

THE DEEDS REGISTRY ACT, 1968

Date of commencement: 1st May, 1973.

Date of assent: 25th November, 1968.

Arrangement of sections

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An Act to consolidate and amend the laws relating to the Registration of Deeds.

PART I

PRELIMINARY

Short title.

1. This may be cited as the Deeds Registry Act, 1968.

Interpretation.

2. In this Act, unless the context otherwise requires —

“Act” includes regulations;

“board” shall be construed as meaning the Human Settlement Authority established under section 4 of the Human Settlement Authority Act, No. 2 of 1988;

“concession” means a grant of land or the use thereof for agricultural, mining or grazing purposes, or any grant of minerals or mineral products or timber made by or on behalf of the King or the Ngwenyama, and confirmed either by the former Chief Court of Swaziland or by the former High Commissioner under Part III of the Concessions Act, No. 3 of 1904;

“conveyancer” means a person lawfully admitted to practise as such in Swaziland;

“court” means the High Court of Swaziland or any judge thereof;

“Deeds Registry” means the Deeds Registry established under section 3;

“diagram” means a document containing geometrical, numerical and verbal representations of a piece of land which has been signed by a surveyor, and which has been approved or certified by the Surveyor-General or other officer empowered so to approve or certify a diagram on his behalf and includes a diagram or a copy thereof prepared in the office of the Surveyor-General and approved or certified as aforesaid, or a diagram which has at any time prior to the commencement of this Act been accepted for registration as a diagram in the Deeds Registry or the Surveyor-General’s office;

“general plan” means a plan which represents the relative positions and dimensions of two or more pieces of land and which has been prepared and signed by a surveyor and approved or certified as a general plan by the Surveyor-General or other officer empowered so to approve or certify a general plan on his behalf and includes a general plan or copy thereof prepared in the office of the Surveyor-General and approved or certified as aforesaid, or a general plan which has at any time prior to the commencement of this Act been accepted for registration in the Deeds Registry or the Surveyor-General’s office;

“immovable property” includes —

- (a) concession;
- (b) registered lease of rights to minerals; and
- (c) registered lease of land which, when entered into, was for a period of not less than ten 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 ten years;

“land” includes an undivided share in land;

“Land Survey Act” means the Land Survey Act, No. 46 of 1961;

“lot” means a piece of land registered as a lot, erf, plot or stand in the Deeds Registry and which is represented as an independent entity on the approved general plan of an established township by or under any law but does not include a piece of land intended to serve as a street or thoroughfare in such township; (Amended A.5/1973.)

“Master” means the Master or Assistant Master of the High Court;

“Minister” means the Minister for Justice; (Amended A.5/1973.)

“mineral” has the meaning assigned to it in the Mining Proclamation (*Cap.* 145) or any amendment or substitution of such Proclamation, and includes “precious metals” or “precious stones” in the meaning assigned thereto in the said Proclamation or any amendment or substitution thereof; (Added A.5/1973.)

“mortgage bond” means a bond attested by the Registrar specially hypothecating immovable property;

“notarial bond” means a bond attested by a notary public hypothecating movable property generally or specially;

“notarial deed” means a deed attested by a notary public, and does not include a document a signature to which is merely authenticated by a notary public, or a copy of a document which has been certified as correct by a notary public;

“notary public” means, in relation to any deed or other document creating or conveying real rights in land, or in relation to any other document executed within Swaziland, a person lawfully admitted to practise as such in Swaziland and in relation to any document, other than a deed or document creating or conveying real rights in land, executed outside Swaziland, a person practising as such in the place where the document is executed;

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

“prospecting contract” means a notarial deed whereby the registered holder of the right to minerals in land, grants the right to prospect and seek for any minerals in the land together with the right to lease any right to any such minerals; (Amended A.5/1973.)

“real right” means any right which becomes a real right upon registration;

“registered” means registered in the Deeds Registry;

“Registrar” means the Registrar or Assistant Registrar of Deeds appointed under the provisions of this Act; (Amended A.5/1973.)

“Registry duplicate” means the counterpart or copy of a deed, consisting of more than one copy, which is filed or intended to be filed of record in the Deeds Registry;

“regulation” means a regulation made under section 9;

“share”, in relation to land, means an undivided share;

“surveyor” means a land surveyor registered as such in terms of the Land Survey Act, No. 46 of 1961;

“township” includes —

- (a) a group of pieces of land, or of subdivisions of a piece of land, which are combined with streets and public places and are used mainly for residential, business, industrial or similar purposes, or are intended to be so used;
- (b) an area of land registered or recognized at the commencement of this Act in the Deeds Registry as a township if a general plan thereto is filed in the Deeds Registry or in the office of the Surveyor-General
- (c) a township established, approved, proclaimed or otherwise recognized as such under any law;

“Townships Board” means the Private Townships Board established by section 3 of the Private Townships Act, No. 17 of 1961.

Establishment of Deeds Registry.

3. (1) There shall be a Deeds Registry for Swaziland situate at such place as the Minister may by notice in the Gazette prescribe.

(2) All matters pending in the Deeds Registry existing at the commencement of this Act or which have been referred to it up to and until the 25th June, 1973 shall be carried out to completion in such deeds registry as if this Act had not been enacted, and the Deeds Registry established in terms of subsection (1) hereof shall be deemed to be a continuation of such Deeds Registry with power to complete the registration of any deeds lodged, or referred to such Deeds Registry. (Amended K.O-I-C. 18/1973.)

(3) All deeds which have been validly registered in the deeds office existing at the commencement of this Act shall be deemed to have been as validly registered to all intents and purposes as if they had been registered in the Deeds Registry established in terms of subsection (1) hereof. (Added K.O-I-C. 18/1973.)

Appointment of Registrar.

4. (1) The Minister may appoint a Registrar of Deeds for Swaziland and such Assistant Registrar as may be necessary who shall have the power, subject to the regulations, to do any act or thing which may lawfully be done under this Act or any other law by the Registrar of Deeds, and such appointment shall be notified in the Gazette. (Amended A.5/1973.)

(2) The Minister may also appoint such examiners of deeds and clerks as may be necessary who shall carry out such duties and perform such functions as the Registrar may assign to them.

(3) The Registrar shall have a seal of office which shall be affixed to all deeds executed or attested by him and to all copies of deeds issued by him to serve in lieu of the original deeds. (Amended A.5/1973.)

Duties of Registrar.

5. The Registrar shall —

- (a) take charge of and preserve all records of the Deeds Registry referred to in section 3(2) and of the Deeds Registry established by section 3(1);
- (b) examine all deeds or other documents submitted to him for execution or registration, and after examination reject any such deed or other document the execution or registration of which is not permitted by this Act or by any other law, or to the execution or registration of which any other valid objection exists:

Provided that such deed or document need not be examined in its entirety before being rejected;

- (c) register grants or leases of land lawfully issued by the Government and register amendments, renewals and cancellations of such leases, and releases of any part of the property leased;
- (d) attest or execute and register deeds of transfer of land, and execute and register certificates of title to land;
- (e) register notarial cessions of concessions and notarial renewals of concessions;
- (f) attest and register mortgage bonds;
- (g) register cessions (including cessions made as security) of registered mortgage bonds and register cancellations of such cessions if made as security;
- (h) register cancellations of registered mortgage bonds, releases of any part of the property hypothecated thereby or of all such property if the debt is further secured by a collateral bond, releases of any joint debtor or of any surety in respect of any such bond, the substitution of another person for a debtor in respect of any such bond, reductions of cover in respect of any such bond intended to secure future debts, and part payments of the capital amount due in respect of any such bond other than a bond intended to secure future debts;
- (i) register waivers of preference in respect of registered mortgage bonds and notarial bonds with regard to the whole or any part of the property hypothecated thereby in favour of other such bonds whether registered or about to be registered;
- (j) register waivers of preference in respect of registered real rights in land, in favour of mortgage bonds, whether registered or about to be registered;
- (k) register notarial bonds and cancellations and cessions thereof, including cessions made as security, and cancellations of such cessions if made as security, as well as deeds of hypothecation lodged with him under the Financial Institutions (Consolidation) Order, No. 23 of 1975, and any cession,

substitution, cancellation or amendment of any such deed; (Amended K.O-I-C. 23/1975.)

- (l) register releases of any part of the property hypothecated by any registered notarial bond or of all such property if the debt is further secured by a collateral bond, releases of any joint debtor or of any surety in respect of any such bond, reductions of cover in respect of any such bond intended to secure future debts, and part payments in respect of the capital amount due in respect of any such bond other than a bond intended to secure future debts;
- (l bis) register agreements varying the terms of bonds; (Added A.5/1973.)
- (m) register antenuptial contracts, and register such notarial deeds of donation, including a donation to be held in trust, and such other notarial deeds having reference to persons and property in Swaziland as are required or permitted by law to be registered;
- (n) register notarial cessions, leases or sub-leases of rights to minerals and notarial variations of such cessions, leases or sub-leases, notarial cessions of such registered leases or sub-leases, notarial cancellations of such leases or sub-leases, certificates of registration of such rights and reservations of such rights made in grants or transfers of land and notarial variations of such reservations;
- (o) register any servitude, whether personal or praedial, and record the modification or extinction of any registered servitude;
- (p) register notarial leases, sub-leases, and cessions of leases or of sub-leases, of land, and notarial amendments of such leases and sub-leases, and notarial renewals and notarial cancellations of such leases and sub-leases and notarial releases of any part of the property leased;
- (q) register notarial prospecting contracts and notarial cessions thereof and cancellations of such contracts;
- (r) register any real right, not specifically referred to in this section, and any cession, modification or extinction of any such registered right;
- (s) register against any registered mortgage or notarial bond any agreement entered into by the mortgagor and the holder of that bond, whereby any terms of that bond have been varied;
- (t) register general plans of lots or of subdivisions of land, open registers of the lots or subdivisions of land shown on such general plans and record in such registers the conditions upon which the lots or subdivisions have been laid out or established;
- (u) register powers of attorney whereby the agents named therein are authorized to act generally in Swaziland for the principals granting such powers, or to carry out a series of acts or transactions registrable in the Deeds Registry and register copies of such powers which are filed of record in the office of the Master and which have been issued by him for the purpose of being acted upon in the Deeds Registry;
- (v) make, in connection with the registration of any deed or other document, or in compliance with the requirements of any law, such endorsements on any

registered deed or other document as may be necessary to give effect to such registration or to the objects of such law;

- (w) record all notices, returns, statements or orders of court lodged with him in terms of any law;
- (x) remove from his records, with the approval of the Master and after the lapse of ten years from the date of entry in such records, any entry made therein, whether before or after the commencement of this Act, in pursuance of the transmission to him of a notice of liquidation or an order of liquidation or sequestration or in pursuance of the lodging with him by the Master of a return in terms of section 66 of the Administration of Estates Act, No. 28 of 1902;
- (y) keep the registers prescribed under this Act or any other law, and make such entries therein as are necessary for the purpose of carrying out the provisions of this Act or such other law and of maintaining an efficient system of registration calculated to afford security of title and ready reference to any registered deed;

and, generally, the Registrar shall discharge all such duties as by law may or are to be discharged by the Registrar or as are necessary to give effect to the provisions of this Act.

Powers of Registrar.

6. (1) The Registrar shall have the power —
- (a) to require the production of proof upon affidavit or otherwise of any fact necessary to be established in connection with any matter or thing sought to be performed or effected in the Deeds Registry;
 - (b) whenever it is in his opinion necessary or desirable to rectify in any deed or other document, registered or filed in the Deeds Registry, an error in the name or description of any person or property mentioned therein, or in the conditions affecting any such property, to rectify the error:
Provided that —
 - (i) every person appearing from the deed or other document to be interested in the rectification, has consented thereto in writing;
 - (ii) if any such person refuses to consent thereto or his consent thereto cannot be obtained, the rectification may be made on the authority of an order of court;
 - (iii) if the error is common to two or more deeds or other documents, including any register in the Deeds Registry, the error shall be rectified in all those deeds or other documents;
 - (iv) no such rectification shall be made if it would have the effect of transferring any right;
 - (c) to issue, under conditions prescribed by regulation, certified copies of deeds or other documents registered or filed in the Deeds Registry;
 - (d) if in his opinion any deed or other document submitted to him has become illegible or unserviceable, or has been altered or tampered with by any

unauthorized person, to require that a certified copy thereof be obtained to take its place.

