

DISTRIBUTION AND TRANSFER OF CERTAIN STATE LAND ACT
119 OF 1993[/SAPL4]

[ASSENTED TO 9 JULY 1993] [DATE OF COMMENCEMENT: 20 JULY
1993]

(English text signed by the State President)

as amended by

Land Affairs General Amendment Act 11 of 1995

ACT

To regulate the distribution and transfer of certain land belonging to the State and designated by the Minister as land to be dealt with in accordance with the provisions of this Act; and to provide for matters connected therewith.

[a119y1993s1]1 Definitions

In this Act, unless the context otherwise indicates-

'applicant' means a person by whom, or on behalf of whom, an application has been submitted to a commissioner in terms of section 9;

'commissioner' means the land distribution commissioner concerned appointed under section 3;

'designated land' means the land designated by the Minister under section 2 to be dealt with in terms of this Act;

'development body' means-

(a) the Development and Housing Board established by section 2 of the Development and Housing Act, 1985 (Act 103 of 1985);

(b) the Development Board established by section 3 of the Development Act (House of Representatives), 1987 (Act 3 of 1987);

(c) the Housing Development Board established by section 2 of the Housing Development Act (House of Delegates), 1987 (Act 4 of 1987);

(d) a development corporation established under section 5 (1) (a) of the Promotion of the Economic Development of National States Act, 1968 (Act 46 of 1968), or an institution established by or under any other law with objects similar to those of a development corporation established under the said section 5 (1) (a);

'Director-General' means the Director-General of Land Affairs;

[Definition of 'Director-General' substituted by s. 18 (a) of Act 11 of 1995.]

'local authority' means-

(a) any institution or body contemplated in section 84 (1) (f) of the Provincial Government Act, 1961 (Act 32 of 1961);

(b) any joint or single local authority established under section 15 (a) of the Interim Measures for Local Government Act, 1991 (Act 128 of 1991);

(c) a local government body established in terms of the provisions of section 30 (2) (a) of the Black Administration Act, 1927 (Act 38 of 1927), as that section was before it was repealed by section 8 (1) of the Abolition of Racially Based Land Measures Act, 1991 (Act 108 of 1991);

'Minister' means the Minister of Land Affairs.

[Definition of 'Minister' substituted by s. 18 (b) of Act 11 of 1995.]

[a119y1993s2]2 Application of Act

(1) This Act shall apply to land belonging to the State (including land registered in the name of a Minister, a Premier or a former Administrator), and land belonging to a local authority or development body, and designated by the Minister by notice in the Gazette as land to be dealt with in accordance with the provisions of this Act: Provided that land belonging to a local authority or development body may only be so designated by the Minister if it is 'land of a local authority' or 'land of a development body' as defined in section 88 of the Abolition of Racially Based Land Measures Act, 1991 (Act 108 of 1991).

[Sub-s. (1) substituted by s. 19 (a) of Act 11 of 1995.]

(2) Land may be designated by the Minister under subsection (1) if that land is to be transferred to a number of persons or to a group of persons, whether in terms of the provisions of any other law or not, and-

(a) the identity of those persons in the opinion of the Minister is not readily ascertainable;

(b) the land is to be distributed among those persons, or the share or portion to which those persons are entitled is to be determined, and such distribution or determination cannot take place without the intervention of a commissioner;

(c) the Minister deems it necessary, for any reason mentioned in the notice referred to in subsection (1), that the land concerned shall be so designated.

(3)

[Sub-s. (3) deleted by s. 19 (b) of Act 11 of 1995.]

(4) The compensation (if any) which is payable in respect of such land, share or portion shall also be mentioned in the notice referred to in subsection (1).

[a119y1993s3]3 Appointment of land distribution commissioner

(1) The Minister may, subject to the provisions of subsection (3) and on the conditions determined by him, appoint a land distribution commissioner in respect of one or more pieces of designated land to deal with that land in accordance with the provisions of this Act.

(2) Any such commissioner shall be a judge of the Supreme Court of South Africa or a magistrate, or a person who has held office as such a judge or such a magistrate, or an advocate or attorney who has for an uninterrupted period of at least five years practised as such.

