, do not apply to State land; to further regulate the endorsement of deeds on divorce, division of joint estates and change of matrimonial property systems; to further regulate registration of deeds in the event of the partition of rights to minerals; to further regulate the registration of postnuptial agreements; and to define or further define certain expressions; and to provide for matters connected therewith.

(Afrikaans text signed by the President.)
(Assented to 3 April 1996.)

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

Amendment of section 3 of Act 47 of 1937, as substituted by section 2 of Act 87 of 1965 and amended by section 1 of Act 41 of 1977, section 1 of Act 92 of 1978, section 1 of Act 44 of 1980, section 3 of Act 27 of 1982, section 28 of Act 88 of 1984, section 2 of Act 14 of 1993 and section 9 of Act 122 of 1993

1. Section 3 of the Deeds Registries Act, 1937 (hereinafter referred to as the principal Act), is hereby amended by the substitution for paragraph (k) of subsection (1) of the following paragraph:

"(k) register antenuptial contracts, including orders under section 20, and contracts contemplated in section 21, of the Matrimonial Property Act, 1984, and register such **notarial deeds of donation (including a donation to be held in trust) and such other** notarial deeds having reference to persons and property within the area served by the registry in question as are required or permitted by law to be registered;"

Amendment of section 17 of Act 47 of 1937, as substituted by section 29 of Act 88 of 1984 and amended by section 1 of Act 75 of 1987 and section 9 of Act 14 of 1993

2. Section 17 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:

"<<(4) Where immovable property, a real right in immovable property, a bond or a notarial bond-

(a) is registered in the name of a person who has married since the registration took place; or

- (b) is registered in the name of a person who on the date of the registration was married out of community of property or whose marriage was on that date governed by the law of another country, and whose marriage was subsequently dissolved by death or divorce; or
- (c) forms an asset in a joint estate and was registered prior to 1 November 1984 in the name of the husband only,

the registrar shall on the written application by the person concerned and on the submission of the deed in question and of proof of the relevant facts, endorse the change in status or make a note to the effect that the said person is a party to a marriage in community of property, as the case may be: Provided that where there are two or more mutually dependant deeds, all such deeds must be submitted for endorsement>>.".

Amendment of section 24bis of Act 47 of 1937, as inserted by section 9 of Act 43 of 1962 and amended by section 9 of Act 87 of 1965

3. Section 24bis of the principal Act is hereby amended by the deletion of paragraph (iv) of the proviso to subsection (3).

Amendment of section 43 of Act 47 of 1937, as amended by section 19 of Act 43 of 1957

4. Section 43 of the principal Act is hereby amended by the deletion of paragraph (b) of subsection (5).

Amendment of section 45 of Act 47 of 1937, as amended by section 20 of Act 43 of 1957, section 19 of Act 43 of 1962, section 31 of Act 88 of 1984, section 2 of Act 24 of 1989 and section 14 of Act 14 of 1993

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

- (a) by the substitution for subsection (I) of the following subsection:

"(1) If immovable property, ****or**** a lease under any law relating to land settlement or a bond, <<which forms an asset in a joint estate>> is registered in a deeds registry ****in the name of the survivor of two spouses who were married in community of property, or in the name of the joint estate of such spouses, or in the name of both such spouses**** and 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 the surviving spouse save where 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 surviving spouse is entitled to deal with such property, lease or bond, and thereupon ****he**** <<such 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 in the Afrikaans text for paragraph (a)bis of subsection (2) of the following paragraph:

"(a)bis daardie goed of die aandeel van die oorlede ****eggenoot**** <<gade>> daarin van die verband vrygestel word; of";

- (c) by the deletion of paragraph (b) of subsection (2);

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

"(c) **the said bond has been passed by the survivor alone or by both spouses who were married in community of property, and** a written consent (which shall be in duplicate, in the prescribed form and signed by the survivor 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 as sole debtor in respect thereof, is produced to the registrar together with the bond.";

(e) by the substitution for subsection (3) of the following subsection:

"(3) The registrar shall, in any case of release and substitution in terms of paragraph (c) of subsection (2), when he <<or she>> endorses on the title deeds of the property that the survivor is entitled to deal therewith-

- (a) make in the appropriate register an entry setting forth that the estate of the deceased spouse is released from liability in respect of the obligation secured by the bond and that the survivor has become sole debtor in respect of the bond; <<and>>
- (b) **annex one duplicate of the written consent referred to in the said paragraph to the bond and file the other with the registry duplicate of the bond; and
- (c) ** endorse on the bond that the estate of the deceased spouse is released from liability in respect of the obligation secured thereby and that the survivor has become sole debtor in respect of the bond."; and

(f) by the substitution in die Afrikaans text for subsection (4) of the following subsection:

"(4) Vanaf die datum van die aantekening op die titelbewyse van die goed ingevolge subartikel (1), is die boedel van die oorlede **eggenoot** <<gade>> bevry van enige verbintenis wat deur die verband verseker is, en word die langsliewende **eggenoot** <<gade>> die enigste skuldenaar ten aansien daarvan, net asof hy <<of sy>> die verband op daardie datum gepasseer het en, indien die verband 'n verband tot versekering van toekomstige skulde is, sal die onroerende goed daarin verbind versekering verskaf vir enige verdere of toekomstige voorskotte wat deur die houër van die verband aan die langsliewende **eggenoot** <<gade>> gemaak word.".