(2) The registrar shall perform, in case of dispute, all the functions of a taxing officer of the court in relation to fees charged by conveyancers and notaries public for performing any acts which are required or permitted under this Act to be performed by conveyancers or notaries public in connection with deeds executed, registered or filed or intended to be executed, registered or filed in the Deeds Registry or in relation to fees charged by other legal practitioners in connection with preliminary work performed with reference to any such deed.

Registered deeds not to be cancelled except upon an order of court.

7. (1) Save as is otherwise provided in this Act or in 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 real right in land other than a mortgage bond, and no cession of any registered bond not made as security, shall be cancelled by the Registrar except upon an order of court.

(2) Upon the cancellation of any deed conferring or conveying title to land or any real right in land other than a mortgage bond as provided for in subsection (1), the deed, under which the land or such real right in land was held immediately prior to the registration of the deed which is cancelled, shall be revived to the extent of such cancellation, and the Registrar shall cancel the relevant endorsement thereon evidencing the registration of the cancelled deed.

Inspection of records and supply of information.

8. The Registrar shall, on such conditions as may be prescribed and upon payment of the prescribed fees, permit any member of the public to inspect the public registers and other public records in the Registry, other than the index to such registers or records, and to make copies of those records or extracts from those registers and to obtain such other information concerning deeds or other documents registered or filed in the Registry as, prior to the commencement of this Act, could, customarily, be made or obtained:

Provided that no such fee shall be payable in respect of any search or inspection made in the Deeds Registry —

- (a) by a conveyancer or notary public in connection with any deed which he has been instructed to prepare, attest or lodge in the Registry; or
- (b) by any surveyor in connection with any land survey which he has been instructed to perform; or (Amended A.5/1973.)
- (c) by the Sheriff or a messenger of a subordinate court, or his deputy, in connection with the exercise of his duties as such.

Regulations.

9. (1) The Minister may make regulations prescribing —

- (a) the fees of office, if any, to be charged in respect of an act, matter or thing required or permitted to be done in or in relation to the Deeds Registry, including any report made to the court by the Registrar in connection with any application or action to which he is not a party;
- (b) the fees and charges —

- (i) of conveyancers and notaries public in connection with the preparation, passing and registration of deeds or other documents registered or filed or intended for registration or filing in the Deeds Registry;
 - (ii) of any other legal practitioners in connection with preliminary work performed with reference to any such deed or other document; and
 - (iii) which may lawfully be made in connection with the taxation of any of the fees or charges referred to in sub-paragraphs (i) and (ii) of this paragraph.
- (c) the manner and form in which and the qualifications of the person by whom any deed or other document required or permitted to be lodged, registered or filed in the Deeds Registry shall be prepared, lodged, executed, registered, filed or delivered and the time within which any deed shall be executed;
- (d) the manner and form in which endorsements or entries required by this Act or any other law to be made on registered deeds or other documents or in the registers shall be made thereon or therein;
- (e) the particular documents which, when produced in the Deeds Registry, shall be attested or witnessed, and the manner in which any such document shall be attested or witnessed;
- (f) the manner and form in which lots or portions of lots in townships or similar areas may be registered;
- (g) the manner and form in which —
 - (i) information which is required by law to be furnished to the Registrar shall be recorded in the Deeds Registry;
 - (ii) information permitted by law to be furnished by the Registrar to the public shall be furnished; and
 - (iii) the identity of persons shall be established;
- (h) the conditions upon which conveyancers, surveyors and other persons may conduct any search in the Deeds Registry, and the precautions which shall be taken to ensure preservation of the records from damage by improper handling or otherwise;
- (i) the conditions under which copies of deeds and other documents registered in the Deeds Registry may be issued for judicial purposes, or purposes of information or in substitution of deeds or other documents which have been lost, destroyed, defaced or damaged and the conditions under which extracts from registers or from any documents registered or filed in the Deeds Registry may be furnished;
- (j) the manner or form in which consent shall be signified to any cancellation, cession, part-payment, release or amendment of, or other registrable transaction affecting, any bond or other document registered in the Deeds Registry;
- (k) the conditions under which a copy of a power of attorney may be accepted by the Registrar in lieu of the original;

(l) the forms of deeds which shall be used in circumstances not provided for in this Act;

(m) any matter which under this Act is required or permitted to be prescribed.

(2) In making any regulation under this section prescribing the fees and charges of conveyancers in connection with the preparation and passing of deeds, the Minister may prescribe separate fees for the preparation and the passing of deeds in the event of the deeds being prepared by one conveyancer and passed by another. (Amended K.O-I-C. 2/1973.)

PART II REGISTRATION

Registers.

10. (1) The Minister shall prescribe such personal, general debt, property and other registers and indices to the said registers as may be necessary to carry out the provisions of this Act, and which shall be prepared, opened and kept by the Registrar. (Amended K.O-I-C. 2/1973.)

(2) In addition to the registers referred to in subsection (1), the Registrar shall open and keep such registers as he may by any other law be required to keep.

Continuation of existing registers.

11. (1) Until such time as any new register has been prepared and opened under the provisions of section 10, the Registrar shall continue to keep the corresponding register in use in the Registry immediately prior to the commencement of this Act, and shall make therein the like entries as were customarily made therein prior to such commencement.

(2) A general debt register referred to in section 10 in which any debts secured by bonds are entered shall be deemed to be a continuation of the debt register kept in the Deeds Registry prior to the commencement of this Act and any entries made in the latter shall have the same effect in law as they would have had if they had been made in the debt register so referred to.

When registration takes place.

12. (1) Deeds executed or attested by the Registrar shall be deemed to be registered upon the affixing of the Registrar's signature thereto, and deeds, documents or powers of attorney lodged for registration shall be deemed to be registered when the Deeds Registry endorsement in respect of the registration thereof is signed:

Provided that no such deed, document or power, which is one of a batch of interdependent deeds, documents or powers of attorney intended for registration together, shall be deemed to be registered until all the deeds, documents or powers of attorney or the registration endorsements in respect thereof, as the case may be, have been signed by the Registrar.

(2) If by inadvertence the Registrar's signature has not been affixed to a deed executed or attested by him, or to the registration endorsement in respect of the registration of a deed, document or power of attorney lodged for registration, at the time at which the signature should have been affixed in the ordinary course, the Registrar may affix his

signature thereto when the omission is discovered, and the deed, document or power of attorney shall thereupon be deemed to have been registered at the time aforesaid. (Amended A.5/1973.)

(3) All endorsements or entries made on deeds, documents or powers of attorney or in registers, in connection with the registration of any deed, document or power of attorney, shall be deemed to have been affixed simultaneously with the affixing of the signature of the Registrar thereto in respect of deeds executed or attested by the Registrar or with the signing of his registration endorsement in respect of deeds, documents or powers of attorney lodged for registration, although in fact they may have been made subsequent thereto.

(4) Any deed, document or endorsement which, under this section is required to be signed by the Registrar, may, if the Registrar is not available to sign such deed, document or endorsement, be signed by the successor in office of the Registrar or by any person acting in the place of the Registrar, whereupon any reference in subsection (1) or (3) to the signature of the Registrar shall be deemed to include a reference to the signature of such successor or person acting as Registrar, as the case may be.

Deeds to follow sequence of their relative causes.

13. (1) Save as otherwise provided in this Act or in any other law or as directed by the court —

- (a) transfers of land and cessions of real rights therein shall follow the sequence of the successive transactions in pursuance of which they are made, and if made in pursuance of testamentary disposition or intestate succession they shall follow the sequence in which the right to ownership or other real right in the land accrued to the persons successively becoming vested with such right;
- (b) it shall not be lawful to depart from any such sequence in recording in the Deeds Registry any change in the ownership in such land or of such real right;

Provided that —

- (i) if the property has passed in terms of a will or through intestate succession from a deceased person to his descendants, and one or other of these descendants has died a minor and intestate and no executor has been appointed in his estate, transfer or cession of the property which has vested in that descendant may be passed by the executor in the estate of the deceased person direct to the heirs *ab intestato* of the descendant;
- (ii) if the Registrar is satisfied that the value of the immovable property which has vested in any heir or legatee in terms of a will or through intestate succession would be equalled or exceeded by the costs involved in transferring or ceding it to the heir or legatee, and the heir or legatee has sold the property, transfer or cession thereof may, with the consent in writing of the heir or legatee, be passed by the executor in the estate of the deceased person direct to the purchaser;
- (iii) if in the administration of the estate of a deceased person any redistribution of the whole or any portion of the assets in such estate takes place among the heirs and legatees (including ascertained

fideicommissary heirs and legatees) of the deceased, or between such heirs and legatees and the surviving spouse, the executor or administrator of such estate may transfer the land or cede the real rights therein direct to the persons entitled thereto in terms of such redistribution;

- (iv) in a redistribution mentioned in proviso (iii) it shall be lawful to introduce movable property not forming part of the estate for the purpose of equalizing the division;
- (v) the provisions of proviso (iii) shall apply, *mutatis mutandis*, with reference to a redistribution of assets of the joint estate of spouses who were married in community of property and have been divorced or judicially separated, and with reference to a redistribution of assets of a partnership on dissolution of the partnership;
- (vi) if a fiduciary interest in land or in a real right terminates before transfer of the land or cession of the real right has been registered in favour of the fiduciary, it shall be competent to transfer the land or cede the real right direct to the fideicommissary;
- (vii) if the right of a person to claim transfer of land or cession of a real right from another person has been vested in a third person in terms of a judgment or order of a court or in terms of a sale in execution held pursuant to that judgment or order, transfer of that land or cession of that real right may be passed direct to the third person by the person against whom the right was exercisable.

(2) In any transfer or cession in terms of any proviso to subsection (1)(b) there shall be paid the transfer duty and death duties which would have been payable had the property concerned been transferred or ceded to each person successively becoming entitled thereto.

Preparation of deeds by conveyancer.

14. Save as is otherwise provided in this Act or in any other law, no deed of transfer, mortgage bond or certificate of title or registration of any kind mentioned in this Act shall be attested, executed or registered by the Registrar unless it has been prepared by a conveyancer.

How real rights shall be transferred.

15. Save as otherwise provided in this Act or in any other law the ownership of land may be conveyed from one person to another only by means of a deed of transfer executed or attested by the Registrar, and other real rights in land may be conveyed from one person to another only by means of a deed of cession attested by a notary public and registered by the Registrar:

Provided that notarial attestation shall not be necessary in respect of the conveyance of real rights acquired under a mortgage bond.

Special provisions relating to women.

16. (1) All deeds executed or attested by the Registrar, or attested by a notary public and required to be registered in the Deeds Registry, and made by or on behalf of or in favour of women, shall in each case disclose the full name and status of the woman concerned, whether

unmarried, married, widowed, or divorced as the case may be. If the woman is married the full name of her husband shall also be disclosed. If the marriage is governed by the law in force in Swaziland it shall be stated whether the marriage was contracted with or without community of property, and if the parties to a marriage are Africans whether the consequences of such marriage are governed by Swazi law and custom as provided in the Marriage Act, No. 47 of 1964. If the marriage is governed by the law of any other country it shall be stated that the marriage is governed by the law of that country.

(2) A woman married out of community of property and a woman whose marriage is governed by the law of any country other than Swaziland shall be assisted by her husband in executing any deed or other document required or permitted to be registered in the Deeds Registry or required or permitted to be produced in connection with any such deed or document, unless the marital power has been excluded or unless the assistance of the husband is on other grounds deemed by the Registrar to be unnecessary.

(3) Immovable property, bonds or other real rights shall not be transferred or ceded to, or registered in the name of, a woman married in community of property, save where such property, bonds or real rights are by law or by a condition of a bequest or donation excluded from the community.

(4) If immovable property or a bond not excluded from the community has at the commencement of this Act been registered in the name of a woman married in community of property which still subsists, her husband to whom she is so married may, unless she has been authorized by an order of court to deal therewith, alone deal with such property or bond.

(5) If immovable property has been acquired by one or other of two spouses married in community of property in such a manner that the said property would on transfer or cession thereof become part of the joint estate, and the community has been dissolved by the death of one of the spouses before the property is transferred or ceded, the property shall be transferred or ceded to the joint estate of the spouses, pending liquidation thereof, and shall, subject to the provisions of any disposition affecting the property, be deemed to be the joint property of the surviving spouse and of the estate of the deceased spouse.

