rural development
& land reform
Department:
Rural Development and Land Reform
REPUBLIC OF SOUTH AFRICA

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CHIEF REGISTRAR'S CIRCULAR NO. 1 OF 2017

RESTITUTION OF LAND RIGHTS ACT, 1994 (ACT NO. 22 OF 1994)

1. Application of this Circular and withdrawal of CRC 18 of 2014

The provisions in respect of ***transfer duty*** as contained in paragraph 3.4 in CRC 18 of 2014 are out-dated. CRC 18 of 2014 is therefore withdrawn and substituted with this Circular. CRC 2 of 1995 that was previously withdrawn by CRC 18 of 2014 remains withdrawn.

2. Commencement and Purpose of the Act

The Act came into operation on 2 December 1994.

The purpose of the Act is to provide for the restitution of rights in land to persons or communities dispossessed of such rights after 19 June 1913 as a result of past racially discriminatory laws or practices; to establish a Commission on Restitution of Land Rights and a Land Claims Court; and to provide for matters connected therewith.

3. Impact of certain provisions of the Act on deeds registration procedures

3.1. Vesting of land in the name of the State

3.1.1. Where, in terms of the Act, land is acquired or expropriated in order to be restored or awarded to a claimant, such land vests in the State, which must transfer it to a claimant (section 42A(1) of the Act).

3.1.2. The vesting of the land in the name of the State, as contemplated in section 42A of the Act, must be by means of the registration of :-

3.1.2.1. A transfer by endorsement in terms of section 16 of the Deeds Registries Act, 1937 (Act No. 47 of 1937); or

3.1.2.2. A Deed of Transfer in terms of section 31 of Act 47 No. of 1937 (Form G).

3.2. Registration of land in the name of a claimant

3.2.1 Land that has vested in the State (item 3.1.1 above), must be transferred to the claimant by means of a conventional deed of transfer or by means of a deed of grant.

3.3. Certain laws not applicable in respect of land restored or awarded

3.3.1. The laws governing the subdivision of agricultural land shall not apply in respect of any subdivision undertaken in order to restore or award land to any claimant in terms of the Act (section 42B(1)).

- Examiners must ensure that reference is made on the diagram that the laws governing the subdivision of agricultural land are not applicable.

3.3.2. Section 42B(2) determines that the laws governing the establishment of townships shall not apply to land restored or awarded to any claimant in terms of the Act, as long as that land is predominantly occupied by that claimant.

- An exemption from complying with the provisions of the above legislation can only be granted upon the lodgement of proof to the effect that the relevant land is predominantly occupied by that claimant. A letter by the Chief Director: Restitution Support or by the Regional Land Claims Commissioner is sufficient in this regard.

3.4. Transfer duty

In terms of section 42A(2) of the Act, read with Section 9 (1) (*n*) of the Transfer Duty Act No. 40 of 1949, registrations of transfer of land in terms of the Act are exempt from Transfer duty and may be registered without the need to lodge a ***transfer duty receipt*** or an ***exemption certificate*** from South African Revenue Services, (in this regard see the Directive issued by SARS dated 14 January 1999, referenced 2/2/1, as well as CRC 14 of 2000).

3.5. Registration Fees

Only transfers in terms of section 42A of the Act are automatically exempt from registration fees. In respect other transfers, unless a directive referred to in section 42(2) of the Act is lodged with the particular transfer of land or a right in land, registration fees are payable.

CHIEF REGISTRAR OF DEEDS
DATE: 24 JANUARY 2017

REFERENCE : A14/P
RINGBINDER : 68

CHIEF REGISTRAR OF DEEDS
REGISTRARS OF DEEDS
DEEDS TRAINING
LAW SOCIETY OF SOUTH AFRICA : PRETORIA
BUTTERWORTHS PUBLICATIONS : DURBAN
PROPERTY LAW COMMITTEE : PRETORIA

Office of the Commissioner
Policy and Law application –
Other Taxes

SARS

DEEDS OFFICES
CASH OFFICES – RECEIVER OF REVENUE
PROVINCIAL STATE ATTORNEY'S
LAW SOCIETY

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Reference
2/2/1

Date
14 January 1999

PRIVAATSAK
1999 -01- 25
PRETORIA
STATE ATTORNEY

Gentlemen

TRANSFER DUTY: EXEMPTIONS FROM PAYMENT OF TRANSFER DUTY FOR LAND REFORM PROJECTS

It is hereby confirmed that the undermentioned Land Reform Projects when tendered for registration in the Deeds Offices in order to give effect to the provisions of the different Land Reform Projects not have to be accompanied by a transfer duty exemption receipt issued by Receiver's offices.

