



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

N\$7.60

WINDHOEK - 13 June 2012

No. 4963

CONTENTS

Page

GOVERNMENT NOTICE

No. 142 Promulgation of Flexible Land Tenure Act, 2012 (Act No. 4 of 2012), of the Parliament 1

Government Notice

OFFICE OF THE PRIME MINISTER

No. 142

2012

PROMULGATION OF ACT OF PARLIAMENT

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

No. 4 of 2012: Flexible Land Tenure Act, 2012.

Act No. 4, 2012

FLEXIBLE LAND TENURE ACT, 2012

ACT

To create new forms of title to immovable property; to create a register for these forms of title and registrars to register these forms of title; to provide for the nature of the rights conferred by these forms of title; and to provide for matters incidental thereto.

(Signed by the President on 14 May 2012)

ARRANGEMENT OF SECTIONS

Section

1. Definitions
2. Objects of Act
3. Application of Act
4. Establishment of Land Rights Offices
5. Appointment of Land Rights Registrar and other officers
6. Registers
7. Duties of Registrar
8. Powers of Registrar
9. Nature of starter title rights
10. Nature of land hold title rights
11. Preliminary steps before establishment of starter title or land hold title scheme
12. Establishment of starter title scheme
13. Establishment of land hold title scheme
14. Upgrading of starter title scheme to land hold title scheme
15. Upgrading of starter title or land hold title to full ownership
16. Regulations
17. Enforcement of restrictive conditions
18. Associations
19. Appeals
20. Short title and commencement

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

Definitions

- 1.** In this Act, unless the context indicates otherwise –

“blockerf” means a piece of land on which a starter title scheme or a land hold title scheme is established;

“common property” means, in respect of a land hold title scheme, that part of the blockerf concerned that does not form part of any plot;

“holder” means the person who holds starter title or land hold title rights;

“land hold title register” means the land hold title register established in terms of section 6(1);

“land hold title rights” means the rights described in section 10;

Act No. 4, 2012**FLEXIBLE LAND TENURE ACT, 2012**

“land hold title scheme” means a scheme established in terms of section 13 over a specific block of land under which persons may acquire land hold title rights over plots forming part of that block of land, which plots have been measured and indicated in the manner provided for by this Act;

“Minister” means the Minister responsible for the registration of immovable property;

“plot” means a piece of land forming part of the block of land of a land hold title scheme that is held by a specific holder of land hold title rights;

“Registrar” means a Land Rights Registrar appointed under section 5(1);

“Registrar of Deeds” means the Registrar of Deeds appointed in terms of section 2 of the Deeds Registries Act, 1937 (Act No. 47 of 1937), or, in respect of land situated in Rehoboth, appointed in terms of section 3 of the Registration of Deeds in Rehoboth Act, 1976 (Act No. 93 of 1976);

“relevant authority” means –

- (a) in respect of land situated within the area of a municipality, town or village, that municipality, town or village council, as the case may be;
- (b) in respect of land situated within a settlement area, the regional council in whose area that land is situated;

“prescribed” means prescribed by the regulations;

“regulations” means regulations made in terms of section 16;

“starter title register” means the starter title register established in terms of section 6(1);

“starter title rights” means the rights described in section 9;

“starter title scheme” means a scheme established in terms of section 12 in respect of a specific block of land which entitles persons to acquire starter title rights over that block of land; and

“this Act” includes the regulations.

Objects of Act

2. The objects of this Act are –

- (a) to create alternative forms of land title that are simpler and cheaper to administer than existing forms of land title;
- (b) to provide security of title for persons who live in informal settlements or who are provided with low income housing;
- (c) to empower the persons concerned economically by means of these rights.

Act No. 4, 2012**FLEXIBLE LAND TENURE ACT, 2012****Application of Act**

3. Starter title schemes and land hold title schemes may only be established on land situated within the boundaries of a municipality, town or village council or within the boundaries of a settlement area.

Establishment of Land Rights Offices

4. (1) The Minister, after consultation with the Minister responsible for Local Government and Housing, may by notice in the Gazette establish a Land Rights Office for the area specified in the notice concerned as the area of jurisdiction of that office: Provided that the Minister may if he or she considers it expedient, establish only one Land Rights Office for the whole country.

