

(16 May 2011 – to date)

[This is the **current** version and applies as from **16 May 2011**, i.e. the date of commencement of the Rural Development and Land Reform General Amendment Act 4 of 2011 – **to date**]

LAND REFORM: PROVISION OF LAND AND ASSISTANCE ACT 126 OF 1993

(Previously known as the “Provision of Certain Land for Settlement Act 126 of 1993”)

(Previously known as the “Provision of Land and Assistance Act 126 of 1993”)

(Government Notice 1293 in Government Gazette 14992 dated 23 July 1993. Commencement date: 23 July 1993.)

As amended by:

Development Facilitation Act 67 of 1995 - Government Notice 1526 in Government Gazette 16730 dated 4 October 1995. Commencement date: 22 December 1995 – unless otherwise indicated [Proc. No. R.111 in Government Gazette 16880 dated 22 December 1995] also amended by the Provision of Certain Land for Settlement Amendment Act 26 of 1998 – Government Notice 890 in Government Gazette 19019 dated 3 July 1998. Deemed to have taken effect on: 27 April 1994.

Land Affairs General Amendment Act 11 of 2000 - Government Notice 301 in Government Gazette 21028 dated 24 March 2000. Commencement date: 24 March 2000.

Provision of Land and Assistance Amendment Act 58 of 2008 - Government Notice 21 in Government Gazette 31788 dated 9 January 2009. Commencement date: 9 January 2009.

Rural Development and Land Reform General Amendment Act 4 of 2011 - Government Notice 427 in Government Gazette 34300 dated 16 May 2011. Commencement date: 16 May 2011.

Publisher’s note – The Act has been amended by section 11 of Act 26 of 1998 by the substitution for the word “Administrator”, wherever it occurs, of the word “Minister”.

ACT

(Afrikaans text signed by the State President.)

(Assented to 9 July 1993.)

To provide for the designation of certain land; to regulate the subdivision of such land and the settlement of persons thereon; to provide for the acquisition, maintenance, planning, development, improvement and disposal of property and the provision of financial assistance for land reform purposes; and to provide for matters connected therewith.

Prepared by:

(Long title substituted by section 12 of Act 26 of 1998, deemed to have come into operation on 27 April 1994)

(Long title substituted by section 9 of Act 58 of 2008)

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

ARRANGEMENT OF SECTIONS

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- 1A. Objects of Act
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1. Definitions

In this Act, unless the context otherwise indicates –

“Administrator”

(Definition of “Administrator” deleted by section 1 of Act 26 of 1998, deemed to have come into operation on 27 April 1994)

“agricultural enterprise” includes an enterprise engaged in activities pertaining to agricultural production and plantation, livestock production, agricultural services, hunting, trapping and game propagation, forestry and logging, aquaculture and fishing and any property utilised to carry on that enterprise;

(Definition of “agricultural enterprise” inserted by section 1(a) of Act 58 of 2008)

“deeds registry” means a deeds registry as defined in section 102 of the Deeds Registries Act, 1937 (Act No. 47 of 1937);

“Department” means the Department of Rural Development and Land Reform;
(Definition of “Department” inserted by section 1(b) of Act 58 of 2008)
(Definition of “Department” substituted by section 17 of Act 4 of 2011)

“designated land” means land which is under section 2 designated for settlement;

“developer” means any person who under section 4 undertakes the development of designated land;

“development body”
(Definition of “development body” deleted by section 1 of Act 26 of 1998, deemed to have come into operation on 27 April 1994)

“enterprise” means an undertaking engaged in production or distribution of goods or services not for the sole purpose of own consumption;
(Definition of “enterprise” inserted by section 1(c) of Act 58 of 2008)

“Minister” means the Minister of Rural Development and Land Reform;
(Definition of “Minister” substituted by section 68 (Schedule) of Act 67 of 1995)
(Definition of “Minister” substituted by section 17 of Act 4 of 2011)

“partition plan” means a partition plan as referred to in section 6;

“prescribed” means prescribed by or under this Act;

“property” includes movable or immovable, corporeal or incorporeal property and includes shares, rights, title or interest in or to a juristic person, other entity or a trust;
(Definition of “property” inserted by section 1(d) of Act 58 of 2008)

“settlement” means the settlement of persons on designated land as referred to in section 7(1);

“this Act” includes a regulation made under this Act.

1A. Objects of Act

The objects of this Act are to—

- (a) give effect to the land and related reform obligations of the State in terms of section 25 of the Constitution of the Republic of South Africa, 1996;

- (b) effect, promote, facilitate or support the maintenance, planning, sustainable use, development and improvement of property contemplated in this Act;
- (c) contribute to poverty alleviation; and
- (d) promote economic growth and the empowerment of historically disadvantaged persons.