(3) A commissioner who is not in the full-time service of the State shall in respect of his service as a commissioner be paid such remuneration and allowances as the Minister, with the concurrence of the Minister of Finance, may from time to time determine.

[Sub-s. (3) substituted by s. 20 of Act 11 of 1995.]

(4) If a commissioner for any reason vacates his office or is unable to perform his duties-

(a) another commissioner shall be appointed in terms of this section in respect of the designated land concerned;

(b) anything done in terms of this Act by the commissioner who has vacated his office, or who is unable to perform his duties, shall be deemed to have been done by the commissioner referred to in paragraph (a); and

(c) any proceedings commenced with in terms of this Act by the commissioner who has vacated his office, or who is unable to perform his duties, shall be proceeded with by the commissioner referred to in paragraph (a) as if those proceedings were commenced with by him.

[a119y1993s4]4 Functions of commissioner

(1) The commissioner concerned shall, in accordance with the provisions of this Act-

(a) determine the identity of the persons to whom the designated land, or an undivided share in or defined portion of such land, is to be transferred;

(b) distribute the designated land among the persons concerned, or determine the share or portion of such land to which every person concerned is entitled;

(c) perform the other functions which he shall or may perform in terms of this Act.

(2) A commissioner shall act as chairman at all meetings held in terms of the provisions of this Act.

[a119y1993s5]5 Convening of meeting of persons concerned

(1) The commissioner shall convene a meeting of the persons to whom designated land will probably be transferred and at such meeting the commissioner shall explain to the persons attending the meeting concerned-

(a) that it is contemplated to distribute the designated land concerned in terms of the provisions of this Act, or that the share or portion to be transferred to each of a number or group of persons is to be determined;

(b) that a list will be compiled in terms of the provisions of this Act in which the persons concerned will be identified and in which the distribution of the designated land or the determination of the share or portion of each of those persons will be set out;

(c) the procedures that will be followed at the compilation of the list referred to in paragraph (a);

(d) the conditions applicable at the transfer of the designated land concerned;

(e) any other relevant provision of this Act.

(2) If the persons to whom the designated land concerned is to be transferred have already been mentioned in the notice referred to in section 2 (1), the list referred to in subsection (1) (b) shall only be compiled in order to distribute the designated land among the persons so mentioned or to determine the share or portion of each such person.

(3) The commissioner shall determine the place and time for the holding of a meeting contemplated in subsection (1), and shall cause to be published in a newspaper circulating in the district in which the designated land concerned is situated, a notice-

(a) explaining the intention with the designated land concerned;

(b) calling upon the persons who have an interest in such land to attend the meeting at the place and time mentioned in the notice; and

(c) briefly explaining the purpose of the meeting.

(4) As soon as it is practicable after the date upon which the notice referred to in subsection (3) has appeared in the newspaper, the commissioner shall-

(a) send a copy of the notice by registered post to every person who has an interest in such distribution and whose name and address are known to the commissioner;

(b) if he is of the opinion that any further notice will be necessary to ensure that the persons concerned will receive adequate notice, give such further notice as he may deem necessary in the circumstances, and which may include-

(i) a further notice in a newspaper, or a notice in a magazine or on the radio or television;

(ii) a notice in the Gazette;

(iii) the sending of further copies of the notice referred to in subsection (3), whether by registered post or not;

(iv) an oral notice;

(v) the display of a notice at a suitable place on the designated land;

(vi) the display of a notice on a public building.

(5) (a) The commissioner shall, where the designated land is occupied by persons other than those contemplated in section 2 (3), convene a meeting of such other persons at which he shall inform the persons attending such meeting of the designation and intended distribution of such land.

(b) The commissioner shall inform such other persons concerning the consequences that such designation may have on their further occupation of the land.

(c) The provisions of subsections (3) and (4) shall mutatis mutandis apply in relation to the notice to such other persons of such meeting.

[a119y1993s6]6 Compilation of list by persons concerned

(1) The commissioner shall, at the meeting referred to in section 5 (1)-

(a) inform the persons attending such meeting that the persons to whom such land shall be transferred, may compile a list as contemplated in section 5 (1) (b), and request the persons concerned to compile such list for submission on the date referred to in paragraph (b); and

(b) adjourn the meeting concerned to a date which shall not be earlier than 30 days after the date of the meeting concerned.

