

# DEEDS REGISTRY (AMENDMENT) ACT, 2017

No. 15



of 2017

## ARRANGEMENT OF SECTIONS

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### **An Act to amend the Deeds Registry Act.**

*Date of Assent:* 14/11/2017

*Date of Commencement:* ON NOTICE

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Deeds Registry (Amendment) Act, 2017, and shall come into operation on such date as the Minister may, by Order published in the *Gazette*, appoint.

Short title and commencement

2. The Deeds Registry Act, (hereinafter referred to as “the Act”) is amended in section 2 —

Amendment of section 2 of Cap. 33:02

(a) by substituting for the definitions of “Director”, “general plan”, “immovable property”, “owner” and “township” respectively, the following new definitions —

““Director” means the Director of Surveys and Mapping;

“general plan” has the same meaning assigned to it under Land Surveys Act;

Cap. 33:01

“immovable property” includes —

(a) a deed of customary land grant issued under the Tribal Land Act;

Cap. 32:02

(b) any registered lease of rights to minerals; and

(c) any registered lease of land which, when entered into, was for a period of not less than 10 years or for the natural life of the lessee or any other person mentioned in the lease, or which is renewable from time to time at the will of the lessee indefinitely or for periods which together with the first period amount in all to not less than 10 years;

“owner”, in relation to immovable property, means a person registered as the owner or holder thereof and includes a land board established under the Tribal Land Act, the trustee in an insolvent state, the liquidator of a company which is an owner and the representative recognised by law of any owner who has died or who is a minor or of unsound mind or is otherwise under disability, where such trustee, liquidator or legal representative is acting within authority conferred on him by law; and

Cap. 40:01

“township” has the same meaning assigned to it under the Local Government Act”; and

(b) by inserting in its correct alphabetical order, the following new definition —

“land board” has the same meaning assigned to it under the Tribal Land Act;

Amendment of section 5 of the Act

3. Section 5 of the Act is amended by substituting for paragraph (c) appearing therein, the following new paragraph —

“(c) register customary land grants, grants or leases of land lawfully issued by the Government or grants issued by any other competent authority and register amendments, renewals and cancellations of such leases, and releases of any part of the property leased;”.

Amendment of the Act

3A. The Act is amended by substituting for section 8, the following new section —

“Registered deeds not to be cancelled except upon an order of court”  
8. Except as is otherwise provided in this Act or any other law, no registered deed of grant, deed of transfer, certificate of title or other deed conferring or conveying title to land, or any legal real right in land other than mortgage bond, and not cession of any registered bond made as security, shall be cancelled by the Registrar except upon an order of court:

Provided that for purposes of section 44 of Tribal Land Act, order of the court includes an order of the Land Tribunal established in terms of the Land Tribunal Act.”.

Cap. 32:13

Amendment of section 11 of the Act

4. Section 11 of the Act is amended by substituting for the word “President” wherever it appears the word “Minister”.

Amendment of section 15 of the Act

5. Section 15 of the Act is amended in subsection (2), by deleting the words “and death” appearing therein.

Amendment of section 16 of the Act

6. Section 16 of the Act is amended by —

(a) substituting for subsection (3), the following new subsection —

- “(3) The provisions of this section shall not apply in relation to —
- (a) any instrument attested under the provisions of the Married Persons Property Act; and
  - (b) the registration of customary land grants and transfer of deed of customary land rights; and

Cap. 29:03

- (b) inserting immediately after subsection (3), the following new subsection —

“(4) Notwithstanding subsection (3) (b), sectional titles in relation to customary land grants shall not be attested, executed or registered by the Registrar unless they have been prepared by a conveyancer.”.

7. The Act is amended by inserting, immediately after section 17, the following new section —

Amendment  
of the Act

“Transfer of  
customary  
rights  
17A. (1) A person who is a holder of a deed of customary land grant may make an application to the land board in a form as may be prescribed by the Registrar for transfer of his or her rights therein.

(2) Where the land board approves the application made under subsection (1), the land board shall forward the application together with such supporting documents as may be necessary to the Registrar for transfer of the rights of the holder.

(3) A transfer of customary land grant shall not be registered in the Deeds Registry unless a customary land grant has been registered therein.

(4) The provisions of section 54, shall apply with necessary modifications in respect of transfer of customary land rights in terms of this section.”.

8. Section 18 is amended by —

Amendment  
of section 18  
of the Act

- (a) substituting for subsection (2), the following new subsection —

“(2) If the person is married, the full name of his or her spouse shall be disclosed and it shall be stated whether the marriage was contracted in or out of community of property or is governed by the law of any other country or religion including whether such law or religion imposes community of property on marriage.”; and

- (b) substituting for subsection (5), the following new subsection —

“(5) If immovable property not excluded from the community is registered in the name of a spouse married in community of property, neither spouse may, irrespective of when that property was so registered, alone deal with such property unless he or she has the consent in writing of the other spouse, in the form of an affidavit sworn before a Commissioner of Oaths or has been authorised by an order of court to deal therewith.”.

Amendment  
of the Act

**8A.** The Act is amended by inserting immediately after section 19, the following new section —

**19A.** If any piece of unalienated tribal land has been surveyed and is represented on a diagram or a general plan, the Registrar shall, upon written application by any duly authorised person, accompanied by the diagram or a general plan of the land in duplicate, enter particulars of the land in the appropriate registers and execute in the prescribed form and in accordance with the diagram or a general plan, a certificate of registered land title thereof.”

Amendment  
of section 43  
of the Act

**9.** Section 43 is amended by substituting for subsection (1) thereof, the following new subsection —

“(1) If immovable property, a lease or a bond is registered in the Deeds Registry in the name of one of the spouses or in the name of the joint estate of such spouses and the surviving spouse has lawfully acquired the property or bond or a share thereof, the Registrar shall, on written application by such survivor or by the executor of the estate of the deceased spouse, accompanied by such other documents as may be prescribed, endorse on the title deed of the property or on the bond that the survivor shall be entitled to deal therewith as if he or she has taken formal transfer or cession into his or her own name of the share of the deceased spouse in the property or bond.”

Amendment  
of section 44  
of the Act

**10.** Section 44 is amended by substituting for subsection (1) thereof, the following new subsection —

“(1) If immovable property or a lease under any law relating to land settlement or a bond is registered in the Deeds Registry in the name of one of the spouses who were married but have been divorced or in the name of the joint estate of such spouses, and one of them has lawfully acquired the property, lease or bond of his or her former spouse or a share thereof, the Registrar shall, on written application by such spouse accompanied by such documents as the Registrar deems necessary, endorse on the title deeds of the property or on lease or the bond that such spouse is entitled to deal with such property, lease or bond, and thereupon such spouse shall be entitled to deal therewith as if he or she has taken formal transfer or cession into his or her name of the share of the former spouse in the property, lease or bond.”

Amendment  
of section 90  
of the Act

**11.** The Act is amended by deleting section 90.

PASSED by the National Assembly this 10th day of August, 2017.

BARBARA N. DITHAPO,  
*Clerk of the National Assembly*