(2) The Minister may after consultation with the Minister responsible for Local Government and Housing, by notice in the *Gazette* –

- (a) alter the area of jurisdiction of a Land Rights Office;
- (b) merge two or more Land Rights Offices;
- (c) if no land hold title schemes or starter title schemes exists in the area of jurisdiction of a Land Rights Office, withdraw the establishment of that office.

Appointment of Land Rights Registrar and other officers

5. (1) The Minister must, subject to the laws governing the public service in Namibia, appoint a person for every Land Rights Office as Land Rights Registrar who is responsible for the operation of the land rights office concerned.

(2) The Minister may, subject to the laws governing the public service in Namibia, appoint registration officers and land measurers who may, subject to the control and directions of the Registrar, do anything which may be done under this Act by a registration officer or land measurer as the case may be.

(3) When it becomes necessary the Minister may, subject to the laws governing the public service in Namibia, appoint an officer employed in the Land Rights Office to act as Registrar for the period for which such appointment is necessary.

(4) An acting Registrar has all the powers of a Registrar while he or she is so acting.

Registers

6. (1) The Registrar of Deeds must establish a land hold title register and a starter title register.

(2) Subject to the provisions of this Act, the registers referred to in subsection (1) may be recorded in a computer system or in any other appropriate manner: Provided that it must be possible to readily retrieve any information that is required by this Act to be recorded in the register concerned.

Act No. 4, 2012**FLEXIBLE LAND TENURE ACT, 2012**

- (3) The following information must be recorded in the starter title register –
- (a) the number of the deed issued in respect of every blockerf in respect of which a starter title scheme has been established, as well as a description of the blockerf concerned in the prescribed manner;
 - (b) in respect of each starter title scheme, the full name and identity number of every holder of rights in respect of that starter title scheme;
 - (c) the provisions of the constitution of the association of the scheme concerned;
 - (d) any conditions imposed by the relevant authority on the scheme in terms of section 12(6);
 - (e) any other information that may be prescribed.
- (4) The following information must be recorded in the land hold title register –
- (a) the number of the deed issued in respect of every blockerf in respect of which a land hold title scheme has been established, as well as a description of the blockerf concerned in the prescribed manner;
 - (b) such information as may be prescribed in respect of each plot and recorded in the prescribed manner: Provided that the information prescribed under this paragraph must be sufficient in order to make a reasonable determination of the boundaries of that plot;
 - (c) all conditions imposed in terms of section 13(6) by the relevant authority;
 - (d) the full names and identity numbers of the holders of plots on that land hold title scheme;
 - (e) the prescribed particulars of all transactions for which registration is required by section 10(5);
 - (f) the prescribed particulars of the holder of any real rights registered against the plot concerned, as well as all the terms and conditions relating to those rights;
 - (g) the provisions of the constitution of the association of the scheme concerned;
 - (h) any other information that may be prescribed.
- (5) Any document purporting to be an extract from a register referred to in this section and prepared in the prescribed manner is *prima facie* proof of any matter which according to such document is recorded in the register concerned.
- (6) The Registrar of Deeds must issue such directives and perform such inspections or cause such inspections to be performed as in his or her opinion may be

Act No. 4, 2012**FLEXIBLE LAND TENURE ACT, 2012**

necessary in order to ensure that the information contained in the registers established under this section is as accurate as possible.

Duties of Registrar

- 7.** (1) It is the duty of each Registrar –
- (a) to ensure that all information that is required to be recorded in the registers referred to in section 6 and which relates to starter title schemes or land hold title schemes situated in the area of jurisdiction of the land title office of which he or she is the Registrar, is recorded in the required register;
 - (b) to ensure that regular inspections of land hold title and starter title schemes situated in the area of jurisdiction of the office for which he or she has been appointed as the Registrar, are conducted to determine whether the information recorded in the registers referred to in section 6 has been recorded accurately;
 - (c) to ensure that assistance is rendered to persons who intend to transfer land hold title or starter title rights or who desire to create land hold title schemes or starter title schemes.

(2) In order to perform his or her duties referred to in subsection (1), he or she may instruct any registration officer or land measurer to perform any task that in the opinion of that Registrar is necessary or expedient in order to perform any duty or function of the Registrar referred to in this Act.