(2) If the persons present at the meeting referred to in subsection (1) (b) have not compiled and submitted such list, the commissioner may adjourn the meeting as often as in his opinion is necessary until such list has been compiled and is submitted.

[a119y1993s7]7 Objections to list compiled by persons concerned

(1) If a list is furnished in terms of section 6 the commissioner shall cause to be published in a newspaper circulating in the district in which the designated land concerned is situated, a notice-

(a) making it known that a list has been compiled in terms of section 6 in respect of the designated land concerned and that such list will be open for inspection during the period of 30 days, or such longer period as the commissioner may in his discretion determine, following the day upon which the notice has appeared in the newspaper, and at such times and at such place in the district concerned as shall be mentioned in the notice; and

(b) calling upon any person who wishes to object to the contents of such list, to furnish his objection and the grounds therefor, supported by sworn or solemnly affirmed declarations and such documents as he may be able to submit, to the commissioner within a period of 30 days after the expiration of the period referred to in paragraph (a).

(2) The provisions of section 5 (4) shall mutatis mutandis apply in relation to a notice mentioned in subsection (1).

(3) (a) An objection referred to in subsection (1) (b) shall be in writing and shall set out clearly and concisely the facts upon which such objection is based, and a declaration referred to in that subsection shall also be in writing.

(b) Notwithstanding the provisions of paragraph (a), an objection or a declaration may, with the leave of the commissioner, be made orally.

(c) An objection or a declaration which is made orally shall be reduced to writing by the commissioner or a person designated by the commissioner.

(4) The Director-General shall, upon the request of any person who desires to object or make a declaration in terms of this section, reduce such objection or declaration to writing or cause it to be reduced to writing.

(5) The commissioner may-

(a) conduct such investigation in connection with any objection submitted to him in terms of this section as he may deem necessary in order to be able to make a finding on the validity of such objection;

(b) at his discretion refuse to hear any oral evidence of any person or of any particular person at such an investigation unless such evidence is given under oath or solemn affirmation, which may be administered by the commissioner.

(6) (a) The commissioner may after the investigation contemplated in subsection (5) refuse such objection or, if the commissioner is satisfied that an objection raised in terms of this section is valid, convene a meeting at which the

persons who participated in the compilation of the list concerned shall be present, and at such meeting the commissioner shall request those persons to alter the list with due regard to the objection concerned.

(b) The provisions of section 5 (3) and (4) shall mutatis mutandis apply to a meeting referred to in paragraph (a).

[a119y1993s8]8 Commissioner to compile list in certain circumstances

If-

(a) the persons concerned could for any reason not compile a list in terms of section 6, or after a reasonable period has elapsed could not submit such a list; or

(b) in the opinion of the commissioner such list was compiled but has not been altered in terms of section 7 (6) to accommodate an objection,

the commissioner shall, subject and with due regard to the provisions of sections 9 to 12, compile the list concerned.

[a119y1993s9]9 Application for distribution and transfer of land

(1) The commissioner concerned shall in cases where section 8 is applicable cause to be published in a newspaper circulating in the district in which the designated land concerned is situated, a notice calling upon every person contemplated in section 2 (3) who claims to have acquired a right to the transfer in terms of this Act of such land, or of a piece of, an undivided share in or a defined portion of such land, and to be registered as an owner in respect of such land, to submit to the commissioner, within the period of 30 days, or such longer period as the commissioner may in his discretion determine, following the day upon which the notice has appeared in the newspaper, an application for the distribution of or the determination of his share or portion of the designated land concerned, and the transfer of that land, share or portion to him, in terms of the provisions of this Act, supported by sworn or solemnly affirmed declarations by the persons alleging those facts, and by such documents as the applicant may be able to submit, including any title deed in respect of the land concerned that he may have in his possession.

(2) As soon as it is practicable after the date upon which the notice referred to in subsection (1) has appeared in the newspaper, the commissioner shall-

(a) send a copy of the notice by registered post to every person referred to in that subsection whose name and address are known to the commissioner;

(b) if he is of the opinion that any further notice will be necessary to ensure that the persons concerned will receive adequate notice, give such further notice as he may deem necessary in the circumstances, and which may include-

- (i) a further notice in a newspaper, or a notice in a magazine or on the radio or television;
- (ii) a notice in the Gazette;
- (iii) the sending of further copies of the notice referred to in subsection (1), whether by registered post or not;
- (iv) an oral notice;
- (v) the display of a notice at a suitable place on the designated land;
- (vi) the display of a notice on a public building.

(3) (a) An application in terms of subsection (1) shall be in writing and shall set out clearly and concisely the facts upon which that application is based, and a declaration referred to in that subsection shall be in writing.

(b) Notwithstanding the provisions of paragraph (a), an application may, with the leave of the commissioner, be made orally.

(c) An application or a declaration which is made orally shall be reduced to writing by the commissioner or a person designated by the commissioner.

(4) The Director-General shall, upon the request of any person who desires to apply or make a declaration in terms of subsection (1), reduce such application or such declaration to writing or cause it to be reduced to writing.

(5) (a) If the commissioner has reason to suspect that any person who is subject to some or other form of legal disability and who can claim such a right as is referred to in subsection (1), has not submitted an application as contemplated in that subsection and that no such application has been submitted on his behalf, the commissioner may, if he deems it necessary in a particular case, take such steps as he may deem expedient in order to cause such an application to be submitted by or on behalf of the person concerned.

(b) The commissioner may receive any claim submitted in terms of paragraph (a) also after the expiration of the period referred to in subsection (1).

(c) If the commissioner is unable to cause an application to be submitted by or on behalf of the person concerned, he shall record the facts on which his claim to such right is based.

(d) The record contemplated in paragraph (c) shall for the purposes of this Act be deemed to be an application submitted to the commissioner on behalf of the person concerned in terms of this subsection.

(6) (a) The commissioner may allow an application in terms of subsection (1) to be submitted after the expiry of the period referred to in the said subsection if the

reasons why the application was not submitted within the period mentioned in subsection (1) are presented to the commissioner.

(b) The commissioner shall, on receipt of an application submitted in terms of paragraph (a), make such application known in any manner the commissioner deems fit, and shall in such publication call upon any person who wishes to object to the granting of the application so received to submit his objections to the commissioner in the manner prescribed by section 10 (1) (b), within 30 days of the commissioner's publication of such application.

(c) The application referred to in paragraph (a) shall for the purposes of this Act be deemed to be an application submitted to the commissioner in terms of subsection (1).

[a119y1993s10]10 Objections to applications

(1) After the expiration of the period referred to in section 9 (1), and after the provisions of section 9 (5) have been complied with, the commissioner shall cause to be published in a newspaper circulating in the district in which the designated land concerned is situated, a notice-

(a) making it known that the claims submitted to the commissioner in terms of section 9 will be open for inspection during the period of 30 days following the day upon which the notice has appeared in the newspaper, and at such times and such place in the district concerned as shall be mentioned in the notice; and

(b) calling upon any person who wishes to object to the granting of any application, to furnish his objection and the grounds therefor, supported by sworn or solemnly affirmed declarations and such documents as he may be able to submit, to the commissioner within a period of 30 days after the expiration of the period referred to in paragraph (a).

(2) The provisions of-

(a) section 9 (2) shall mutatis mutandis apply in relation to a notice referred to in subsection (1);

(b) section 9 (3) and (4) shall mutatis mutandis apply in relation to an objection and the declarations referred to in subsection (1) (b).

[a119y1993s11]11 Investigation by commissioner

The commissioner may-

(a) conduct such investigation in connection with any application submitted to him in terms of section 9 as he may deem necessary in order to be able to make a finding on the claim of any applicant to the designated land concerned or to a piece of, an undivided share in or a defined portion of such land, or on the distribution of such land or the determination of a share in that land, or on the validity of any objection furnished to the commissioner in terms of section 10;

(b) at his discretion refuse to hear any oral evidence of any person or of any particular person at such an investigation unless such evidence is given under oath or solemn affirmation, which may be administered by the commissioner.