(Section 1A inserted by section 2 of Act 58 of 2008)

2. Powers of Minister with regard to certain land

- (1) The Minister may, subject to the provisions of section 3, designate for the purposes of settlement—
 - (a) State land which is controlled by him or her and made available by him or her for those purposes;
 - (b) land which is purchased or acquired by him or her for those purposes and which is made available by him or her for those purposes;
 - (c) any land which has been made available for those purposes by the owner thereof.
- (2) The Minister shall give notice in the *Gazette* of any land designated under subsection (1).
- (3) The Minister may by notice in the *Gazette*—
 - (a) impose conditions for the use of the land designated under subsection (1); and
 - (b) amend, withdraw or provide for the lapsing of any condition contemplated in paragraph (a).

(Section 2(3) substituted by section 3 of Act 11 of 2000)

- (4) The laws governing the subdivision of agricultural land and the establishment of townships shall not apply in respect of land referred to in subsection (1) unless the Minister directs otherwise in the notice in question.

(Section 2 substituted by section 2 of Act 26 of 1998, deemed to have come into operation on 27 April 1994)

3. Publication of notice in newspaper

- (1) Taking into consideration the languages most commonly used in the district, the Minister shall cause to be published in at least one newspaper circulating in the district in which the designated land is situated, a notice calling upon interested parties to submit in writing to the Minister within a period mentioned in the notice, which period may not be shorter than 21 days, following the day upon which the notice appeared in the newspaper, any representations which they wish to make in respect of the contemplated

designation: Provided that if no substantial change in land use is likely to occur as a result of the proposed settlement in terms of this Act, the Minister may direct that no such publication shall be necessary.

- (2) The Minister shall not designate any land before he or she has considered all the representations received by virtue of subsection (1).

(Section 3 substituted by section 3 of Act 26 of 1998, deemed to have come into operation on 27 April 1994)

4. Development of designated land

The development of designated land shall be undertaken –

- (a) in the case of land referred to in section 2(1)(a) or (b), by the Minister or by someone with whom he has concluded an agreement for that purpose; and
- (b) in the case of land referred to in section 2(1)(c), by the owner of that land or by someone with whom he has concluded an agreement for that purpose.

5. Subdivision of designated land

The developer may, subject to the conditions contemplated in section 2(3), subdivide the designated land or cause it to be subdivided in accordance with the provisions of this Act into pieces of land for small-scale farming, residential, public, community, business or similar purposes.

6. Partition plan

- (1) The developer shall draw up or cause to be drawn up a partition plan indicating the intended subdivision of the designated land.
- (2) If the Minister is not the developer, the developer shall submit such partition plan to the Minister, and if the Minister is satisfied with the intended subdivision of the designated land, he shall approve the partition plan.

7. Surveying and approval of plans and diagrams

The developer shall –

- (a) as indicated on the approved partition plan, cause plans and diagrams to be prepared for the designated land, and shall cause such plans and diagrams to be submitted to the surveyor-general for approval; and

- (b) after the plans and diagrams have been approved or provisionally approved by the surveyor-general, file such plans and diagrams at the deeds registry for registration by the registrar of deeds.

8. Settlement of persons on designated land

- (1) The developer may, subject to the provisions of subsection (2), alienate or lease a piece of land referred to in section 5 to any person.
- (2) Settlement of a person shall take place only after a land surveyor has surveyed the designated land and placed the beacons: Provided that the Minister may in a particular case grant permission that such settlement may take place in a manner determined by him even though the beacons concerned have not been placed.

9. Registration of ownership

- (1) If ownership in a piece of land referred to in section 5 is transferred, the developer shall, as soon as the surveying thereof is completed, lodge a deed of transfer, made out in the name of the person to which such piece of land has been alienated, on the form prescribed for that purpose under the Deeds Registries Act, 1937 (Act No. 47 of 1937), at the deeds registry, whereupon the registrar of deeds shall register such piece of land in the name of that person.

(Section 9(1) substituted by section 68 (Schedule) of Act 67 of 1995, with effect from 22 March 1996)

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

- (a) a conveyancer; or
- (b) if the owner of the 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 9(2) substituted by section 68 (Schedule) of Act 67 of 1995, with effect from 22 March 1996)

- (3) A deed of transfer referred to in subsection (1) shall be in the form prescribed under the Deeds Registries Act, 1937, and shall be signed by the owner of the piece of land or his or her duly authorised agent in the presence of a conveyancer referred to in subsection (2)(a) or an officer or person referred to in subsection (2)(b) in the manner prescribed under that Act.

