



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 183

1996

PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 8 of 1996: Registration of Deeds in Rehoboth Amendment Act, 1996.

Act No. 8, 1996

**REGISTRATION OF DEEDS IN
REHOBOTH AMENDMENT ACT, 1996**

EXPLANATORY NOTE:

- _____ Words underlined with solid line indicate insertions in existing enactments.
- [] Words in bold type in square brackets indicate omissions from existing enactments.

ACT

To amend the Registration of Deeds in Rehoboth Act, 1976, so as to amend the definition of "owner"; to provide for the registration of property forming part of the joint estate in the name of both spouses; to provide for endorsement of deeds where a spouse is entitled, as a result of an adjustment made in terms of section 8 of the Married Persons Equality Act, 1996, to immovable property forming part of the joint estate; and to provide for matters incidental thereto.

(Signed by the President on 1 July 1996)

BE IT ENACTED by the Parliament of the Republic of Namibia, as follows:-

Amendment of section 1 of Act 93 of 1976, as amended by section 1 of Act 35 of 1994

1. Section 1 of the Registration of Deeds in Rehoboth Act, 1976 (hereinafter referred to as the principal Act), is hereby amended by the substitution for the definition of "owner" of the following definition:

"owner" means, in relation to -

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| <p>(a) immovable property, real rights in immovable property and notarial bonds, subject to paragraph (b), the person registered as the owner or holder thereof and includes the trustee in an insolvent estate, the liquidator of a company or a close corporation which is an owner or a holder and the representative recognized by law of any owner or holder who has died or who is a minor or of unsound mind or is otherwise under disability, provided such trustee, liquidator or legal representative is acting within the authority conferred on him or her by law;</p> <p>(b) immovable property, real rights in immovable property and notarial bonds -</p> <p style="padding-left: 20px;">(i) which are registered under section 10 in the name of both spouses, either one of the spouses acting with the written consent of the other spouse; and</p> <p style="padding-left: 20px;">(ii) which are registered in the name of only one spouse and which form part of the joint estate of both spouses, either one of the spouses acting <u>with the written consent of the other spouse;</u></p> |
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**REGISTRATION OF DEEDS IN
REHOBOTH AMENDMENT ACT, 1996****Substitution of section 10 of Act 93 of 1976**

2. The following section is hereby substituted for section 10 the principal Act:

"Registration of property in name of married persons

10. (1) From the commencement of the Registration of Deeds in Rehoboth Amendment Act, 1996, immovable property, real rights in immovable property and notarial bonds which would upon transfer, cession, or registration thereof form part of a joint estate shall be registered in the name of the husband and the wife, unless that transfer, cession, or registration takes place only in the name of a partnership, and the husband or wife is involved therein only in the capacity of partner in that partnership.

(2) Every deed or other document executed or attested by a registrar, or attested by a notary public and required to be registered in a deeds registry, and made by or on behalf of or in favour of any person, shall -

- (a) state the full names of the person concerned and whether he or she is married or unmarried;
- (b) where the marriage concerned is governed by the law in force in Namibia, state whether the marriage is in or out of community of property or is a marriage governed by the Recognition of Certain Marriages Act, 1991 (Act 18 of 1991);
- (c) where the marriage of the person concerned is in community of property or is governed by the Recognition of Certain Marriages Act, 1991, state the full names of his or her spouse; and
- (d) where the marriage concerned is governed by the law of any country other than Namibia, state that the marriage is governed by the law of that country and state the full names of his or her spouse.

(3) Where a marriage in community of property or governed by the Recognition of Certain Marriages Act, 1991, has been dissolved by the death of one of the spouses before property or a mortgage or notarial bond which on transfer or cession thereof would have formed part of the joint estate could be transferred or ceded, that property, mortgage, or notarial bond shall be transferred or ceded to the joint estate of the spouses, pending the administration thereof, and is, subject to the provisions of any disposition with regard to that property, deemed to be the joint property of the surviving spouse and of the estate of the deceased spouse.

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(4) If immovable property, a real right in immovable property, or a notarial bond forming part of a joint estate is registered in the deeds registry in the name of one of the spouses, the registrar shall on the written application of either of the spouses, or a conveyancer as his or her duly authorized agent, if the registrar is satisfied as to the relevant facts, endorse on the relevant deed or bond or, if such deed or bond can not be produced to him or her due to the other spouse's refusal to produce such deed or bond in his or her possession or under his or her control, only on the registry duplicate thereof and in the appropriate registers -

- (a) the full name of such other spouse; and
- (b) that the spouses are married in community of property or, where applicable, that the marriage of the spouses is governed by the Recognition of Certain Marriages Act, 1991.

(5) A person married in terms of a marriage the legal consequences of which are governed by the law of any country other than Namibia -

- (a) shall be assisted by his or her spouse in executing any deed or other document required or permitted to be executed or registered in the deeds registry or required or permitted to be produced in connection with any such deed or document; or
- (b) shall produce the consent of his or her spouse to such execution, registration, or production,

unless the assistance or consent of such spouse is in terms of this Act or on any other grounds considered by the registrar to be unnecessary."

Insertion of section 10bis in Act 93 of 1976

3. The following section is hereby inserted in the principal Act after section 10:

"Endorsement of deeds where a spouse is entitled in terms of section 8 of Married Persons Equality Act, 1996, to immovable property forming part of the joint estate

10 bis. Where during the subsistence of the marriage a spouse is entitled, as a result of a settlement made to such spouse in terms of section 8 of the Married Persons Equality Act, 1996, to immovable property forming part of the joint estate, the registrar shall on the written application of that spouse, accompanied by such documents as the registrar deems necessary and if the registrar is satisfied as to the relevant facts, endorse on the relevant title deed or, if such deed cannot be produced by such spouse due to the other spouse's refusal to produce the deed in his or

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her possession or under his or her control, only the registry duplicate thereof and in the relevant registers, that the spouse to whom the settlement in question was made is entitled to deal with such immovable property, and thereupon such spouse shall, subject to subsection (5) of the said section 8, be entitled to deal therewith as if he or she had taken formal transfer in his or her own name of such property."

4. This Act shall be called the Registration of Deeds in Rehoboth Amendment Act, 1996, and shall come into operation on a date to be determined by the Minister of Lands, Resettlement and Rehabilitation by notice in the *Gazette*.
