



rural development  
& land reform

Department:  
Rural Development and Land Reform  
REPUBLIC OF SOUTH AFRICA

## STATE LAND LEASE AND DISPOSAL POLICY

THIS POLICY REPLACES ALL EXISTING POLICIES ON THE LEASING OF IMMOVABLE ASSETS OF THE DEPARTMENT OF RURAL DEVELOPMENT AND LAND REFORM. IT ALSO TAKES PRECEDENCE OVER ANY OTHER DEPARTMENTAL POLICY THAT CONTAINS ANY PROVISION ON LEASING OF IMMOVABLE ASSETS.

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## DEFINITION OF TERMS

- i. The meaning of words or terms which are defined in this document is operative only in the context of this document and shall supersede any other meaning provided elsewhere.
- ii. All policy statements articulated in this document are mainly applicable to the Department of Rural Development and Land Reform hence no continuous citation of the name of the said department is necessary in the body of this document.
- iii. Any citation of a law without the words, "*as amended*", refers to the latest version of that law, including amendments.
- iv. **Agricultural Leases** refer to lease arrangements that provides for the use of property at primary agricultural level. Such level is construed to exclude processing of raw agricultural products.
- v. **Approval Authority** means any person who has authority to approve leases in terms of existing delegation or power of attorney issued in terms of laws referred to in this Policy.
- vi. **Approved Business Plan** means a business plan envisaged in the Recapitalization and Development Policy.
- vii. **Informal Right to Land** means the land use rights or occupation rights or land access rights envisaged in the Interim Protection of Informal Land Rights Act, 1996 (Act No. 31 of 1996).
- viii. **Land and Agricultural Bank of South Africa** means the Bank as defined in the Land and Agricultural Development Bank Act, 2002 (Act No. 15 of 2002).
- ix. **Land Tenure Right** means leasehold or any long term lease.
- x. **Leasehold** means the right to hold or use property for a fixed period of time at a given price, without transfer of ownership, on the basis of a written lease contract.
- xi. **Long Term Lease** means any lease which is 10 years or longer.
- xii. **Net Income** means net results of turnover excluding input costs, direct ploughing / breeding costs, and salaries or wages.
- xiii. **New and Eligible Lessee** means a first time lessee who qualifies in terms of the criteria set by the National Land Allocation and Recapitalization Control Committee.
- xiv. **Non Agricultural Leases** mean any lease arrangement that provides for the use of property for a purpose that excludes activities which may fall within the definition of primary agriculture.



- xv. **Option Agreement** means an agreement between two parties whereby, in exchange for a fee, one of the parties has the right but not the obligation, up to a specified date or event, to lease a property at a specified price.
- xvi. **Previously disadvantaged persons** means South African Citizens who are racially classified as African, Coloured and Indian.
- xvii. **Provincial Vesting and Disposal Committee** means an intergovernmental committee established by various State land custodians at provincial level to consider, amongst other things, vesting and land disposal applications.
- xviii. **Public Servants** means State employees employed under any national or provincial legislation; municipal employees; public representatives at national provincial and local levels; traditional leaders who are recognized under any legislation; employees of any company or entity where Government of the Republic of South Africa is a majority shareholder or where a provincial government is a majority shareholder or where a municipality is a majority shareholder.
- xix. **Reference to a position or post description e.g. Director: Land Reform:** Any reference to any position or post description refers to that post as on the date of approval of this Policy. Should the functions of that post be assigned to another position, such reference shall be construed to be relating to the new position.
- xx. **Spouse** means a partnership in a civil or religious or customary marriage. This includes partners who live together as if they are married.
- xxi. **State Land Leasing Debtor System** means the Spatial Module of the web based State Land Leasing Debtor System.
- xxii. **Turnover** means market value of harvest crop or average number of livestock of saleable age, including cash received from the sale of produce.

## CHAPTER 1

### 1. CONTEXT

#### 1.1 REVERSING THE LEGACY OF THE 1913 NATIVES LAND ACT

The root of the land question today arises out of the pervasive process of land alienation that dispossessed the majority of South Africans of their land over the past few centuries. 2013 is the centenary of the 1913 Natives Land Act, which was the first of a number of discriminatory laws that reinforced the massive dispossession of land from black South Africans. The formulation of this policy forms part of Government's undertaking to review all land reform policies as enunciated in the 2011 Green Paper on Land Reform, with a view to address issues relating to historical exclusion, equitable access to land, and participation in the optimal utilisation of land; as well as to address challenges relating to access to food at both household and national level to bring about household food security and national food self-sufficiency.

#### 1.2 THE CONSTITUTION

The context of all rural development and land reform policies is the 1996 Constitution of post-apartheid South Africa. In this instance, the most pertinent sections of the Constitution are 25, 26, 27 and 36.

Section 25(5) provides that, *"The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis"*. In a context wherein the majority of citizens still do not have equitable access to land, this constitutional promise still remains an imperative.

Furthermore, Section 25(5) is the only clause that recognizes this exclusive right for "citizens" and it's accordingly weighted higher than that of non-citizens or foreign controlled juristic persons; hence, although South Africa belongs to all who live in it and afforded Basic Rights, when it comes to land it is citizens that are prioritized.

Section 25(4) talks to national interest and states that *'For purposes of this (a) the public interest includes the nation's commitment to land reform and to reforms to bring about equitable access to all South Africa's natural resources, and (b) property is not limited to land'*. Implied here is that national interests take precedence and that limitations and exemptions to such limitations of access will be in furtherance of national interests.

Section 25(8) of the constitution states that *'No provision of this section may impede the state from taking legislative and other measures to achieve land, water and related reform, in order to redress the results of past racial*



*discrimination, provided that any departure from the provisions of this section is in accordance with the provisions of section 36(1)'. Consequently it compels the state to spare no effort in addressing land reforms and racial disparity and inequity in land ownership by South Africans.*

Section 36(1) that limits the rights in the Bill of Rights states that *'the rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom taking into account (a) the nature of the right; (b) the importance of purposes of the limitation; (c) the nature and extent of the limitation; (d) the relation between the limitation and its purpose; and (e) less restrictive means to achieve the purpose'*. Hence Sections 25(4), (5) and (8) on the imperative of land reform, its national interest status and its override of rights, provided it's generally applicable underscores the importance of land reform and accelerating equitable access.

The envisaged policies towards limiting access to land by South Africans with excessive land holdings and foreign nationals and juristic persons ought to be weighed against the stated importance and compulsion upon the state in Sections 25(4), (5) and (8) addressed above. These define the nature and significance of land.

