

KIMBERLEY LEASEHOLD CONVERSION TO FREEHOLD ACT 40 OF 1961

(Afrikaans text signed by the Officer Administering the Government)

*[Assented to: 26 May 1961]
[Commencement date: 30 May 1961]*

as amended by:

Kimberley Leasehold Conversion to Freehold Amendment Act 10 of 1966
Proclamation 247 / GG 4883 / 19751031
Regional and Land Affairs General Amendment Act 89 of 1993
Land Affairs General Amendment Act 11 of 1995

ACT

To provide for the transfer of the ownership of certain erven at Kimberley to the lessees or licensees thereof, for the exemption from the payment of certain duties and fees payable in connection with such transfer and the performance of certain acts in pursuance thereof, and for matters incidental thereto, and to amend the General Law Amendment Act, 1957.

BE IT ENACTED by the Queen's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa, as follows: -

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1. Definitions

In this Act, unless the context otherwise indicates -

“Bultfontein” means the following properties situated in the municipality and division of Kimberley in the province of Northern Cape and registered in favour of either the municipality or the council of the municipality of the city of Kimberley:

- (a) remainder of portion 240 of the farm Bultfontein of which a diagram, No. 9104/1958, is annexed to certificate of consolidated title No. 212/1959;
- (b) portions 241 and 242 of the farm Bultfontein of which diagrams, Nos. 3479/59 and 3480/59, are annexed to deed of transfer No. 606/1959;
- (c) erven Nos. 1, 155 and 156 of Beaconsfield Township Extension No. 1 (shown on general plan T.P. 780 LD) of which diagrams, Nos. 10066/59, 10067/59 and 10068/59, are annexed to certificate of registered title No. 727/1959; and
- (d) erven Nos. 4, 7, 18, 26 and 27 of New Park Township (shown on general plan T.P. 833 LD) of which diagrams, Nos. 4454/51, 4457/51, 4468/51, 4476/51 and 4477/51, are annexed to certificate of registered title No. 728/1959;

[Definition of “Bultfontein” amended by s. 1 of Act 11/95]

“certified general plan” means the general plan framed and certified by the Surveyor-General in terms of section three;

“deed of obligation” means any written agreement whereby an owner of an erf -

- (a) binds or hypothecates all his rights under a lease or licence of such erf in favour of another person as security for the performance of any obligation; and
- (b) undertakes to cede such lease or licence to the creditor in respect of such obligation as such security;

“Deeds Registries Act” means the [Deeds Registries Act, 1937](#) (Act No. 47 of 1937), and any regulations made thereunder;

“erf” means any piece of land included in Bultfontein and held under a lease or licence which is registered in the office of the town clerk and entitles the lessee or licensee and his successors in title to occupy such piece of land;

“Land Survey Act” means the Land Survey Act, 1927 (Act No. 9 of 1927);

“Master” means the Master of the Supreme Court of South Africa appointed for the area of jurisdiction of the division of the Supreme Court which has its seat at Kimberley;

[Definition of “Master” substituted by s. 1 of Act 11/95]

“Minister” means the Minister of Land Affairs;

[Definition of “Minister” substituted by s. 6 of Act 89/93 and s. 1 of Act 11/95]

“owner”, in relation to an erf, means any person (including the State) who and whose successors in title are under a lease or licence registered in the office of the town clerk entitled to occupy such erf and includes -

- (a) any sheriff, deputy-sheriff, messenger of the court, trustee, executor, liquidator, curator, administrator or other person lawfully entitled or required to dispose of the rights under such lease or licence; and
- (b) any person who has ceded such lease or licence as security for the performance of any obligation, but does not include any person to whom such lease or licence has been so ceded;

“prescribed” means prescribed by this Act or by regulation made under this Act;

“Registrar of Deeds” means the Registrar of Deeds stationed at Kimberley;

“Surveyor-General” means the Surveyor-General appointed in respect of the office of surveyor-general established under section 3 of the Land Survey Act, 1927 (Act No. 9 of 1927), for the region within which the district of Kimberley is situated;

[Definition of “Surveyor-General” substituted by s. 1 of Act 11/95]

“town clerk” means the town clerk of Kimberley and includes any person designated by the city council of Kimberley as town clerk for the purposes of this Act.

