

ALIENATION OF LAND ACT NO. 68 OF 1981

[View Regulation]

[ASSENTED TO 28 AUGUST, 1981]
DATE OF COMMENCEMENT: 19 OCTOBER, 1982]

(except s. 26 on 6 December, 1983)

(English text signed by the State President)

This Act has been updated to <i>Government Gazette</i> 28824 dated 11 May, 2006.
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as amended by

Alienation of Land Amendment Act, No. 51 of 1983

Regional and Land Affairs Second General Amendment Act, No. 170 of 1993
[with effect from 17 December, 1993]

Development Facilitation Act, No. 67 of 1995
[with effect from 22 December, 1995]

Abolition of Restrictions on the Jurisdiction of Courts Act, No. 88 of 1996
[with effect from 22 November 1996]

Alienation of Land Amendment Act, No. 103 of 1998

GENERAL NOTE

This Act has been amended by the KwaZulu Land Affairs Act No. 11 of 1992 with effect from 11 September 1998 insofar as it relates to KwaZulu. Please see the relevant annotations for details of these amendments.

ACT

To regulate the alienation of land in certain circumstances and to provide for matters connected therewith.

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1. Definitions.—(1) In this Act, unless the context otherwise indicates—

"agricultural land" in paragraph (d) (ii) of the definition of "land" means any land used or intended to be used mainly for commercial farming operations;

[Definition of "agricultural land" inserted by s. 1 (a) of Act No. 103 of 1998.]

"alienate", in relation to land, means sell, exchange or donate, irrespective of whether such sale, exchange or donation is subject to a suspensive or resolutive condition, and **"alienation"** has a corresponding meaning;

"consideration", in relation to a sale of land under any deed of alienation, means the purchase price and interest thereon, excluding rent or occupational interest constituting a reasonable compensation for the use and enjoyment of the land by the purchaser;

[Definition of "consideration" inserted by s. 1 (a) of Act No. 51 of 1983.]

"contract"—

- (a) means a deed of alienation under which land is sold against payment by the purchaser to, or to any person on behalf of, the seller of an amount of money in more than two instalments over a period exceeding one year;
- (b) includes any agreement or agreements which together have the same import, whatever form the agreement or agreements may take;

"deed of alienation" means a document or documents under which land is alienated;

[Definition of "deed of alienation" substituted by s. 1 (b) of Act No. 51 of 1983.]

"Deeds Registries Act" means the Deeds Registries Act, 1937 (Act No. 47 of 1937);

"deeds registry" means a deeds registry as defined in section 102 of the Deeds Registries Act, including the office of the registrar of Rand townships;

"erf" means an erf as defined in section 102 of the Deeds Registries Act;

"estate agent" means an estate agent as defined in section 1 of the Estate Agents Act, 1976 (Act No. 112 of 1976);

"insolvent" means—

- (a) any person whose estate is under sequestration in terms of the Insolvency Act, 1936 (Act No. 24 of 1936);
- (b) any insolvent deceased estate which is dealt with in terms of the provisions of section 34 (5) of the Administration of Estates Act, 1965 (Act No. 66 of 1965);
- (c) any juristic person in liquidation which is unable to pay its debts;

- (d) any person whose estate is dealt with in terms of section 28 (5) of the Agricultural Credit Act, 1966 (Act No. 28 of 1966);

“intermediary” means—

- (a) any person who sells land to a remote purchaser; or
- (b) subject to the provisions of subsection (2), any person who has alienated land which, after such alienation, is sold by another person to a remote purchaser and which, at the time of the sale, has yet to be transferred to such firstmentioned person;

“land”—

- (a) includes—

- (i) any unit;
- (ii) any right to claim transfer of land;
- (iii) any undivided share in land;
- (iv) initial ownership referred to in section 62 of the Development Facilitation Act, 1995;
[Para. (a) substituted by s. 68 of Act No. 67 of 1995.]

- (b) includes, in Chapters I and III, any interest in land, other than a right or interest registered or capable of being registered in terms of the Mining Titles Registration Act, 1967 (Act No. 16 of 1967);

- (c) in section 3 (2) and Chapter II—

- (i) means any land used or intended to be used mainly for residential purposes;

- (ii) excludes—

(aa) agricultural land as defined in section 1 of the Subdivision of Agricultural Land Act, 1970 (Act No. 70 of 1970);

(bb) land which forms part of any scheduled Black area as defined in section 49 of the Development Trust and Land Act, 1936 (Act No. 18 of 1936), or of a released area contemplated in section 2 of the said Act;

[KwaZulu: Item (bb) repealed by s. 39 (1) of KwaZulu Land Affairs Act No. 11 of 1992.]

(cc) land to which the provisions of the Rural Coloured Areas Act, 1963 (Act No. 24 of 1963), apply;

(dd) land which is held in trust by the State or a Minister for any person;

[KwaZulu: Item (dd) repealed by s. 39 (1) of KwaZulu Land Affairs Act No. 11 of 1992.]

[Para. (c) amended by s. 1 (c) of Act No. 51 of 1983.]

- (d) in section 29A—

- (i) includes—

(aa) land, whether or not registrable, used or intended to be used mainly for residential purposes;

(bb) any housing interest as defined in section 1 of the Housing Development Schemes for Retired Persons Act, 1988 (Act No. 65 of 1988), and any proposed housing interest;

(cc) any share in a share block company as defined in section 1 of the Share Blocks Control Act, 1980 (Act No. 59 of 1980), and any proposed share, which confers on the holder of such share the right to occupy land owned or leased by the share block company and which is used or intended to be used mainly for residential purposes;

(dd) any unit as defined in section 1 of the Sectional Titles Act, 1986 (Act No. 95 of 1986), and includes any proposed unit;

- (ii) excludes agricultural land;

[Para. (d) added by s. 1 (b) of Act No. 103 of 1998.]

“local authority” means any institution or body contemplated in section 84 (1) (f) of the Republic of South Africa Constitution Act, 1961 (Act No. 32 of 1961), which has been established or constituted by or under any ordinance of a provincial council or in relation to which a provincial council may make ordinances;

“Minister” means the Minister of Industries, Commerce and Tourism;

“owner”, in relation to land, means the person in whose name that land is registered in the deeds office concerned, and also any successor in title of such person;

“practitioner” means a practitioner as defined in section 1 of the Attorneys Act, 1979 (Act No. 53 of 1979);

"prescribe" means prescribe by regulation;

"purchaser", in Chapter II, means any person to whom land is alienated under a contract;

"registrable", in relation to land, means capable of being registered as the subject of a separate title deed in a deeds registry in that the requirements of any law relating to such registration have been complied with, and includes capable of being transferred in initial ownership as contemplated in section 62 of the Development Facilitation Act, 1995;

[Definition of "registrable" substituted by s. 1 (d) of Act No. 51 of 1983 and by s. 69 of Act No. 67 of 1995.]

"regulation" means a regulation made under this Act;

"remote purchaser", in relation to land, means, subject to the provisions of subsection (3), any person who purchases land in terms of a contract from another person who is not the owner of that land;

"repealed Act" means the Sale of Land on Instalments Act, 1971 (Act No. 72 of 1971);

"Sectional Titles Act" means the Sectional Titles Act, 1971 (Act No. 66 of 1971);

"seller" means, in Chapter II, any person who alienates land in terms of a contract or any other person to whom the obligation of that person to give transfer of land in terms of a contract has passed;

"this Act" includes any regulation or notice in terms of this Act;

"township" includes any land which is subject to a town planning scheme in operation or binding under any law or an amendment thereof;

"unit" means a unit as defined in section 1 of the Sectional Titles Act and includes any proposed unit.

(2) Any person who is an intermediary in terms of paragraph (b) of the definition of "intermediary" in subsection (1), ceases to be such when the land referred to in that paragraph is registered in his name.

(3) Any person who is a remote purchaser in terms of the definition of "remote purchaser" in subsection (1), ceases to be such when the land referred to in that definition is registered in the name of the other person mentioned in that definition.