Powers of Registrar

- 8.** (1) A registrar has, in respect of every starter title and land hold title schemes within the jurisdiction of his or her Land Rights Office, the power to –
- (a) inspect that land hold title scheme in order to determine whether the boundaries of plots are recorded accurately in the register concerned;
 - (b) inspect that starter title scheme or land hold title scheme in order to determine any question that is relevant for the performance of his or her duties under this Act;
 - (c) institute such enquiries or conduct such interviews with any person as may be necessary in order to determine any question that may be relevant for the performance of any function assigned to him or her by this Act;
 - (d) conduct a formal hearing in order to determine any matter that is in dispute between two or more parties having a substantial interest in the determination of a matter relating to his or her duties, if it is necessary, or if he or she is requested by a party to a dispute;
 - (e) make an entry in the register which in his or her opinion is necessary in order to correct the register or to reflect the transaction concerned, when it is found (whether after a hearing in terms of paragraph (d) or

Act No. 4, 2012**FLEXIBLE LAND TENURE ACT, 2012**

otherwise) that any information recorded in the register is inaccurate or does not reflect any transaction that has validly been concluded.

(2) When a hearing in terms of subsection (1)(d) is held, the Registrar concerned may summon any person in the prescribed manner to give evidence in that hearing or may instruct any person to provide any information relevant to the subject of that hearing in the form of an affidavit.

(3) Any person who fails to comply with a summons or instruction issued or made in terms of subsection (2) is guilty of an offence and on conviction liable to a fine not exceeding N\$4 000 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(4) A Registrar may delegate any power or assign any function to a registration officer or land measurer.

(5) A delegation or assignment under subsection (4) may be in respect of a specified class of duties or functions, or may be in respect of a specific matter.

(6) When a Registrar assigns a function, or delegate a power under subsection (4), he or she may give such instructions or guidelines relating to the exercise of such power or the performance of such function as he or she may deem necessary.

(7) A delegation of a power or an assignment of a function under subsection (4) does not prevent a Registrar concerned from exercising that power or from performing the function concerned.

Nature of starter title rights

- 9.** (1) The holder of a starter title right has the right –
- (a) to erect a dwelling on the blockerf at the specified location of the specified size and nature;
 - (b) to occupy the dwelling referred to in paragraph (a) in perpetuity;
 - (c) on his or her death to bequeath the dwelling to his or her heirs and to lease to another person;
 - (d) subject to subsection (3), to utilise such services as may be provided to the scheme as a whole by a local authority or any other person;
 - (e) to transfer his or her rights to any other person, (whether that person is the heir of the holder of that rights or whether the transfer is another transaction recognised by law);
 - (f) to be a member of the association of the scheme concerned.

(2) The relevant authority in whose jurisdiction a starter title scheme is created or any other person may agree to provide services to the scheme as a whole under such conditions as may be determined by such authority or other person.

(3) If services are provided as envisaged in subsection (2), the deed of the starter title scheme concerned or the constitution of the association of that scheme must

Act No. 4, 2012**FLEXIBLE LAND TENURE ACT, 2012**

determine the rights and duties of every holder of rights in that scheme in respect of the services concerned and may provide for the forfeiture of such rights for any holder of such rights who does not fulfil his or her duties.

(4) Starter title rights may be transferred by agreement followed by occupation of the dwelling concerned by the person to whom the right has been transferred or any person assigned by him or her to occupy that dwelling.

(5) It is the duty of the transferrer and the transferee and all other holders of rights in a starter title scheme to inform the Registrar of the property office in whose jurisdiction the scheme is situated of any transfer of rights.

(6) The Registrar must register any transfer of rights of which he or she has been informed or of which he or she has become aware, if he or she is satisfied that that transaction occurred.

(7) The registration of a transaction is prima facie proof of the transaction concerned.

(8) Except for persons who are married in community of property, a starter title right may not be held by more than one person jointly.

(9) No juristic person may hold any starter title right.

(10) No natural person may hold more than one starter title right and no person may acquire a starter title right if he or she is the owner of any immovable property or a land hold title right in Namibia.

(11) Any agreement to effect a transfer of starter title rights in contravention of subsection (8), (9) or (10) is void.