(Section 9(3) substituted by section 68 (Schedule) of Act 67 of 1995, with effect from 22 March 1996)

- (4) An officer or person referred to in subsection (2)(b)—

(a) shall disclose the fact that the deed of transfer referred to in subsection (1), or any power of attorney, application or consent, which may be required by the registrar for the purposes of the registration of the transfer was prepared by him or her, by signing an endorsement to that effect on the deed of transfer, power of attorney, application or consent, as the case may be, and by virtue of such signing accepts, *mutatis mutandis*, in terms of section 15A(1) and (2) of the Deeds Registries Act, 1937, responsibility for the correctness of the facts stated in any such document; and

(b) may, despite anything to the contrary contained in any other law, perform all of the functions of conveyancer in relation to the registration of a deed of transfer as contemplated in this section.

(Section 9(4) substituted by section 68 (Schedule) of Act 67 of 1995, with effect from 22 March 1996)

(5) A conveyancer, officer or person referred to in subsection (2) shall lodge the deed of transfer together with the necessary supporting documents at a deeds registry in the manner prescribed under the Deeds Registries Act, 1937.

(Section 9(5) inserted by section 68 (Schedule) of Act 67 of 1995, with effect from 22 March 1996)

(6) The registrar shall deal with a deed of transfer and other documents referred to in subsection (5) as if such deed of transfer were executed in the presence of the registrar in terms of section 20 of the Deeds Registries Act, 1937.

(Section 9(6) inserted by section 68 (Schedule) of Act 67 of 1995, with effect from 22 March 1996)

(7) Ownership of the 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 9(7) inserted by section 68 (Schedule) of Act 67 of 1995, with effect from 22 March 1996)

(8)

(Section 9(8) inserted by section 68 (Schedule) of Act 67 of 1995, with effect from 22 March 1996)

(Section 9(8) substituted by section 4 of Act 26 of 1998, deemed to have come into operation on 27 April 1994)

(Section 9(8) repealed by section 3 of Act 58 of 2008)

10. Provision of property for land reform purposes

(1) The Minister may, from money appropriated by Parliament for the purpose of this Act—

(a) acquire property; and

(b) on such conditions as he or she may determine—

(i) make available state land administered or controlled by him or her or made available to him or her;

- (ii) maintain, plan, develop or improve property or cause such maintenance, planning, development or improvement to be conducted by a person or body with whom or which he or she has concluded a written agreement for that purpose;
- (iii) provide financial assistance by way of an advance, subsidy, grant or otherwise to any person for the acquisition, maintenance, planning, development or improvement of property and for capacity building, skills development, training and empowerment; or
- (iv) in writing authorise the transfer of funds to—
 - (aa) a provincial government;
 - (bb) a municipality;
 - (cc) any other organ of state; or
 - (dd) any other person or body recognised by the Minister for such purposes,

which he or she considers suitable for the achievement of the objects of this Act, whether in general, in cases of a particular nature or in specific cases.

- (2) The laws governing land use, the subdivision or consolidation of land, or the establishment of townships, shall not apply to land contemplated in this Act unless the Minister directs otherwise in writing.
- (3) The Minister shall have all the rights, powers and duties arising from or incidental to anything contemplated in this section and, without detracting from the generality of the foregoing, may—
 - (a) maintain property, including state land;
 - (b) conduct a business or other economic enterprise; or
 - (c) exercise the rights of a holder of shares or a right in or to a juristic person, other entity or trust, contemplated in subsection (1).
- (4) Despite section 14 of the Deeds Registries Act, 1937 (Act No. 47 of 1937), and the provisions of any other law to the contrary, the transfer of ownership of any property contemplated in this Act—
 - (a) may be passed and registered directly from the owner of such property to a person to whom the Minister has disposed of such property; and

- (b) shall be exempt from the payment of any transfer, stamp or other duty, fees of the deeds office or other charge.

(Section 10 substituted by section 68 (Schedule) of Act 67 of 1995)

(Section 10 substituted by section 5 of Act 26 of 1998, deemed to have come into operation on 27 April 1994)

(Section 10 substituted by section 4 of Act 58 of 2008)

10A. Activities to be managed as separate unit

- (1) The Department must account for the acquisition, management, disposal and leasing of property and the provision of financial assistance in terms of this Act through a trading entity established and operating in accordance with the requirements of the Public Finance Management Act, 1999 (Act No. 1 of 1999).
- (2) The trading entity referred to in terms of subsection (1), once established, must maintain separate and itemised financial accounts and accounting records in respect of each agricultural enterprise or separately administered portion of immovable property which it acquires, manages, disposes of, or leases.