(6) When immovable property or a bond is registered in the name of —

(a) a woman who has married since the registration was effected; or

(b) a woman who at the date of registration was married out of community of property or whose marriage was at that date governed by the law of any country other than Swaziland, and who has since been widowed or divorced;

it shall be competent for the Registrar, on written application by such woman, assisted where necessary by her husband, and on production of the relevant deed and of proof to his satisfaction of the change in her status, to record that change on the deed and in the registers:

Provided that where there are two or more inter-dependent deeds, all such deeds shall be produced for endorsement.

PART III REGISTRATION OF LAND

Transfer of Land

Manner of dealing with Government land.

17. (1) The ownership of unalienated Government land may be transferred from the Government only by a deed of grant issued under proper authority and, save as hereinafter provided, having a diagram of the land annexed thereto.

(2) The ownership of land alienated from and reacquired by the Government may be transferred from the Government either by deed of grant issued under proper authority, or by deed of transfer, but in either case the deed of grant or transfer shall contain a reference to the title deed by which the Government held the land and to the title deed to which the diagram of the land is annexed and shall set forth the conditions upon which the land is alienated and the rights to the land reserved by the Government on that alienation.

(Amended A.5/1973.)

(3) If any piece of unalienated Government land has been surveyed and is represented on a diagram the Registrar shall, upon written application by the proper authority, accompanied by the diagram of the land in duplicate, enter particulars of the land in the appropriate register and execute in the prescribed form and in accordance with the diagram, a certificate of registered Government title thereof prepared by a conveyancer. (Amended A.5/1973.)

(4) Transfer of the ownership of land held by the Government under certificate of registered Government title shall be effected by deed of grant issued under proper authority, but it shall not be necessary to annex a diagram of the land thereto:

Provided that the grant shall contain a reference to the certificate and to the diagram annexed to the certificate.

(5) No deed (other than a deed of grant conveying ownership) purporting to create or deal with or dispose of any real right in any piece of unalienated Government land shall be capable of registration until a certificate of registered Government title has been executed in respect of that piece of land.

Form and manner of execution of deeds of transfer.

18. Deeds of transfer shall be prepared in the forms prescribed by law or by regulation or in such other form as the Registrar may in special cases approve and, save as in this Act or any other law provided or as ordered by the court in respect of deeds of transfer executed by the Registrar, shall be executed in the presence of the Registrar by the owner of the land described therein or by a conveyancer authorized by power of attorney to act on behalf of the owner and shall be attested by the Registrar.

General plan of subdivision of a piece of land not divided for township purposes.

19. (1) When any piece of land has been divided into portions exceeding fifteen in number, for purposes other than as provided for in section 46, the owner thereof shall lodge with the Registrar a duly approved general plan of the land so divided together with his title deed to the land. The Registrar shall thereupon register such general plan and make an endorsement on the title deed recording that the land held thereunder has been divided into the portions shown on the general plan.

(2) When any deed affecting a portion of a registered piece of land is tendered for registration the Registrar may in his discretion, before accepting such deed for registration, call for a sworn declaration to the effect that the portion of land sought to be dealt with does not consist of one or a part of one or more than one of a number of portions within the meaning of this section into which the said registered piece of land has been divided.

Transfer from joint estate.

20. In any transfer lodged in the Deeds Registry relating to land which is an asset in a joint estate, the surviving spouse shall be joined in his personal capacity with the executor of the estate of the deceased spouse except —

- (a) where the executor is only dealing with the share of the deceased spouse; or
- (b) where the land has been sold to pay the debts of the joint estate; or
- (c) where there has been a massing of the joint estate and the surviving spouse has adiated; or
- (d) where such transfer is in favour of the surviving spouse; or
- (e) where the surviving spouse has signed as executor the power of attorney to pass such transfer.

Transfer of two or more pieces of land by one deed.

21. (1) Two or more persons each owning a different piece of land may not transfer those pieces of land to one or more persons by the same deed of transfer, unless such transfer is authorized by the provisions of any other law or by an order of the court.

(2) Two or more pieces of land may by one deed be transferred, by one person or by two or more persons holding such pieces of land in undivided shares, to one person or to two or more persons acquiring such pieces of land in undivided shares:

Provided that each of such pieces of land shall be described in a separate paragraph.

(3) Two or more portions of a piece of land may by one deed be transferred by one person or by two or more persons holding the whole of such piece of land in undivided shares to one person or two or more persons acquiring such portions in undivided shares:

Provided that each portion is described in a separate paragraph in which reference is made to the diagram of that portion and the diagrams of all such portions are annexed to the deed.

Transfer of undivided shares in land by one deed.

22. (1) Land held by one person may be transferred by one deed from that person to two or more persons in undivided shares.

(2) Land held by two or more persons in undivided shares may be transferred by one deed from those persons to any other person, or to two or more other persons in undivided shares.

Transfer to undivided shares in more than one piece of land to two or more persons in one deed.

23. Undivided shares in more than one piece of land may not be transferred to two or more persons by one deed unless the shares appropriated to each person are the same in respect of each piece of land.

Special provisions relating to transfer of undivided shares.

24. (1) No transfer of an undivided share in land which is intended or calculated to represent or purports to represent a defined portion of land shall be capable of being registered.

(2) If a piece of land is owned by two or more persons in undivided shares and one or more of such persons acquires the share or shares of the remaining owner or owners in a defined portion of that piece of land, all the owners jointly, including the owner or owners acquiring the share or shares, may transfer such defined portion to the person or persons acquiring it.

Special provisions relating to partnership property.

25. (1) If land or a real right registered in the name of a firm or partnership is acquired by any member or partner of such firm or partnership in his individual capacity, transfer or cession thereof shall be given by all the members or partners constituting such firm or partnership:

Provided that in any other case land or real rights owned by a firm or partnership may be dealt with by such firm or partnership as provided in the regulations.

(2) If on dissolution of a firm or partnership any land or real right owned by such firm or partnership is awarded to all the members or partners in their individual capacities, the Registrar shall on written application signed by all the members or partners constituting such firm or partnership, accompanied by proof of dissolution and such other documents as may be required or prescribed, endorse on the title deed of the land or real right that such land or real right vests in the individuals named therein, and thereupon such persons shall be entitled to deal therewith as if they had taken formal transfer or cession in their names of their shares in such land or real right.

(3) If the land or real right referred to in subsection (2) is hypothecated under a registered mortgage bond, the endorsement contemplated in that subsection shall not be made unless such bond is cancelled or the holder thereof consents in writing, in duplicate, to the substitution of the individual member or partners as debtors under the bond:

Provided that such substitution shall not be permitted unless —

- (a) the individual members or partners apply in writing, in duplicate, to be substituted, jointly and severally, as debtors under the bond and such application is witnessed in the manner prescribed;
- (b) the individual members or partners are competent to mortgage the land or real right;
- (c) where applicable, the individual members or partners renounce in the said application the exception *de duobus vel pluribus reis debendi*; and

- (d) where the member or partner is a woman, she renounces in the said application any special legal exceptions which she would otherwise be entitled to raise.

Transfer to unascertained children.

26. (1) If land or a real right or a bond is donated or bequeathed to the children born or to be born of any person or of any marriage, or is otherwise acquired on behalf of such children, transfer of the land or cession of the real right or bond on behalf of such children may be passed in the case of children born or to be born of a person, to that person in trust for those children, and in the case of children born or to be born of a marriage, to the person who would be the guardian of those children during their minority, in trust for the children.

(2) If land or a real right or a bond is donated to the children born or to be born of any person or of any marriage, the person to whom transfer or cession may be passed in terms of subsection (1) may, for the purposes of such transfer or cession, accept the donation.

(3) When the identity of all such children has been established, the Registrar shall make an endorsement on the title deed or bond setting out their names, whereupon the title deed shall be deemed to be to and in favour of such children in the same manner as if the transfer or cession had originally been passed to them by name notwithstanding the provisions of section 16(3).

Deeds of partition transfer.

27. (1) If two or more persons, who own in undivided shares the whole of any piece or pieces of land, have agreed to partition that land, the Registrar shall, on production to him of a power of attorney by such persons authorizing the passing of deeds of partition transfer of such land in accordance with the agreement of partition, which agreement shall be embodied in the power of attorney or annexed thereto, and on compliance with the further provisions of this section, attest deeds of partition transfer which shall be as nearly as practicable in the prescribed form, conveying to the respective owners the land or shares therein awarded to them under the said agreement. (Amended A.5/1973.)

(2) In the power of attorney or agreement of partition referred to in subsection (1) there shall be described —

- (a) the land to be partitioned;
- (b) the share or shares registered in the name of each joint owner;
- (c) the land or share therein awarded to each of the owners;
- (d) the conditions, if any, affecting any land or share therein so awarded; and
- (e) the consideration, if any, given for the purpose of equalizing the partition.

(3) There shall be produced to the Registrar the title deeds of the land to be partitioned and the necessary diagrams:

Provided that no new diagram need be produced in respect of the whole or remaining extent of any one of the pieces of land to be partitioned. (Amended A.5/1973.)

(4) Subject to the provisions of this section, the provisions of sections 18 and 20 to 23 inclusive, shall, *mutatis mutandis*, apply in respect of deeds of partition transfer.

(5) Any deed of partition transfer attested under subsection (1) shall in respect of the land therein described take the place of the deed by which it was previously held, but the

partition transfer shall not vary or affect the conditions of tenure of the said land or any other conditions affecting the said land generally, save in so far as such last mentioned conditions may be varied, defined or limited by the agreement of partition or the consents of interested parties.

(6) The provisions of this section shall, *mutatis mutandis*, apply to a partition of land ordered by the court or determined by an award of arbitrators.

Requisites where share in land partitioned is mortgaged.

28. (1) If the share or shares owned by any of the parties to a partition is or are mortgaged, the partition transfers shall not be attested unless the bond is produced to the Registrar together with the written consent, in duplicate, of the legal holder of the bond, to the partition and to the substitution of the land awarded to the mortgagor for the share or shares mortgaged.

(2) In registering the transfer the Registrar shall —

- (a) endorse on the bond that the land awarded to the mortgagor has been substituted for the share or shares mortgaged;
- (b) make an entry of the substitution in the registers; and
- (c) endorse on the transfer that the land described therein is, in accordance with this section, mortgaged by the bond.

(3) If only a fraction of the share or shares owned by any of the parties to a partition is mortgaged, the substitution referred to in this section shall only take place in respect of the fraction so mortgaged, if from the agreement of partition or from other evidence it appears that a defined portion or share therein has been separately awarded in respect of such mortgaged fraction.

(4) Where more than one property is partitioned by the same partition and the whole of any one or more of the properties affected is awarded to an owner, such property or properties may be substituted under that owner's bond, if the bond is over his share in all the properties partitioned.

Requisites where share in land partitioned is subject to other rights.

29. (1) If the share or shares owned by any of the parties to a partition appear from the title deeds of the land partitioned to be subject to a lease, personal servitude or other real right, excluding rights to minerals, the written consent of the holder thereof to the partition and allocation of the lease, servitude or such other real right, together with the deed, if any, by which the lease, servitude or real right is held, shall be produced to the Registrar.

(2) The land described in the deeds of partition transfer shall be made subject to the lease, servitude or real right to the same extent as the share or shares for which it is substituted, and the deed, if any, by which the lease, servitude or real right is held, shall be endorsed by the Registrar in the same manner as the bond mentioned in section 28.

(3) If there exists any bond by which the lease, servitude or real right is itself mortgaged, that bond shall also be produced to the Registrar together with the written consent of the legal holder thereof to the partition and allocation of the lease, servitude or such other real right, and the Registrar shall make the endorsements and entries mentioned in section 28 on the bond, the deeds concerned and in the registers.

Effect of compliance with sections 28 and 29.

30. Upon the completion of the endorsements and entries mentioned in sections 28 and 29, the land described in the deeds of partition transfer and the lease, personal servitude or real right, if any, shall be deemed to be as fully and effectually mortgaged as if they had been hypothecated by the bond at the time of its execution and the said land shall be deemed to be as fully and effectually encumbered by the said lease, personal servitude or real right as if it had been encumbered thereby at the time of the registration thereof.

Partition of land subject to fideicommissum.

31. (1) (a) Any piece of land the whole or any share of which is subject to a *fideicommissum* may, where partition has not been prohibited, be partitioned with the written consent of the fideicommissary heirs or successors if they are ascertained and are majors and otherwise competent.