(12) The functions of the association of a starter title scheme are –

(a) to represent the holders of rights in the scheme concerned in negotiations with the relevant authority;

(b) to mediate disputes between members of the scheme concerned.

Nature of land hold title rights

10. (1) The holder of land hold title rights –

(a) has, subject to the provisions of this Act, all the rights in the plot concerned that an owner has in respect of his or her erf under the common law;

(b) may subject to the provisions of this Act, perform all the juristic acts in respect of the plot concerned that an owner may perform in respect of his or her erf under the common law;

(c) has an undivided share in the common property;

Act No. 4, 2012**FLEXIBLE LAND TENURE ACT, 2012**

- (d) is a member of the association of the scheme concerned.
- (2) The undivided share in the common property referred to in subsection (1)(c) is the same for each plot, irrespective of the exact size of the plot concerned.
- (3) The rights of any holder of a land hold title are limited by any servitude or other right in favour of the owner of any other property over the blockerf concerned.
- (4) Any servitude granting a right in favour of the owner of the blockerf on which a land hold title scheme is created, may be exercised by every holder of land hold rights in the blockerf after the scheme has been created.
- (5) The following transactions may only be performed by registration in the land hold title register referred to in section 6 -
- (a) transferring the land hold title rights to another holder;
 - (b) creating or cancelling a mortgage or any other form of security for a debt executable on the plot concerned;
 - (c) creating or cancelling a right of way in favour of any owner of land hold title rights in any plot on the same scheme as the plot concerned;
 - (d) creating or cancelling servatudes relating to the provision of water, electricity, telecommunications or any similar service or the removal of sewerage from any plot on the scheme concerned.
- (6) No servitude, restrictive condition or long term lease or any other real right may be registered in respect of a land hold title plot except a right referred to in subsection (5)(b), (5)(c) or (5)(d) and a restrictive condition imposed under section 13(6) by the relevant authority.
- (7) Transactions for which registration is required in respect of land hold title rights, become effective on the date when such transaction is registered.
- (8) Subject to the provisions of this Act, the legal effect of –
- (a) registration of any transaction in respect of land hold title rights, is the same as the legal effect of registration in the deeds registry of a similar transaction;
 - (b) the failure to register any transaction for which registration is required by subsection (5) is the same as the failure to register a similar transaction in the deeds registry.
- (9) The functions of the association of a land hold title scheme are –
- (a) to manage the common property of the scheme concerned;
 - (b) to represent the holders of rights in the scheme concerned in negotiations with the relevant authority.

Act No. 4, 2012**FLEXIBLE LAND TENURE ACT, 2012****Preliminary steps before establishment of starter title or land hold title scheme**

11. (1) The relevant authority may on its own motion, or on application by the owner of a piece of land or one or more persons who reside on a piece of land, consider the establishment of a starter title scheme or a land hold title scheme on that land.

(2) Before the establishment of a starter title scheme or a land hold title scheme is considered, the land concerned must be subdivided or consolidated in such a manner that the scheme concerned would be situated on one portion of land registered as such in the deeds registry and any mortgage, usufruct, fideicommissum or similar right on that piece of land must be cancelled.

(3) The relevant authority may –

- (a) require the owner of a piece of land on which the establishment of a starter title scheme or a land hold title scheme is considered, to pay a specified amount of money to it;
- (b) require that an association to which a group of people occupying a piece of land belongs, pay a specified amount to it;
- (c) contract with the occupiers of a specific piece of land that a specified amount must be paid to it by every occupier in installments,

which amount must be used for the purpose of covering the whole or part of the costs incurred by the relevant authority relating to the establishment of the scheme concerned.

(4) Before the establishment of a land hold title scheme may be considered –

- (a) the plots that will form part of the scheme concerned must be measured in the prescribed manner by one or more land measurers and the physical boundaries must be indicated in the prescribed manner on the block concerned by a land measurer;
- (b) a description in the prescribed form and which has been prepared in the prescribed manner, indicating the physical boundaries of the plots and the numbers allocated to the plots that will form part of the scheme concerned, must be prepared by one or more land measurers.

