

Chapter D1

LEASEHOLD

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Section A: Leasehold in respect of the Black Communities Development Act, No.4 of 1984

1. INTRODUCTION

Up until 1 September 1991 residence of black people in urban areas was controlled by the Black Communities Development Act. Upon commencement of the Abolition of Racially Based Land Measures Act, No. 108 of 1991, most of this act was repealed. Chapters VI and VIA, however, remain in force, as well as the regulations promulgated in terms of this Act. There are two sets of regulations, i.e. the so-called *Leasehold Regulations* and the so-called *Township Development Regulations*.

Land tenure rights (rights of leasehold) can still be granted and registered in terms of Chapters VI and VIA. *However, such granting and registration is limited to towns for which no township register has yet been established.*¹

¹ Section 6(1)(b) of the Upgrading of Land Tenure Rights Act, No. 112 of 1991.

2. THE REGISTRATION OF LEASEHOLD

1. As mentioned above, leasehold and land tenure rights can still be *granted* and *registered* in terms of this act, but only in respect of ***towns for which no township register has yet been opened.***

(If a township register has been opened right of ownership in respect of an erf can be granted by a special deed of transfer, in terms of section 13 of the Upgrading of Land Tenure Rights Act - (See Section B, paragraph 4 below).

2. A person to whom leasehold is granted (in respect of an erf in a town for which no township register was opened) may register such leasehold at the deeds registry. In order to effect registration thereof in the deeds registry a "Certificate of Provisional Granting of Leasehold" together with a "Certificate of Registered Grant of Leasehold" shall be lodged with the deeds registry. The "Certificate of Registered Grant of Leasehold" shall be registered by the registrar of deeds.
3. A conveyancer's execution with the registrar, as in conventional transfers, shall not be necessary. No stamp or transfer duties shall be payable in respect of the registration of leasehold.

4. Requirements for registration

The following documents shall be lodged at the deeds registry:

- (a) "Certificate of Provisional Granting of Leasehold";
- (b) "Certificate of Registered Grant of Leasehold"
- (c) Rates Clearance Certificate.

The following documents shall not be required:

- (a) competency affidavit;
- (b) reference to the 99-year period;
- (c) reference to any rent payable.

5. Mortgage bonds over leasehold are passed in the same manner as are mortgage bonds passed over right of ownership.

3. THE TRANSFER OF A REGISTERED LEASEHOLD

1. A registered leasehold in respect to a leasehold site may be transferred in one of two ways, i.e. -
 - (a) by means of a ***deed of transfer*** - (**Form E** of the Deeds Registries Act's Regulations must be used); or

- (b) by an **endorsement** in terms of the Deeds Registries Act - (Section 54(1) of the Black Communities Development Act).
- **Comment on 1(a):** If a right of leasehold is *registered* and the leasehold site is sold thereafter, transfer thereof to another person shall be passed in the same way as in conventional transfers, i.e. by means of a **conventional deed of transfer**, i.e. **Form E** of the Regulations to the Deeds Registries Act shall be used.
 - **Comment on 1(b):** Suppose a registered leasehold is inherited, the surviving spouse's undivided half-share in that property can then be transferred by way of **endorsement**, in accordance with the stipulations of the Deeds Registries Act.
2. If transfer of a registered leasehold is effected by means of a **deed of transfer** (Form E), the description of property in the new deed should read as follows:
- "... all right, title and interest in the leasehold in respect of Erf 9488 Pimville Zone 6 township measuring 337 (three hundred and thirty-seven) square metres originally registered and still held under Certificate of Registered Grant of Leasehold TL4943/1988 with General Plan No L669/1986 referring thereto."*
3. **Requirements for registration:**
The following documents shall be lodged at the deeds registry:
- (a) the *Deed of Transfer* (prepared by a conveyancer in accordance with **Form E**);
 - (b) the current *Certificate of Registered Grant of Leasehold*;
 - (c) the *Clearance Certificate* as proof thereof that all rates and taxes have been paid
4. All special conditions applicable to property shall be incorporated in the deed of transfer. If the property is subject to a servitude of a wall shared, it should read as follows: *"subject to a servitude of a wall shared as indicated on the general plan/diagram."*
- #### 4. THE CONVERSION OF LEASEHOLD INTO RIGHT OF OWNERSHIP
1. A right of leasehold in respect of leasehold premises is automatically converted into a right of ownership when a township register is opened with regard to the town in which the premises is situated. The mere endorsement of the title deed by the Registrar to that effect, will serve as sufficient proof of that fact - (See Section B, paragraph 2 below).