(b) If they are ascertained and any of them are minors, the consent of the court shall be produced in respect of the minors; if they are ascertained but any of them have been declared insolvent, or if they are under curatorship or otherwise under disability the consent of their trustees or curators or other legal representatives shall be produced on their behalf; if they are not ascertained or if they cannot be found, proof shall be produced to the satisfaction of the Registrar that the land awarded in the agreement of partition to the owner of any share subject to the *fideicommissum* is an equivalent of that share.

(2) The land so awarded shall in the deed of partition transfer be made subject to the *fideicommissum* in the same manner as the corresponding share was in its title deed made subject thereto before partition.

Registration of title by other than the ordinary procedure.

32. (1) Any person who has acquired in any manner the right to ownership of immovable property registered in the name of any other person and who is unable to procure registration thereof in his name in the usual manner and according to the sequence of the successive transactions or successions in pursuance of which the right to the ownership of such property has devolved upon him may apply to the court by petition for an order authorizing the registration in his name of such property.

(2) Every petition to the court under the provisions of this section shall be lodged with the Registrar of the said court and the allegations contained in such petition shall be supported by sworn declarations and all available documentary evidence which the applicant may be able to adduce.

(3) Every such petition shall be laid before a judge in chambers who shall make such order thereon as to him shall seem fit, and such judge may order that any matter arising upon such petition shall be argued and determined in open court.

(4) The court considering any petition for registration of title may, if the court deems it expedient to do so, grant a rule *nisi* setting forth the description of the immovable property mentioned in such petition, and calling upon all persons claiming to have any right or title to such property to appear and establish their claims to the same upon a day to be named in the rule, and may give directions as to the mode of service or publication of such rule.

(5) Upon the return day of any such rule granted as aforesaid, and no cause being shown to the contrary, the court may order the Registrar to register the property mentioned in

such order as the property of the person therein named, subject to such terms and conditions as may be therein mentioned.

(6) In case any person should appear to show cause against any rule *nisi* granted as aforesaid, the court may, if it sees fit to do so, and, without the issue of any summons, require any issue of fact to be tried upon pleadings or make such order as will determine the matter in dispute.

(7) Subject to the terms of any order made under this section, any deed of transfer passed in pursuance of such order shall be passed subject to every condition, servitude, bond or other encumbrance to which, according to the records of the Deeds Registry, the property to which the application relates, is subject and the Registrar shall, in connection with such condition, servitude, bond or other encumbrance, make the usual and proper entries and endorsements upon or in respect of such deed of transfer in his Registry, before such deed is delivered to the applicant.

(8) The registration of immovable property in the name of any person in pursuance of an order made under this section shall have the effect of vesting such person with a title to such property which shall be liable to be annulled, limited or altered on every ground on which the title of such person to such property would have been liable to be annulled, limited or altered if such property had been transferred to such person in the ordinary course.

(9) If in pursuance of any order made under this section the Registrar registers any property in the name of any person, such person shall be liable to pay such taxes, duties and fees of office in respect of such registration as he would have been liable to pay if such property had been transferred to him in the usual manner directly from the last registered owner thereof, but shall not be liable to pay any tax, duty, quit-rent or interest thereon which such owner or intermediate holder of the right to such property may have become liable to pay, unless he has by agreement bound himself to pay such tax, duty, quit-rent or interest, or unless the delay in obtaining the registration in his name was due to the neglect or default of himself or his agent:

Provided that any person who has become liable to pay any tax, duty, quit-rent or interest in respect of any property shall continue to be so liable notwithstanding that such property has, in pursuance of an order made under this section, been registered in the name of another person.

(10) Upon production to the Registrar of any order made under this section and of a certificate by the proper officer as to the payment of the transfer duty, if any, which the person named in the order is liable to pay, and on compliance with any other requirements which have under this Act to be complied with, the Registrar shall register such property in accordance with the said order, by executing a deed of transfer thereof in the prescribed form in favour of the person named in the order:

Provided that it shall not be necessary to produce the title deed of the property or a certified copy thereof, if an affidavit by the transferee is produced that he has been unable to obtain possession of such title deed.

Substituted Title Deeds

Certificate of registered title of undivided share.

33. (1) A person who is the joint owner of a piece of land the whole of or shares in which is or are held by that person and others under one title deed may, subject to the provisions of

section 36, obtain a certificate of registered title of his undivided share in such land and no transfer of a fraction only of his undivided share or hypothecation or lease of the whole or any fraction of his undivided share in the land shall be registered in the Deeds Registry unless a certificate of registered title of such undivided share is produced to the Registrar:

Provided that all the joint owners so holding under one title deed may together transfer an undivided share in the land or a fraction of the share held under such deed or hypothecate or effect the registration of a lease of the whole of such land or share without the production of such a certificate:

Provided further that such a certificate shall not be necessary where a joint owner disposes of the whole of his share by deeds of transfer to be registered simultaneously.

(2) If the title deed under which land or shares therein is held in joint ownership is lost or destroyed any joint owner may, upon compliance with the prescribed requirements, obtain a certificate of registered title in respect of his share in the land without obtaining a certified copy of the deed which has been lost or destroyed.

(3) The provisions of subsections (1) and (2) shall apply also where two or more pieces of land or shares therein are held in joint ownership by the same title deed:

Provided that all the pieces of land or the shares therein shall be included in the certificate of registered title and shall be described in separate paragraphs.

Certificate of registered title of aggregate share.

34. Any person who is, by virtue of more than one title deed, the owner of undivided shares in one or more than one piece of land may, subject to the provisions of section 36, obtain a certificate of registered title in respect of his aggregate share in the land:

Provided that if there are two or more pieces of land the several pieces of land or shares therein shall be described in separate paragraphs.

Certificate of registered title of one or more properties held under one deed.

35. A person who holds two or more pieces of land, or undivided shares therein, by one title deed may, subject to the provisions of section 36, obtain a certificate of registered title in respect of one or more of such pieces of land or of the undivided share or shares held by him therein:

Provided that at least one of the pieces of land or the share therein held by that deed remains held thereby.

Conditions governing the issue of certificates of registered title.

36. (1) A certificate of registered title mentioned in section 33, 34 or 35 may be obtained upon written application by the owner to the Registrar accompanied, save as provided in section 33(2), by the title deed of the land and shall be as nearly as practicable in the prescribed form.

(2) If the property concerned is subject to a registered mortgage bond, that bond shall be produced to the Registrar by the holder thereof, upon the request and at the expense of the applicant for the certificate of registered title.

(3) (a) Before issuing any such certificate the Registrar shall cause to be made upon the title deed in question and the Registry duplicates thereof or in the case provided in section

33(2), upon the Registry duplicate only, and upon the mortgage bond, if any, an endorsement that a certificate of registered title has, in accordance with the appropriate section of this Act, been substituted for the said title deed in respect of the property in question.

(b) The Registrar shall further make entries in the registers of the issue of the certificate and shall, if the property is mortgaged, endorse that fact upon the certificate.

(4) Any such certificate when issued shall in respect of the property described therein take the place of the title deed by which such property was previously held and the issue of the certificate shall not in any manner affect any right or obligation in connection with such property.

Certificate of registered title taking place of lost or destroyed deed.

37. (1) If the title deed of any land has been lost or destroyed and the Registry duplicate of such title deed has also been lost or destroyed, the Registrar shall, on written application by the owner of the land, accompanied by a diagram of the land, if no diagram thereof is filed in the Registry or in the office of the Surveyor-General, execute a certificate of registered title in respect of such land in accordance with the diagram of the land.

(2) Before issuing the certificate the Registrar shall, at the expense of the applicant, publish in the prescribed form notice of intention to issue the certificate in two consecutive ordinary issues of the Gazette and once a week for two consecutive weeks in a newspaper circulating in Swaziland whether printed therein or elsewhere.

(3) A draft of the proposed certificate and a copy of the diagram, if any, accompanying the application, shall be open for inspection in the Registry free of charge by any interested person for a period of six weeks after the date of the first publication of the notice in the Gazette, during which period any person interested may object to the issue of the certificate.

(4) Any person who has lodged with the Registrar an objection to the issue of the certificate may, in default of any arrangement between him and the applicant, apply to the court, within one month after the last day upon which an objection may be lodged, for an order prohibiting the Registrar from issuing the certificate, and the court may make such order on the application as it may deem fit.

(5) A certificate of registered title issued under this section shall be as nearly as practicable in the prescribed form and shall take the place of the lost or destroyed title deed and shall embody or refer to every condition, servitude, bond, lease or other encumbrance which, according to the records of the Registry, was embodied or referred to in the lost or destroyed title deed or in any endorsement thereon.

Certificate of registered title to correct error in registration or omit lapsed servitudes.

38. (1) If by reason of an error the same land has been registered in the names of different persons, the Registrar may, upon transfer of the land being given to one of them by the other or others, issue to the person to whom transfer is so given a certificate of registered title of the land held by him under the various title deeds.

(2) Any person who is the registered owner of any one or more defined portions of land under a registered deed reflecting conditions or servitudes which have lapsed by merger duly noted or which have been cancelled may apply for the issue to him of a certificate of registered title in respect of such land free of such conditions or servitudes.

(3) The certificate of registered title referred to in subsection (2) shall be in the form prescribed and shall supersede the title under which the land was previously held.

(4) The provisions of section 36 shall, *mutatis mutandis*, apply in respect of the issue of such certificates.

Certificate of consolidated title of two or more pieces of land.

39. (1) If a diagram has been framed and approved by the Surveyor-General and such diagram represents two or more pieces of land which are —

- (a) contiguous to each other;
- (b) owned by the same person or by two or more persons in the same undivided shares in each piece of land;
- (c) registered in the same property register; and
- (d) situate in the same district, the title deed or deeds of the said pieces of land may, on compliance with the requirements of this section, be superseded by a certificate of consolidated title issued by the Registrar in the prescribed form.

(2) Every certificate of consolidated title shall be in accordance with the new diagram and shall be issued on written application by the owner or owners of the pieces of land in question accompanied by the title deed or deeds thereof and any bond thereon together with the written consent of the holder of the bond.

(3) In registering the certificate, the Registrar shall endorse on the title deed or deeds that they have, in respect of the land described in the certificate, been superseded by the certificate and, on the certificate, that the land therein described or the share thereof referred to in such endorsement is mortgaged by such bond, and shall make such endorsements on the bond and such entries in the registers as clearly indicate that the land is now owned by virtue of the certificate and that the land or share thereof is subject to the bond.

(4) (a) If a portion only of the land represented on the new diagram is mortgaged, a certificate shall not be issued unless the bond is cancelled:

Provided that, on the written application of the owner and with the consent of the holder of the bond, all land included in the new diagram may be substituted for the land originally mortgaged under the bond.

(b) If different portions of the land represented on the new diagram are mortgaged under different bonds, the certificate shall not be issued unless the bonds are cancelled.

(5) (a) If a portion only of the said land is subject to a registered deed of lease or other registered deed, other than a bond, whereby any real right in the land is held by any other person, the certificate shall not be issued unless a diagram of such portion is already annexed to the said registered deed, or, if no such diagram is annexed, unless a diagram in duplicate of such portion is produced.

(b) It shall not be necessary to produce a diagram of such portion if the diagram of the consolidated land shows that portion by dotted lines or in any other way sufficient to identify it.

(c) The said diagram shall be annexed to the registered deed aforesaid and the Registry duplicate thereof and shall be mentioned in any endorsement made on or reference made in the certificate concerning such registered deed.

(6) No diagram representing a combination of portions of two or more pieces of land shall be accepted for purposes of transfer until a certificate of consolidated title has been issued for the land represented on the diagram.

(7) More than one combination of portions of two or more pieces of land, each of which combination is represented on a separate diagram, may be included in one certificate of consolidated title but each combination shall be described in a separate paragraph therein.

Certificate of uniform title.

40. (1) If the owner of two or more pieces of land which are —
- (a) contiguous to each other;
 - (b) situate in the same district;
 - (c) registered in the same property register; and
 - (d) held on different conditions of tenure, or subject to different rights reserved in favour of the Government;

desires to consolidate his title in respect of those pieces of land on uniform conditions of tenure or subject to the reservation of uniform rights in favour of the Government, the title deeds of the said pieces of land may, with the written consent of the Minister and on compliance with the provisions of this section, be superseded by a certificate of uniform title issued by the Registrar, in the prescribed form, subject to such uniform conditions of tenure or to reservation of such uniform rights in favour of the Government as are set forth in such written consent.