(5) The person who has requested the approval of the establishment of a land hold title scheme, must prepare a list of persons with whom contracts have been concluded for the transfer of plots on the establishment of the scheme together with the number of the plot that must be so transferred and if such person is not the relevant authority, submit that list to the relevant authority.

(6) Before the establishment of a starter title scheme or a land hold title scheme is considered, the relevant authority must cause a feasibility study to be conducted in order to investigate the feasibility and desirability of creating a starter title scheme or a land hold title scheme on the piece of land concerned.

(7) In order to satisfy itself of the desirability of the establishment of the scheme concerned, the relevant authority –

Act No. 4, 2012**FLEXIBLE LAND TENURE ACT, 2012**

- (a) may inspect the blockerf in question;
 - (b) may conduct a geological, environmental or any other scientific study relating to the blockerf in question;
 - (c) may question or interview any person who is able to provide relevant information relating to the desirability of the establishment of the scheme in question;
 - (d) may require the owner of the blockerf or the person who requested the establishment of the scheme in question to provide any information relevant to the desirability of the establishment of the scheme in question to the relevant authority;
 - (e) must consider all relevant legislation and any town planning scheme applicable to the area in which the piece of land concerned is situated.
- (8) When the relevant authority is considering the desirability of the establishment of a starter title scheme or a land hold title scheme, it must also consider the objects of this Act set out in section 2.
- (9) If the relevant authority is satisfied that the establishment of the scheme is desirable, it must cause a notice to be published in a newspaper circulating in the district in which the land concerned is situated, indicating that the establishment of the scheme is considered and inviting any person to provide information relevant to the establishment of the scheme to it.

Establishment of starter title scheme

12. (1) If after the procedures referred to in section 11 have been followed, the relevant authority is satisfied that the establishment of a starter title scheme is desirable, it may approve the establishment of the scheme concerned.

(2) After the establishment of a starter title scheme has been approved as contemplated in subsection (1), the relevant authority must send a notice to that effect to the Registrar of Deeds and to the Registrar of the local property office in whose jurisdiction the land concerned is situated.

(3) As soon as possible after the receipt of the notice referred to in subsection (2), the Registrar of Deeds must make an endorsement on the title deed of the blockerf concerned that a starter title scheme has been established on that blockerf.

(4) The starter title scheme is deemed to have been established on the date on which the endorsement referred to in subsection (3) has been made.

(5) After the endorsement referred to in subsection (3) has been made on the title deed concerned, the owner may no longer deal with the blockerf concerned: Provided that any transaction that may be necessary in order to give effect to any requirements necessary to finalise the scheme concerned, may be lawfully performed by the owner of the blockerf.

Act No. 4, 2012**FLEXIBLE LAND TENURE ACT, 2012**

(6) The relevant authority may impose conditions upon a starter title scheme –

- (a) which limit the number of persons who may acquire starter title rights in the scheme concerned;
- (b) relating to the nature of buildings or structures that may be erected on the blockerf concerned;
- (c) relating to the laying, maintenance and protection of such pipes, conduits, wires, cables and sewers as may be necessary to lay on, under or over the blockerf concerned, whether related to the provision of services to the scheme concerned or not;
- (d) relating to the amount payable for, the manner and time at which, the person liable for and any damages, interest or penalties payable in the case of late payment of or failure to pay, any moneys payable to the relevant authority in respect of the provision of any services to the scheme as a whole or to individual households;
- (e) relating to any other matter in respect of which it may be necessary or desirable to impose conditions upon the scheme concerned.

(7) The notice referred to in subsection (2) must contain –

- (a) the number of the title deed of the blockerf on which the scheme is established;
- (b) a list of the heads of all the households that resided on the blockerf concerned when the desirability of the establishment of the scheme was investigated;
- (c) a list of all the conditions imposed by the relevant authority in terms of subsection (6);
- (d) any other information that may be prescribed;
- (e) any other information that the relevant authority considers relevant for the determination of the matters referred to in subsection (9).

(8) When the Registrar receives a notice referred to in subsection (2), he or she must enter all the particulars relating to the scheme in the starter title register.

(9) The Registrar must as soon as possible after having received a notice referred to in subsection (2), conduct an investigation to determine which persons must be registered as the initial holders of starter title rights in the starter title scheme concerned.