2. Exclusion of certain erven from certain township plans

- (1) Notwithstanding anything to the contrary contained in any other law the Surveyor-General shall alter the general plans referred to in paragraphs (c) and (d) of the definition of “Bultfontein” by excluding therefrom the erven referred to in the said paragraphs, and the said erven shall upon being so excluded be free of any conditions imposed in respect thereof under the provisions of the Townships Ordinance, 1934 (Ordinance No. 33 of 1934 (Cape)), before the repeal thereof, or under the provisions of the Land Use Planning Ordinance, 1985 (Ordinance No. 15 of 1985 (Cape)).

[Subs. (1) substituted by s. 2 of Act 11/95]

- (2) The provisions of sub-section (5) of section thirty of the Land Survey Act shall *mutatis mutandis* apply to the alteration of the said general plans in terms of sub-section (1).

3. Framing of general plan in respect of Bultfontein

- (1) As soon as practicable after the commencement of this Act the town clerk shall furnish the Surveyor-General with all such plans and other documents relating to the survey of each erf as the city council of Kimberley may have in its possession or under its control.
- (2) If the town clerk fails to comply with the provisions of sub-section (1) the Surveyor-General may -
 - (a) take such steps as he may deem necessary to enable him to frame a general plan of Bultfontein; and
 - (b) recover the costs thereby incurred by him from the city council of Kimberley.
- (3) After receipt by him of the plans and other documents referred to in sub-section (1) or the taking of steps in terms of paragraph (a) of sub-section (2), as the case may be, the Surveyor-General shall frame a general plan of Bultfontein, showing each erf and all thoroughfares, public places and other land.
- (4) In framing such general plan it shall not be necessary to comply with any regulation made under the Land Survey Act.
- (5) After the said general plan has been framed the Surveyor-General shall certify it and transmit two copies thereof to the town clerk.

4. Opening of township register

- (1) The town clerk shall within two months of the receipt by him of the copies of the certified general plan transmitted to him in terms of sub-section (5) of section three, lodge one of the said copies with the Registrar of Deeds together with the title deeds by which the city council of Kimberley holds the land to which the said plan relates.
- (2) The Registrar of Deeds shall after the receipt by him of a copy of the certified general plan and the title deeds referred to in sub-section (1) open for the erven shown on the said plan a register in which such particulars relating to each such erf as appear on the said plan shall be entered on the folio bearing its number.

- (3) Thereupon the Registrar of Deeds shall -
- (a) make an endorsement on the title deeds referred to in sub-section (1) to the effect that a general plan of the land described in the said title deeds has been registered and that the erven shown on such plan are subject to the provisions of this Act; and
 - (b) cause to be published in the *Gazette* a notice to the effect that a register of erven has been opened.
- (4) As soon as practicable after the publication of such notice the town clerk shall cause to be published once in at least two newspapers, each published in a different official language as referred to in section 3(1) of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), and circulating in the municipal area of Kimberley, a notice drawing the attention of all interested persons to the said notice in the *Gazette* and stating the purport thereof.

[Subs. (4) substituted by s. 3 of Act 11/95]

5. Applications for transfer of ownership of erven

- (1) After the publication of the notice in the *Gazette* in terms of [section 4\(3\)](#), any owner of an erf who is of the opinion that he is in terms of any agreement construed with due regard to the provisions of this Act entitled to the transfer to him of such erf, may at any time within a period of five years from the date of such publication, but not thereafter, apply in the manner prescribed to the town clerk for such transfer.

[Subs. (1) substituted by s. 1 of Act 10/66]

- (2) (a) After receipt by him of any such application the town clerk may require the applicant in question to furnish him with such information or documents at his disposal as the said town clerk may deem necessary for determining whether the applicant is so entitled to such transfer of the erf in question.
- (b) If an applicant fails to comply with any requirement of the town clerk in terms of paragraph (a) within ninety days thereof or such longer period as the board referred to in sub-section (3) may allow, his application shall lapse.
- (3) (a) If the town clerk is satisfied, whether or not there was such requirement, that the applicant is entitled to such transfer, he shall grant his application.
- (b) If the town clerk is not so satisfied he shall notify the applicant thereof who may, within ninety days of the date on which he was so notified,

make representations in connection with his application to a board consisting of the Chief Registrar of Deeds, the Master and the chief magistrate of Kimberley, and of which the said Chief Registrar shall be chairman.