### **1.3 THE PRINCIPLES AND STRATEGIC THRUST OF THE GREEN PAPER ON LAND REFORM**

In 2011, the Green Paper on Land Reform provided for a single land tenure framework, integrating the current multiple forms of land ownership - communal, state, public and private - into *'a single 4-tier tenure system'*:

- 1.3.1 State and public land: Leasehold;
- 1.3.2 Privately owned land: Freehold, with limited extent;
- 1.3.3 Land owned by Foreigners: Freehold, but Precarious Tenure, with obligations and conditions to comply with; and
- 1.3.4 Communally owned land: Communal Tenure, with institutionalised use rights.

The principles and the strategic thrust underlying land reform, as set out in the Green Paper on Land Reform, are deracialising the rural economy; democratizing the allocation and use of land across gender, race and class; and sustained production discipline for food security (and food sovereignty).

The strategic thrust, also set out in the Green Paper, is that land reform should be pursued with minimal disruption to food production and based in

the agrarian transformation strategy. Agrarian transformation refers to the *'rapid and fundamental change in the relations (systems and patterns of ownership and control) of land, livestock, cropping and community'*. The first part of the strategy deals with building the person, the household and the community. This focuses primarily on dealing with basic human needs and providing the required social infrastructure for improved access to services. This part of the strategy also includes community building, organisational and skills development initiatives.

The issue of land forms the basis of development in many rural areas as well as commercial farm land in South Africa and therefore an essential part of the strategy includes the implementation of an improved land tenure system. The other two components of the strategy dealing with livestock and cropping are directly linked to the growth of the rural economy and focuses on the provision of the required economic infrastructure as well as development of entrepreneurs and improved market access and credit facilities. In addition these two components also deal with the recapitalisation of all farms acquired through land reform so as to ensure improved food security for South Africa.

#### **1.4 THE NATIONAL DEVELOPMENT PLAN AND THE MEDIUM TERM STRATEGIC FRAMEWORK**

Land reform within the context of the National Development Plan (2012) is accorded the daunting task of ensuring that economic growth and integration is facilitated as an intended outcome of land and agrarian reform. Poverty alleviation and job creation are therefore key hallmarks that will measure the success of land reform. The NDP land reform proposals are aligned with the Medium Term Strategic Framework (2014-19) on (a) sustainable land reform (agrarian transformation); (b) improved food security; and (c) smallholder farmer development and support (technical, financial, infrastructure) for agrarian transformation.

Within the MTSF period (2014-19), this Policy will seek to promote conditions which enable the previously disadvantaged persons to gain access to land on an equitable basis and also promote agricultural production and capital investment in rural areas in particular.

## **2. SCOPE**

2.1 This Policy applies to all immovable assets for which the Department has legal title and which fall under the following categories:

2.1.1 Former South African Development Trust (SADT) immovable assets and those which previously vested in the former homelands (Gazankulu, Lebowa, KaNgwane, KwaNdebele, QwaQwa, Transkei, Bophuthatswana, Venda and Ciskei), except those immovable assets



which were assigned or vest in other authorities in terms of specific legislation;

- 2.1.2 Immovable assets acquired in terms of the Land Reform: Provision of Land and Assistance Act, 1993 (Act No. 126 of 1993) for achieving the objectives of the Proactive Land Acquisition Strategy (PLAS).
  - 2.1.3 Immovable assets transferred from other government departments for land reform purposes;
  - 2.1.4 Immovable assets acquired in terms of the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994) and temporarily held by the Department for future transfer to claimants.
  - 2.1.5 Immovable assets held by the Minister, in trust for traditional communities, as provided in relevant title deeds.
  - 2.1.6 Some immovable assets which may have been acquired and transferred to National Government as part of asset forfeiture proceedings involving the Asset Forfeiture Unit.
- 2.2 This Policy shall be implemented and adhered to by all officials involved with any activity relating to leasing of Departmental immovable assets.

### **3. LEGISLATIVE MANDATE**

- 3.1 The laws discussed in this paragraph are only those which are regarded as core in the performance of immovable asset management functions.
- 3.2 As indicated above, the Constitution of the Republic of South Africa Act, 1996 (Act No. 108 of 1996) enjoins the State to take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis. The provisions of this Policy are consequently about access and equity as opposed to revenue generation.
- 3.3 The State Land Disposal Act, 1961 (Act No 48 of 1961) empowers the President to, amongst other things, lease State land. These powers were assigned<sup>1</sup> to the predecessor to the Minister of Rural Development and Land Reform in July 1995 in respect of land located in former homelands. The powers therefore vest in the Minister of Rural Development and Land reform in succession.

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<sup>1</sup> See Notice No. 1012 of 1995 in Government Gazette No. 16511 Published on 7 July 1995.

- 3.4 The Land Reform: Provision of Land and Assistance Act, 1993 (Act No. 126 of 1993), empowers the Minister to, amongst other things, lease any property contemplated in the said Act. The land acquired to further the objectives of the Proactive Land Acquisition Strategy is leased in accordance with the provisions of this Act.
- 3.5 The Restitution of Land Rights Act, 1994 did not envisage the possibility of land acquired in terms of that Act being retained by the State for a longer period hence it does not have land administration related provisions. The only authority for the administration of this land can be located in the Public Finance Management Act, 1999 (Act No. 1 of 1999).
- 3.6 Section 38 of the Public Finance Management Act, 1999 deals with General Responsibilities of Accounting Officers. The said responsibilities include;
- 3.6.1 Effective, efficient, economic and transparent use of the resources of the department<sup>2</sup>;
  - 3.6.2 Taking effective and appropriate steps to collect all money due to the department<sup>3</sup>; and
  - 3.6.3 Responsibility for the management, including the safeguarding and the maintenance of the assets, and for the management of the liabilities of the department<sup>4</sup>.
- 3.7 Similar responsibilities are also imposed to other officials by section 45 of the Public Finance Management Act, 1999.
- 3.8 It should be noted that the Public Finance Management Act, 1999 does not define the word "resources" and the word "assets". The Concise Oxford Dictionary defines a resource as a stock or supply of materials or assets. As the word "assets" generally refer to both movable and immovable assets, it is safely construed in this Policy that land acquired through the Restitution of Land Rights Act, 1994 is administered in terms of section 38 of the Public Finance Management Act, 1999.
- 3.9 As already implied above, land acquired through the Restitution of Land Rights Act, 1994 is managed in accordance with directives and policies

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<sup>2</sup> Section 38(1)(b).

<sup>3</sup> Section 38(1)(c)(i).

<sup>4</sup> Section 38(1)(d).

approved by the Accounting Officer from time to time. Any policy relating to the administration of the subject land which is approved by the Minister after being supported, in writing, by the Accounting Officer shall be presumed to have been approved or issued by the Accounting Officer in terms of the Public Finance Management Act, 1999.