(10) The persons who are entitled to be registered as the initial holders of rights in a starter title scheme are the heads of all households that resided on the blockerf, when the investigation of the desirability of the establishment of a starter title scheme was commenced.

Act No. 4, 2012**FLEXIBLE LAND TENURE ACT, 2012**

(11) After the investigation referred to in subsection (9) has been completed, the Registrar must cause all the information that must be recorded in the starter title register to be entered in that register in accordance with his or her findings.

(12) The Registrar must issue a document prepared in the prescribed manner and containing the prescribed information to every person who is registered as the initial holder of starter title rights in the scheme concerned.

Establishment of land hold title scheme

13. (1) If after the procedures referred to in section 11 have been followed, the relevant authority is satisfied that the establishment of a land hold title scheme is desirable, it may approve the establishment of the scheme concerned.

(2) As soon as possible after the establishment of the scheme concerned has been approved, the relevant authority must send a notice to the Registrar of the Land Rights Office in whose jurisdiction the blockerf concerned is situated as well as to the Registrar of Deeds.

(3) As soon as possible after the receipt of the notice referred to in subsection (2), the Registrar of Deeds must make an endorsement on the title deed of the blockerf concerned to the effect that a land hold title scheme has been established on that blockerf.

(4) The land hold title scheme is deemed to have been established on the date on which the endorsement referred to in subsection (3) has been made.

(5) From the date on which the endorsement referred to in subsection (3) has been made, no person may in any manner deal with the blockerf concerned: Provided that any transaction that may be necessary in order to give effect to any requirements necessary to finalise the scheme concerned, may be lawfully performed by the owner of the blockerf.

(6) The relevant authority may impose conditions on plots forming part of the scheme concerned –

- (a) relating to the nature of buildings or other structures that may be erected on the plot concerned which conditions may (without limiting the generality of this paragraph) relate to –
 - (i) the distance between buildings and the boundaries of the plot;
 - (ii) the maximum height of any building or structure that may be erected on the plot;
- (b) relating to the laying, maintenance and protection of such pipes, conduits, wires, cables and sewers as may be necessary to lay on, under or over the plot concerned, whether related to the provision of services to the plot concerned or not;
- (c) prohibiting the transfer of the plot to another person –

Act No. 4, 2012**FLEXIBLE LAND TENURE ACT, 2012**

- (i) before a specified period of time since the acquisition of the rights concerned has elapsed;
 - (ii) unless the permission of the relevant authority has been obtained; or
 - (iii) unless any other specified condition has been fulfilled;
- (d) any other conditions that may be necessary or desirable to impose.
- (7) Different conditions may be imposed on different plots in the same land hold title scheme.
- (8) The notice referred to in subsection (2) must state –
- (a) the number of the title deed of the blockerf on which the land hold title scheme is situated;
 - (b) all the conditions that the relevant authority has imposed upon the plots forming part of the scheme concerned;
 - (c) any other information that may be prescribed;
 - (d) any other information that the relevant authority may deem necessary,
- and must be accompanied by the description referred to in section 11(4)(b) and the list referred to in section 11(5).
- (9) On receipt of the notice referred to in subsection (2), the Registrar must enter the information relating to the scheme concerned in the land hold title register in the prescribed manner.
- (10) Immediately after the information has been entered into the land hold title register as contemplated in subsection (9), the persons indicated in the list referred to in section 11(5) become the holders of land hold title rights in the plots indicated in that list.
- (11) If there are any plots in the scheme concerned that are not indicated in the list referred to in section 11(5), such plots will be held by the owner of the blockerf concerned.
- (12) Any person who becomes the holder of land hold title rights must be issued with a document in the prescribed form indicating that he or she is the holder of the rights concerned.
- (13) Subject to subsection (14), no person may receive or request any money as consideration for the transfer of a land hold title plot before the scheme has been established.
- (14) The provisions of subsection (13) –
- (a) do not apply to the government or the relevant authority;

Act No. 4, 2012**FLEXIBLE LAND TENURE ACT, 2012**

- (b) do not prohibit any person from requiring that any sum of money must be paid to a legal practitioner who must hold that money in trust and if the scheme is not established, pay it back to the person who originally deposited it or if the scheme is established, pay it over to the person who requested that deposit.