- (c) The address of the said board shall be the Deeds Registry, Kimberley.
- (4) If an applicant referred to in paragraph (b) of sub-section (3) has made representations to the said board in terms of that paragraph or, if such applicant did not so make any representations, after the expiration of the period of ninety days referred to in the said paragraph, the town clerk shall consult the said board in regard to the application in question and thereafter grant or refuse such application and notify the applicant accordingly.
- (5) The Griqualand West Local Division of the Supreme Court of South Africa may, on the application of any person aggrieved by the refusal of his application by the town clerk in terms of sub-section (4), set aside such refusal of the application and make such order regarding such application as it may deem fit, provided such application to the said court is made within ninety days of the date on which the applicant was notified in terms of sub-section (4) of the refusal of his application.

6. Deeds of transfer of erven

- (1) If the town clerk has granted the application of an applicant in terms of section five or is in terms of any order made on an application in terms of sub-section (5) of that section obliged to grant such an application, the said town clerk shall as soon as practicable prepare in the prescribed manner a deed of transfer of the erf in question from the city council of Kimberley to the applicant in question and lodge such deed with the Registrar of Deeds together with such documents as may be prescribed.
- (2) Such deed of transfer shall contain -
 - (a) all registered conditions to which the title to the land of which the erf in question formed part is subject;
 - (b) all other conditions which the city council of Kimberley is in terms of any agreement with any person obliged to impose against the title to such erf and which are registrable in terms of the Deeds Registries Act; and
 - (c) all other conditions to which the lease or licence of such erf is subject and which are registrable in terms of the Deeds Registries Act.

- (3) If after examination of any deed of transfer lodged with him in terms of subsection (1) the Registrar of Deeds is satisfied that such deed is in order it shall, notwithstanding the provisions of the Deeds Registries Act, be executed by the town clerk in the presence of the said Registrar.

[S. 6 ceased to have effect as from 1 December 1975 – See [Proclamation 247/75](#)]

7. Conversion of certain cessions into mortgage bonds

- (1) If any owner has ceded his lease or licence of an erf as security for the performance of any obligation and the town clerk is furnished, before lodging the deed of transfer of such erf with the Registrar of Deeds in terms of section six -
 - (a) if the cession took place in pursuance of a deed of obligation, with such deed of obligation and a certified copy thereof; or
 - (b) in any other case, with a mortgage bond hypothecating the said erf in favour of the cessionary as security for the performance of such obligation,

the said town clerk shall, when so lodging the said deed of transfer with the Registrar of Deeds, also lodge with him such deed of obligation and such certified copy or such mortgage bond, as the case may be.

- (2) Notwithstanding anything to the contrary contained in the Deeds Registries Act the said Registrar shall simultaneously with the registration of such deed of transfer by him, register against the title deed of such erf such mortgage bond or, as the case may be, such deed of obligation as if it were a mortgage bond hypothecating such erf in favour of the cessionary, provided such Registrar has in any such case been furnished with such documents as may be prescribed.
- (3) Upon such registration of a deed of obligation it shall, *mutatis mutandis*, become a mortgage bond registered in favour of the cessionary in question in substitution of such deed of obligation.

[S. 7 ceased to have effect as from 1 December 1975 – See [Proclamation 247/75](#)]

8. Suspensive agreements relating to leases or licences of erven

- (1) If any lease or licence of an erf or all the rights under such a lease or licence were sold under an agreement which suspends the passing of the ownership thereof but which is binding on the parties thereto at the commencement of this Act and at the time when such erf is transferred to the owner thereof under the provisions of this Act, such agreement shall as from the registration of such transfer be deemed to be an agreement for the sale of such erf.

- (2) If the buyer of an erf under such an agreement satisfies the Registrar of Deeds that the agreement for the sale of the lease or licence of that erf or of all the rights under such lease or licence was entered into prior to the commencement of this Act, the provisions of section sixteen shall *mutatis mutandis* apply in respect of the sale and transfer to him of such erf.

9. Transfer of undivided share in an erf

No deed of transfer of an undivided share in an erf shall be registered under the provisions of section six unless simultaneously with the registration of that deed of transfer a deed of transfer or deeds of transfer of the remaining undivided share or shares in the said erf are so registered.

10. Effect of registration of title deed

The registration in the deeds registry by the Registrar of Deeds of a transfer deed executed in terms of sub-section (3) of section six shall have the effect of vesting in the transferee the ownership of the erf in question and of terminating the lease or licence by virtue of which the transferee was entitled to occupy such erf.