CHAPTER I FORMALITIES IN RESPECT OF DEEDS OF ALIENATION

2. Formalities in respect of alienation of land.—(1) No alienation of land after the commencement of this section shall, subject to the provisions of section 28, be of any force or effect unless it is contained in a deed of alienation signed by the parties thereto or by their agents acting on their written authority.

(2) The provisions of subsection (1) relating to signature by the agent of a party acting on the written authority of the party, shall not derogate from the provisions of any law relating to the making of a contract in writing by a person professing to act as agent or trustee for a company not yet formed, incorporated or registered.

(2A) The deed of alienation shall contain the right of a purchaser or prospective purchaser to revoke the offer or terminate the deed of alienation in terms of section 29A.

[Sub-s. (2A) inserted by s. 2 of Act No. 103 of 1998.]

3. Application of Act to sales of land by public auction.—(1) The provisions of section 2 do not apply to the sale of land by public auction.

(2) If in terms of a sale of land by public auction the purchase price or any other charges is or are payable by the purchaser in more than two instalments over a period exceeding one year—

- (a) the provisions of this Act apply to that sale as if it were a sale under a contract;
- (b) in such application of section 6, the conditions of sale determined in terms thereof shall be read in public immediately before the auction; and
- (c) the seller shall forthwith after the auction furnish the purchaser with a copy of the contract, failing which the purchaser may cancel the sale.

[Sub-s. (2) amended by s. 2 of Act No. 51 of 1983.]

CHAPTER II SALE OF LAND ON INSTALMENTS

(General Note: Conflicting legislation: S. 172 (1) of the National Credit Act, No. 34 of 2005 determines that the provisions of the National Credit Act, No. 34 of 2005 prevail to the extent of the conflict.)

4. Application of Chapter.—This Chapter shall not apply in respect of a contract in terms of which the State, the Community Development Board established by section 2 of the Community Development Act, 1966 (Act No. 3 of 1966), the National Housing Commission mentioned in section 5 of the Housing Act, 1966 (Act No. 4 of 1966), or a

local authority is the seller.

(General Note: Conflicting legislation: S. 172 (1) of the National Credit Act, No. 34 of 2005 determines that the provisions of the National Credit Act, No. 34 of 2005 prevail to the extent of the conflict.)

5. Language in which contract shall be drawn up.—The purchaser in relation to a contract is entitled to choose the official language in which the contract shall be drawn up.

(General Note: Conflicting legislation: S. 172 (1) of the National Credit Act, No. 34 of 2005 determines that the provisions of the National Credit Act, No. 34 of 2005 prevail to the extent of the conflict.)

6. Contents of contract.—(1) A contract shall contain—

- (a) the names of the purchaser and the seller and their residential or business addresses in the Republic;
 - (b) the description and extent of the land which is the subject of the contract;
 - (c) if the seller is not the owner of the land, the name and address of that owner;
 - (d) if the land is encumbered by a mortgage bond, the name and address of the person, or his representative or, in the case of a participation bond, the name and address of the nominee company, or its representative, in favour of whom the mortgage bond over the land is registered at the time the contract is concluded;
 - (e) the amount of the purchase price;
 - (f) the annual rate at which interest, if any, is to be paid on the balance of the purchase price;
 - (g) the amount of each instalment payable under the contract in reduction or settlement of the purchase price and interest (if any);
 - (h) the due date or the method of determining the due date of each instalment;
 - (i) if the land is sold by an intermediary, the name and address of every other intermediary who alienated the land prior to the date the contract is concluded;
 - (j) the amount or amounts of any transfer duty (if any) payable in terms of the Transfer Duty Act, 1949 (Act No. 40 of 1949), in respect of the land, and the name of the person or persons by whom such duty is to be paid;
 - (k) the dates on which and the conditions on which the purchaser shall be entitled to take possession and occupation of the land;
 - (l) the place where the payments shall be made;
 - (m) the date on which the risk, profit and loss of the land shall pass to the purchaser;
 - (n) a statement of the obligation (if any) of the purchaser to insure the subject matter of the contract;
 - (o) a statement—
 - (i) of any amount which in terms of any law is payable in respect of the land as endowment, betterment or enhancement levy, a development contribution or any similar imposition and an indication of the person to and the person by whom it is so payable; and
 - (ii) that no amount contemplated in subparagraph (i) is payable in respect of the land, if such is the case;
- [Para. (o) substituted by s. 3 of Act No. 51 of 1983.]
- (p) an indication of the party who shall be liable for the payment of the costs of—
 - (i) the drafting of the contract;
 - (ii) the recording thereof in terms of section 20; and
 - (iii) the transfer of the land;
 - (q) if the land is not the subject of a separate title deed at the time the contract is concluded, the latest date at which the land shall be registrable in the name of the purchaser;
 - (r) if the seller is the owner of the land, an undertaking by him that the land shall not be encumbered or further encumbered by a mortgage bond on or before the date on which the contract is recorded in terms of section 20;
 - (s) the period within which the purchaser is obliged or may be compelled to take transfer of the land against simultaneous payment of all amounts owed by him in terms of the contract;
 - (t) a reference to—
 - (i) the right of a purchaser under section 11 to perform the obligations of the owner or an

intermediary;

- (ii) the right of the purchaser under section 17 to accelerate payments in terms of the contract and to claim transfer of the land against simultaneous payment of all the amounts payable by him to the seller in terms of the contract;
- (iii) the right of the purchaser under section 20 to have the contract recorded;
- (iv) the rights and remedies of the purchaser under sections 13 (2), 16 (3), 23 and 27;
- (v) the obligation of the purchaser—
 - (aa) in terms of section 9 to give the information referred to in that section to any mortgagee;
 - (bb) in terms of section 15 (2) to accept a mortgage bond arranged in terms of that section on his behalf;
 - (cc) in terms of section 21 (1) to give the information referred to in that section to the owner of the land;
- (vi) the limitation in terms of section 19 of the right of the seller to take action by reason of any breach of contract on the part of the purchaser.

(2) The date which is stated in a contract in terms of subsection (1) (m), shall not be earlier than the date which is stated therein in terms of subsection (1) (k) as the date on which the purchaser shall be entitled to take possession of the land.

(3) The aggregate amount of the instalments referred to in subsection (1) (g) which are to be paid during any of successive periods of 12 months following on the date of the contract, shall not be less than the interest which, in terms of the contract, would become payable during that period if all instalments were paid timeously.

(4) The date stated in a contract in terms of subsection (1) (q), shall not be later than five years from the date of the contract.

(5) If for whatever reason the seller is unable, after the date referred to in subsection (4), to tender transfer of the land against simultaneous payment of all the amounts payable to him by the purchaser in terms of the contract, the purchaser may cancel the contract, in which event the parties shall be entitled to the relief provided for in section 28 (1), or the purchaser may abide by the contract, in which event no interest shall be payable by him in terms of the contract as from the date in question until such time as such transfer is tendered: Provided that this subsection shall not detract from any additional claim for damages which the purchaser may have.

(General Note: Conflicting legislation: S. 172 (1) of the National Credit Act, No. 34 of 2005 determines that the provisions of the National Credit Act, No. 34 of 2005 prevail to the extent of the conflict.)

7. Sale of land encumbered by mortgage bond.—(1) If the land sold in terms of a contract is encumbered by one or more than one mortgage bond, the seller shall within 30 days after the conclusion of the contract hand to the purchaser or send to him by registered post a certificate, drawn up and dated not more than four months before the conclusion of the contract, by each mortgagee, in which is indicated the amount the mortgagee requires to be paid in terms of section 9 for the discharge of his mortgage bond or for the release of the land from his mortgage bond, as the case may be, as well as the rate or rates at which interest shall be levied as from the date of the certificate.

(2) Any certificate contemplated in subsection (1) shall irrevocably bind the mortgagee concerned and any successor in title of him for a period of four months as from the date of such certificate, and shall operate in favour of any person to whom the land is or has been alienated.

(3) If—

- (a) a seller fails to furnish the purchaser with a certificate as provided in subsection (1) within the period referred to in that subsection; or
- (b) the amount or aggregate amounts indicated in the certificate or certificates contemplated in subsection (1) exceed the amount stated in the contract in terms of section 6 (1) (e),

the purchaser is entitled within 14 days after the period referred to in paragraph (a) has expired, or after receipt of the certificate or certificates referred to in paragraph (b), as the case may be, to cancel the contract, in which case the parties are entitled to the relief provided for in section 28 (1).