(15) Any person who contravenes subsection (13) is guilty of an offence and on conviction liable to a fine not exceeding N\$15 000 or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment.

Upgrading of starter title scheme to land hold title scheme

14. (1) If at least 75% of the holders of rights in a starter title scheme have consented, an application in the prescribed form may be lodged with the relevant authority for the upgrading of that scheme to a land hold title scheme.

(2) If the relevant authority grants the application for the upgrading of a starter title scheme to a land hold title scheme, the holders of rights in that scheme who do not agree with the upgrading, must be granted starter title rights in a similar scheme by the relevant authority.

(3) The relevant authority that provided starter title rights to holders as contemplated in subsection (2), may sell the plots that would have been allocated to those holders to other persons for its own account at such price as it thinks fit.

(4) Subject to this section, the provisions of section 11 and 13 apply with the necessary changes to such upgrading.

(5) Subject to subsection (3), when a starter title scheme is upgraded to a land hold title scheme, every holder of starter title rights must be allocated a plot in the land hold title scheme which must correspond as closely as possible to the piece of ground actually occupied by that person on the block concerned.

(6) The relevant authority may require that every holder of rights in the starter title scheme concerned deposit a sum of money with it, which money may be used by the relevant authority in order to defray its expenses relating to the upgrading of the scheme concerned.

Upgrading of starter title or land hold title to full ownership

15. (1) If a starter title scheme or land hold title scheme is situated within the area of an approved township, such scheme may be upgraded to full ownership.

(2) The block must be surveyed and subdivided in accordance with the applicable laws relating to the surveying and subdivision of land in Namibia.

(3) Subject to subsection (4), upgrading under this section may only be done when all the holders of rights in the scheme concerned have agreed in writing to that upgrading.

(4) If 75% of the holders of rights in the scheme agree with an upgrading under this section, the relevant authority may pay fair compensation to the holders of rights that do not agree with the upgrading.

Act No. 4, 2012**FLEXIBLE LAND TENURE ACT, 2012**

(5) If the relevant authority has compensated any person as contemplated in subsection (4), it may sell the erwen that would have been allocated to the persons who were compensated, for its own account.

(6) The costs of such upgrading must be borne by the holders of rights in the scheme concerned in the same proportion as the surface area of the plot or piece of land of such person bears to the surface area of all the plots or pieces of land on the scheme concerned.

Regulations

16. (1) The Minister may after consultation with the committee referred to in subsection (3), make regulations –

- (a) prescribing the fees that must be paid in respect of any action performed by a Land Rights officer or an official employed in that office;
- (b) prescribing fees that must be paid to the relevant authority for the consideration of an application under this Act or relating to anything done by that authority under this Act;
- (c) prescribing the form or any requirement relating to any document or application that must be lodged, issued or prepared under this Act;
- (d) if the registers referred to in this Act are stored on a computer system, prescribing the data formats, protocols, procedures or any technical requirements relating to documents submitted or issued and any other matter relating to the programs and data relating to such system;
- (e) prescribing any matter that may be necessary or desirable to ensure the security and integrity of the information stored on the computer system referred to in paragraph (d);
- (f) prescribing the qualifications or any matter relating to the training of land measurers;
- (g) prescribing a model constitution for an association of a starter title scheme or a land hold title scheme, prescribing compulsory provisions to be contained in such a constitution, prohibiting certain provisions in such a constitution, prescribing the manner in which such a constitution may be amended or prescribing the powers and duties of such associations;
- (h) prescribing the categories of persons that may prepare documents under this Act, prohibiting certain categories of persons from preparing such documents and prescribing or limiting the fees that may be charged for the preparation of such documents;
- (i) requiring or permitting land surveyors to perform certain duties relating to the measuring of or description of the boundaries of plots on land hold title schemes;