(2) The provisions of section 39(3) to (6), inclusive, shall, *mutatis mutandis*, apply in respect of such certificate.

(3) The Minister may agree with the owner as to the aforesaid uniform conditions of tenure or uniform rights in favour of the Government and may consent to the issue of a certificate of uniform title.

(4) If the said land is subject to any bond or if the said land or any portion thereof is subject to any registered deed of lease or other registered deed whereby any real right in the land is held by any other person, there shall be produced to the Registrar the written consent of the holder of any such bond, lease or right to the issue of the certificate of uniform title and to the uniform conditions of tenure or uniform rights in favour of the Government which may have been agreed upon.

(5) The provisions of this section shall, *mutatis mutandis*, apply in respect of land comprising portions which are held on different conditions of tenure or subject to different rights reserved in favour of the Government, and the title to which has been consolidated prior to the commencement of this Act.

Certificate of amended title of one piece of land.

41. (1) A certificate of amended title in the prescribed form may also be issued by the Registrar in respect of any one piece of land where rectification of title is required in consequence of a survey or re-survey of such land as provided in the Land Survey Act, No. 46 of 1961.

(2) Every such certificate shall be in accordance with the new diagram and shall be issued on written application by the owner or owners of the land in question, accompanied by

the title deed thereof, together with any bond thereon and the written consent of the holder of any such bond.

(3) In registering the certificate the Registrar shall endorse on the title deed of the land in question that the title has been superseded by the certificate, and on the certificate that the land therein described, or the share thereof referred to in such endorsement, is mortgaged by such bond, and shall make such endorsements on the bond and such entries in the registers as clearly indicate that the land is now owned by virtue of such certificate and that the land or such share thereof is subject to such bond.

(4) The provisions of section 39(4)(a) and (5) shall, *mutatis mutandis*, apply in respect of such certificate.

Certificate of registered title of a portion of a piece of land.

42. (1) If a defined portion of a piece of land has been surveyed and a diagram thereof has been approved by the Surveyor-General, the Registrar may, on written application by the owner of the land accompanied by the diagram of such portion, the title deed of the land, any bond thereon and the written consent of the holder of any such bond, issue a certificate of registered title, in respect of such portion, as nearly as practicable in the prescribed form.

(2) In registering the certificate the Registrar shall endorse on the title deed that it has been superseded by the certificate in respect of the land described in the certificate, and on the certificate that the land described therein is mortgaged by the bond, and shall make such endorsements on the bond and such entries in the registers as clearly indicate that the land is now owned by virtue of the certificate and is subject to such bond.

(3) The provisions of this section shall apply where two or more defined portions of land have been surveyed and the diagrams thereof approved:

Provided that each of such portions shall be described in a separate paragraph in the certificate.

(4) No defined portion of a piece of land shall be mortgaged until the owner thereof has obtained a certificate of registered title in respect of such portion in accordance with the provisions of this section.

(5) Save in the case of a transfer of a whole lot, no owner of a township, in whose title deed the individual lots are not separately described, shall deal separately in any way with an individual lot in such township until he has obtained a certificate of registered title of such lot in the prescribed form.

Change of Title by Endorsement

Rectification of title by endorsement.

43. (1) If rectification of title is required in respect of any one piece of land in consequence of a survey or re-survey of such land or of the correction of any error in the diagram thereof under the Land Survey Act, No. 46 of 1961, the Registrar may, on written application by the owner of the land accompanied by the title deed and the new or the corrected diagram thereof, any bond thereon and any registered deed of lease or other registered deed whereby any real right therein is held by any other person and the written consent of the holder of such bond, lease or right, endorse on the aforesaid deeds in the

prescribed form a description of the land according to the new or corrected diagram, which description shall supersede the description already appearing in the aforesaid deeds.

(2) If a new diagram is produced, the Registrar shall in making the said endorsement substitute the new diagram for the old one in the manner prescribed.

(3) The provisions of subsections (1) and (2) shall, *mutatis mutandis*, apply in respect of a deed of cession or a certificate of rights to minerals when the Surveyor-General has approved a new or corrected diagram in consequence of a survey or re-survey of the land over which such rights operate or for the purpose of correcting any error in the diagram in terms of the Land Survey Act, No. 46 of 1961.

Transfer or cession by means of endorsement.

44. (1) If immovable property or a bond is registered in the Deeds Registry in the name of the survivor of two spouses who were married in community of property or in the name of the joint estate of such spouses and such survivor has lawfully acquired the share of the deceased spouse in the property or bond, the Registrar shall on written application by the executor in the estate of the deceased spouse and by the survivor, save where such survivor has signed as executor, accompanied by such other documents as may be prescribed, endorse on the title deeds of the property or on the bond that the survivor is entitled to deal with such property or bond, and thereupon such survivor shall be entitled to deal therewith as if he had taken formal transfer or cession into his own name of the share of the deceased spouse in the property or bond.

(2) If the immovable property mentioned in subsection (1) is hypothecated under a registered mortgage bond the endorsement provided for in the said subsection shall not be made unless —

- (a) such bond is cancelled; or
- (b) the estate of the deceased spouse is released from liability under the bond; or
- (c) the said bond has been passed by the survivor alone and a written consent, which shall be in duplicate in the prescribed form and signed by the survivor and the legal holder of the bond, to the release of the estate of the deceased spouse from liability under the bond and to the substitution of the survivor as sole debtor in respect thereof, is produced to the Registrar together with the bond.

(3) The Registrar shall, in any case of release and substitution in terms of subsection 2(c), when he endorses on the title deeds of the property that the survivor is entitled to deal therewith —

- (a) make in the appropriate register, against the relevant entry, a note that the estate of the deceased spouse is released from liability in respect of the obligation secured by the bond and that the survivor has become sole debtor in respect of the bond;
- (b) annex one duplicate of the written consent referred to in the said paragraph to the bond and file the other with the Registry duplicate of the bond; and (Amended A.5/1973.)
- (c) endorse on the bond that the estate of the deceased spouse is released from liability in respect of the obligation secured thereby and that the survivor has become sole debtor in respect of the bond.

(4) As from the date of the endorsement on the title deeds of the property in terms of subsection (1), the estate of the deceased spouse shall be absolved from any obligation secured by the bond and the survivor shall become sole debtor in respect thereof in the same manner as if he had passed the bond at that date.

Endorsement of deeds where marriage dissolved by divorce.

45. (1) If immovable property or a bond is registered in the Deeds Registry in the name of one of two spouses who were married in community of property but have been divorced, and the person in whose name such property or bond is registered has lawfully acquired the share of his former spouse in the property or bond, the Registrar may, on written application by that person, accompanied by proof that all taxes, duties, fees and quit-rent, if any, have been paid and such further documents as the Registrar deems necessary, endorse on the title deeds of the property or on the bond that such person is entitled to deal with such property or bond, and thereupon such person shall be entitled to deal therewith as if he had taken formal transfer or cession into his name of the share of the former spouse in the property or bond.

(2) If any immovable property referred to in subsection (1) is hypothecated under a registered mortgage bond, section 44(2), (3) and (4) shall, *mutatis mutandis*, apply.

PART IV
TOWNSHIPS

Requirements in case of subdivision of land into lots.

46. (1) If land has been subdivided into lots shown on a general plan, the owner of the land subdivided shall furnish a copy of the general plan to the Registrar who shall, subject to compliance with the requirements of this section and of any other law, register the plan and open a register in which all registrable transactions affecting the respective lots shown on the plan shall be registered.

(2) For the purposes of registration of such a general plan the title deed of the land which has been subdivided shall be produced to the Registrar together with the diagram thereof and any mortgage bond endorsed on the title deed and the mortgagee's consent to the endorsement of such bond to the effect that it attaches to the land described in the general plan.

(3) If the land subdivided as shown on the general plan forms the whole of any registered piece of land held by the title deed, the Registrar shall make upon the title deed and the Registry duplicate thereof an endorsement in the prescribed form indicating that the land has been laid out as a township in accordance with the plan, and that the lots shown on the plan are to be registered in the relative register.

(4) If the land subdivided as shown on the general plan forms a portion only of any registered piece of land held by the title deed the Registrar shall, on written application by the owner of the land, issue a certificate of township title in his favour in respect of the said portion as nearly as practicable in the prescribed form and in accordance with a diagram thereof.

(5) If the land subdivided as shown on the general plan comprises the whole or portions of two or more registered pieces of land, the Registrar may require the owner to

obtain a certificate of consolidated title of the land so subdivided and the Registrar shall make on such certificate the endorsement mentioned in subsection (3).

(6) The provisions of section 42 and of section 39(2) to (5) inclusive, shall respectively and, *mutatis mutandis*, apply in respect of the certificate of township title mentioned in subsection (4), and the certificate of consolidated title mentioned in subsection (5).

(7) It shall not be necessary on the separation of a whole lot from the title of a township, whether by the issue of a Government grant, certificate of registered title or deed of transfer to have framed a separate diagram of such lot; but it shall be sufficient to refer in such Government grant, certificate of registered title or deed of transfer to the general plan registered in terms of subsection (1):

Provided that no portion of any lot shall be dealt with in any manner whatsoever except upon the submission for filing of record of diagrams of such portion and of the parent lot and thereafter, in each deed concerning the said portion or the parent lot, reference shall be made to the diagram thereof and not to the general plan:

Provided further that a diagram of a lot shall be submitted for filing of record whenever it is sought to register a servitude over such lot, unless such servitude is already represented on the said general plan, or unless such servitude is expressed in general terms and is not required to be plotted on a diagram.

(8) Save where any proclamation or notice relating to a township already established specially provides for reference to the general plan of such township, the provisions of subsection (7) shall apply only with reference to general plans lodged for registration on or for the commencement of this Act.

Transfer of township or portion thereof.

47. The owner of land in respect of which a register has been opened under section 46 may transfer, by one deed, the whole or any portion of such land or a share in the whole of such land:

Provided that —

- (a) If a portion only of the land is transferred —
 - (i) the transfer shall be passed in accordance with a diagram, to be annexed to such deeds, from which shall be excluded all lots on the land represented thereon which have already been transferred, and on which the total area of such transferred lots shall be indicated;
 - (ii) the boundaries of such portion shall coincide with one or more of the lines of division shown on the general plan and shall not intersect any of the lots shown thereupon;
- (b) if the remainder of the land is sought to be transferred or mortgaged or otherwise dealt with, there shall be produced to the Registrar a certificate of remainder signed by the Surveyor-General; and
- (c) the deed of transfer shall disclose that the land conveyed thereby has been laid out as a township or is a portion of land so laid out, that such land remains subject to the provisions of any law relating to townships and, if any public place or portion thereof in such township forms part of the land

transferred, that the rights of owners of lots and of other persons to such public place are not affected by such transfer.

Extension of the boundaries of an existing township.

48. (1) If any area of land constitutes, by reason of its situation, a portion of an existing township, the Minister may, by notice published in the Gazette, extend the boundaries of the township to include such area, and thereupon such area of land shall be deemed to be and shall be registered as a lot in that township.

(2) Whenever the Minister extends the boundaries of an existing township in terms of subsection (1) he may, after consultation with the Townships Board and the local authority if any, cancel, vary or suspend existing conditions of title imposed under the provisions of any other law relating to the land being incorporated, and impose such conditions of title in respect of such land as may in the circumstances be deemed advisable or necessary.

(3) Any conditions imposed under subsection (2) shall be set forth in a schedule to the relevant notice.

(4) The provisions of subsection (2) shall not apply in respect of any condition of title affecting rights to minerals.

PART V

BONDS

General Provisions

Execution of bonds.

49. (1) A mortgage bond shall be executed in the presence of the Registrar by the owner of the immovable property therein described or by a conveyancer duly authorized by such owner by power of attorney and shall be attested by the Registrar.

(2) A mortgage bond or notarial bond may be registered to secure an existing debt or a future debt or both existing and future debts.

(3) Mortgage bonds or notarial bonds intended to secure loans for building purposes shall be deemed to be bonds to secure existing debts.

(4) If in a mortgage bond or notarial bond purporting to secure a future debt the amount of an existing debt is mentioned, such existing debt shall be deemed to be secured as part of the maximum amount intended to be secured by such bond.

(5) Save as authorized by any other law or by order of the court, debts or obligations to more than one creditor arising from different causes may not be secured by one mortgage bond or notarial bond.

Requirements in case of bonds intended to secure future debts.