(4) A mortgagee shall, within 21 days of being requested thereto by a seller, furnish him with the certificate referred to in subsection (1), and if he fails to do so, he shall be liable to such person as if he were obliged by contract to furnish him with such certificate and failed to do so.

[Sub-s. (4) added by s. 4 of Act No. 51 of 1983.]

(General Note: Conflicting legislation: S. 172 (1) of the National Credit Act, No. 34 of 2005 determines that the provisions of the National Credit Act, No. 34 of 2005 prevail to the extent of the conflict.)

8. Sale of land by intermediary.—(1) If land is sold by an intermediary, that intermediary shall within 30 days after the date of the contract hand or send to the purchaser by registered post a certificate bearing a date and furnished not more than 30 days before the conclusion of the contract by—

(a) the person who alienated the land to that intermediary; and

(b) every other person who alienated that land to an intermediary prior to the conclusion of the contract.

(2) The certificate referred to in subsection (1) shall indicate the amount owed at the date of the certificate in respect of the land to the person who furnished it and shall be signed by that person in the presence of two witnesses, who shall attest to that signature on the certificate.

(3) If—

(a) the seller fails to furnish the purchaser with a certificate as provided in subsection (1) within the period referred to in that subsection; or

(b) the amount of such certificate exceeds the amount stated in the contract in terms of section 6 (1) (e),

the purchaser is entitled within 14 days after the period referred to in subsection (1) has expired, or after receipt of the certificate, as the case may be, to cancel the contract, in which case the parties are entitled to the relief provided for in section 28 (1).

(General Note: Conflicting legislation: S. 172 (1) of the National Credit Act, No. 34 of 2005 determines that the provisions of the National Credit Act, No. 34 of 2005 prevail to the extent of the conflict.)

9. Disclosure to purchaser of release figure in respect of land encumbered by mortgage bond.—(1) When land encumbered by a mortgage bond is sold in terms of a contract, the purchaser shall forthwith notify the mortgagee of—

(a) the conclusion of that contract;

(b) his address contemplated in section 23 and any change of that address; and

(c) such other particulars in respect of the contract as the mortgagee may reasonably require to be furnished to him.

(2) (a) A mortgagee who has been notified by a purchaser in terms of subsection (1) shall, at least 21 days before instituting legal proceedings against the mortgagor on the mortgage bond, inform the purchaser, by written notice sent to him by registered post at his address referred to in subsection (1) (b), of his intention to do so.

(b) For the purposes of paragraph (a), proceedings are deemed to be instituted on the date on which summons is issued or the notice of motion is filed, as the case may be.

(c) Any mortgagee who fails to comply with the provisions of paragraph (a) shall, notwithstanding the provisions of subsection (3), at no time require the purchaser to pay the costs of any legal proceedings contemplated in that paragraph, for the discharge of or release of the land from the mortgage bond concerned: Provided that if the mortgagee who failed to give notice in terms of paragraph (a) should subsequently give such notice, the amount of such costs incurred after expiry of 21 days from the date of the last-mentioned notice may be included in the amount required for the discharge of or the release of the land from the mortgage bond, as the case may be.

(3) Any purchaser may, if the land in question is—

(a) encumbered by a mortgage bond but not together with other land, require the mortgagee to furnish him with a certificate bearing a date and in which are stated the amount required by the mortgagee for the discharge of his mortgage bond, and the rate or rates at which interest is to be paid thereon; or

(b) encumbered by a mortgage bond together with other land, require the mortgagee to furnish him with a certificate bearing a date and in which are stated the amount required by the mortgagee for the release of the land from his mortgage bond, and the rate or rates at which interest is to be paid thereon,

which amount shall, in either case, not exceed the amount contemplated in section 7 (1) together with interest and the amounts, or if the land is encumbered together with other land by the same mortgage bond, a proportionate share of the amounts, which a building society may recover in terms of section 48 of the Building Societies Act, 1965 (Act No. 24 of 1965), less—

(i) in a case referred to in paragraph (a), any amount paid by or on behalf of the purchaser or mortgagor in redemption of the mortgage bond; or

(ii) in a case referred to in paragraph (b), a proportionate share of any amount paid by or on behalf of the mortgagor in redemption of the mortgage bond as well as any amount paid by the purchaser to the mortgagee or mortgagees in terms of section 11 (1) (a) (i) and (iii).

[Sub-para. (ii) substituted by s. 5 of Act No. 51 of 1983.]

(4) The proportionate share referred to in subsection (3) shall be determined in accordance with the ratio which the amount required to be paid for the release of the land from the mortgage bond mentioned in the certificate referred to in section 7 (1) bears to the balance outstanding under that mortgage bond at the time when the certificate was issued.

(5) A request for a certificate referred to in subsection (3) shall be addressed to the mortgagee in writing and shall be accompanied by the fee prescribed from time to time in respect of mortgage bonds of the class to

which the mortgage bond concerned belongs.

(6) Any mortgagee who receives any such request, shall within 21 days from the date of that request furnish the purchaser concerned with such a certificate, but shall not be obliged to do so more often than three times in any calendar year.

(7) Any such certificate shall irrevocably bind the mortgagee concerned and his successor or successors in title for a period of four months from the date of such certificate, and shall operate in favour of any person to whom the land is or has been alienated.

(8) If a contract has been recorded in terms of section 20, a mortgagee in whose favour a mortgage bond over the land concerned is registered subsequent to such recording, is deemed to have consented irrevocably and unconditionally in favour of the purchaser whose contract was so recorded or any person to whom such land is subsequently alienated, to the discharge of his mortgage bond or the release of the land from his mortgage bond.

(General Note: Conflicting legislation: S. 172 (1) of the National Credit Act, No. 34 of 2005 determines that the provisions of the National Credit Act, No. 34 of 2005 prevail to the extent of the conflict.)

10. Certificates and information to be furnished by intermediaries and owners.—(1) A remote purchaser may by written notice require the owner or any intermediary who alienated the land in question prior to the date the contract concerned was concluded, to furnish him with the particulars of the outstanding balance under the deed of alienation in terms of which the owner or that intermediary alienated the land and with particulars as to any amount which in terms of the deed of alienation is due and unpaid.

(2) Any owner or intermediary receiving a written notice referred to in subsection (1), shall, within 30 days of the date of that notice, furnish the remote purchaser concerned with the outstanding balance and the particulars referred to in that subsection, but shall not be obliged to do so more often than three times in one calendar year.

(3) The owner of land alienated in terms of a contract and any intermediary who has alienated that land shall furnish any subsequent intermediary or remote purchaser, as the case may be—

- (a) in regard to any intermediary who alienated the land prior to him, with the information referred to in section 6 (1) (i);
- (b) in regard to the deed of alienation under which he alienated the land with—
 - (i) the certificate referred to in section 8 (1);
 - (ii) the certificate referred to in subsection (1) of this section; and
 - (iii) the information referred to in section 16 (2) (f),

and if he fails to do so, he shall be liable to such intermediary or purchaser as if he were obliged by contract to do so and failed to do so.

(General Note: Conflicting legislation: S. 172 (1) of the National Credit Act, No. 34 of 2005 determines that the provisions of the National Credit Act, No. 34 of 2005 prevail to the extent of the conflict.)