Act No. 4, 2012**FLEXIBLE LAND TENURE ACT, 2012**

- (j) prescribing the period within which an appeal in terms of section 19 must be lodged, the documents and information that must be lodged with such an appeal, the manner in which evidence may be adduced, the nature of evidence that may be presented at such an appeal, the procedure at the hearing of such an appeal and any other procedural matter relating to such an appeal;
 - (k) prescribing any matter that must or may be prescribed;
 - (l) prescribing any matter that is necessary or expedient to prescribe for the proper operation of this Act.
- (2) If a land surveyor has performed the duties prescribed in terms of subsection (1)(i) to a reasonable professional standard, such surveyor is not liable for the accuracy of the measuring or recording of the boundaries concerned.
- (3) The Minister must appoint a committee that may –
- (a) recommend the making of regulations;
 - (b) make recommendations relating to the amendment of this Act or relating to the manner in which this Act should be administered.
- (4) The committee referred to in subsection (3) consists of five members appointed by the Minister who in the opinion of the Minister have knowledge relating to any matter relevant to the implementation of this Act.
- (5) The Committee may with the approval of the Minister co-opt any person having any special knowledge as a member of the committee for such period as the committee thinks fit.
- (6) A co-opted member referred to in subsection (5) does not have a right to vote.
- (7) The Minister may, with the concurrence of the Minister responsible for Finance, determine the allowances to be paid to members (including co-opted members) of the committee referred to in subsection (3) who are not in the full time employ of the State.
- (8) The committee must elect from among its members one member to act as chairperson and if the chairperson is not present, at a meeting of the Committee, elect another member to preside at that meeting.
- (9) A majority of the members of the committee forms a quorum at a meeting of the committee.
- (10) A decision of a majority of the members present at a meeting of the committee is a decision of the committee: Provided that in the case of an equality of votes, the person who presides at that meeting, has a casting vote in addition to his or her deliberative vote.

Act No. 4, 2012**FLEXIBLE LAND TENURE ACT, 2012****Enforcement of restrictive conditions**

17. (1) The relevant authority, the association of the scheme concerned or any other person having a substantive interest in the enforcement of any restrictive condition imposed in terms of section 12(6) or section 13(6) may apply in the prescribed manner to the Registrar for the issue of an order to enforce the condition concerned.

(2) The Registrar must within the period prescribed conduct a hearing to determine whether the person concerned has not complied with the condition as alleged.

(3) If the Registrar finds that a person has not complied with a condition as contemplated in subsection (2), he or she must give an order to compel the person concerned to comply with the relevant condition within a period specified by him or her which period must be reasonable in all the circumstances.

(4) If an order made under subsection (3), is made in favour of the relevant authority and entails the erection, alteration or demolition of a structure, the relevant authority may (at the cost of the holder concerned) carry out the erection, alteration or demolition, if the holder concerned has failed to perform the work concerned.

(5) Any person who wilfully fails to comply with an order made in terms of subsection (3) is guilty of an offence and on conviction liable to a fine not exceeding N\$5 000 or on the failure to pay the fine concerned, to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

Associations

18. (1) The association of a starter title scheme or land hold title scheme –

- (a) must hold an annual general meeting which is called in the manner provided by the constitution of the association concerned; and
- (b) may hold a special general meeting for a specific purpose (including the dismissal of the committee and the election of a new committee) that is called in the manner prescribed in the constitution of the association concerned.

(2) The association of a land hold title scheme or a starter title scheme is managed by a committee whose composition is determined by the constitution of the association.

(3) A decision of a majority of the members present at a meeting of a committee of an association referred to in subsection (1), is a decision of the committee: Provided that in the case of an equality of votes, the person who presides at that meeting, has a casting vote in addition to his or her deliberative vote.

(4) The committee of the association of a land hold title scheme or a starter title scheme is elected in an election conducted in the prescribed manner in which –

- (a) in the case of a starter title scheme, every holder of rights in the scheme has one vote;

Act No. 4, 2012**FLEXIBLE LAND TENURE ACT, 2012**

(b) in the case of a land hold title scheme, a person may exercise one vote for every plot owned by him or her.

(5) Subject to any provision in the constitution of the association relating to the dismissal of the committee by a general meeting of the association, the term of office of a committee elected as contemplated in subsection (4), is one year.

Appeals

19. Any person having a substantial interest in any decision made by a Registrar may appeal subject to the prescribed procedural rules to the magistrate's court of the district in which the property concerned is situated.

Short title and commencement

20. This Act is called the Flexible Land Tenure Act, 2012, and comes into operation on a date determined by the Minister by notice in the *Gazette*.