2. After conversion into right of ownership the land shall remain subject to the same restrictions, conditions or charges which applied to such land immediately before conversion, with regard to the provisions of section 4 of Act 112 of 1991.

Section B: Leasehold in respect of the Upgrading of Land Tenure Rights Act No. 112 of 1991

1. DEFINITIONS

"erf"	in relation to a township, means any surveyed or any informally demarcated unit in the township or, if a general plan has been prepared for the township, any unit indicated on such general plan as an erf, plot or stand;
"formalised township"	means a township for which a general plan has been approved under a provision of any law which has been established as a township under the Black Communities Development Act or the Black Administration Act; or is declared to be a formalised township;
"land tenure right"	means any leasehold, deed of grant, quitrent or any other right to the occupation of land;
"title of land right"	in relation to any erf or any other piece of land, means a deed executed under a provision of any law as proof of the registration of a land tenure right in respect of such erf or such piece of land in the name of a person;
"township"	means any piece of land which is subdivided into smaller units in such a manner that the units are accessible by means of streets or thoroughfares, whether the units have been surveyed or are informally demarcated;
"township owner"	means the person who, by virtue of his ownership of the land on which a township is situated, is the owner of the erven and other pieces of land in the township

Schedule 1 of the Act

Land Tenure Rights in terms of Schedule 1 of the Act refers to all forms of *leaseholds, deeds of grant and quitrents*.

Schedule 2 of the Act

Land Tenure Rights in terms of Schedule 2 of the Act refers to all rights to the *occupation* of land.

2. CONVERSION OF SCHEDULE 1 LAND TENURE RIGHTS (Leaseholds, Deeds of Grant & Quitrents) INTO RIGHT OF OWNERSHIP (Section 2 of the Act)

1. *From 1 September 1991 all schedule 1 land tenure rights (leaseholds / deeds of grant / quitrents) which was granted in respect of any erf in a formalized township for which a township register was already opened, were **automatically converted into ownership** - (Section 2(1)(a)).*
2. *From 1 September 1991 all schedule 1 land tenure rights (leasehold / deeds of grant / quitrents) which was granted in respect of any erf in a formalized township for which a township register is opened after the commencement of this Act, shall at the opening of the township register be **automatically converted into ownership** - (Section 2(1)(b)).*
3. No registration procedure shall be required for such conversion. The holder of the right of ownership/leasehold (or his agent) shall produce the relevant title deed to the registrar who shall endorse such title deed to the effect that the land tenure right is converted to ownership - (Section 2(2)(a)).
4. It shall not be required that the conveyancer shall make application for the leasehold to be converted to ownership. The owner himself or his agent can produce the deed of transfer to the registrar in order to have it endorsed.
5. No transfer duties, stamp duties or other costs are payable in respect of such endorsement.
6. If, however, transfer is to be passed of land tenure rights (leasehold) in respect of which no endorsements for the conversion thereof have been made, the registrar shall, upon registration of the deed of transfer, endorse the deed to the effect that the leasehold is converted to ownership.
7. **Transfer of leasehold converted into ownership:**
 - 7.1 A registered leasehold converted into ownership is transferred by means of a **conventional deed of transfer**. Such deed of transfer shall be prepared in accordance with **Form E** of the Deeds Registries Act.

- 7.2 Such deed of transfer shall be made subject to the provisions, if any, contained in the title of the land, the title of land right and all proclaimed township conditions.
- 7.3 In other words, the title deed of leasehold does not reflect the conditions which appear in the township's title of land and those of any proclamation pertaining to that land. When the deed of transfer is prepared, the conveyancer should examine the original title of land for any township conditions, servitudes, or mineral rights. If there are any, they should be inserted into the deed of transfer.

8 Requirements for registration

The following documents shall be lodged at the deeds registry:

- (a) the *deed of transfer* (prepared by a conveyancer in accordance with Form E);
- (b) the old *title deed* (with endorsement that the land tenure right (leasehold) is converted into ownership);
- (c) a *transfer duty receipt* that transfer duties have been paid; and
- (d) a *clearance certificate*.