11. Purchaser or remote purchaser may fulfil obligations of owner or intermediary.—(1) When land has been sold in terms of a contract—

- (a) the purchaser or remote purchaser may, if—
 - (i) the owner fails to fulfil his obligations to a mortgagee or mortgagees; or
 - (ii) any intermediary fails to fulfil his obligations to the person who alienated the land to him; or
 - (iii) any payment to be made by him to the person who alienated the land to him, would reduce the amount owed by him to that person to an amount less than the amount or amounts in aggregate which in terms of section 9 (3) the mortgagee or mortgagees referred to in subparagraph (i) may at that time require for the discharge of the mortgage bond or bonds or the release of the land from the mortgage bond or bonds, as the case may be, or the amount owed by any intermediary to the person referred to in subparagraph (ii),

[Sub-para. (iii) substituted by s. 6 of Act No. 51 of 1983.]

fulfil the obligations of that owner or of that intermediary, or make such payment to the mortgagee or mortgagees or the person concerned to the extent of such failure or difference, as the case may be, and such fulfilment or payment shall be accompanied by the prescribed particulars;

- (b) fulfilment in terms of paragraph (a) shall be deemed to be fulfilment to the same extent by the purchaser or remote purchaser of his obligations to his seller, and at the same time fulfilment by a remote purchaser shall be deemed to be fulfilment to the same extent of the obligations of each intermediary between the remote purchaser and the owner or intermediary, as the case may be, whose obligations the remote purchaser fulfils;
- (c) the owner or intermediary is not entitled to recover again from a purchaser or remote purchaser, as the case may be, any payment made in good faith by the purchaser or remote purchaser on behalf of the owner or intermediary to any mortgagee or mortgagees or person who alienated the land to that intermediary.

(2) Any purchaser or remote purchaser who has in terms of subsection (1) made any payment which exceeds the amount owing by him to his seller, may recover the excess from the owner or intermediary, as the case may be, on whose behalf that payment was made.

(General Note: Conflicting legislation: S. 172 (1) of the National Credit Act, No. 34 of 2005 determines that the provisions of the National Credit Act, No. 34 of 2005 prevail to the extent of the conflict.)

12. Calculation of interest and limitation of amount recoverable from purchaser.—(1) When interest is payable in terms of a contract, it shall be calculated, not more often than monthly and not less often than quarterly, on the outstanding balance of the purchase price then owing in terms of the contract, and such interest shall not exceed the rate of interest prescribed from time to time in respect of contracts of the class to which the contract concerned belongs.

(2) No seller shall in connection with a contract obtain judgment for or recover from a purchaser an amount exceeding the sum of—

- (a) the purchase price and interest thereon owing to him by the purchaser in terms of the contract;
- (b) the costs for the payment of which the purchaser is liable in terms of an express provision in the contract and which have actually been incurred by the seller—
 - (i) in connection with the drafting of the contract;
 - (ii) in connection with the recording of the contract in terms of section 20;
 - (iii) in connection with the transfer of the land to the purchaser, provided such transfer has already taken place or is tendered against payment by the purchaser of all amounts owing by him in terms of the contract;
 - (iv) after the date stated in the contract in terms of section 6 (1) (m), in respect of—
 - (aa) maintenance and repair of;
 - (bb) rates and taxes on; and
 - (cc) premiums on an insurance policy relating to, the land and improvements thereon;
 - (v) in respect of moneys referred to in section 11 (4) (b) of the Sectional Titles Act;
 - (vi) in respect of any endowment payable on the difference between the purchase price and the amount on which the endowment is payable in terms of any law to any person in respect of the land;
- (c) all costs which are actually incurred by him in connection with the recovery of the amount referred to in this subsection and are in terms of the provisions of any law recoverable from the purchaser; and
- (d) interest payable by the purchaser on account of any failure on his part.

(3) When the purchaser has paid in full the purchase price and interest, no further interest, other than interest referred to in subsection (2) (d), shall be payable by the purchaser.

(4) The provisions of subsection (2) shall not affect any right which a seller may have in the event of cancellation of the contract.

(5) Any *rouwkoop* stipulation in a contract in terms of which the purchaser is deemed to have terminated the contract on account of any act or omission on his part and he, in consequence thereof, is liable to any forfeiture or for the payment of a penalty or damages or for the delivery or performance of anything, or any other stipulation of like import, is subject to the Conventional Penalties Act, 1962 (Act No. 15 of 1962), as if that stipulation were a penalty stipulation contemplated in that Act.

(General Note: Conflicting legislation: S. 172 (1) of the National Credit Act, No. 34 of 2005 determines that the provisions of the National Credit Act, No. 34 of 2005 prevail to the extent of the conflict.)

13. Copy of contract to purchaser and default of seller to furnish copy.—(1) Within 30 days after the conclusion of a contract, the seller shall hand to the purchaser or send to him by registered post to his address referred to in section 23, a copy thereof and the seller is not entitled to make any charge for the making of such copy or for complying with the provisions of this subsection.

(2) If the seller fails to comply with the provisions of subsection (1) and if he remains in default for more than 14 days to furnish the purchaser with a copy of the contract after the purchaser has requested him therefor in a letter sent to him by registered post to his address referred to in section 23, the purchaser is not liable for the payment of interest in terms of the contract from the date of the conclusion thereof to the date upon which the purchaser receives a copy of the contract from the seller.

(General Note: Conflicting legislation: S. 172 (1) of the National Credit Act, No. 34 of 2005 determines that the provisions of the National Credit Act, No. 34 of 2005 prevail to the extent of the conflict.)

14. Cession of right to, and authority to collect, periodical income.—(1) (a) A cession of a right to payment

of an amount payable periodically under a contract of service or towards the maintenance of any person, to secure any payment in terms of a contract, shall be null and void.

(b) An authority to receive or collect an amount referred to in paragraph (a) or any portion of such an amount, to secure payment in terms of a contract, shall at all times be revocable.

(2) The provisions of subsection (1) shall not apply to any cession or authority by an employee to or in favour of his employer to secure payments in respect of housing which is provided by the employer to the employee.

(General Note: Conflicting legislation: S. 172 (1) of the National Credit Act, No. 34 of 2005 determines that the provisions of the National Credit Act, No. 34 of 2005 prevail to the extent of the conflict.)

15. Invalidity of certain provisions.—(1) Subject to the provisions of subsection (2), an agreement whereby

- (a) any person who acted on behalf of the seller in connection with the conclusion of a contract or the negotiations which preceded the conclusion of the contract, is appointed or deemed to have been appointed as the agent of the purchaser;
- (b) a purchaser forfeits any claim in respect of—
 - (i) necessary expenditure he has incurred with or without the authority of the owner or seller of the land concerned, in regard to the preservation of the land or any improvement thereon;
 - (ii) any improvement which enhances the market value of the land and was effected by him on the land with the express or implied consent of the said owner or seller;
- (c) the liability of a seller to indemnify the purchaser against eviction is restricted or excluded;
- (d) the purchaser binds himself in advance to agree to an assignment by the seller of his obligations in terms of a contract;
- (e) a purchaser is obliged to accept a loan secured by a mortgage bond arranged on his behalf by the seller or his agent for payment of all the amounts owed by him in terms of the contract; or
- (f) a purchaser, if he elects to accelerate the discharge of his obligations in terms of the contract, may not claim that transfer of the land shall be effected against payment of all amounts owing in terms of the contract,

or any other agreement of like import, shall be of no force or effect.

(2) Subject to the provisions of subsection (3), the purchaser shall, if the seller at any time arranges on behalf of the purchaser a loan secured by a mortgage bond over the land—

- (a) within 14 days after he has been requested by written notice sent to his address contemplated in section 23, complete an application and provide all necessary information required by the intended mortgagee for purposes of the loan and furnish the seller with the completed application and the information; and
- (b) in the event of the loan being granted, forthwith sign all documents required for the purposes of the registration of the mortgage bond.

(3) A loan referred to in subsection (2)—

- (a) shall be arranged for payment of all amounts owed by the purchaser to the seller in terms of the contract as well as the costs of transfer and the costs of registration of the mortgage bond; and
- (b) shall, as to the rate of interest and redemption, not be more onerous than the terms which at the time of transfer apply in respect of a loan secured by a first mortgage bond over land granted by a building society for the amount in question and on security of the same kind or class of property.

(4) If the purchaser fails to comply with any of the provisions of subsection (2), the seller is entitled to cancel the contract, in which case the parties are entitled to the relief provided for in section 28 (1): Provided that nothing contained in this subsection shall detract from any additional claim for damages which the seller may have.

(General Note: Conflicting legislation: S. 172 (1) of the National Credit Act, No. 34 of 2005 determines that the provisions of the National Credit Act, No. 34 of 2005 prevail to the extent of the conflict.)