- 3.10 The Government Immovable Asset Management Act, 2007 (Act No. 19 of 2007) mainly provides a uniform framework for the management of immovable assets that are held or used by national or provincial departments. It also seeks to ensure coordination of the use of immovable assets with service delivery objectives of national and provincial departments. The provisions of this policy have consequently been designed in a manner that seeks to adhere to immovable asset management principles provided in the said Act.



## CHAPTER 2

### AGRICULTURAL LEASES

#### 4. THE NATIONAL DEVELOPMENT PLAN ON AGRICULTURE AND LAND REFORM

The National Development Plan (NDP) boldly states that rural economies will be supported by, amongst other things, agriculture. Its vision 2030 includes better integration of the country's rural areas, achieved through successful land reform, infrastructure development, job creation and poverty alleviation.

The NDP further asserts that underdevelopment in the former homelands should be confronted through agricultural development, improved land management, infrastructure and targeted support to rural women. Having recognised agriculture as the primary economic activity in rural areas, it then projects that agriculture has the potential to create close to 1 million new jobs by 2030, which is a significant contribution to the overall employment target. The use of some underused land in communal areas and land-reform projects for commercial production is proposed as part of the interventions that will lead to the creation of 1 million new jobs by 2030.

In dealing with jobs and livelihoods in communal areas, the NDP proposes a stepped programme of financing for land reform farmers. *'This can be achieved through giving successful applicants a rent-free probation for two or three years. If farmers prove capable, they will move to a long-term lease of about 40 years with the full commercial rental phased in over four years. Part of the rental fee applied to a sinking fund held at the Land Bank will eventually give them full title'*. Whilst this proposal is in relation to communal areas, it is argued that the same approach can be applied elsewhere, outside communal areas, and achieve the same results or more. This policy consequently provides for a rent free five year period for qualifying farmers.

#### 5. CATEGORIES OF FARMERS AND OTHER PERSONS IN THE AGRICULTURE SPACE

The land reform programme is understood as referring to land redistribution; land restitution; land tenure reform and land development. It is premised on the principles of de-racialising the rural economy; democratic and equitable land allocation and use across race, gender and class; and sustained production discipline towards guaranteed food security.

At a very specific level, land reform seeks to contribute to the decongestion of communal areas, provide secure on or off farm settlement, provide access to land for food security and sustainable livelihoods for individuals and groups in various settings and also support the development of agricultural and other land-based

commercial enterprises. In an endeavour to achieve these noble objectives, this policy departs from the premise that farmers aren't homogeneous. It acknowledges that farmers, whether subsistence or commercial, have different needs and are at different levels of development in terms of technical capacity (farming, business management and marketing), access to resources and willingness to take risks.

This policy adopts a more targeted approach that seeks to create developmental pathways appropriate to the different categories of farmers and other persons. This approach seeks to address food security and social justice issues at the lower level (Category 1) and provides the very poor with the opportunity to gain initial access to land to make a start with farming and other land uses.

At a second level (Category 2), this categorization approach seeks to address the needs of persons that have had access to limited extents of land and have been producing for subsistence purposes but who want to expand their operations.

At a third level, the categorization approach enables qualifying emerging farmers (Category 3) to obtain access to land at a level that they can manage, in order to expand their existing commercial production on land (with sufficient support). At the same time, it addresses the transformation of agriculture through giving opportunities to existing and qualifying commercial farmers (Category 4).

The different categories of farmers are defined below as:

- Category 1:** Households with no or very limited access to land, even for subsistence production.
- Category 2:** Small-scale farmers who have been farming for subsistence purposes and selling part of their produce on local markets. This may be land in the communal areas, on commercial farms, on municipal commonage or on church land.
- Category 3:** Medium-scale commercial farmers who have already been farming commercially at a small scale and with aptitude to expand, but are constrained by land and other resources
- Category 4:** Large-scale or well established commercial farmers who have been farming at a reasonable commercial scale, but are disadvantaged by location, size of land and other resources or circumstances, and with real potential to grow.

The adopted categorization approach envisages that farmers may graduate from one category to the next. The initial land allocation should therefore take into account the likelihood of graduation and thus either allow for it in the land that is acquired and allocated, or anticipate that land that is acquired may be transitional



for a particular farmer. An example of this is that a number of livestock farmers may share a farm with different grazing camps allocated to each one of them. In the long term, however, it could be expected that as each farmer's stock numbers grow, they will graduate out of the farm onto a larger area of land with the farm either being kept for graduation purposes, or eventually being used by only one of the original group of farmers. A single farmer may therefore benefit more than once in terms of this policy. This shall however be balanced against the need to assist more qualifying farmers.

Any persons who is in Category 1 or is in transition from Category 1 to Category 2 at the time s/he enters into a lease agreement with the Department shall only become entitled to a long term lease without an option to purchase. On the other hand, any person who is already in Category 2 at the time of entering into a lease agreement with the Department and who intends to graduate to Category 3 shall qualify for a long term lease with an option to purchase.

Any persons who is already in Categories 3 or 4 shall automatically qualify for a long term lease with an option to purchase. The applicable conditions for the exercise of the option to purchase are provided in paragraph 22 below.

## **6. TARGET GROUP**

The discussion in paragraph 5 above represents a sectoral segmentation of the target group.

- 6.1 The target group for agricultural leases shall be Africans, Indians and Coloureds. The African in this context includes persons from the first nations of South Africa.
- 6.2 Further priority, within the target group shall be given to women and the youth who either have basic farming skills or demonstrate a willingness to acquire such skills. Special attention shall be paid to the youth with experience or qualifications in the field of agriculture.
- 6.3 Military Veterans, as defined in the Military Veterans Act, 2011 (Act No. 18 of 2011) irrespective of their race, shall also be prioritised. This shall however exclude those who served in the Union Defence Force (prior to 1961) and the South African Defence Force (prior to 27 April 1994) who do not fall under the categories identified in 6.1 above.
- 6.4 Public Servants and their spouses shall not qualify to benefit from agricultural leases irrespective of them falling under any of the categories identified above. The lessee shall therefore sign a declaration to the effect that their spouse is not a civil servant and acknowledge that any misrepresentation in this regard constitutes a ground for immediate termination of the lease agreement.



- 6.5 It often occurs that immovable assets acquired in terms of the Restitution of Land Rights Act, 1994 are transferred to the State as a result of claimants being unable, for a variety of reasons, to take transfer at that stage. Such occurrences are normally sudden and therefore not always carefully considered hence decisions on how the immovable assets and / or existing businesses should be taken care of are taken in rather urgent circumstances. The previous landowners normally become the immediately available persons who can keep acceptable levels of production until transfer to claimants is possible or until a suitable lessee could be found.
- 6.6 The target group criteria outlined above may therefore be relaxed in relation to immovable assets acquired for restitution purposes in those instances where the only viable option is considered to be a lease agreement with the previous land owner, who may be white. A motivation in this regard would be prepared by the Chief Director: Land Restitution Support for approval in accordance with 8.4 and 8.5 below.