Amendment of section 45bis of Act 47 of 1937, as inserted by section 21 of Act 43 of 1957, substituted by section 2 of Act 75 of 1987 and amended by section 3 of Act 24 of 1989 and section 15 of Act 14 of 1993

6. Section 45bis of the principal Act is hereby amended-

(a) by the substitution for subsections (1) and (1A) of the following subsections, respectively:

"(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** <<and it->>

- (a) **were married in community of property but** <<formed an asset in a joint estate of spouses 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; or
- (b) **are or were married in community of property** <<forms or formed

an asset in a joint estate,>> and a court has made an order, or has made an order and given an authorization, under section 20 or 21 (1) of the Matrimonial Property Act, 1984 (Act No. 88 of 1984), as the case may be, in terms of which the property, lease or bond is awarded **to the person in whose name it is registered or, where the property, lease or bond is registered in the name of both spouses** to one of **them** <<the spouses>>,

the registrar may, on written application by **that person** <<the spouse concerned>> and 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** <<spouse>> is entitled to deal with such property, lease or bond, and thereupon such **person** <<spouse>> shall be entitled to deal therewith as if he <<or she>> had taken formal transfer or cession into his <<or her>> 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 relating to land settlement or a bond is registered in a deeds registry **in the name of both spouses who** <<and it->>

(a) **where married in community of property but** <<formed an asset in a joint estate of spouses 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; <<or>>

(b) **are or were married in community of property** <<forms or formed an asset in a joint estate>> and a court has made an order, or has made an order and given an authorization, under section 20 or 21 (1) of the Matrimonial Property Act, 1984 (Act No. 88 of 1984), as the case may be, in terms of which the property, lease or bond is awarded to both spouses in undivided shares,

the registrar may on written application by both spouses, accompanied by such documents as the registrar deems necessary, endorse on the title deeds of the property, or on the lease or bond, 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."; and

(b) by the substitution in the Afrikaans text in subsection (2) for subparagraph (iii) of paragraph (b) of the following subparagraph:

"(iii) die voormalige **eggenote** <<gades>> gesamentlik en afsonderlik skriftelik aanspreeklikheid (in die voorgeskrewe vorm en onderteken deur beide sodanige **eggenote** <<gades>> en die wettige verbandhouer) vir die hele skuld aanvaar en afstand doen van die eksepsie de duobus vel pluribus reis debendi.".

Amendment of section 73bis of Act 47 of 1937, as inserted by section 32 of Act 43 of 1962

7. Section 73bis of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:

"(4) Subject to the provisions of this section, the provisions of sections 21, 22, 23, 27, 28, <<30>>, 45 and 45bis shall mutatis mutandis apply in respect of deeds of partition cession.".

Amendment of section 89 of Act 47 of 1937, as substituted by section 6 of Act 3 of 1988

8. Section 89 of the principal Act is hereby amended-

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

"(b) a contract in terms of section 21 ****or 25(2) or (3)**** of the Matrimonial Property Act, 1984."; and subsections,

- (b) by the substitution for subsections (2) and (3) of the following respectively:

"(2) Where a contract in terms of section 21 ****or 25(2) (b) or (3) (b)**** of the Matrimonial Property Act, 1984, replaces ****or amends**** an existing antenuptial contract, the contract to be registered shall be accompanied by the existing contract or a certified copy thereof.

(3) Upon the registration of a contract contemplated in section 21 ****or 25(2) (b) or (3) (b)**** of the Matrimonial Property Act, 1984, the existing antenuptial contract, if any, shall be cancelled or endorsed appropriately, as the case may be, and for that purpose the registrar shall notify the registrar of the registry where the existing contract is registered and every registrar in whose registry a copy thereof is filed in terms of section 87(3).".

Amendment of section 102 of Act 47 of 1937, as amended by section 12 of Act 3 of 1972, section 22 of Act 27 of 1982, section 9 of Act 62 of 1984, section 4 of Act 75 of 1987, section 7 of Act 3 of 1988, section 6 of Act 24 of 1989, section 32 of Act 113 of 1991 and section 22 of Act 14 of 1993

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

- (a) by the insertion after the definition of "erf" of the following definition:

" '<<executor' includes any representative recognized by law of a deceased owner;>>",

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

"(a) immovable property, subject to ****paragraphs**** <<paragraph>> (b), ****and (c)**** the person registered as the owner or holder thereof and includes the trustee in an insolvent estate, a liquidator or trustee elected or appointed under the Agricultural Credit Act, 1966 (Act No. 28 of 1966), the liquidator of a company or a close corporation which is an owner and the ****representative recognized by law**** <<executor>> of any owner who has died or <<the representative regonized by law of any owner>> who is a minor or of unsound mind or is otherwise under disability, provided such trustee, liquidator, <<executor>> or legal representative is acting within the authority conferred on him <<or her>> by law;"

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

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

- (i) which are registered in the name of both spouses in a marriage in community of property, either one or both of the spouses;
- (ii) which are registered in the name of only one spouse and which forms part of the joint estate of both spouses in a marriage in community of property, either one or both of the spouses;

(iii) which are registered under section 17(1) in the name of both spouses in a marriage in community of property to which the provisions of Chapter III of the Matrimonial Property Act, 1984 (Act No. 88 of 1984), are not applicable, the husband;

(iv) which are registered in the name of only one spouse and which form part of the joint estate of both spouses in a marriage in community of property to which the provisions of Chapter III of the Matrimonial Property Act, 1984, are not applicable, the husband>>";
and

(d) by the deletion of paragraph (c) of the definition of "owner".

Substitution of certain expression

10. The principal Act is hereby amended by the substitution for the expression "Regional and Land Affairs", wherever it occurs, of the expression "Land Affairs".

Short title

11. This Act shall be called the Deeds Registries Amendment Act, 1996.