16. Statements of account.—(1) While a contract is in force, the seller shall free of charge hand to the purchaser a statement of account or send such statement by registered post to him at his address referred to in section 23, not later than 12 months from the date of the contract and thereafter within 30 days of the end of each successive period of 12 months following on the date of the first statement of account.

(2) In the first said statement there shall be indicated the purchase price and other costs separately which were owing in terms of the contract at the date of the contract or, in any other statement, the outstanding balance which was owing in terms of the contract at the date of the previous statement and, in all statements—

- (a) the interest and other costs which accrued in terms of the contract during the period covered by the statement;
- (b) the allocation, in respect of capital interest and other costs separately, of amounts paid during that

period in terms of the contract;

- (c) the balance of the purchase price and other costs owing in terms of the contract at the end of that period;
- (d) the amount, if any, payable in respect of any endowment, betterment or enhancement levy, a development contribution or any similar imposition in terms of any law in relation to the land at the end of that period;

[Para. (d) substituted by s. 7 of Act No. 51 of 1983.]

- (e) if the land is encumbered with a mortgage bond or mortgage bonds—
 - (i) but not together with other land, the amount owing under that mortgage bond or those mortgage bonds at the end of that period; or
 - (ii) together with other land, the proportionate amount, calculated in accordance with the provisions of section 9 (3) (b), owing under that mortgage bond or those mortgage bonds in respect of the land at the end of that period;
- (f) the amount, if any, owing at the end of that period in terms of any alienation of the land in question before the time the contract was concluded.

(3) If in respect of any statement of account the seller fails to comply with the provisions of subsection (1) or (2) and if he remains in default for more than 30 days to furnish the purchaser with that statement of account after the purchaser has by letter, sent to him by registered post at his address referred to in section 23, requested him therefor, the purchaser is not liable for the payment of interest in terms of the contract from the date of the posting of that letter to the date upon which the purchaser receives the statement from the seller.

(General Note: Conflicting legislation: S. 172 (1) of the National Credit Act, No. 34 of 2005 determines that the provisions of the National Credit Act, No. 34 of 2005 prevail to the extent of the conflict.)

17. Right of purchaser to accelerate payments and claim transfer of land.—The purchaser is at all times entitled—

- (a) to make a payment before the due date on which it has to be made in terms of the contract; or
- (b) to make larger payments than the payments for which the control provides; or
- (c) if the land is registrable at that time, to tender payment of all amounts owing in terms of the contract to the seller and claim that transfer of the land shall be effected to the purchaser against such payment.

(General Note: Conflicting legislation: S. 172 (1) of the National Credit Act, No. 34 of 2005 determines that the provisions of the National Credit Act, No. 34 of 2005 prevail to the extent of the conflict.)

18. Transfer of land to remote purchaser—(1) Subject to the provisions of subsection (2), any remote purchaser is entitled to claim transfer of land to himself, provided—

- (a) he has fulfilled or tenders fulfilment of his obligations in terms of the contract under which he purchased the land;
- (b) the obligations of every intermediary between the owner and the remote purchaser have been fulfilled or fulfilment thereof is tendered; and
- (c) the land is at that time registrable.

(2) If any intermediary contemplated in subsection (1) (b) is an insolvent at the time land is to be transferred under and by virtue of that subsection, the land shall, notwithstanding anything to the contrary contained in any rule of law but subject to the provisions of the Deeds Registries Act, be transferred by the trustee or liquidator or executor concerned to the person to whom that intermediary alienated the land.

(3) A remote purchaser who, in order to obtain transfer of land, pays the transfer duty and transfer costs which are payable by an intermediary, may recover the amounts so paid from that intermediary.

(4) If any seller assigns to any other person, hereinafter referred to as the assignee, his obligation to give transfer of the land in terms of a contract, such assignment is deemed to be a power of attorney to the assignee to transfer the land in accordance with the conditions of the contract to the purchaser, and the assignee may appoint a conveyancer to execute the deed of transfer.

(General Note: Conflicting legislation: S. 172 (1) of the National Credit Act, No. 34 of 2005 determines that the provisions of the National Credit Act, No. 34 of 2005 prevail to the extent of the conflict.)

19. Limitation of right of seller to take action.—(1) No seller is, by reason of any breach of contract on the part of the purchaser, entitled—

- (a) to enforce any provision of the contract for the acceleration of the payment of any instalment of the purchase price or any other penalty stipulation in the contract;
- (b) to terminate the contract; or

- (c) to institute an action for damages,

unless he has by letter notified the purchaser of the breach of contract concerned and made demand to the purchaser to rectify the breach of contract in question, and the purchaser has failed to comply with such demand.

[Sub-s. (1) amended by s. 8 (a) of Act No. 51 of 1983.]

(2) A notice referred to in subsection (1) shall be handed to the purchaser or shall be sent to him by registered post to his address referred to in section 23 and shall contain—

- (a) a description of the purchaser's alleged breach of contract;

[Para. (a) substituted by s. 8 (b) of Act No. 51 of 1983.]

- (b) a demand that the purchaser rectify the alleged breach within a stated period, which, subject to the provisions of subsection (3), shall not be less than 30 days calculated from the date on which the notice was handed to the purchaser or sent to him by registered post, as the case may be; and

[Para. (b) substituted by s. 8 (b) of Act No. 51 of 1983.]

- (c) an indication of the steps the seller intends to take if the alleged breach of contract is not rectified.

[Para. (c) substituted by s. 8 (b) of Act No. 51 of 1983.]

(3) If the seller in the same calendar year has so handed or sent to the purchaser two such notices at intervals of more than 30 days, he may in any subsequent notice so handed or sent to the purchaser in such calendar year, make demand to the purchaser to carry out his obligation within a period of not less than seven days calculated from the date on which the notice was so handed or sent to the purchaser, as the case may be.

(4) Subsection (1) shall not be construed in such a manner as to prevent the seller from taking steps to protect the land and improvements thereon or, without or after notice as required by the said subsection, from claiming specific performance.

(General Note: Conflicting legislation: S. 172 (1) of the National Credit Act, No. 34 of 2005 determines that the provisions of the National Credit Act, No. 34 of 2005 prevail to the extent of the conflict.)

20. Recording of contract.—(1) (a) A seller, whether he is the owner of the land concerned or not, shall cause the contract to be recorded by the registrar concerned in the prescribed manner provided a prior contract in force in respect of the land has not been recorded or is not required to be recorded in terms of this section.

- (b) If a period of 90 days from the date—

(i) of the contract, if the land is registrable; or

(ii) upon which the land becomes registrable; or

(iii) upon which the land is registered in the name of a purchaser in terms of a preceding contract which was or was required to be recorded in terms of this section,

has expired without the seller having caused the contract to be recorded in terms of paragraph (a), the purchaser may—

- (aa) within 14 days after such expiry cancel the contract, in which case the parties shall be entitled to the relief provided for in section 28 (1): Provided that nothing in this subparagraph contained shall detract from any additional claim for any damages which the purchaser may have; or

(bb) at any time thereafter, if he does not cancel the contract under subparagraph (aa), apply to the registrar concerned to record the contract in the prescribed manner: Provided that should a purchaser exercise his right to cause a contract to be recorded in terms of the foregoing provisions of this subparagraph, he shall not be liable for any wasted costs arising from the seller also having taken steps or taking steps to have such contract recorded.

(c) If a contract recorded in terms of this section is terminated for whatever reason, such recording shall be cancelled in the prescribed manner.

[Sub-s. (1) substituted by s. 9 of Act No. 51 of 1983.]

(2) The registrar concerned—

- (a) may register a mortgage bond over land in respect of which a contract has been recorded;

(b) shall not register a transfer of land in respect of which a contract has been recorded, unless—

(i) the transferee is the purchaser under the contract; or

(ii) the transferee is an intermediary in relation to the purchaser; or

(iii) such recording has been cancelled.

[Sub-s. (2) substituted by s. 9 of Act No. 51 of 1983.]

(2A) The provisions of section 43 (5) (a) of the Deeds Registries Act shall not be applicable in respect of the recording of a contract in terms of this section.