SECTIONS IN LAND REFORM LEGISLATION REFERRING TO EXEMPTION FROM TRANSFER DUTY

Land reform legislation has been scrutinized and the following sections referring to exemption from transfer duty have been identified:

RESTITUTION OF LAND RIGHTS ACT (ACT NO. 22 OF 1994).

Section 42 - Transfer duty and fees

(1) The Minister may direct that any transfer duty or other fees payable by a claimant in respect of any transfer of land or of a right in land in terms of this Act shall be defrayed in full or in part from money appropriated by Parliament for that purpose.

(2) The Minister may, in consultation with the Minister of Finance, direct that no transfer duty, stamp duty or other fees contemplated in subsection (1) shall be paid in respect of a particular transfer under this Act.

Section 42A Registration of land in name of claimant

(1) Where, in terms of this Act, the Court orders the State to acquire or expropriate land in order to restore or award the land to a claimant, the claimant shall become owner thereof on the date of such acquisition or expropriation.

(2) No duty, fee or other charge is payable in respect of any registration in terms of subsection (1).

Section 42D – Powers of Minister in case of waiver of rights to relief

If the Minister is satisfied that the claimant is entitle to restitution of a right in land, and that persons has entered into a agreement in terms of which he or she has waived any or all of his or her rights to relief under this Act, the Minister may, after consultation with the Commission and or such conditions as he or she may determine-

(a) award to the claimant land, a portion of land or any other right in land and, where necessary, acquire such land, portion of land or other right in land; or
(b) pay compensation to such person: or
(c) make both an award and pay compensation to such person.

Expenditure in connection with the exercise of the powers conferred by subsection (1) shall be defrayed from moneys appropriated by Parliament for that purpose.

LAND REFORM (LABOUR TENANTS) ACT, ACT NO. 3 OF 1996

Section 38(A) – Deeds registration

Transfer duty shall not be payable in respect of the acquisition of land or a right in land in terms of this Act.

EXTENSION OF SECURITY OF TENURE ACT, ACT NO. 62 OF 1997

Section 4 Subsidies

(5) No transfer duty shall be payable in respect of any transaction for the acquisition of land in terms of this section or in respect of any transaction for the acquisition of land which is financed by a subsidy in terms of this section.

PROVISION OF LAND AND ASSISTANCE ACT, ACT NO. 126 OF 1993

Section 9 Registration of ownership

(8) Section 17(1) and (2) of the Deeds Registries Act, 1937 (Act No. 47 of 1937), shall not apply to and no transfer or stamp duty shall be payable in respect of the-

(a) transfer of ownership of land referred to in section 2(1); or

(b) acquisition of land or the right in land by any person contemplated in section 10: Provided that section 17(1) and (2) of the Deeds Registries Act, 1937, shall apply in respect of the acquisition of land contemplated in section 10(1)(d).

UPGRADING OF LAND TENURE RIGHTS ACT, ACT NO. 112 OF 1991 (AS AMENDED BY ACT 34 OF 1996)

Chapter 1

2(b) No transfer duty, stamp duty or other fees shall be payable in respect of any such entries and endorsements.

(8) Sections 17(1) and (2) of the Deeds Act shall not apply to and no transfer duty or stamp duty shall be payable in respect of the transfer of ownership of any erf or piece of land in terms of this section.

LAND TITLES ADJUSTMENT ACT, ACT NO 111 OF 1993

Section 10(6)

If a direction was published under section 5(7), the commissioner shall cause the land, share of portion concerned to be transferred to the person entitled thereto and such land, share of portion shall, subject to the provisions of this Act, be registered in terms of the Deeds Registry Act, 1937 (Act No. 47 of 1937), and shall be exempted from the payment of transfer duty, stamp duty or other fees.

TRANSFER AND DISTRIBUTION OF CERTAIN STATE LAND ACT, ACT NO 119 OF 1993

Section 15 – Duties of the Director General

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

Sincerely

For COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE