

DEEDS REGISTRY ACT

ACT 12 OF 1967

[Date of Assent: 3rd May, 1967]

[Date of commencement: 15th May, 1967]

GN 51/1967

ACT

To consolidate and amend the laws in force in Lesotho relating to the registration of deeds.

Enacted by the Parliament of Lesotho

Short title
and
commence-
ment

1. The Act may be cited as the Deeds Registry Act 1967 and has effect from a date to be fixed by the Minister by notice in the **Gazette**.

Interpretation

2. (1) In this Act and in the regulations unless the context otherwise requires —

“conveyancer” means a person admitted and lawfully practising as such in respect of Lesotho;

“court” means the High Court of Lesotho;

“deeds registry” means the deeds registry established under section **three**;

“diagram” means a sketch plan clearly defining the area and situation of land to which the registration of immovable property refers and which sketch plan is approved of by the registrar of deeds;

“immovable property” includes —

(a) any building including fixtures or improvements in or over land and the right of occupation and use thereof;

(b) a registered lease or sub-lease of any such building, fixtures and improvements as aforesaid, which when entered into was for a period of not less than three years or for the natural life of the lessee or any other person mentioned in the lease or sub-lease, or which is renewable from time to time at the will of the lessee indefinitely or for periods which together with the first period amount in all to not less than three years; or

(c) any right to minerals (including any right to mine for minerals) and a lease or sub-lease of such right;

“land” means the land only and does not include any buildings or other improvements erected thereon;

“legal practitioner” means a person duly admitted and practising as such in Lesotho;

"Master" means the Master or Assistant Master of the High Court;

"mining grant" means a grant in writing of rights or interests in or over land for mining and winning minerals made by the proper authority in pursuance of a provision of the Constitution or of any other law in that behalf;

"Minister" means the Minister of the Government of Lesotho for the time being responsible for the administration of this Act, and includes an assistant Minister to the extent that he has been authorised by the Minister to exercise any power or perform any duty under this Act;

"mortgage bond" means a bond attested by the registrar specifically hypothecating immovable property;

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

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

"notary public" means a person admitted and lawfully practising as such in respect of Lesotho, and includes in relation to any document executed outside Lesotho, a person practising as such in the place where the document is executed;

"owner", in relation to immovable property, means the person registered as the owner or holder thereof and includes the trustee in an insolvent estate, the liquidator of a company which is an owner and the representative recognised by law of any owner who has died or who is a minor or of unsound mind or is otherwise under disability:

Provided that such trustee, liquidator or legal representative is acting within the authority conferred upon him by law;

"plot" means every piece of land registered as a plot in the deeds registry and includes every defined portion not intended to be a public place, of a piece of land laid out as a township, whether or not it has been formally recognised, approved or proclaimed as such;

"prescribed" means prescribed by this Act or any regulation;

"proper authority" means the King, a Principal Chief or any other person having authority in relation to land in accordance with the Constitution of Lesotho and any other law in that behalf;

"prospecting grant" means a grant in writing of rights or interests in or over land to prospect for minerals made by the proper authority in pursuance of a provision of the Constitution or of any other law in that behalf;

"real right" includes any right which becomes a real right upon registration;

"registered" means registered in the deeds registry;
 "registrar" means the registrar of deeds appointed under this Act;

"registry duplicate" means the counterpart or copy of a deed consisting of more than one copy which is filed or intended to be filed of record in the deeds registry;

"regulation" means a regulation made under section **nine**;

"rural area" and "urban area" have the meanings respectively assigned to those expressions by section **ninety-one** of the Constitution of Lesotho;*

"share" in relation to immovable property means undivided share.

(2) For the avoidance of doubt it is hereby declared that nothing in this Act shall be construed as conferring upon any person the ownership in or over land.

(3) This Act shall not be applicable to rural areas with the exception of such areas within a rural area which are used for —

- (a) trade, commerce and industry, including prospecting for minerals and mining minerals; and
- (b) the purposes of an ecclesiastical, charitable or educational institution of a public character in respect of property for ecclesiastical, charitable or educational purposes exclusively; and
- (c) the purposes of an institution or body in respect of property for the purpose of a public hospital.

PART I—ADMINISTRATION

Deeds
registry

3. (1) There shall be a deeds registry at Maseru to serve the area of Lesotho which registry shall be a continuation of the deeds registry existing at the commencement of this Act.

(2) In the deeds registry existing at the commencement of this Act there shall be carried out to completion as if this Act had not been passed all matters which immediately prior to such commencement were pending in that registry.

Appointment
of registrar
or
assistant
registrars
of deeds

4. (1) Subject to the laws governing the Public Service there shall be appointed —

- (a) a registrar of deeds who shall be in charge of the deeds registry;
- (b) assistant registrars of deeds who shall, under the direction of the registrar, have such powers and perform such duties of the registrar as may be specified in his appointment.