(3) The owner of land and any person in possession of the owner's copy of the title deed concerned shall render all necessary assistance to enable a seller or purchaser of that land to cause a contract to be recorded in terms of subsection (1), or to effect a cancellation of such recording in terms of subsection (1) (c), and if he fails to do so he shall be liable to such seller or purchaser as if he were obliged by contract to do so and failed to do so.

[Sub-s. (3) substituted by s. 9 of Act No. 51 of 1983.]

(4) A recording of a contract in terms of this section is subject to any pre-emptive right registered in a deeds registry in respect of the land concerned on or before the date of the recording.

(5) When a contract has been recorded—

- (a) the purchaser has, if the land concerned is sold in execution or because the owner of that land is an insolvent, a preferent claim in respect of the proceeds of the sale, which claim, notwithstanding anything to the contrary contained in any other law—
 - (i) ranks in preference immediately after any claim of a mortgagee whose mortgage bond over the land was registered prior to or on the date of the recording of the contract; and
 - (ii) equals the amount the purchaser may recover from the seller under section 28 (1) in the event of a termination of that contract or, if he is a remote purchaser, any amount he may have paid on behalf of the owner under section 11 (1); and
- (b) the said claim of a mortgagee shall, in competition with any claim of a purchaser, not exceed the amounts referred to in section 9 (3).

(6) In this section "registrar" means a registrar of deeds within the meaning of the Deeds Registries Act, and includes the registrar of Rand townships referred to in section 2 of that Act.

(General Note: Conflicting legislation: S. 172 (1) of the National Credit Act, No. 34 of 2005 determines that the provisions of the National Credit Act, No. 34 of 2005 prevail to the extent of the conflict.)

21. Purchaser to be notified to take transfer of land when such land is attached or the owner becomes an insolvent.—(1) Any remote purchaser shall forthwith notify the owner of the land of—

- (a) the conclusion of the contract in question;
- (b) his address referred to in section 23 and any change of that address; and
- (c) the name and address of any intermediary who alienated the land prior to the date the said contract was concluded.

(2) When the owner of land sold under a contract becomes an insolvent, or a judgment creditor of that owner attaches such land by virtue of a writ in execution—

- (a)
 - (i) the owner shall, within 14 days of the appointment of a trustee or liquidator or the attachment, inform the trustee or liquidator or judgment creditor, as the case may be, of the name and address of any person of whose name and address he was notified in terms of the provisions of subsection (1); and
 - (ii) a mortgagee shall, within ten days after he receives notice of the insolvency or attachment, inform the trustee, executor, liquidator or judgment creditor, as the case may be, of the name and address of any purchaser who gave notice to him that he had purchased the land in terms of a contract;
- (b) the trustee, executor, liquidator or judgment creditor of that owner shall, if that land is registrable, as soon as may be practicable notify every person who he has reason to believe purchased the land in terms of a contract or is an intermediary in relation to the contract, of his right, subject to the provisions of section 22 (3), to take transfer of the land concerned.

(3) The notification contemplated in subsection (2) (b) shall be effected by notice in writing handed to the person concerned or sent to him by registered post.

(4) Any trustee, executor, liquidator or judgment creditor contemplated in subsection (2) (b)—

- (a) who fails without fault on his part to hand or send a notice referred to in subsection (3) to a purchaser or an intermediary in accordance with that subsection, shall not merely by reason of such failure incur any liability towards the purchaser or intermediary concerned; and
- (b) shall, unless the contrary is proved, be deemed so to have failed through his fault if—
 - (i) due notice in accordance with the provisions of subsection (2) (a) was given to him in respect of the purchaser concerned; or
 - (ii) he did not take all reasonable steps appropriate to the circumstances of the case to obtain the name and address of the purchaser or intermediary concerned, unless he is a mortgagee to whom notice was required to be given in terms of section 9 (1), and no such notice was given to him by the purchaser concerned.

(5) Any owner or mortgagee who wilfully or negligently fails to comply with the provisions of subsection

(2) (a), shall be guilty of an offence and upon conviction liable to a fine not exceeding R1 000 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(General Note: Conflicting legislation: S. 172 (1) of the National Credit Act, No. 34 of 2005 determines that the provisions of the National Credit Act, No. 34 of 2005 prevail to the extent of the conflict.)

22. Transfer of land to purchaser when such land is attached or the owner becomes an insolvent.—

(1) When the owner of land alienated under a contract becomes an insolvent, or a judgment creditor of the owner attaches such land by virtue of a writ of execution, that land shall, subject to the provisions of the Deeds Registries Act, be transferred to any person who purchased that land in terms of a contract or who is an intermediary in relation to that contract and who, in accordance with the provisions of subsection (2), makes arrangements for the payment of all costs in connection with the transfer and of an amount equal to—

- (a) all amounts owing under the deed of alienation in terms of which that owner alienated the land; or
- (b) the sum of—
 - (i) the costs of attachment or, in the case of an insolvent, such sequestration and administration costs contemplated in section 89 (1) of the Insolvency Act, 1936 (Act No. 24 of 1936), as relate to the land;
 - (ii) any amount payable in respect of any endowment, betterment or enhancement levy, a development contribution or any similar imposition in terms of any law in relation to the land; and
[Sub-para. (ii) substituted by s. 10 (b) of Act No. 51 of 1983.]
 - (iii) if the land is encumbered by a mortgage bond and, in the case of an insolvent, subject to the provisions of the Insolvency Act, 1936, the amounts required by the mortgagee in accordance with the provisions of section 9 (3) of this Act, including interest to date of transfer,

whichever of the two amounts contemplated in paragraph (a) or (b) may be the larger, and also makes arrangements for the signing of all documents required in connection with transfer.

[Sub-s. (1) amended by s. 10 (a) of Act No. 51 of 1983.]

(2) (a) The arrangements contemplated in subsection (1), shall be made by the person concerned—

- (i) if the land was attached, before the land is sold in execution, to the satisfaction of the deputy sheriff or messenger of the court concerned, as the case may be; and
- (ii) if the owner of the land is an insolvent and, subject to the provisions of paragraph (b), within such period as his trustee, executor or liquidator, as the case may be, may allow, which period shall not be less than 30 days, to the satisfaction of such trustee, executor or liquidator, as the case may be.

(b) If a trustee, executor or liquidator refuses or fails to accept any offer by the person concerned in respect of arrangements contemplated in subsection (1), that person may appeal to the Master of the Supreme Court under whose supervision the owner is being liquidated or his or her estate is being sequestrated.

[Para. (b) substituted by s. 90 of Act No. 88 of 1996.]

(3) If more than one person is prepared and able to take transfer in accordance with the provisions of subsection (1), the land shall be transferred to the person to whom the land was first alienated.

(4) A transfer in terms of subsection (1) shall be effected by the deputy sheriff, messenger of the court, trustee, executor or liquidator, as the case may be, as if it were a transfer *mutatis mutandis* by virtue of a sale in execution or the realization of an immovable asset of an insolvent.

(5) When land is transferred in accordance with the provisions of subsection (1) to a remote purchaser or an intermediary to whom the land was alienated by a person other than the owner, the provisions of section 18 (1) shall apply *mutatis mutandis* in respect of the transfer of the land to the remote purchaser or the intermediary.

(6) If any person has, by virtue of arrangements made by him in terms of subsection (1), paid a larger amount than the amounts referred to in subsection (1) (a), he has, subject to any claim he may have in terms of section 11 (2) or 18 (3), a concurrent claim against the owner for the difference.

(7) If no satisfactory arrangements are made in terms of subsection (1), the land and its proceeds shall be dealt with in accordance with the rules of law relating to sales in execution or insolvency, as the case may be.

(General Note: Conflicting legislation: S. 172 (1) of the National Credit Act, No. 34 of 2005 determines that the provisions of the National Credit Act, No. 34 of 2005 prevail to the extent of the conflict.)

23. Addresses of purchaser and seller.—The addresses stated in any contract in terms of section 6 (1) (a) shall serve as *domicilium citandi et executandi* of the parties for all purposes of the contract, and notice of a change of such an address shall be given in writing and shall be delivered or sent by registered post by one party to the other, in which case such changed address shall serve as such *domicilium citandi et executandi* of the party who has given such notice.