11. When diagrams of erven are required

- (1) Notwithstanding anything to the contrary contained in any other law it shall not be necessary to annex a diagram to any deed of transfer of an erf prepared in terms of section six or to any subsequent deed of transfer of the whole of such erf, if a reference is made in such deed to the certified general plan.
- (2) If it is sought to transfer a defined portion of an erf transferred in terms of section six a diagram of the whole of such erf framed by the Surveyor-General shall in accordance with the provisions of the Deeds Registries Act be annexed to the deed of transfer of such erf prior to the transfer of such portion.
- (3) The provisions of sub-section (2) shall *mutatis mutandis* apply in any case where a notarial deed of servitude necessitates, in terms of the said Act, the registration of a servitude diagram.

12. Amendment of certified general plan

- (1) The Surveyor-General may amend the certified general plan by correcting any error in the numerical data, figure or designation of any erf shown thereon.
- (2) If any such amendment affects the extent or designation of any such erf the Surveyor-General shall notify the Registrar of Deeds thereof who shall upon receipt by him of such notification, amend in accordance therewith the

relative title deed (if any) and the relative register in his registry and any other deed or register in the said registry affected thereby.

- (3) If any such erf has been transferred in terms of the provisions of this Act the said Registrar shall before effecting any registration of a subsequent transfer of such erf or any portion thereof or undivided share therein, likewise amend the relative duplicate title deed belonging to the owner of such erf.
- (4) As soon as practicable after the date fixed in terms of section twenty the Registrar of Deeds shall furnish the Surveyor-General with a list of erven entered in the register referred to in section four which have not been transferred by the city council of Kimberley to any other person.
- (5) As soon as practicable after the receipt by him of such list the Surveyor-General shall amend the certified general plan by the exclusion therefrom of every erf on such list and notify the town clerk and the Registrar of Deeds thereof.
- (6) Except when a thoroughfare is affected the provisions of sub-sections (2), (3) and (4) of section thirty of the Land Survey Act shall not apply with reference to any amendment of the said general plan.

13. Effect of data recorded on certified general plan

Any doubt or dispute as to any beacon or boundary depicted on the certified general plan shall be resolved on the basis of the numerical data recorded on the said plan and in terms of the Land Survey Act in so far as the provisions thereof can be applied.

14. Procedure if data on certified general plan are incorrect

If at any time after the transfer of any erf in terms of this Act the Surveyor-General is satisfied that the extent and dimensions of such erf are on the certified general plan represented incorrectly to such an extent that damage or loss might result to any person who has or may obtain an interest in such erf, the provisions of section forty-two of the Land Survey Act shall *mutatis mutandis* apply.

15. Exemption from provisions

The provisions of the Land Use Planning Ordinance, 1985 (Ordinance No. 15 of 1985 (Cape)), shall not apply to anything required or permitted to be done under the provisions of this Act.

[S. 15 substituted by s. 4 of Act 11/95]

16.

[S. 16 repealed by s. 2 of Act 10/66]

17. Exemption from liability in respect of certain acts and omissions

If any person suffers any damage in consequence of any act or omission by any other person in the exercise of his powers or the performance of his functions or duties under this Act, the State or the city council of Kimberley or such other person shall not be liable for such damage unless such act or omission was *mala fide* or was due to negligence.

18. Regulations

The Minister may make regulations prescribing -

- (a) the manner in which application for the transfer of the ownership of an erf is to be made;
- (b) the form of deeds of transfer to be prepared by the town clerk,

and generally as to any matter which is required or permitted to be prescribed in terms of this Act or which he considers it necessary or expedient to prescribe in order that the objects of this Act may be achieved.

19. Amendment and repeal of section 6 of Act 68 of 1957

- (1) Sub-section (1) of section six of the General Law Amendment Act, 1957, shall in relation to the farm Bultfontein referred to therein, be construed as if the words “or the first day of January, 1962, whichever is the earlier” did not appear therein.
- (2) The said section 6 is hereby repealed with effect from a date to be fixed by the State President by proclamation in the *Gazette*, such date not to be earlier than the day next succeeding the day on which the period of five years referred to in section 5(1) expires.

[Subs. (2) substituted by s. 3 of Act 10/66]

[Date fixed as 1 December 1975 by [Proc. 247/75](#)]

20. Short title and duration of certain sections

This Act shall be called the Kimberley Leasehold Conversion to Freehold Act, 1961, and sections six and seven shall cease to have effect as from a date to be fixed by the Governor-General by proclamation in the *Gazette*.

[Date fixed as 1 December 1975 by [Proc. 247/75](#)]