(Section 10A inserted by section 5 of Act 58 of 2008)

11. Minister's power to dispose of property

The Minister may, on such terms and conditions as he or she may deem fit, for the purposes of this Act, sell, exchange, donate, lease, award or otherwise dispose of or encumber any property contemplated in this Act or, if such property is no longer required for the purposes of this Act, for any other purpose.

(Section 11 repealed by section 68 (Schedule) of Act 67 of 1995)

(Section 11 inserted by section 6 of Act 26 of 1998, deemed to have come into operation on 27 April 1994)

(Section 11 substituted by section 6 of Act 58 of 2008)

12. Expropriation Act

- (1) Without derogating from the powers that a Minister may exercise under the Expropriation Act, 1975 (Act No. 63 of 1975), the Minister may for the purposes of this Act, exercise equivalent powers to the powers that such other Minister may exercise under the Expropriation Act, 1975.
- (2) Notwithstanding the provisions of the Expropriation Act, 1975, the owner of the land in question shall be given a hearing before any land is expropriated in terms of this Act.

- (3) In the event of expropriation, compensation shall be paid as prescribed by the Constitution, with due regard to the provisions of section 12(3), (4) and (5) of the Expropriation Act, 1975.
- (4) Any right in land which derives from the provisions of this Act will be capable of expropriation in accordance with the provisions of any applicable legislation.

(Section 12 substituted by section 7 of Act 26 of 1998, deemed to have come into operation on 27 April 1994)

13.

(Section 13 repealed by section 8 of Act 26 of 1998, deemed to have come into operation on 27 April 1994)

14. Regulations

The Minister may make regulations regarding –

- (a) any matter which in terms of this Act is required or permitted to be prescribed;
- (b) the sizes of the pieces of land into which the designated land shall be subdivided;
- (c) any steps which may be taken if the developer does not comply with the conditions contemplated in section 2(3) or, if applicable, the developer does not comply with any term of an agreement referred to in section 4;
- (d) the supply of services to persons who are settled on the designated land;
- (e) the number of people who may inhabit a piece of land contemplated in section 5;
- (f) the grant of financial or other assistance to a buyer or lessee of a piece of land contemplated in section 5;
- (g) the matters contemplated in section 10,

(Section 14(g) added by section 7 of Act 58 of 2008)

and, generally, with regard to any other matter which he considers it necessary or expedient to prescribe in order to achieve or promote the objects of this Act, and the generality of this provision shall not be limited by the preceding paragraphs of this section.

15. Delegation

- (1) The Minister may, on such conditions as he or she may determine—

- (a) delegate to any officer in the Department of Rural Development and Land Reform any power conferred upon the Minister by this Act, except the power under section 14 to make regulations;
(Section 15(1)(a) substituted by section 18 of Act 4 of 2011)
 - (b) authorize any such officer to perform any duty imposed upon the Minister by this Act.
- (2) The Minister may, either in general or in a particular case or in cases of a particular nature and on such conditions as he or she may determine—
- (a) delegate to the Premier of a province or, with the concurrence of the Premier, to a member of the Executive Council of that province, any power conferred upon the Minister by this Act, except the power under section 14 to make regulations;
 - (b) authorize that Premier or member of the Executive Council to perform any duty imposed upon the Minister by this Act.
- (3) The Premier or the member of the Executive Council contemplated in subsection (2) may, subject to such conditions as the Minister may determine—
- (a) delegate to the Director-General of the province or any officer of the provincial administration in question any power delegated to that Premier or member under subsection (2);
 - (b) authorize that Director-General or any such officer to perform any duty which that Premier or member is authorized to perform under subsection (2).
- (4) The Minister may, with the concurrence of a Municipal Council, either in general or in a particular case or in cases of a particular nature and on such conditions as he or she may determine—
- (a) delegate to any officer of the Municipal Council any power conferred upon the Minister by this Act, except the power under section 14 to make regulations;
 - (b) authorize that officer of the Municipal Council to perform any duty imposed upon the Minister by this Act.
- (5) Any delegation of a power or authorization to perform a duty under this section—
- (a) shall be done in writing;
 - (b) shall not prevent the person who effected the delegation or granted the authorization from exercising that power of performing that duty himself or herself;
 - (c) may at any time be withdrawn in writing by that person.

(Section 15 substituted by section 9 of Act 26 of 1998, deemed to have come into operation on 27 April 1994)

16. Short title

This Act shall be called the Land Reform: Provision of Land and Assistance Act, 1993.

(Short title substituted by section 10 of Act 26 of 1998, deemed to have come into operation on 27 April 1994)

(Short title substituted by section 8 of Act 58 of 2008)