## **7. SELECTION OF LESSEES**

- 7.1 There shall be district level committees called District Beneficiary Selection Committees which shall screen all potential lessees and make recommendations to the Provincial Technical Committee<sup>5</sup>, which shall make final recommendations to the National Land Allocation and Recapitalization Control Committee. The functions of the District Beneficiary Selection Committee shall in future be assumed by the District Land Reform Committees or District Lands Committees envisaged in the NDP.
- 7.2 The District Beneficiary Selection Committee shall comprise of the:
- 7.2.1 DRDLR: District or Regional Office Manager; Head of Land Reform in the district, if such a person is different from the District / Regional Office Manager; relevant project officers / coordinators; a State Land Administration / Property Management official from the District / Regional Office or Provincial Office and such other officials appointed by the Director Land Reform from time to time;
  - 7.2.2 Representative from a provincial department responsible for the agriculture function;

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<sup>5</sup> Reference to this committee includes any other future name of the same structure provided that it performs the same function.

- 7.2.3 Representatives from a district municipality and a relevant local municipality;
  - 7.2.4 A representative from the Department of Agriculture, Forestry and Fisheries, where possible.
  - 7.2.5 Organized Agriculture;
  - 7.2.6 Representative from the Reference Group<sup>6</sup>;
  - 7.2.7 Commodity Organisations in the relevant area; and
  - 7.2.8 Any other member who may, in the opinion of the District Beneficiary Selection Committee, add value to its business.
- 7.3 The National Land Allocation and Recapitalization Control Committee (NLARCC) shall provide the District Beneficiary Selection Committee with, amongst other things;
- 7.3.1 General rules of operation which shall provide for reasonable notices of meetings, declaration of conflict of interest and quorum, provided that the absence of non-Departmental members shall not result in the absence of quorum. The general rules referred to here shall also provide for accurate record keeping by the District Beneficiary Selection Committee; and
  - 7.3.2 Guidelines containing a transparent and fair criteria for the assessment of lease applicants; and
- 7.4 All members of the District Beneficiary Selection Committee shall be appointed, in writing, by the Director: Land Reform. Non-departmental members of the committee shall be issued with appointment letters once their respective organisations have indicated their identity to the Director: Land Reform.
- 7.5 The recommended lessees should have been selected from an updated district database of potential lessees. Such a database shall be maintained by the Director: Land Reform.
- 7.6 In the absence of a district database of potential lessees, the Director: Land Reform shall apply transparent mechanisms to ensure that such a database exists. Such mechanisms may include advertisements in local newspapers.

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<sup>6</sup> Members selected from the Land Reform Beneficiary Reference Group



- 7.7 Leases on immovable assets acquired for restitution purposes shall also be processed in accordance with this paragraph. There are no grounds for urgency that may justify a deviation since this process can be undertaken simultaneously or immediately prior to the commencement of conveyancing processes.

## 8. APPROVAL OF LEASES

- 8.1 All leases shall be approved by the Approval Authority in accordance with any existing delegation or assignment or power of attorney.
- 8.2 All documents that constitute proof of existing delegation or assignment of authority or function in relation to the signing of leases shall become **Appendices** to this Policy Document. Such documents however exclude isolated delegations which are given in individual lease applications.
- 8.3 All leases falling under this chapter shall be regarded to have commenced on the first date of the month in which they were signed and end on the last date regardless of such date falling on a weekend or public holiday and also regardless of the date of signature by the last signing party.
- 8.4 Leases which are 5 years or less on immovable assets acquired in terms of the Restitution of Land Rights Act, 1994 shall be approved by the Deputy Director General: Land Reform and Administration.
- 8.5 Leases which are longer than 5 years on immovable assets acquired in terms of the Restitution of Land Rights Act, 1994 shall be approved by the Director General. Such leases are however discouraged and shall only be approved in exceptional circumstances. The Director General shall be the only authority to determine whether such exceptional circumstances do exist, depending on the motivation submitted to her / him.
- 8.6 Leases on immovable assets acquired for restitution purposes shall be submitted to the Approval Authority immediately after they have been considered by the Provincial Technical Committee hence they shall not be submitted to the National Land Allocation and Recapitalization Control Committee.
- 8.7 All leases on immovable assets referred to in this Chapter, other than those referred to in 8.5 above, shall be signed by the Deputy Director General: Land Reform and Administration.
- 8.8 Should any change in the existing delegation of powers for approval of leases occur after the approval of this policy, the provisions of any document



providing for such change shall take precedence over the provisions of this paragraph.

8.9 The Chief Director: Provincial Shared Service Centre shall ensure that all approved leases in the province are captured in the State Land Leasing Debtor System (SLLDS). The procedures to be followed in capturing leases in the SLLDS are outlined in **Appendix 1** of this Policy.

8.10 The Chief Director: Provincial Shared Service Centre shall deliver signed copies of lease agreements to the Chief Director: Financial Management Services and the Chief Director: State Land Administration. In the case of PLAS immovable assets leases, copies shall also be sent to the Director: PLAS.

## **9. RENTAL DETERMINATION**

9.1 Treasury Regulations, issued in terms of the Public Finance Management Act, 1999 provide for the letting of immovable state property at market-related tariffs, excluding state housing for officials and political office bearers, unless the relevant treasury approves otherwise. The said regulations further provide that no state property may be let free of charge without the prior approval of the relevant treasury.

9.2 In seeking to address the provisions referred to in 9.1 above, the Department had previously determined rental at 6% of production value. Difficulties were however experienced in finding competent professionals to help determine production value. This policy position was entirely placed on an incorrect assumption that the Land and Agricultural Development Bank would supply sufficient expertise for this purpose. The assumption was indeed misplaced hence there was no delivery from the very beginning. This necessitated a shift to a market related rental, as provided in the Lease Management Policy of March 2009.

9.3 A market related rental has been unaffordable to land reform lessees since they generally start from a zero capital base. This makes it impossible for them to bring any agricultural enterprise to a point of profitability hence the default rate in rental payments constantly increase. By virtue of the target group starting from a point of material disadvantage as a result of lack of asset base and other resources, a special rental determination and payment dispensation is provided for in this Policy.

9.4 All lessees shall develop business plans, which will then form the basis for determination of rental. Such business plans shall be reviewed by the Provincial Technical Committee and approved by the NLARCC.