3. CONVERSION OF SCHEDULE 2 LAND TENURE RIGHTS (Rights to the Occupation of Land) INTO RIGHT OF OWNERSHIP - (Section 3 of the Act) ²

1. Any land tenure right mentioned in Schedule 2 (rights to the occupation of land) for which a township register was opened, shall as from 1 September 1991 be converted into ownership by the registrar of deeds registering a ***special deed of transfer*** in the name of the holder of the land tenure right - (Section 3(1)). **Form DDD** shall be used for this purpose. (These are land tenure rights to the *occupation* of land granted to individuals, but for which no "certificate of leasehold" was issued. It must be distinguished from leasehold.)
2. In order for a schedule 2 land tenure right to be converted into ownership, the owner of the erf (or piece of land) shall lodge with the registrar for registration a "deed of transfer" (prepared in accordance with **Form DDD** of the Deeds Regulations) issued in the name of the holder of the land tenure right - (Section 3(1)).

² Section 3 of the Act has almost entirely been amended by Section 68 of the Development Facilitation Act, No.67 of 1995.

3. The deed of transfer shall be prepared by-
 - (a) a *conveyancer*, or
 - (b) if the owner of the erf or piece of land is the State or any local government body, *any officer in the public service or person in the employ of such local government body*, as the case may be, who has been designated for the purpose by the Minister, a Premier or a local government body, as the case may be - (Section 3 (2)).
4. A deed of transfer, drafted in accordance with **Form DDD**, shall be signed by the owner of the erf or piece of land or his or her duly authorised agent in the presence of:
 - (a) a *conveyancer*, or
 - (b) *an officer in the service of the central-, provincial- or local government* - (Section 3 (3)).
5. An officer or person in the service of the central-, provincial- or local government -
 - (a) shall disclose the fact that the deed of transfer or any power of attorney, application or consent, which may be required by the registrar for the purposes of registration of the transfer was prepared by him or her, by signing an endorsement to that effect on the deed of transfer, power of attorney, application or consent, as the case may be, and by virtue of such signing accepts, *mutatis mutandis*, in terms of section 15A (1) and (2) of the Deeds Act, responsibility for the correctness of the facts stated in any such document - (Section 3(4)(a)); and
 - (b) may, despite anything to the contrary contained in any other law, perform all of the functions of a conveyancer in relation to the registration of a deed of transfer as contemplated in this section - (Section 3(4)(b)).
6. A conveyancer, officer or person in the service of the central-, provincial- or local government shall lodge the deed of transfer together with the necessary supporting documents at a deeds registry in the manner prescribed under the Deeds Act - (Section 3 (5)).
7. The registrar shall deal with a deed of transfer and the other documents as if such deed of transfer were executed in the presence of the registrar in terms of section 20 of the Deeds Act - (Section 3 (6)).
8. Ownership of the erf or piece of land shall be deemed to have been transferred on the date of registration by the registrar of a deed of transfer referred to in subsection (1) - (Section 3 (7)).

9. No transfer duties, stamp duties or other fees shall be payable but the required clearance certificate shall be lodged. Furthermore, proof that no VAT is payable shall have to be delivered - (Section 3 (8))
10. The deed of transfer shall be made subject to all existing conditions, if any, in the title deed concerning the property.
11. The subsequent transfer is passed by means of a formal deed of transfer. The deed of transfer shall be prepared in accordance with Form E of the Deeds Registries Act.

4. SHORTENED REGISTRATION PROCEDURES RELATING TO CERTAIN ERVEN AND LAND TRANSFERRED BY TOWNSHIP OWNER (Section 13 of the Act)

1. If a township owner, with reference to any formalised ownership, intends to transfer ownership in respect of any erf or any other piece of land in respect of which no land tenure right has been granted, he may do so by lodging a **deed of transfer**, according to **Form DDD** prescribed under the Deeds Act, and made out in the name of the transferee, at the deeds registry for the registration of such erf or piece of land in the name of the transferee.
2. All requirements for registration of such deed of transfer are exactly the same as those referred to in paragraphs 3.3 to 3.11 above.

Chapter D2

LESS FORMAL TOWNSHIP ESTABLISHMENT in development areas

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Section A: In terms of the Upgrading of Land Tenure Rights Act, No. 112 of 1991

This act does not prescribe a procedure for township establishment but authorises the administrator or township developer to open township registers, in respect of formalised townships, according to a shorter procedure.¹

(A formalised township is a township for which a general plan has been approved or which is declared to be a formalised township)

The provisions of section 7 to 12 shall only apply to formalised townships. In this regard it should be noted that section 11 determines that, before a township register can be opened, a certificate of rights to minerals in favour of the owner of the land or any other person who is entitled to mineral rights shall be taken out.