(General Note: Conflicting legislation: S. 172 (1) of the National Credit Act, No. 34 of 2005 determines that the provisions of the National Credit Act, No. 34 of 2005 prevail to the extent of the conflict.)

24. Relief that court may grant in respect of contracts.—(1) Notwithstanding the provisions of any law to the contrary but subject to any other powers that any court may have, if a contract does not substantially comply with any one of the provisions of section 5 or 6, a court within whose area of jurisdiction the land referred to in the contract is situated, is, if appropriate proceedings are instituted by the purchaser within a period of two years from the date upon which the contract was concluded, competent—

- (a) to reduce the rate of interest payable by the purchaser in terms of the contract to such rate as it may deem just and equitable in the circumstances;
- (b) to grant an order for rectification of the contract;
- (c) to declare the contract to be void *ab initio*; or
- (d) to grant such alternative relief as it may deem fit.

(2) A court within whose area of jurisdiction land sold under a contract is situated, may, on the application of the purchaser who, by reason of the fact that any person failed to sign a document relating to the transfer of or the payment of transfer duty in respect of such land, is unable to obtain transfer of such land, order the deputy sheriff or messenger of the court concerned, as the case may be, to sign on behalf of any such person any such document, subject to such conditions as the court may determine.

(3) A magistrate's court shall, notwithstanding the value of the land or claim concerned, have jurisdiction to grant any relief contemplated in subsection (1) or (2).

[Sub-s. (3) substituted by s. 11 of Act No. 51 of 1983.]

(General Note: Conflicting legislation: S. 172 (1) of the National Credit Act, No. 34 of 2005 determines that the provisions of the National Credit Act, No. 34 of 2005 prevail to the extent of the conflict.)

25. Evidence.—If in any proceedings it is alleged that land sold under a contract is used or is intended to be used mainly for residential purposes, it shall be presumed that the said land is so used or is intended to be so used until the contrary has been proved.

(General Note: Conflicting legislation: S. 172 (1) of the National Credit Act, No. 34 of 2005 determines that the provisions of the National Credit Act, No. 34 of 2005 prevail to the extent of the conflict.)

CHAPTER III GENERAL PROVISIONS

26. Restriction on the receipt of consideration by virtue of certain deeds of alienation.—(1) No person shall by virtue of a deed of alienation relating to an erf or a unit receive any consideration until—

- (a) such erf or unit is registrable; and
- (b) in case the deed of alienation is a contract required to be recorded in terms of section 20, such recording has been effected.

[Sub-s. (1) amended by s. 12 (a) of Act No. 51 of 1983.]

(2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding R1 000 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(3) The provisions of subsection (1) shall not apply to any amount paid by way of consideration which—

- (a) the alienee, by virtue of a deed of alienation, entrusts to a practitioner or an estate agent in his capacity as such, to keep, for the benefit of the alienator in terms of that deed of alienation, in the trust account of the practitioner or estate agent; or

[Para. (a) substituted by s. 12 (b) of Act No. 51 of 1983.]

- (b) by virtue of a deed of alienation is paid to the alienator if, before such payment, the alienee is furnished with an irrevocable and unconditional guarantee by a banking institution registered otherwise than provisionally under the Banks Act, 1965 (Act No. 23 of 1965), a building society registered otherwise than provisionally under the Building Societies Act, 1965 (Act No. 24 of 1965), or a registered insurer as defined in section 1 of the Insurance Act, 1943 (Act No. 27 of 1943), in terms of which the said banking institution, building society or insurer undertakes to repay the said amount to the alienee if the erf or unit is not registrable and, where applicable, a recording is not effected within a period specified in the said guarantee.

[Para. (b) substituted by s. 12 (b) of Act No. 51 of 1983.]

(4) If, in the circumstances contemplated in subsection (3), the alienator becomes an insolvent before the erf or unit has become registrable or the relevant contract has been recorded in terms of section 20, any amount kept in a trust account in terms of paragraph (a) of that subsection or the repayment of which was guaranteed in terms of paragraph (b) of that subsection, shall immediately become payable to the alienee concerned by the practitioner, estate agent, banking institution, building society or insurer concerned.

[Sub-s. (4) substituted by s. 12 (c) of Act No. 51 of 1983.]

[Date of commencement 6 December, 1983.]

27. Rights of purchaser who has partially paid the purchase price of land.—(1) Any purchaser who in terms of a deed of alienation has undertaken to pay the purchase price of land in specified instalments over a period in the future and who has paid to the seller in such instalments not less than 50 per cent of the purchase price, shall, if the land is registrable, be entitled to demand from the seller transfer of the land on condition that simultaneously with the registration of the transfer there shall be registered in favour of the seller a first mortgage bond over the land to secure the balance of the purchase price and interest in terms of the deed of alienation.

(2) The conditions as to the rate of interest and redemption as well as other conditions of the mortgage bond contemplated in subsection (1), shall not be more onerous than the conditions which applied in respect of the deed of alienation.

(3) If for whatever reason the seller is unable, fails or refuses to tender transfer within three months of the receipt of the demand referred to in subsection (1), the purchaser may cancel the relevant deed of alienation, in which case the parties are entitled to the relief provided for in section 28 (1): Provided that nothing contained in this subsection shall detract from any additional claim for damages which the purchaser may have.

(4) The provisions of this section shall not apply in respect of a deed of alienation in terms of which the State or a local authority is the seller.

28. Consequences of deeds of alienation which are void or are terminated.—(1) Subject to the provisions of subsection (2), any person who has performed partially or in full in terms of an alienation of land which is of no force or effect in terms of section 2 (1), or a contract which has been declared void in terms of the provisions of section 24 (1) (c), or has been cancelled under this Act, is entitled to recover from the other party that which he has performed under the alienation or contract, and—

(a) the alienee may in addition recover from the alienator—

(i) interest at the prescribed rate on any payment that he made in terms of the deed of alienation or contract from the date of the payment to the date of recovery;

(ii) a reasonable compensation for—

(aa) necessary expenditure he has incurred, with or without the authority of the owner or alienator of the land, in regard to the preservation of the land or any improvement thereon; or

(bb) any improvement which enhances the market value of the land and was effected by him on the land with the express or implied consent of the said owner or alienator; and

(b) the alienator may in addition recover from the alienee—

(i) a reasonable compensation for the occupation, use or enjoyment the alienee may have had of the land;

(ii) compensation for any damage caused intentionally or negligently to the land by the alienee or any person for the actions of whom the alienee may be liable.

(2) Any alienation which does not comply with the provisions of section 2 (1) shall in all respects be valid *ab initio* if the alienee had performed in full in terms of the deed of alienation or contract and the land in question has been transferred to the alienee.

29. Waiver of rights or powers by purchaser.—The waiver by any person who has purchased land in terms of a deed of alienation, of any right conferred upon him by this Act, shall be null and void.

29A. Purchaser's right to revoke offer or terminate deed of alienation.—(1) Subject to subsection (5), a purchaser or prospective purchaser of land may within five days after signature by him or her, or by his or her agent acting on his or her written authority, of—

(a) an offer to purchase land; or

(b) a deed of alienation in respect of land,

revoke the offer or terminate the deed of alienation, as the case may be, by written notice delivered to the seller or his or her agent within that period.

(2) The period of five days contemplated in subsection (1) shall be calculated with the exclusion of the day upon which the offer was made or the deed of alienation was entered into, as the case may be, and of any Saturday, Sunday or public holiday.

(3) The written notice contemplated in subsection (1) shall be effective only if it—

(a) is signed by the purchaser or his or her agent acting on his or her written authority;

(b) identifies the offer or deed of alienation that is being revoked or terminated, as the case may be; and

(c) is unconditional.

(4) Where an offer is revoked or deed of alienation is terminated as contemplated in subsection (1), every person who received any amount from the purchaser or prospective purchaser in respect of the offer or deed of

alienation, as the case may be, shall refund the full amount of such payment to the purchaser within 10 days of the date on which the notice referred to in subsection (1) was delivered to the seller or his or her agent.