- 9.5 New and eligible lessees, excluding those mentioned in 9.7 below shall pay zero percent rental for the initial period of 5 years. During this period, they may be supported through the development component of the Recapitalisation and Development Programme, in accordance with an approved business plan.
- 9.6 In the event that the support provided by the Recapitalisation and Development Programme lasts for a period lesser than 5 years, the lessee shall become liable for rental from the beginning of April of the following year, irrespective of which month in a year the implementation of the business plan was finalised.
- 9.7 New and eligible lessees who are allocated immovable assets which operate as going concerns which require no immediate capital investment in terms of the Recapitalisation and Development Programme shall have their rental determined in accordance with 9.9 below and such rental shall be payable immediately upon commencement of implementation of the business plan.
- 9.8 Lessees who have valid operating leases at the time this Policy comes into effect shall have their rental percentage reviewed to 5% of projected annual net income, after 90 days of this Policy coming into operation. The first day shall be calculated from the first day of the month after the month in which the Minister appended his / her signature on this Policy Document. The projected annual net income referred to here shall be determined through a business or farm plan. Such plans shall be reviewed by the District Beneficiary Selection Committees, Provincial Technical Committee and approved by the NLARCC. In the event the business plan is not approved after 90 days of the approval of this Policy, the provisions of 11.3 below shall apply.
- 9.9 The rental rate for all leases falling under this chapter shall therefore be 5% of projected annual net income. In order to create certainty at commencement of the lease agreement and also to simplify revenue collection processes, the rental percentage shall always be based on projected net income, instead of actual net income. This will motivate the lessee to work towards achieving the projected income and any additional income shall serve as an incentive for the lessee to work harder and achieve more.

## **10. ESCALATION**

There shall be no annual escalation of rental since the rental amount is not fixed, but rather dependent on projected annual income, which may fluctuate from year to year.



## **11. RENTAL PAYMENT**

- 11.1 Rental shall be paid annually, in arrears. Any lessee who intends to pay monthly may do so, provided that such payment period is recorded in the original or amended lease agreement.
- 11.2 Where the nature of the crop does not allow annual harvesting, the rental shall become payable within a period of three months from the date the crop is expected to be harvested. This period shall always be projected from available information on crops of that nature so that lease agreements can be finalized timeously. Such a projection shall be contained in the business plan.
- 11.3 Liability for rental in respect of lessees who have valid leases at the time this Policy comes into operation shall be suspended only after 90 days of this Policy coming into effect until a business plan is developed and approved, which period shall not be later than 12 months from the date the suspension of rental payment came into effect. The 90 days period is meant to allow communication with lessees and prevent the possibility of subsequent claims by lessees on the basis of having paid when they already have an exemption in terms of the Policy.
- 11.4 Once the business plan is approved and the lessee duly notified of such approval, such lessee shall then become liable for payment, immediately upon the commencement of the implementation of such business plan provided that rental shall still be payable in accordance with 11.1 or 11.2 above.
- 11.5 Liability in this case is immediately upon commencement of business plan implementation since these lessees would have had the benefit of being in the Departmental leasing system long before the commencement of this Policy and also since rental payments shall become part of the financial projections of the enterprise.
- 11.6 Rental on immovable assets acquired for restitution purposes shall accrue to the State until the date of transfer to the claimants or until the date on which risks and rewards pass to claimants. If the date of passing of risks and rewards to claimants is prior to the date of transfer, such date shall be specified in the agreement envisaged in section 42D or Court Order envisaged in section 35 of the Restitution of Land Rights, 1994.

## **12. LEASE PERIOD**

- 12.1 The lease period for all leases shall be 30 years, which may be renewable for another 20 years.

- 12.2 The initial 5 year period shall be treated as a probation period in which the performance of the lessee shall be assessed. This period may be extended in those instances where the relevant crop's production cycle only allows harvesting after 5 years. In such instances, the first two production cycles shall be treated as a probation period.
- 12.3 The Director: Land Reform shall keep a list of all lessees who are on probation.
- 12.4 The assessment of performance of lessees who are on probation shall mainly be based on their ability to implement their business plans. Other issues relating to compliance of the lessee with their lease agreements shall also be considered.
- 12.5 At the expiry of the initial 5 year period, the Director: Land Reform shall produce and present a report to the National Land Allocation and Recapitalization Control Committee on the reasons why the lessee should be removed from the list of lessees who are on probation.
- 12.6 In the event the lessee's performance is regarded by the NLARCC to be unsatisfactory, the probation period may be extended for a further 5 year period or the lease may be terminated. In either case, the Director: Land Reform shall inform the lessee, in writing, of the reasons for the extension of the probation period or for the termination of the lease agreement.
- 12.7 All lessees whose leases have reached a cumulative period of 50 years shall be eligible to apply for new leases altogether. Such applications should however be submitted at least within a period of 3 years prior to the expiry of the 20 year extension.

### **13. WATER USE CHARGES**

- 13.1 A lessee may apply for water use authorization or water use license from the relevant water authority in relation to leased Departmental immovable assets.
- 13.2 In the event of the appropriate authority granting such a license or water use authorization, the lessee shall then become liable for payment of water use charges.
- 13.3 As a water use charge is a charge on land<sup>7</sup>, the Department may settle any debt arising out of water use on Departmental immovable assets and then recover from the lessee the cost in order to avoid litigation and costs escalation.

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<sup>7</sup> Section 60(1) of the National Water Act, 1998 (Act No. 36 of 1998).



13.4 Upon termination of a lease agreement or immediately prior to the very first lease agreement being signed, the Chief Director: Provincial Shared Service Centre shall ensure that all water use charges have been fully paid by the previous lessee or land owner and written confirmation from the relevant water use authority should be obtained.

#### **14. PROPERTY RATES**

14.1 The Department is generally liable for property rates<sup>8</sup> on immovable assets falling under its custodianship, except in those instances where the Municipal Property Rates Act, 2004 (Act No. 6 of 2004) provides scope for another person to be considered liable.

14.2 Notwithstanding 14.1 above, a lessee who has a lease which is longer than 5 years shall become liable for property rates from the beginning of the 6<sup>th</sup> year. This shall also apply to lessees whose crop's production cycle only allows harvesting after 5 years, provided that the Department shall pay and recover that amount from the lessee.

14.3 Any spouse or dependent that is approved to take over a lease agreement after death of a lessee shall also be liable from the date the cumulative lease period<sup>9</sup> amounts to more than 5 years.

14.4 Lessees shall be obliged to pay property rates immediately upon receipt of invoices or at any other time arranged between them and relevant municipalities.

#### **15. IMPROVEMENTS**

15.1 The lessee shall request permission from the Chief Director: Provincial Shared Service Centre, in writing, for any intended improvement. Such request shall declare the purpose of the intended improvement.

15.2 The Chief Director: Provincial Shared Service Centre shall, if the improvement is in his or her opinion justified, grant consent in writing.

15.3 Upon completion of construction, the lessee shall provide the Chief Director: PSSC with proof of expenditure incurred on any improvement which naturally appreciate in value and which contribute to the production of the farm.