50. (1) No mortgage bond or notarial bond attested or registered after the commencement of this Act shall be of any force and effect for the purpose of giving preference or priority in respect of any debt incurred after the registration of such bond unless —

- (a) it is expressly stipulated in the bond that the bond is intended to secure future debts generally or some particular future debt therein; and

(b) a sum is fixed in the bond as an amount beyond which future debts shall not be secured by the bond.

(2) If a mortgage bond or notarial bond purports to secure payment by the mortgagor of the costs of preserving and realizing the security or of fire insurance premiums, cost of notice or bank exchange, such costs and charges shall not be deemed to be future debts within the meaning of subsection (1).

Cession of bond to secure future advances.

51. A cession of a mortgage bond or notarial bond passed to secure future advances may be registered and the registration of such cession shall not affect the provisions of the bond relating to future advances up to the amount stated in such bond or the amount as reduced.

Exclusion of general clause in mortgage bonds.

52. (1) Save as provided in any other law, the Registrar shall not attest any mortgage bond which purports to bind movable property or which contains the clause, commonly known as the general clause, purporting to bind generally all the immovable or movable property of the debtor or both and shall not register any notarial bond which purports to bind immovable property.

(2) No mortgage bond shall be passed by two or more mortgagors unless it purports to bind immovable property of each mortgagor:

Provided that, notwithstanding the provisions of section 49(1), land, held subject to a condition that, on the happening of a certain event, such land shall revert to a person named in such condition, may be mortgaged by the owner thereof and such person by means of a bond passed by them jointly and severally, or may be mortgaged by the owner of such land with the consent of such person.

No bond to be passed in favour of an agent.

53. No mortgage bond or notarial bond shall be passed in favour of any person as the agent of a principal.

Requirements in case of bonds passed by or in favour of two or more persons.

54. (1) If a mortgage bond or notarial bond is passed by two or more mortgagors, no release from the bond —

(a) of any mortgagor and his property, or of a portion of the property of any mortgagor, may be registered without the written consent of the other mortgagor or mortgagors; or

(b) of all the property of any mortgagor may be registered unless such mortgagor is also released.

(2) If a mortgage bond or notarial bond is passed by two or more mortgagors, no waiver of preference by the mortgagee in favour of a further mortgage bond or notarial bond over the property of one of the mortgagors may be registered without the written consent of the other mortgagor or mortgagors.

(3) No mortgage bond or notarial bond may be passed in favour of two or more persons in which it is stipulated that the share of one holder shall rank prior in order of

preference to the share of another, nor may any transaction be registered which would have the effect of giving preference to one share in such bond over another share.

Transfer of hypothecated immovable property.

55. (1) No transfer of mortgaged land shall be attested or executed by the Registrar, and no cession of a mortgaged lease of immovable property, or of any mortgaged real right in land, shall be registered until the bond has been cancelled or the land, lease, or right has been released from the operation of the bond with the consent in writing of the holder thereof; or unless, in the case of any such mortgage bond which has been lost or destroyed, the Registrar has, on application by the registered holder thereof, cancelled the entry in his register in respect of such bond:

Provided that no such cancellation or release shall be necessary if the transfer or cession is made —

- (a) in execution of the judgment of any court, including a subordinate court, by the competent officer; or
- (b) by the trustee of an insolvent estate, an executor administering and distributing an estate under section 50 of the Administration of Estates Act, No. 28 of 1902, the liquidator of a company which is unable to pay its debts and which is being wound up by or under the supervision of the Court; or
- (c) in any circumstances in this Act or in any other law specially provided or as ordered by the court.

(2) A consent to the release from the operation of a bond of all the property mortgaged thereunder shall, except where the debt secured by such bond is further secured by a collateral bond, be deemed to be a consent to the cancellation of that bond.

Substitution of debtor in respect of a mortgage bond.

56. (1) If the owner (in this section referred to as the transferor) of land which is hypothecated under a registered mortgage bond, other than a mortgage bond to secure the obligations of a surety (not being a person referred to in section 55(1)(b)), transfers to another person the whole of the land hypothecated thereunder, and has not reserved any real right in such land, the Registrar may, notwithstanding the provisions of subsection (1) of the said section, register the transfer and substitute the transferee for the transferor as debtor in respect of the bond:

Provided that there is produced to him, in duplicate, the written consent in the prescribed form of the holder of the bond and the transferee to the substitution of the transferee for the transferor as the debtor in respect of the bond for the amount of the bond disclosed therein or for a lesser amount.

(2) In registering the transfer the Registrar shall —

- (a) make, in the appropriate register —
 - (i) an entry setting forth that the debt of the transferor secured by the bond is cancelled; and
 - (ii) an entry setting forth that the transferee has become the debtor in respect of the bond;

- (b) annex one duplicate of the written consent referred to in subsection (1) to the bond and file the other with the Registry duplicate thereof; (Amended A.5/1973.)
- (c) endorse upon the bond in the prescribed form —
 - (i) the name of the transferee;
 - (ii) the date and number of the transfer;
 - (iii) a reference to the said written consent; and
 - (iv) that the transferee has been substituted for the transferor as debtor in respect of the bond; and
- (d) make on the transfer deed an endorsement of mortgage containing the date and number of the bond and the amount due in terms thereof.

(3) As from the date of the transfer deed the transferor shall be absolved from any obligation secured by the bond and the transferee shall be substituted for him as the debtor in respect of such bond and shall be bound by the terms thereof in the same manner as if he had himself passed the bond and had renounced therein the benefit of all relevant exceptions.

(4) The provisions of this section shall not apply if the mortgaged land is to be transferred —

- (a) to a person who would not himself be competent to mortgage it; or
- (b) to two or more persons, unless they take transfer of the land in undivided shares and renounce, in the written consent referred to in subsection (1), the exception *de duobus vel pluribus reis debendi*; or
- (c) to a woman, unless she renounces, in the said written consent, any special legal exceptions which she would otherwise be entitled to raise.

(5) The provisions of subsections (1) to (4), inclusive, shall, *mutatis mutandis*, apply in respect of immovable property other than land which is hypothecated under a registered mortgage bond.

Returns by Master in connection with insolvent estates and further provisions relative to insolvent estates.

57. (1) If it appears from the liquidation account of any estate which has been sequestrated or from the vouchers relating thereto that a payment has been made to any creditor on account of a registered bond, the Master shall notify the payment to the Registrar who shall thereupon write off the amount thereof in the appropriate register, on the Registry duplicate of the bond and also if possible on the original bond and the holder thereof shall deliver the bond to the Master who shall forward it to the Registrar in order that the amount paid may be written off thereon.

(2) Except in cases where an insolvent has been rehabilitated in pursuance of a composition made by him with his creditors, the Master shall from time to time transmit to the Registrar a return specifying —

- (a) the name and address of every person who has been rehabilitated after the sequestration of his estate; and

- (b) the immovable property and registered bonds appearing in the schedules lodged with the Master by or on behalf of such person or in the liquidation account of his estate;

and upon the receipt of that return the Registrar shall, in accordance therewith, cancel in the appropriate registers all bonds registered therein against the property of the said person prior to the sequestration of his estate and endorse the Registry duplicates and, if possible, also the bonds themselves as cancelled and the holder of such bonds shall, when requested to do so by the Master, deliver the bonds to him, and the Master shall forward them to the Registrar for cancellation.

(3) If any of the immovable property mentioned in the return has not yet been transferred by the trustee, the Registrar shall further note on the Registry duplicate of the title deed of such property and in the appropriate registers that such property has in terms of the law relating to insolvency vested in the trustee.

(4) Immovable property which has vested in a trustee in accordance with the provisions of the law relating to insolvency and which has not in terms of that law or in terms of an order of the court been re-vested in the insolvent may, whether before or after rehabilitation of the insolvent, be transferred only by the trustee, and may not after such rehabilitation be transferred, mortgaged or otherwise dealt with by the insolvent until it has been transferred to him by the trustee:

Provided that if after rehabilitation the trustee has been discharged or there is no trustee in existence, the Master shall, if satisfied that the rehabilitated insolvent is entitled to the property, give him transfer thereof in such manner as may be prescribed.

(5) If by virtue of the provisions of the law relating to insolvency or in terms of an order of the court an insolvent has been reinvested with the ownership of any property, such property may not be transferred, mortgaged or otherwise dealt with by the insolvent until an endorsement, in the manner prescribed, that the property has been restored to him, has been made by the Registrar on the title deed of the property.

(6) Nothing in this section contained shall be construed as modifying any provision of the law relating to insolvency.

(7) The provisions of this section shall apply, *mutatis mutandis*, in respect of —

- (a) estates administered and distributed under section 50 of the Administration of Estates Act, No. 28 of 1902; and
- (b) companies which are unable to pay their debts and are liquidated or wound up by or under the supervision of the court under the law relating to companies.

Endorsement of bond after sale in execution.

58. Whenever any mortgaged immovable property has been sold, in execution of a judgment of a competent court or under express authority contained in a special law, to satisfy any debt due in respect of a registered bond or otherwise, and the proceeds of the sale have been paid to the legal holder of the bond, the sheriff or deputy sheriff or messenger concerned or the person acting under the authority of such special law shall notify to the Registrar how much of the special sum due in terms of the bond has been paid, and shall transmit the bond to the Registrar and the Registrar shall thereupon write off the amount so paid in the appropriate registers and on the bond and the Registry duplicate thereof.

Consent of bondholder to registration of merger of rights of mortgagor.

59. If the holder of a mortgaged lease of land or of mortgaged real rights in land acquires the ownership of that land, or if the holder of a mortgaged lease of real rights in land acquires those rights, or if the owner of mortgaged land, which is entitled to rights of servitude over other land, acquires the ownership of that other land, such acquisition of the additional land or rights shall not be registered without the consent in writing of the holder of the bond.

Notarial Bonds

Registration of notarial bonds.

60. (1) Every notarial bond executed before or after the commencement of this Act shall be registered in the Deeds Registry within the period of three months after the date of its execution or within such extended period as the court may on application allow.

(2) Every notarial bond shall disclose —

- (a) the place at and the date on which it was executed, and the full address of the place where the notary executing it carries on his practice as such; (Amended A.5 of 1973.)
- (b) the place where the debtor resides and the place or places, if any, where he carries on business.

PART VI

RIGHTS IN IMMOVABLE PROPERTY

General Provisions

Restriction on registration of rights in immovable property.

61. No deed, or condition in a deed, purporting to create or embodying any personal right and no condition which does not restrict the exercise of any right of ownership in respect of immovable property shall be capable of registration.

Certificates of registered real rights.

62. (1) A person who either before or after the commencement of this Act has transferred land subject to the reservation of any real right in his favour, other than a right to minerals and a right to a praedial servitude, may on application in writing to the Registrar accompanied by the title deed of the land obtain a certificate of registration of that real right as nearly as practicable in the prescribed form.

(2) That person shall not separately mortgage or otherwise deal with that real right or transfer a share thereof, if transferable, unless he has obtained such certificate in the manner aforesaid:

Provided that the holder of that real right may transfer the whole thereof, if transferable, without first obtaining a certificate as provided for in subsection (1).

(3) The provisions of section 36(2) to (4), inclusive, shall, *mutatis mutandis*, apply in respect of such certificate.

Personal Servitudes

Registration of notarial deed creating personal servitude.

63. (1) Save as provided in any other law, a personal servitude may be created by means of a deed executed by the owner of the land encumbered thereby and the person in whose favour it is created and attested by a notary public:

Provided that —

- (a) in the case of a servitude in favour of the public or of all or some of the owners or occupiers of lots in a township, the Registrar may, if in his opinion it is impracticable to require such deed to be executed by the persons in whose favour the servitude is created, register such deed notwithstanding the fact that it has not been executed by such person;
- (b) where it is desired to register a right of way in favour of the public at the same time as the registration of a subdivision which it serves, it shall in like manner and without the registration of a notarial deed be permissible to register it in the deed relating to the subdivision and also to endorse the title deed of the remainder accordingly; and
- (c) conditions which restrict the ownership in immovable property may be included in a deed of transfer of that immovable property tendered for registration if these conditions can be enforced by some person who is mentioned in, or, if not mentioned therein, is ascertainable from, the said deed of transfer or from other evidence and that person, if determinable, has signified acceptance of that right.

(2) The deed shall contain a sufficient description of the land encumbered by the servitude and shall mention the title of that land.

(3) For the registration of the deed, the title of the land, and, if it is mortgaged, the bond and the consent in writing of the legal holder thereof to the registration of the servitude free of the bond shall be produced.