[a119y1993s12]12 Finding by commissioner

(1) The commissioner shall, after the provisions of sections 9 and 10 have been complied with, consider each application submitted to him in terms of section 9 and, with due regard to all the circumstances, including any objections lodged in terms of section 10 and the result of any investigation conducted by the commissioner under section 11, make such finding as in his opinion is justified with reference to the claim of the applicant concerned.

(2) The commissioner shall advise the applicant concerned of his finding under subsection (1) by written notice, which shall be handed to the applicant or sent to him by registered post, and shall in such notice inform the applicant-

(a) that, if he is not satisfied with the finding, he may within 30 days from a date mentioned in the notice, or within such further period as the commissioner may determine on good cause shown, in writing request the commissioner to reconsider the finding on grounds which shall be set out fully in the request;

(b) if, according to the finding, the applicant is entitled to the transfer of the land concerned, or a piece of, an undivided share in or a defined portion of such land, that such finding may yet be amended, set aside or substituted under subsection (5) (b).

(3) If any applicant requests the commissioner to reconsider a finding as contemplated in subsection (2) (a)-

(a) the commissioner may, if he is of the opinion that reconsideration of the finding on the grounds set out in the request will serve no useful purpose, refuse the request by written notice, which shall be handed to the applicant or sent to him by registered post;

(b) the commissioner shall, if he does not refuse the request under paragraph (a)-

(i) convene a meeting at a place in the district in which the designated land concerned is situated, for the hearing by him of such further evidence or such representations as the applicant who made the request or any other applicant whose rights, as determined by the commissioner under subsection (1), may be affected if the finding to which the request relates is amended, set aside or substituted under subsection (5) (a), may wish to submit or make to the commissioner;

(ii) inform the applicant who made the request and every such other applicant as is referred to in subparagraph (i), of the date (which shall be a date not earlier than 30 days after the date of the written notice referred to in this

subparagraph), time, place and purpose of the meeting by written notice, which shall be handed to him or sent to him by registered post together with, in the case of a notice to any such other applicant, a copy of the written request concerned;

(iii) afford each applicant concerned at his request, a reasonable opportunity to inspect the relevant documents in the possession of the commissioner and indicated by the applicant, or to make copies thereof or extracts therefrom, before the day of the meeting.

(4) (a) At the meeting the commissioner shall, at the request of any applicant referred to in subsection (3) who is present at the meeting or, in the case of an applicant so referred to who is not present at the meeting, at the request of any person authorized in writing by such applicant as his representative and who is present at the meeting, afford the applicant concerned or such person, as the case may be, a reasonable opportunity to submit any further relevant evidence or make representations to the commissioner.

(b) The commissioner may at his discretion refuse to hear any such evidence of any person or of any particular person unless it is given under oath or solemn affirmation, which may be administered by the commissioner.

(5) The commissioner may, with due regard to the further evidence and representations (if any) submitted or made to him in terms of subsection (4)-

(a) confirm, amend, set aside or substitute by another finding, the finding in respect of which the request has been made;

(b) in so far as it may be necessary as a result of an amendment, setting aside or substitution under paragraph (a), amend, set aside or substitute by another finding, any other finding made by him under subsection (1) and in respect of which a notice has in terms of subsection (3) (b) (ii) been furnished to the applicant concerned.

(6) If the commissioner has confirmed, amended, set aside or substituted a finding under subsection (5), he shall advise the applicant concerned thereof by written notice, which shall be handed to that applicant or sent to him by registered post.

[a119y1993s13]13 Commissioner to furnish list to Director-General

The commissioner shall-

(a) if the persons concerned compiled a list as contemplated in section 6, and no objection was made against such list or an objection was made but such objection was refused in terms of section 7 (6), transmit such list to the Director-General; or

(b) if the commissioner concerned compiled a list in terms of section 8, transmit such list to the Director-General.

[a119y1993s14]14 Records to be submitted to Director-General

The commissioner shall keep minutes or cause minutes to be kept of all meetings at which he presided and shall transmit such minutes as well as all applications, declarations, notices and other documents in his possession together with the list referred to in section 13 (a) or (b) to the Director-General.