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<sup>8</sup> See Section 24 of the Local Government: Municipal Property Rates Act, 2004 (Act No. 6 of 2004).

<sup>9</sup> The lease period of the deceased lessee added to that of the spouse or dependent.

- 15.4 If the improvement constitutes refurbishment of an existing structure that predates the commencement of the lease, the refurbishment costs shall be deducted from the value of the improvement when the immovable asset is sold to the lessee.
- 15.5 In the event the improvement was constructed by the lessee from scratch, the value of the whole improvement shall be deducted from the value of the immovable asset upon sale of such immovable asset to the lessee.
- 15.6 In the event the lease is terminated as a consequence of the actions or omissions of the lessee, the improvement shall become the property of the Department and no compensation shall be paid to the lessee for such improvement. If however the improvement can be removed without any ground damage or nuisance, the lessee shall be entitled to remove such improvement.

## **16. FIREBREAKS**

- 16.1 The National Veld and Forest Fire Act, 1998 (Act No. 101 of 1998) imposes an obligation on the owner of land to prepare and maintain firebreaks. The definition of the owner in this Act includes a lessee.
- 16.2 The lessee shall therefore be responsible for the preparation and maintenance of firebreaks and shall discharge all the obligations of the owner envisaged in the said Act. Such obligations shall include participation in a Fire Protection Association<sup>10</sup>.

## **17. ELECTRICITY CONNECTIONS AND CONSUMPTION COSTS**

- 17.1 The Department shall, at its discretion and after taking the use of the immovable asset into consideration, take steps to get electricity connected to such asset. Expenditure for initial electricity connection costs shall therefore be incurred by the Department.
- 17.2 If there is an existing connection, the cost of opening an account with the relevant supplier shall also be borne by the Department. The lessee shall then pay all subsequent electricity consumption costs.
- 17.3 Should electricity supply be terminated as a result of the lessee's action or omission, reconnection fees shall remain the sole responsibility of the lessee.

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<sup>10</sup> Association envisaged in section 3 of the National Veld and Forest Fire Act, 1998.



## **18. MAINTENANCE OF OTHER INFRASTRUCTURE**

- 18.1 The Department shall ensure that farming units are accessible by road, except where the nature of the enterprise does not require any more than the main access road to the farm.
- 18.2 Minor day to day maintenance of farm roads shall be the responsibility of the lessee, whilst the Department shall assume responsibility for major road maintenance. Such maintenance may be carried out once in 5 years or within a reasonable period after natural disasters.
- 18.3 The Department shall ensure routine maintenance of boundary fences after 10 years of the erection of such fences.
- 18.4 Day to day repairs of boundary and internal fences shall be the responsibility of the lessee.

## **19. INSURANCE**

- 19.1 All productive assets, including standing crop and/or trading stock, that contribute to continued production on a farm shall be insured by the lessee.
- 19.2 Any document that proves the existence of insurance shall be provided by the lessee prior to the expiry of the first production cycle, unless there's no existing productive asset that may be insured during that year.
- 19.3 Premiums payable during the first production cycle, may be paid from Recapitalisation and Development funds. This shall however be limited to farms which would be under Recapitalisation and Development support during that period.

## **20. TERMINATION OF LEASES**

- 20.1 A lease agreement shall terminate in accordance with the provisions of such lease agreement.
- 20.2 A lease agreement shall also terminate upon death of a lessee. The surviving spouse or dependent shall enjoy the first preference in the event they elect to apply for a lease on the subject land.
- 20.3 The spouse or dependent referred to above should be eligible in terms of the requirements of this Policy and also in terms of the criteria prescribed by the NLARCC.
- 20.4 In the event of the surviving spouse or dependent not satisfying the criteria, the Provincial Technical Committee shall produce a report with recommendations for the Approval Authority to make a decision. Such a

report shall include recommendations on steps that would need to be taken to place the applicants in a position that will make them eligible.

20.5 Except in circumstances described above, a lessee shall not cede its rights and obligations to any other person, except with the approval of the NLARCC.

20.6 Any subletting or cession on the part of the lessee shall constitute grounds for immediate termination of the lease agreement without any notification period to remedy the breach.

## **21. OPTION TO PURCHASE**

21.1 As already mentioned above, only Categories 3 and 4 shall qualify for long term leases with option to purchase.

21.2 The lessee's right to exercise the option shall depend on:

21.2.1 Successful completion of the probation period;

21.2.2 Whether the lessee or farmer had expanded or at least maintained production on the land;

21.2.3 Whether the farmer had utilized the Recapitalization and Development or other funds according to the agreements and the Business Plan and where this had not taken place, whether the decisions that were made to revise the plan were economically justified and the funds appropriately utilized;

21.2.4 Whether the farmer complied with the terms of the lease agreement;

21.2.5 Where the farmer has been deemed, by the NLARCC, capable to independently manage his/her/its/their finances as well as market his/her/its/their produce; and

21.2.6 Whether the farmer consents to the State's right of first refusal being registered against the relevant title deed.

21.3 As noted in the Green Paper on Land Reform, State and Public land remain under Leasehold. The option to purchase provided in this chapter is therefore a concession granted to farmers just as an incentive for them to pursue production. In view of the fact that the option is only available to Category 3 and Category 4 farmers, it's therefore safe to assume that the landowning class will be better off, financially, in relation to persons falling under Category 1 and 2 who are more likely to be greater in numbers in relation to the land owning class. The sale value of the land should therefore



not constitute a giveaway in view of the fact that this option is not available to all since it may inadvertently create new forms of land conflict in the country.

21.4 In the event of the option to purchase being realized, the immovable asset shall, in the light of 21.3 above, be sold at a market related price.

## CHAPTER 3

### COMMERCIAL DEVELOPMENTS

#### 22. INTRODUCTION

The Department, including its predecessors, has been routinely receiving long term lease applications for a variety of commercial enterprises in communal areas or in areas that previously fell under the control of Homelands. Such enterprises include mining; tourisms; entertainment; small shopping centres; big malls; township development for low, medium and high income groups; petrol filling stations; alternative energy sources and short term accommodation like hotels and bed and breakfast establishments.

The Government policy since 1994 recognised inhabitants of former homelands as rightful owners of the land they occupy, irrespective of how the ownership of such land may be reflected in the Deeds Registry. In recognition of the fact that the rights of such inhabitants may not be adequately protected in law, Parliament passed the Interim Protection of Informal Land Rights Act, 1996 in order to provide for the temporary protection of such rights.