¹ For a more detailed discussion of this subject, see West A, **De Rebus**, *Township Development in terms of Act 4 of 1984, Act 112 of 1991 and Act 113 of 1991*, September 1992, pp 608 to 609

Section B: In terms of the Less Formal Township Establishment Act, No 113 of 1991

1. INTRODUCTION

In the case of -

- (i) towns outside development areas;
- (ii) towns which are not formalised townships; and
- (iii) land not subject to Chapter III of this act:

the following general rule applies since the commencement of this act on 1 September 1991.

The various provincial enactments in respect of township establishment shall apply, but the township developers may use the provisions of Chapter I and II of this act provided the administrator consents thereto.

2. TOWNSHIP ESTABLISHMENT IN TERMS OF CHAPTER I

1. The purpose of this chapter is to provide a shortened procedure of township establishment (with the administrator's consent) in order to provide for the high rate of urbanisation and to combat unlawful squatting by making land available for the development of rudimentary housing schemes.
2. The administrator, local authority or any other owner of land may make land available for this purpose.
3. Township establishment shall be effected according to sections 2 to 7 of this chapter.
 - 3.1 Settlement of persons on erven of the town shall take place only after a land surveyor has, with a view to the preparation of a general plan, surveyed the erf and placed the erf beacons - (Section 8). Only thereafter a general plan has to be approved and a township register opened.
 - 3.2 A general plan shall be prepared and shall be submitted to the surveyor-general for approval - (Section 5).
 - 3.3 **Opening of township register**

After a plan has been approved by the surveyor-general it shall be lodged with the registrar who shall forthwith open a township register - (Section 6). The

application for opening a township register shall comply with the same requirements as prescribed in section 46 of the Deeds Registries Act.

4. Registration of ownership (Section 9)

If the developer intends to transfer ownership of an erf, he shall, as soon as the township register in respect of the designated land has been opened, submit a special deed of transfer, made out in the name of the person to whom the erf has been allocated, on the **Form DDD** prescribed for that purpose under the Deeds Registries Act, to the deeds registry, whereupon the registrar of deeds shall register the erf in the name of such person - (Section 9(1)).

5. Requirements for registration (Section 9)

The requirements for registration of ownership are exactly the same as those for the conversion of a schedule 2 land tenure right into ownership, referred to in Chapter 11, Section B, paragraphs 3.3 to 3.11 above.

3. TOWNSHIP ESTABLISHMENT IN TERMS OF CHAPTER II

1. This chapter partly fills the gap which remained after the repeal of the Black Communities Development Act. It is, however, not based on racial distinction. A shortened procedure for township establishment is prescribed for areas in which the demand for housing justifies township establishment in accordance with this chapter. No person shall submit an application to establish a township under this Chapter unless the administrator has granted his prior permission in writing thereto.
2. A number of steps prescribed by provincial enactments in respect of township establishment can be omitted by the stipulations of this Chapter.
3. Township establishment shall be carried out in terms of sections 7 to 10 of this Chapter.
4. After the above mentioned requirements have been met the application for the opening of a township register shall comply with the same requirements of section 46 of the Deeds Registries Act.

4. TOWNSHIP ESTABLISHMENT IN TERMS OF CHAPTER III

1. This Chapter makes provision for the controlled and orderly settlement of indigenous tribes where a need exists for communal residential settlement of such tribes. If the administrator is satisfied that the land is suitable for communal

utilisation by members of a local tribe, he may grant permission to such tribe to use the piece of land for residential purposes.

2. The administrator shall give notice in the Gazette of any permission granted and of the conditions subject to which the permission has been granted.
3. Because the land is communally used for settlement, no township register needs to be opened, but a general plan for the area concerned shall be submitted to the surveyor-general for approval.
4. The rights of a tribe member with regard to an erf that has been allocated to him by the tribe shall be governed by the indigenous law and customs of the tribe.
5. **Opening of township register**
If a tribe desires, by means of a tribal decision, that ownership of land of which it is the owner be granted to the persons to whom the erven indicated on the general plan have been allocated, a township register in respect of the land shall first have to be opened (in terms of section 46 of the Deeds Registries Act).
6. **Registration of ownership**
If the tribe intends to transfer ownership in an erf to a tribe member, it shall, after the township register in respect of the land concerned has been opened, submit a special deed of transfer, made out in the name of the person to whom the erf is to be transferred, on the **Form DDD** prescribed for that purpose under the Deeds Registries Act, to the deeds registry, whereupon the registrar of deeds shall register the erf in the name of such person - (Section 26).

Note: The provisions of this Chapter shall not apply to land which, on the date of commencement of this act (i.e. 1 September 1991), belongs or has been allocated to an indigenous tribe or is kept in trust for such tribe.