[a119y1993s15]15 Duties of Director-General

(1) The Director-General shall, as soon as it is practicable after he has received the documents referred to in section 14 -

(a) cause the designated land to be surveyed in terms of the Land Survey Act, 1927 (Act 9 of 1927), in order to give effect to the list referred to in section 13 (a) or (b); and

(b) take the steps necessary in order to ensure that the designated land concerned will be distributed and transferred to the persons specified in such list, or that the share or portion of every such person be determined and such land be transferred.

(2) In surveying the land concerned the surveyor shall consult the commissioner concerned.

(3) No transfer of land shall take place in terms of this Act unless-

(a) the compensation (if any) which is payable in respect of that land, share or portion has been paid or arrangements for the payment thereof have been made to the satisfaction of the Director-General;

(b) all other conditions subject to which such land, share or portion shall be transferred, have been complied with; and

(c) all expenditure and costs connected with the transfer of that land, share or portion have, subject to the provisions of this Act, been paid.

(4) The Director-General shall by written notice handed to each person liable to pay an amount referred to in subsection (3) (a) or (c), or sent to him by registered post, require such person to pay that amount within three months from the date mentioned in the notice, or to make arrangements to the satisfaction of the Director-General within that period for the payment thereof.

(5) If the person concerned fails to pay any amount, or to make the arrangements, referred to in subsection (4), within the period referred to in that subsection, the Director-General shall sell the land, undivided share or defined portion concerned in such manner and on such conditions as the Minister may determine, but subject to the provisions of subsection (6), and transfer it to the purchaser concerned.

(6) Land, or an undivided share in or a defined portion of land, referred to in subsection (5) shall be sold and be transferred subject to any right which is registered

against the land concerned, or against an undivided share in or a defined portion of that land.

(7) The proceeds of a sale in terms of subsection (5) shall be paid to the Director-General and shall be distributed by him as provided in this section.

(8) The amounts referred to in subsection (3) as well as any expenditure incurred by the Director-General in connection with the sale shall be deducted from such proceeds.

(9) After the deductions under subsection (8) have been made, the balance of the proceeds shall be paid to the persons mentioned in the list referred to in section 13 (a) or (b).

(10) A transfer of land, or a share in or portion of land, in terms of this section is exempted from the payment of stamp duty and of registration and other fees.

[a119y1993s16]16 Delegation

(1) The Director-General may, subject to such conditions as he may deem necessary-

(a) delegate to an officer employed by the Department of Land Affairs any power conferred upon him in terms of this Act; or

(b) authorize an officer employed by the Department of Land Affairs to perform any duty assigned to him in terms of this Act.

[Sub-s. (1) substituted by s. 21 of Act 11 of 1995.]

(2) Any person to whom any power has been so delegated or who has been authorized to perform any duty shall exercise that power or perform that duty subject to the directions of the Director-General, and the Director-General may at any time revoke such delegation or authorization.

(3) Any delegation under subsection (1) shall not prevent the Director-General from exercising that power or performing that duty himself.

[a119y1993s17]17 Expenditure

All expenditure in connection with the performance of the functions of a commissioner shall, subject to the provisions of this Act, be defrayed by the Director-General from money appropriated by Parliament for this purpose.

[a119y1993s18]18 Certain laws no bar to subdivision and transfer under this Act

Notwithstanding anything to the contrary regarding the subdivision and registration of land in any other law contained, the surveyor-general may approve a diagram or plan of any subdivision of land in terms of this Act, and the registrar of

deeds may register the transfer of any land, or of any piece of or any undivided share in or any defined portion of land, in terms of this Act.

[a119y1993s19]19 Application of Act

As from the coming into operation of the Land Affairs General Amendment Act, 1995, the provisions of this Act shall apply in the whole of the national territory referred to in section 1 of the Constitution of the Republic of South Africa, 1993 (Act 200 of 1993).

[S. 19 substituted by s. 22 of Act 11 of 1995.]

[a119y1993s20]20 Short title

This Act shall be called the Distribution and Transfer of Certain State Land Act, 1993.