In 1999 the Department approached National Treasury (then Department of State Expenditure) for general approval for proceeds of long term leases on communal land to be paid directly to the affected communities. This was approved and has remained the policy position of the Department since then. This seems to have created an attitude that the Department need not concern itself with up to date information on such leases since the immediate benefits were not directly accruing to the State. The effect is that the amount of investment that goes into communal areas as a consequence of these leases cannot be quantified. The question whether the lessees do comply with their lease obligations and whether the benefits do actually flow from the lessees to community entities and from community entities to the individual members of the community remains unknown. Whilst this chapter is intended to focus on procedural issues to be observed towards having long term lease on commercial developments approved, a separate investigation or policy discussion will be initiated with a view to address the shortcomings discussed here.

#### 23. TARGET GROUP

23.1 Unlike agricultural leases, commercial developments are highly dependent on the ability of the applicant to independently secure development finance. Such developments also have greater potential to benefit communities at a large scale in areas which were systematically marginalised for almost a century. This Policy has consequently taken a non-protectionist approach in order to encourage private sector investment in these areas.



- 23.2 There shall be no target group criteria for determining who may benefit under this chapter.
- 23.3 The prospective lessee should simply demonstrate prospects for community participation in the intended enterprise. Such prospects need not be limited to potential employment but should also include the possibility of skills transfer and community shareholding in the enterprise.
- 23.4 Whilst existing sector specific Broad Based Black Economic Empowerment targets may be used for guidance, the commercial entity operating in a communal area should allocate a minimum of 10% free-rider shareholding in the operating entity.

## **24. COMMUNITY PARTICIPATION**

- 24.1 Where the envisaged development is to take place on land which, at any time prior to 27 April 1994, was allocated to a traditional community or other community, such community shall be consulted in accordance with procedures issued in terms of the Interim Protection of Informal Land Rights Act, 1996.
- 24.2 Where the envisaged development is to take place on land where certain natural persons have enjoyed informal rights to land, such persons shall also be consulted in accordance with the same procedures referred to at 24.1 above.
- 24.3 The land development applicant or prospective lessee shall initiate and manage the consultation process and incur all costs relating to the convening of consultation meetings.
- 24.4 The Department shall assist the land development applicant or prospective lessee in identifying the correct community to be consulted, where such community exists.

## **25. APPROVAL PROCESS**

- 25.1 Commercial developments require land development approval by relevant land use regulation authorities or land development approval authorities.
- 25.2 The land development approval authorities routinely require, amongst other things, proof of tenure rights, proof of approval of environmental impact assessments or Records of Decisions or any plan of similar nature, proof regarding future provision of engineering and other services, approval of access to or egress from a national road and such other information required by empowering legislation.

- 25.3 Land development applicants have been frustrated by different authorities requiring another authority to have approved its part before it can also approve its part. The Department has also made these types of demands in the past and the effect is that no approval gets granted as the respective approvals are dependent on the other.
- 25.4 The Department shall, in view of 25.2 – 25.3, not require any prior approval from another authority for granting a lease for non-agricultural developments.
- 25.5 Where there is a possibility that the prospective lessee's land development application may not be approved, the Department shall approve either an option agreement or a long term lease containing a suspensive condition. The option or suspensive condition shall depend on the nature of the future event which the land development application is dependent on.
- 25.6 The approval of a land tenure right or long term lease shall be preceded by the consultation envisaged in 24 above, only in those instances where such consultation is applicable. Proof of such consultation shall be in the form of a resolution signed by all the persons who attended such a meeting.
- 25.7 All applications for land tenure rights or long term leases under this chapter shall be presented to a Provincial State Land Vesting and Disposal Committee (PSLVDC). The application to the said committee shall include:
- 25.7.1 a business plan or any other document that sufficiently describes the envisaged development;
  - 25.7.2 An approved diagram of the development area or a diagram produced by a registered land surveyor, which should be in the process of being submitted or have already been submitted for examination by a Surveyor General;
  - 25.7.3 A letter from the Regional Land Claims Commissioner or the Chief Director: Land Restitution Support indicating whether the development area or the parent property is not claimed in terms of the Restitution of Land Rights Act, 1994. Where the development area is claimed, the letter should contain an indication whether the claimants have been consulted and whether the approval of a long term lease will not jeopardise the future settlement of the claim;
  - 25.7.4 A valuation report produced by a person entitled to practice and registered in terms of the Valuation Profession Act, 2000 (Act No. 47 of 2000) or a written opinion produced by an Estate Agent who is entitled to practice in terms of the Estate Agency Affairs Act, 1976; and



25.7.5 Proof or any information justifying the Department's legal title to the affected development area.

25.8 After a recommendation by the PSLVDC, the head of the relevant provincial office shall then process the application for approval by the Minister.

## **26. LEASE PERIOD**

26.1 The lease period for all leases under this chapter shall be 30 years, which may be renewable for another 20 years.

26.2 Lessees may reapply for new leases altogether in the event they would still need a lease after the 50 year period. Such an application should however be submitted at least within a period of 3 years prior to the expiry of the renewed period.

## **27. RENTAL DETERMINATION**

27.1 The general norm in commercial developments is that rental becomes a percentage of turnover. The difficulty in these situations is that the quantum remains unknown until the financials of the company are finalised. This poses a challenge since some of the community entities do not have the capacity to manage this and there's also no corresponding Departmental capacity to help communities with revenue collection in long term leases. A fixed rental calculation method has consequently been adopted since it provides certainty on the rental amount from the commencement of the lease.

27.2 The Department shall conduct a valuation of the development area in respect of each application, at the expense of the development applicant or prospective lessee. This shall take the form of the applicant instructing a valuer identified by the Department from the database of valuers.

27.3 In the event the valuation requires special knowledge which ordinarily falls outside of the property valuation profession, the property valuer shall procure such skill so as to ensure that there's only one comprehensive document to be relied on for purposes of determining rental.

27.4 The purpose of the valuation shall be to determine market related rental value of the development area. Market relatedness in this regard shall be determined through a comparison of the future land use with similar land uses elsewhere and rental prices paid in that specific industry. Such comparison may not be restricted by considerations of proximity to the proposed development area.

27.5 In the event the Head of a Property Management or State Land Administration Unit in the PSSC forms a view that the opinion of an ordinary property valuer would not be sufficient or relevant in view of the nature of the development concerned, the opinion of an estate agent who operates in that geographical area or closest geographical area, shall be sought.

27.6 In the event of the Department not being satisfied with the first opinion, it may seek another opinion at its own expense.

## **28. ESCALATION**

Rental shall escalate by 10% per annum until reviewed by the Director General.

## **29. RENTAL PAYMENT**

29.1 Rental for leases under this chapter shall be payable annually in advance.

29.2 Payment shall be due within a period of 3 months from the effective date hence interest may only be charged from the beginning of the 4<sup>th</sup> month from the effective date.