(5) Subsection (1) shall not apply if—

- (a) the purchase price of the land, or the price offered for the land by the prospective purchaser contemplated in that subsection, exceeds R250 000 or such higher amount as the Minister may prescribe in order to counter the effect of inflation;
- (b) the purchaser or prospective purchaser contemplated in that subsection is a trust or a person other than a natural person;
- (c) the purchaser or agent contemplated in that subsection has purchased the land at a publicly advertised auction;
- (d) the seller and purchaser contemplated in that subsection have previously entered into a deed of alienation of the same land on substantially the same terms;
- (e) the purchaser or prospective purchaser contemplated in that subsection has reserved the right in terms of the deed of alienation or offer, as the case may be, to nominate or appoint another person to take over the rights and obligations of the purchaser as stipulated in the offer or deed of alienation in question;
- (f) the purchaser contemplated in that subsection purchases the land by the exercise of an option which was open for exercise for a period of at least five days calculated *mutatis mutandis* in the manner prescribed in subsection (2).

(6) No person shall be entitled to any remuneration payable in respect of an offer or deed of alienation which the purchaser or prospective purchaser has revoked or terminated, as the case may be, pursuant to the provisions of subsection (1) and no such person or agent shall be entitled to claim damages from any person following such revocation of the offer or termination of the deed of alienation by the purchaser or prospective purchaser.

(7) (a) Any provision in any document or in any agreement or undertaking entered into by the purchaser or prospective purchaser, in writing or verbally, whereby a penalty or fee is directly or indirectly imposed or levied on the purchaser or prospective purchaser should he or she exercise the rights contained in this section, shall be void.

(b) Any waiver by a purchaser or prospective purchaser of the rights conferred upon him or her in terms of this section shall be void.

(8) A purchaser or prospective purchaser who signs an offer to purchase land or a deed of alienation in respect of land (hereinafter referred to as the later transaction) within five days (calculated in accordance with subsection (2)) after having signed an offer or a deed of alienation in respect of other land (hereinafter referred to as the earlier transaction) and before he or she has exercised his or her right as contemplated in subsection (1) in respect of the earlier transaction, shall—

- (a) on signature of the later transaction be deemed to have exercised his or her right in terms of subsection (1) to revoke or terminate the earlier transaction; and
- (b) forthwith after signature of the later transaction in writing notify the seller of the earlier transaction of the revocation or termination, as the case may be, of that transaction.

(9) (a) Any person who wilfully or negligently fails to comply with the provisions of subsection (8) (b), shall be guilty of an offence and upon conviction liable to a fine, or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(b) The provisions of paragraph (a) shall not in any way detract from any civil remedy which a seller may have against a purchaser who failed to comply with the provisions of subsection (8) (b).

(10) Subsections (8) and (9) shall not apply to a purchaser or prospective purchaser who *bona fide* intends to purchase both the land to which the earlier transaction and the land to which the later transaction referred to in subsection (8) relate.

[S. 29A inserted by s. 3 of Act No. 103 of 1998.]

30. Restriction of liability.—The State, a conveyancer and any servant of the State shall not be liable in respect of anything done in good faith in the exercise or performance of a power or duty conferred or imposed by or under this Act.

[S. 30 substituted by s. 13 of Act No. 51 of 1983.]

31. Regulations.—(1) The Minister may make regulations—

- (a) after consultation with the Minister of Community Development, prescribing the particulars which are required to be furnished to a registrar referred to in section 20 in connection with the recording of a contract and the cancellation of such recording, and the manner and form in which such particulars shall be furnished;
- (b) after consultation with the Minister of Finance, prescribing the matters in respect of which fees, excluding the fees and charges of conveyancers and notaries public, shall be payable and the tariff of such fees; and

[Para. (b) substituted by s. 8 of Act No. 170 of 1993.]

(c) as to any matter required or permitted by this Act to be prescribed by regulation.

(2) (a) The Minister may by regulation or by written notice exempt any person or category of persons, on the conditions deemed fit by him and set out in any such regulation or notice, from any provision of this Act.

(b) A notice contemplated in paragraph (a) directed to any person, shall be delivered to such person in the manner directed by the Minister, and any such notice directed to a category of persons shall be published in the *Government Gazette*.

(c) The Minister may at any time amend or withdraw any notice contemplated in paragraph (a), and a notice relating to such amendment or withdrawal shall be delivered or published as contemplated in paragraph (b).

[Sub-s. (2) added by s. 14 of Act No. 51 of 1983.]

32. Application of Act to existing deeds of alienation.—(1) In respect of a contract concluded before the commencement of this section and which is still in force at that commencement—

(a) the provisions of section 9 shall *mutatis mutandis* apply: Provided that—

(i) in such application of subsection (1) of that section, that subsection shall be construed as if the notice contemplated in that subsection shall be given forthwith after the said commencement; and

(ii) the reference in subsection (3) of that section to the amount contemplated in section 7 (1), shall be construed to be a reference to the amount indicated in the first certificate given by a mortgagee to the purchaser in terms of section 9 (3);

(b) the provisions of sections 10 (1), (2) and (3) (b) (ii) and (iii), 11 and 12 shall *mutatis mutandis* apply: Provided that the date referred to in section 12 (2) (b) (iv) shall be construed as a reference to the date referred to in section 4 (1) (m) of the repealed Act;

(c) the provisions of sections 14, 15, 16, 17, 18 and 19 shall *mutatis mutandis* apply;

(d) the provisions of section 20 shall *mutatis mutandis* apply as from a date fixed by the Minister by notice in the *Gazette*: Provided that the periods referred to in subsection (1) of that section shall be construed as a reference to a period of six months commencing from that date;

(e) the provisions of section 21 shall *mutatis mutandis* apply: Provided that in such application of subsection (1) of that section, that subsection shall be construed as if the notice contemplated in that subsection shall be given forthwith after the said commencement;

(f) the provisions of sections 22, 23, 24, 25, 27 and 29 shall *mutatis mutandis* apply.

(2) Section 28 shall *mutatis mutandis* apply in respect of an alienation or alleged alienation of land entered into before the commencement of this section: Provided that the reference in subsection (1) of that section to section 2 (1) shall be construed as a reference to section 1 (1) of the Formalities in respect of Contracts of Sale of Land Act, 1969 (Act No. 71 of 1969).

33. Application of Act 73 of 1968.—No provision of the Limitation and Disclosure of Finance Charges Act, 1968 (Act No. 73 of 1968), shall apply to any contract which is subject to the provisions of Chapter II of this Act.

[S. 33 substituted by s. 15 of Act No. 51 of 1983.]

34. Repeal of laws.—(1) Subject to the provisions of subsection (2), the laws specified in the Schedule are hereby repealed to the extent set out in the third column of the Schedule.

(2) The provisions of section 10 (2) of the repealed Act shall apply in respect of any contract as defined in that Act concluded before the commencement of this section and still in force at that commencement.

(3) As from a date fixed by the Minister by notice in the *Gazette*, no purchaser shall be entitled to prove a claim in terms of section 14 (1) of the repealed Act in respect of a contract concluded before and in force at the commencement of this section.

35. Short title and commencement.—(1) This Act shall be called the Alienation of Land Act, 1981, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

(2) Different dates may in terms of subsection (1) be fixed in respect of different provisions of this Act.

Schedule
LAWS REPEALED

<i>Number and year of law</i>	<i>Title</i>	<i>Extent of repeal</i>
Act No. 29 of 1926	Insolvency Act, 1916, Amendment Act, 1926	So much as is unrepealed
Act No. 71 of 1969	Formalities in respect of Contracts of Sale of Land Act, 1969	The whole

Act No. 72 of 1971	Sale of Land on Instalments Act, 1971	The whole
Act No. 72 of 1972	Sale of Land on Instalments Amendment Act, 1972	The whole
Act No. 49 of 1975	Sale of Land on Instalments Amendment Act, 1975	The whole
Act No. 25 of 1976	Sale of Land on Instalments Amendment Act, 1976	The whole
Act No. 74 of 1978	Sale of Land on Instalments Amendment Act, 1978	The whole