Restriction on registration of personal servitudes.

64. No personal servitude of *usufruct*, *usus* or *habitatio* purporting to extend beyond the lifetime of the person in whose favour it is created shall be registered, nor may a transfer or cession of that personal servitude, to any person other than the owner of the land encumbered thereby, be registered.

Reservation of personal servitudes.

65. A personal servitude may be reserved by condition in a deed of transfer of land, if the reservation is in favour of the transferor, or in favour of the transferor and his spouse or the survivor of them, if they are married in community of property, or in favour of the surviving spouse if transfer is passed from the joint estate of spouses who were married in community of property.

Registration of lapse of personal servitude.

66. (1) If for any reason a personal servitude has lapsed, the Registrar shall, on written application by or on behalf of the owner of the land encumbered, accompanied by proof of the lapse of the servitude, the title deed of the land and, if available, the title deed, if any, of the servitude, note on the title deed of the land and of the servitude, if the title deed of the servitude has been produced, that the servitude has lapsed.

(2) Cancellation of the registration of a personal servitude in pursuance of an agreement between the owner of the land encumbered and the holder of the servitude shall be effected by notarial deed:

Provided that the deed shall not be registered if the servitude is mortgaged, unless the mortgagee consents in writing to the cancellation of the bond or the release of the servitude from its operation.

Transfer and mortgage of land with personal servitude thereon.

67. (1) If the owner of land subject to a personal servitude and the holder of that servitude have disposed of the land or any portion thereof together with the rights of servitude to another person, they may together give transfer thereof to the person acquiring it.

(2) The transfer deed shall describe the transferors as the owner of the land and holder of the servitude respectively, but no mention of the servitude shall be made in the description of the land therein.

(3) The owner of land subject to a personal servitude and the holder of that servitude may together mortgage the land to the full extent of their respective rights therein.

(4) The owner of the land and the holder of the servitude may either of them mortgage, as principal debtor, the land or the servitude respectively and the other of them may in the same bond mortgage the servitude or the land as surety.

Transfer and mortgage of land subject to fideicommissum.

68. (1) If the owner of land subject to a *fideicommissum* and the fideicommissary, if the latter is competent to do so, have disposed of the land or any portion thereof together with the fideicommissary rights, to any other person, they may together give transfer thereof to that person.

(2) The transfer deed shall describe the transferors as the owner of the land and the holder of the fideicommissary right respectively, but no mention of the fideicommissary right shall be made in the description of the land therein.

(3) The owner of land subject to a *fideicommissum* and the fideicommissary, if the latter is competent to do so, may together mortgage the land to the full extent of their respective rights therein.

Rights to Minerals

Registration of certificate of rights to minerals prerequisite to dealing with minerals.

69. (1) No deed affecting rights to minerals generally or rights to a particular mineral or minerals in respect of a registered piece of land, or a share therein or a portion thereof, shall after the commencement of this Act be capable of being registered in the Deeds Registry

whether or not the holder of such rights be also the owner of the land affected, unless the holder of the mineral rights has first obtained a certificate of rights to minerals as provided for in section 70.

(2) No certificate of rights to minerals as referred to in subsection (1) shall be issued in respect of mineral rights which are subject to an existing mineral concession unless that concession first be extinguished by cancellation or in any other manner.

Issue of certificate of rights to minerals.

70. (1) (a) The Registrar shall upon the written application of a person who is the lawful holder of rights to minerals, other than under concession title, issue as nearly as practicable in the prescribed form a certificate of rights to minerals in respect of all rights to minerals so held by that person, subject to any subsisting registered rights:

Provided there is produced to the Registrar for annexure to that certificate a diagram of the area of land (to be described as a "mineral area") over which the rights operate.

(b) The holder of the title under which the land is held, and in respect of which a certificate of rights to minerals is issued as provided for in paragraph (a), shall upon demand and at the expense of the applicant produce the title to Registrar.

(2) A certificate of rights to minerals referred to in subsection (1) shall, *inter alia* —

(a) set forth fully the rights to minerals to which it relates; and

(b) be signed by the Registrar and be registered against the title deed of the land from which such rights to minerals have been excluded, and when so signed and registered shall be the title to the said rights to minerals.

(3) If the rights to minerals are subject to a registered mortgage bond, lease or other deed affecting these rights, the said certificate shall not be issued except upon the production of the bond, lease or other deed, and the Registrar shall, when issuing the certificate, endorse —

(a) upon the bond, lease or other deed that a certificate of rights to minerals has been substituted for the title under which these rights were formerly held; and,

(b) upon the certificate of rights to minerals, that the rights held thereunder have been hypothecated, leased or otherwise dealt with in accordance with such bond, lease or other deed, and shall make the necessary entries in the registers; and thereupon the rights to minerals shall be deemed to be as fully and effectively hypothecated, leased or otherwise dealt with as if they were still held under the former title.

Portion of a mineral area not to be dealt with except upon production of a diagram of such portion.

71. Where a certificate of rights to minerals has been registered under the provisions of section 70, the holder of the rights to minerals may not deal with the minerals generally or with a specific mineral or minerals in respect of a portion of a mineral area except upon the production of a diagram of the said portion.

No merger of mineral and land titles.

72. Notwithstanding anything to the contrary contained in any other law, whenever a certificate has been issued, as provided for in section 70 in respect of mineral rights, the rights to minerals and the land shall thereafter each be held under separate title even though the holder of the rights to minerals be also the owner of the land.

Concessions

General provisions relating to concessions.

73. (1) No renewal of a concession and no concession, lease or sub-lease of any rights held under a concession shall be capable of registration in the Deeds Registry unless such deed shall have been executed before a notary public.

(2) The provisions of sections 13, 16, 20 to 26, inclusive, and 43 to 45, inclusive, shall, *mutatis mutandis*, apply in respect of deeds executed and registered under the provisions of subsection (1).

(3) No substituted title in terms of the provisions of sections 33 to 42, inclusive, shall be capable of being executed and registered in respect of a concession or a share therein or a portion thereof.

(4) Where it is sought to mortgage rights held under a concession title, the mortgage shall be effected by means of a mortgage bond executed before the Registrar by a duly admitted conveyancer.

(5) The provisions of sections 49 to 59, inclusive, shall, *mutatis mutandis*, apply in respect of bonds executed and registered under the provisions of subsection (4).

Praedial Servitudes

Creation of praedial servitude by notarial deed.

74. (1) A praedial servitude in perpetuity or for a limited period may be created by means of a deed executed by the owners of the dominant and servient tenements and attested by a notary public.

(2) If the servient tenement is mortgaged or subject to another real right with which the servitude may conflict, the bond or other registered deed by which the real right is held shall be produced together with the consent in writing of the legal holder thereof to the registration of the servitude.

(3) If it is sought to cancel a servitude, and the dominant tenement is mortgaged, the bond shall be produced together with the consent in writing of the legal holder thereof to the registration of the cancellation.

(4) The provisions of section 63(2) and (3) shall, *mutatis mutandis*, apply in respect of praedial servitudes.

Conditions of registration of praedial servitudes.

75. (1) A praedial servitude in perpetuity or for a limited period may be created in a transfer of land only if the servitude is imposed on the land transferred in favour of other land

registered in the name of the transferor, or is imposed in favour of the land transferred on other land registered in the name of the transferor:

Provided that if —

- (a) the land to be transferred is admitted by the person seeking to pass transfer thereof to be subject to unregistered rights of servitude in favour of land registered in a third person's name;
- (b) the person to whom the transfer is to be passed consents in writing to the servitude being embodied in the transfer; and
- (c) the third person appears either in person or by duly authorized agent before the Registrar at the time of execution of the transfer and accepts the servitude in favour of his land;

the servitude may be embodied in the transfer. The appearance of the third person as aforesaid and his acceptance of the servitude shall be recited in the deed of transfer and the title deed on the dominant tenement shall be produced for endorsement thereon of the terms of the servitude.

(2) If a praedial servitude for a limited period has lapsed, the Registrar shall, on written application by or on behalf of an owner of the land affected thereby, and on production of the title deeds of the dominant and servient properties, and the title deed, if any, of the servitude (which title deeds the holder of the servitude and the owners of the dominant and servient tenements shall on demand produce), note on the title deeds of the land and the servitude that the servitude has lapsed.

(3) If the servitude is imposed on other land in favour of the land to be transferred, and that other land is mortgaged or is subject to another registered real right with which the servitude may conflict, the consent, in writing, of the legal holder of the bond or of such other right, to the registration of the servitude shall be produced, together with the bond or other deed evidencing the other right and the title deed of the servient tenement.

(4) In registering the deed of transfer in which the servitude is embodied, the Registrar shall endorse the terms of the servitude and the number and date of the transfer on the title deed of the other tenement and, if a bond or other deed is produced as aforesaid, also thereon.

(5) In the subdivision of land which is entitled to a servitude over other land, it shall be competent for the owner when transferring the subdivision to stipulate in his power of attorney that the exercise of the rights is restricted to the land still held by him, and in that event the transfer of the portion in question shall make no reference to the servitude, nor shall it be necessary to record on the title of the servient tenement that the rights are so restricted.

(6) If in the subdivision of land which is subject to restrictive conditions in favour of a statutory body, that body consents to the subdivision contemplated, the consent shall in the absence of anything to the contrary therein contained, involve the application of all those restrictive conditions to each subdivision so authorized, and on registration of title of the subdivision the deed shall be drawn accordingly.

Leases

Registration of leases and sub-leases.

76. (1) Save where provision to the contrary is made in any law, a lease or sub-lease of land, or of rights to minerals in land and a cession of such a lease or sub-lease intended or required to be registered in the Deeds Registry, shall be executed by the lessor and the lessee or by the lessee and the sub-lessee or by the cedent and the cessionary, as the case may be, and shall be attested by a notary public:

Provided that a lease shall be registered for the full term thereof, including periods of renewal.

(2) Whenever a cession of a lease is to be registered in respect of a portion of the land leased, a notarial copy of the lease shall be attached to such cession and after registration the cession with the notarially certified copy of the lease annexed thereto shall be deemed to be the title to the portion of the lease so ceded, and for a subsequent registration in respect thereof it shall be part of the title.

(3) If the land or right leased or sub-leased is mortgaged or subject to rights of another person it shall not be necessary for purposes of registration of the lease or sub-lease or a cession thereof to produce the bond or the other deed whereby these rights are held or the consent of the legal holder thereof.

Termination of registered lease.

77. (1) When a registered lease or sub-lease has terminated, the Registrar shall, on written application by the owner of the land affected thereby, or the holder of the lease, as the case may be, accompanied by proof of the termination of the lease or sub-lease and, in the case of the termination of the lease, by the title deed of the land and if available the deed of lease, or in the case of the termination of the sub-lease, by the deed of lease and if available the deed of sub-lease, note in the case of the termination of the lease, on the title deed of the land and on the deed of lease, if produced, or in the case of the termination of the sub-lease, upon the deed of lease and upon the deed of sub-lease, if produced, that the lease or sub-lease as the case may be has terminated.

(2) If the full term, including periods of renewal, of a registered lease or sub-lease has expired, no further transactions affecting that lease or sub-lease shall be registered.

Cession of leases and sub-leases.

78. No cession of a lease or sub-lease shall be registered unless the lease or sub-lease has been registered in the Deeds Registry.

Hypothecation of leases and sub-leases.

79. No hypothecation of a lease or sub-lease shall be registered in the Deeds Registry unless the hypothecation is affected by means of —

- (a) a mortgage bond, if the lease or sub-lease is immovable property; or;
- (b) a notarial bond, if the lease or sub-lease is not immovable property.

Notarial bonds hypothecating leases or sub-leases.

80. (1) For the registration of a notarial bond specially hypothecating a registered lease or sub-lease, the deed of lease or sub-lease shall be produced to the Registrar.

(2) In registering the bond, the Registrar shall endorse on the deed that the lease or sub-lease has been hypothecated by the bond.

(3) The provisions of section 55(1) shall, *mutatis mutandis*, apply in respect of any lease or sub-lease so hypothecated.

Prospecting Contracts

Registration of prospecting contracts.