29.3 The effective date on all leases falling under this chapter shall be the first date of the month in which they were signed and the termination date shall always be at the end of the month regardless of such date falling on a weekend or public holiday and also regardless of the date of signature by the last signing party.

## **30. ELECTRICITY CONNECTIONS AND CONSUMPTION COSTS**

30.1 The lessee shall open water and electricity accounts directly with appropriate authorities.

30.2 Electricity connection costs to the development area shall be the responsibility of the lessee.

30.3 Water and Electricity consumption costs shall also be the responsibility of the lessee.

## **31. PROPERTY RATES**

The lessee shall be responsible for municipal property rates on the development area from the effective date.

## **32. OTHER COSTS**

32.1 All land tenure rights or long term lease related costs shall be the responsibility of a prospective lessee or applicant.



32.2 The costs referred at 32.1 above shall include publication of notices for community consultation, property valuation, land surveying and registration of the lease agreement in any office of a Registrar of Deeds.

### **33. IMPROVEMENTS**

33.1 The improvements shall, at the end of the lease, become the property of the relevant community or Department and no compensation shall be paid in respect of such improvement. Should the nature of the improvement require that it is demolished at termination of the lease agreement, the lessee shall take care of all demolition costs.

33.2 The improvement shall only become the property of the Department in those instances where the land is not allocated or legitimately used by any community.

### **34. ENVIRONMENTAL COMPLIANCE AT TERMINATION.**

The lessee shall, at the final termination date, ensure that the development area and its immediate environment are in a condition that complies with any environmental legislation applicable in that area. The Department, as custodian, is not and shall not be considered liable for the lessee's actions and omissions in this regard.

### **35. MAINTENANCE**

Maintenance of any improvement and infrastructure shall be the responsibility of the lessee, except such infrastructure which, by law should be provided and maintained by a State Organ.

### **36. CESSION**

36.1 A lessee may cede its rights and obligations with the prior written variation of the lease agreement, unless the Lease Agreement always contained a cession provision.

36.2 In the event the cession or any variation of the lease terms have the effect of materially changing the general terms agreed to during a Community Resolution meeting, the relevant community shall be consulted prior to such cession or variation being formalised and signed.

### **37. TERMINATION**

A lease agreement shall terminate in accordance with the provisions of such lease agreement.

## **CHAPTER 4**

### **CARETAKER ARRANGEMENTS**

#### **38. CARETAKER AGREEMENTS**

- 38.1 Caretaker agreements shall be used sparingly and mainly on land referred to in Chapter 2 above.
- 38.2 Caretaker agreements shall always be treated as temporary measures to ensure that the property is looked after, whilst a lessee has not yet been selected.
- 38.3 Caretaker agreements may also be used on land referred to in Chapter 3 in those instances where reasonable suspicions exist that the security of the land will be compromised, unless a caretaker is appointed.
- 38.4 As caretaker arrangements may result in the deterioration of the property, such arrangements shall therefore be limited to a maximum of 12 months.
- 38.5 No caretaker agreement may be extended for any period beyond 12 months.
- 38.6 No caretaker agreement shall contain any provision for any form of payment by the caretaker to the Department.

#### **39. APPROVAL**

- 39.1 The Chief Director: Provincial Shared Service Centre shall approve and sign caretaker agreements after being provided with a written motivation regarding why such agreement is necessary.
- 39.2 The written motivation shall be filed together with the caretaker agreement and shall be an annexure to it.
- 39.3 The appointed caretaker should have been recommended by the District Beneficiary Selection Committee and the Provincial Technical Committee, so as to ensure that such a caretaker has reasonable capacity to take care of the relevant property.



## CHAPTER 5

### LETTING OF LAND TO LABOUR TENANTS, OCCUPIERS AND OTHER PERSONS WITH LIMITED OR INSECURE TENURE

40. A labour tenant<sup>12</sup> may have applied for award of land defined in section 16(1)(a) – (d) of the Land Reform (Labour Tenants) Act, 1996, provided that such application was submitted by no later than 31 March 2001.
41. In the event that the labour tenant's application is uncontested and such land is subsequently acquired by the Department for purposes of settling the labour tenant's application, such land shall only be leased to the labour tenants on a long term lease basis at a nominal rental of R 1.00 per annum.
42. Labour tenants or former labour tenants may however apply for leases on any Departmental land, other than land acquired for purposes of settling applications submitted to the Director General in terms of section 17 of the Land Reform (Labour Tenants) Act, 1996. Where labour tenants or former labour tenants submit such lease applications, they will have to comply with the provisions of the relevant chapters of this Policy.
43. Occupiers<sup>13</sup> who need long term security of tenure are, in terms of section 4(1) and (2) of the Extension of Security of Tenure Act, 1997 (Act No. 62 of 1997)

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<sup>12</sup> 'labour tenant' means a person-

- (a) who is residing or has the right to reside on a farm;
- (b) who has or has had the right to use cropping or grazing land on the farm, referred to in paragraph (a) , or another farm of the owner, and in consideration of such right provides or has provided labour to the owner or lessee; and
- (c) whose parent or grandparent resided or resides on a farm and had the use of cropping or grazing land on such farm or another farm of the owner, and in consideration of such right provided or provides labour to the owner or lessee of such or such other farm,

including a person who has been appointed a successor to a labour tenant in accordance with the provisions of section 3 (4) and (5), but excluding a farmworker;

<sup>13</sup> 'occupier' means a person residing on land which belongs to another person, and who has or on 4 February 1997 or thereafter had consent or another right in law to do so, but excluding-

- (a) .....

[Para. (a) substituted by s. 20 (b) of Act 61 of 1998 and deleted by s. 6 (a) of Act 51 of 2001.]

entitled to apply for subsidies to acquire land or rights in land and for the development of land occupied or to be occupied in terms of on-site<sup>14</sup> or off-site developments<sup>15</sup>.

44. In the event that the Department may have acquired or acquires land for purposes of processing the type of application envisaged in the sections cited at 38 above, such land shall only be leased to the Occupiers on a long term lease basis at a nominal rental of R 1.00 per annum.
45. Persons who fall within Category 1 and those who graduate from Category 1 to 2, as defined in Chapter 2 of this Policy shall also qualify to apply for long term leases at nominal rental of R 1.00 per annum.

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(b) a person using or intending to use the land in question mainly for industrial, mining, commercial or commercial farming purposes, but including a person who works the land himself or herself and does not employ any person who is not a member of his or her family; and

(c) a person who has an income in excess of the prescribed amount

<sup>14</sup> **'on-site development'** means a development which provides the occupants thereof with an independent tenure right on land on which they reside or previously resided

<sup>15</sup> **'off-site development'** means a development which provides the occupants thereof with an independent tenure right on land owned by someone other than the owner of the land on which they resided immediately prior to such development