81. (1) If the prospecting rights granted under a prospecting contract are granted for a defined period with a right of renewal for a further period, registration of the contract shall be effective for that period only:

Provided that if the holder of prospecting rights granted under a registered prospecting contract lodges that contract at the Deeds Registry before the expiration of the period together with an affidavit in terms of subsection (2), or within one month after the expiration of the period together with the grantor's written consent to the endorsement, the Registrar shall endorse upon the register of prospecting contracts and upon the contract and the Registry duplicate thereof a statement that the holder claims to have exercised his right of renewal for the period mentioned in the affidavit, and the endorsement so made shall, as from the date thereof, be effective notice of the claim to all interested persons, other than the grantor of the prospecting rights, whose written consent to the endorsement has not been produced.

(2) The affidavit referred to in subsection (1) shall be made by the holder of the prospecting rights under a registered prospecting contract or by his duly authorized agent, and shall state that the holder has fulfilled all the conditions of the contract as entitled him to a renewal of the contract and that he has duly exercised his rights to renew the same.

(3) If at the time when a prospecting contract is tendered for registration, the defined period for which the prospecting rights were granted thereunder has already expired but a further period for which there is a right of renewal has not yet expired, the Registrar shall, upon the application of the person who was the holder of the prospecting rights under the contract and with the consent in writing of the grantor of those rights, register the contract, and the registration shall then be effective in respect of the period for which it is claimed that the contract has been renewed.

(4) If a document purporting to be a prospecting contract contains an ambiguity and the document is, in the opinion of the Registrar, liable to be interpreted as constituting a grant or lease of a right to minerals, the Registrar may register that document as a prospecting contract if a supplementary document executed by all the parties to the document or by their assigns or affidavits by the parties, explaining the purport and effect of the prospecting contract, are lodged at the Deeds Registry, and the document or affidavit shall thereafter be deemed to form part of the prospecting contract to which it relates.

(5) Where, in the circumstances provided for in this section, a prospecting contract has been duly registered in the Deeds Registry, no further prospecting contract or contracts shall be registered against the title deed or title deeds of the same property or properties in

respect of the same mineral or minerals until the duly registered prospecting contract has lapsed by effluxion of time or has been cancelled in terms of section 82 or 86.

(6) For the purposes of this section, the grantor of prospecting rights means the person who from the records in the Deeds Registry appears to be the holder of the rights to minerals in the land in question.

Cancellation of registration on expiry of prospecting contract or failure to renew.

82. (1) Upon the written request of the grantor of prospecting rights under a prospecting contract —

- (a) the registration of which has, under section 81, ceased to be of effect; or
- (b) to the renewal of which no claim has been lodged in the Deeds Registry, or which, if a claim has been lodged, has lapsed by effluxion of time;

the Registrar shall cancel the entries in the registers relating to the contract and the endorsement of the contract upon the grantor's title deed of the land or the rights to minerals affected by that contract.

(2) For the purposes of this section, the grantor of prospecting rights means the person who from the records in the Deeds Registry appears to be the holder of the rights to minerals in the land in question.

PART VII

ANTENUPTIAL CONTRACTS

Antenuptial contracts to be registered.

83. An antenuptial contract required to be registered under section 84 executed before and not registered at the commencement of this Act, or executed after the commencement of this Act, shall be registered in the manner and within the time mentioned in section 84, and unless so registered shall be of no force or effect as against any person who is not a party thereto.

Manner and time of registration of antenuptial contracts.

84. (1) An antenuptial contract executed in Swaziland shall be attested by a notary public and shall be registered in the Deeds Registry within three months after the date of its execution or the commencement of this Act, whichever may be the later date, or within such extended period as the court may on application allow.

(2) An antenuptial contract entered into by an intended husband domiciled in Swaziland at the time of the marriage executed elsewhere than within Swaziland shall be attested by a notary public, or otherwise be entered into in accordance with the law and practice of the country in which is executed and shall be registered in the Deeds Registry within six months after the date of its execution, or the commencement of this Act, whichever may be the later date, or within such extended period as the court may on application allow.

(3) An antenuptial contract registered in accordance with the provisions of subsection (2) shall have in Swaziland the same force and effect as if it had been executed before a notary public in Swaziland.

(4) An antenuptial contract, which has been registered in a public office outside Swaziland in accordance with the law and practice of the country within which the public office is situated, may be registered in the Deeds Registry at any time on lodgment of a signed original (or a copy certified as being a true copy of the original by, or on behalf of, the registering officer of the public office) together with a copy of the contract certified by a notary public which copy shall, after registration of the contract, be filed of record as the Registry duplicate.

Postnuptial execution of antenuptial agreement.

85. Notwithstanding the provisions of sections 83 and 84, the court may, subject to the conditions as it may deem desirable, authorize postnuptial execution of a notarial contract having the effect of an antenuptial contract, if the terms thereof were agreed upon between the intended spouses before the marriage, and may order the registration, within a specified period, of any contract so executed.

PART VIII

MISCELLANEOUS

Cancellation of registration on lapse of certain registered rights.

86. (1) If it is expressly provided in —
- (a) a registered lease of land or rights to minerals; or
 - (b) a registered deed creating or evidencing a servitude; or
 - (c) a registered prospecting contract;

that it shall lapse upon failure to make regularly the periodical payments mentioned therein, the Registrar shall, upon written application accompanied by an affidavit by the lessor or grantor of the registered right that the periodical payments have not been duly made, cancel the registration of the lease, servitude or contract:

Provided that —

- (i) if the address of the lessee or grantee is stated in the registered document, or the address or change thereof has been notified to the Registrar, notice shall be given to the lessee or grantee by the applicant by prepaid registered letter that cancellation of the registration of the document is sought on the ground of failure to make the periodical payments mentioned therein, and that, unless written objection to the cancellation specifying the grounds of objection is lodged with the Registrar within one month, or such further period as the Registrar may in special circumstances determine, application will be made to the Registrar for cancellation of the registration of the document;
- (ii) if the address of the lessee or grantee is not stated in the document or has not been notified to the Registrar, the applicant shall publish the notice referred to in paragraph (d) in two consecutive ordinary issues of the Gazette and once a week for two consecutive weeks in a newspaper circulating in Swaziland, whether printed therein or elsewhere;
- (iii) if any objection is lodged which, in the Registrar's opinion, discloses reasonable ground for refusing cancellation of the registration, he shall not

cancel it until the objection is withdrawn or falls away or cancellation is ordered by the court; and,

- (iv) if any of the rights to be cancelled are mortgaged, notice in writing shall be given by the applicant by prepaid registered letter to the mortgagee of the intention to cancel the rights, before the cancellation is effected.
- (2) For the purposes of this section, the term “lessor” or “grantor” means —
 - (a) in the case of a registered lease of land or a registered deed of servitude, the person who from the records in the Deeds Registry appears to be the owner of the land concerned; and,
 - (b) in the case of a registered lease of rights to minerals or a registered prospecting contract, the person who from the records in the Deeds Registry appears to be the holder of the rights to minerals referred to in the lease or prospecting contract.

Transfer and cession not to be passed as security.

87. No transfer of land and no cession of a registered lease or sub-lease or other real right in land, except a mortgage, made as security for a debt or other obligation, shall be attested by the Registrar or registered in the Deeds Registry.

Taxes, transfer duty, etc. to be paid before registration.

88. (1) No deed or grant, transfer, mortgage bond or other document affecting the title to land shall be registered unless they shall be accompanied by a receipt or certificate of a competent public revenue officer that the taxes, duties, fees, quit-rent, if any, water rates and building penalties (in respect of lots in any township), payable to the Government or other competent authority, on the property to be granted, transferred, mortgaged or burdened have been paid.

(2) If land or a real right in land has been settled upon or donated to an intended spouse in terms of an antenuptial contract, no transfer or cession of that land or right by the donor to a person other than the donee, and no mortgage thereof by the donor, shall be executed before or registered by the Registrar, unless the transfer duty, if any, payable on the settlement or donation has been paid.

Registration of change of name.

89. (1) If any person, partnership or company, whose name appears in a registered deed or other document has changed his or its name, the Registrar shall, upon written application by that person, partnership or company and on production of the consent in writing of every other person interested in such deed or other document or in the rights created, conveyed or evidenced thereby, if he is satisfied that no change of person in law is implied in the change of name, endorse on the deed or other document that the name of the person, partnership or company has been changed to the name stated in the application:

Provided that —

- (a) if the old name appears in another deed or other document registered in the Registry, that deed or other document shall be likewise endorsed, and in either case corresponding entries shall be made in the appropriate registers;

- (b) the Registrar shall, except in the case of a person, partnership or company whose name has been changed in accordance with the provisions of any law, refuse to make the endorsements until the applicant has published a notice, in a form approved by the Registrar, of the application in two consecutive ordinary issues of the Gazette and once a week for two consecutive weeks in a newspaper circulating in Swaziland, whether printed therein or elsewhere; and
- (c) if an objection, which is, in the opinion of the Registrar, bona fide and sufficiently material, is not later than one week after the last publication in the Gazette or newspaper, whichever may be the later publication, lodged with the Registrar, to the endorsement being made, the Registrar may refuse to make the endorsement except upon the authority of an order of court, and the court shall have jurisdiction to make such order in the matter as it may deem just.

(2) Save as provided in any law no change in the name of immovable property shall be recorded in the Deeds Registry except if so required by the Registrar or Surveyor-General in circumstances deemed by either to be expedient.

Women witnesses of deeds and documents.

90. A female person, who would, if she were a male person, be competent to witness a document intended for registration or filing or production in the Deeds Registry, shall be competent to witness that document and any document, which was witnessed before the commencement of this Act by a female person, shall be as valid as if she had been a male person.

Attestation of powers of attorney executed in Swaziland.

91. (1) A power of attorney executed within Swaziland shall, if it purports to give authority to pass, cede, amend or cancel a deed capable of being registered or to perform an act proper to be performed in the Deeds Registry, be attested either by two witnesses above the age of fourteen years, competent to give evidence in any court of law in Swaziland, or by a justice of the peace, commissioner of oaths or notary public, duly described as such.

(2) No person shall be competent to attest a power of attorney under which he is appointed as an agent or derives a benefit.

Execution of deeds by prospective owners.

92. If a deed or document required to be executed by the owner of immovable property has been executed by a person who has acquired the right to receive transfer or cession of that property, that deed or document shall, upon the person receiving transfer or cession of that property, for the purposes of this Act, be deemed to have been executed by the owner of that property.

Notice to Registrar of application to court.

93. Before an application is made to the court for authority for an order involving the performance of an act in the Deeds Registry, the applicant shall give the Registrar at least

fourteen days' notice before the hearing of the application and the Registrar may submit to the court such report thereon as he may deem desirable to make.

Substituted copy of lost deed.

94. (1) If a copy of a registered deed or other document has been issued, in the manner prescribed by regulation, in substitution of a deed or other document which has been lost or is believed to have been destroyed, the original deed or other document, if still in existence, shall thereupon become void.

(2) If a deed or other document which has become void as aforesaid comes into the possession or custody of a person who knows that a copy has been issued in substitution thereof, he shall forthwith deliver or transmit that deed or other document to the Registrar.

Exemption from liability for acts or omissions in Deeds Registry.

95. No act or omission of the Registrar or of an officer employed in the Deeds Registry shall render the Government or the Registrar or that officer liable for damage sustained by a person in consequence of that act or omission:

Provided that if that act or omission is *mala fide* or if the Registrar or officer has not exercised reasonable care and diligence in carrying out his duties in connection with that act or omission, the Government shall be liable for the damage aforesaid; and

Provided further that the Registrar or officer guilty of that act or omission shall be liable to make good any loss or damage resulting therefrom to the Government if that act or omission was *mala fide*.

Formal defects.

96. No act in connection with a registration in the Deeds Registry shall be invalidated by a formal defect, whether such defect occurs in a deed passed or registered, or in a document upon the authority of which the deed has been passed or registered or which is required to be produced in connection with the passing or registration of the deed, unless a substantial injustice has by that act been done which in the opinion of the court cannot be remedied by an order of the court.

Repeal of laws.

97. (a) The whole of the Deeds Proclamation (*Cap. 6*) is hereby repealed.

(b) Section 4 and so much as relates to the fees and charges of notaries and conveyancers of the Notaries, Translators and Conveyancers Tariffs Proclamation (*Cap. 56*) is hereby repealed.

Power to exempt or give directives.

98. The Minister may, by notice in the Gazette —

(a) exempt any person or any transaction from any provision of this Act or any other law made thereunder; or

(b) notwithstanding the provisions of this Act or any other law, issue directives to the Registrar and the Registrar shall comply with any such directive.

(Added D.1/1988.)