(2) (spent).

* This cross—reference has not been dealt with in the course of law revision under Order 11 of 1971, sec. 3 (1), since the provision referred to had not been replaced at the time of revision.

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

5. The registrar shall subject to the provisions of this Act —

Duties of
registrar

- (a) take charge of and preserve all records which were prior to the commencement of this Act, or may become after commencement, records of the deeds registry;
- (b) examine all deeds or other documents submitted to him for execution or registration, and after examination reject any such deed or other document the execution or registration of which is not permitted by this Act or by any other law, or to the execution or registration of which any other valid objection exists;
- (c) register grants or leases of the right to occupy land lawfully issued by the proper authority;
- (d) register grants or leases of immovable property lawfully issued by the proper authority and register amendments, renewals and cancellations of such leases, and releases of any part of the property leased;
- (e) attest or execute and register deeds of transfer of immovable property, and execute and register certificates of title to immovable property;
- (f) attest and register mortgage bonds over immovable property;
- (g) register cessions (including cessions made as security) of registered mortgage bonds and register cancellations of such cessions if made as security;
- (h) register cancellations of registered mortgage bonds, releases of any part of the property hypothecated thereby or of all such property if the debt is further secured by a collateral bond, releases of any joint debtor or of any surety in respect of any such bond, the substitution of another person for a debtor in respect of any such bond, reductions of cover in respect of any such bond intended to secure future debts, and part payment of the capital amount due in respect of any such bond other than a bond intended to secure future debts;
- (i) register notarial bonds and cancellations and cessions thereof (including cessions made as security) and cancellations of such cession if made as security;
- (j) register waivers of preference in respect of registered mortgage bonds and notarial bonds with regard to the whole or any part of the property hypothecated thereby in favour of other such bonds whether registered or about to be registered;
- (k) register releases of any part of the property hypothecated by any registered notarial bond or of all such property if the debt is further secured by a collateral bond, releases of any joint debtor or of any surety in respect of any such bond, reductions of cover in respect of any such bond intended to secure future debts, and

part payments in respect of the capital amount due in respect of any such bond other than a bond intended to secure future debts;

- (l) register antenuptial contracts and register such notarial deeds of donation (including a donation to be held in trust), and such other notarial deeds having reference to persons and property as are required or permitted by law to be registered;
- (m) register grants or leases lawfully issued by the proper authority of rights to minerals;
- (n) register prospecting grants and cessions thereof if such grants are lawfully granted by the proper authority;
- (o) register mining grants, cessions, leases or sub-leases of rights to minerals, and variations of such cessions, leases or sub-leases, cessions of such registered leases or sub-leases, cancellations of such leases or sub-leases, and certificates of registration of such rights, as may lawfully be granted by the proper authority;
- (p) register any servitude, whether personal or praedial, and record the modification or extinction of any registered servitude;
- (q) register leases, sub-leases and cessions of leases or of sub-leases, of immovable property, and amendments of such leases and sub-leases, and renewals and cancellations of such leases and sub-leases and releases of any part of the property leased;
- (r) register against any registered mortgage or notarial bond any agreement entered into by the mortgagor and the holder of that bond whereby any of the terms of that bond have been varied;
- (s) register any real right, not specifically referred to in this section, and any cession, modification or extinction of any such registered right;
- (t) register powers of attorney whereby the agents named therein are authorised to act generally for the principals granting such powers, or to carry out a series of acts or transactions registerable in the deeds registry;
- (u) make in connection with the registration of any deed or other document or in compliance with the requirements of any law such endorsements on any registered deed or other document as may be necessary to give effect to such registration or to the objects of such law;
- (v) record all notices, returns, statements, or orders of court lodged with him in terms of any law;
- (w) keep the registers prescribed under this Act and any other law and make such entries therein as are necessary for the purpose of carrying out the provisions of this Act or such other law and of maintaining an efficient system of registration calculated to afford security of title and ready reference to any registered deed;

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

6. The registrar shall have power —

Powers of
registrar

- (a) to require the production of proof upon affidavit or otherwise of any fact necessary to be established in connection with any matter or thing sought to be performed or effected in the deeds registry;
- (b) whenever it is in his opinion necessary or desirable to rectify in any deed or other document, registered or filed in the deeds registry, an error in the name or the description of any person or property mentioned therein, or in the conditions affecting any such property, to rectify the error:

Provided that —

- (i) every person appearing from the deed or other document to be interested in the rectification has consented thereto in writing;
- (ii) if any such person refuse to consent thereto the rectification may be made on the authority of an order of court;
- (iii) if the error is common to two or more deeds or other documents, including any register in the deeds registry, the error shall be rectified in all those deeds or other documents;
- (iv) no such rectification shall be made if it would have the effect of transferring any right;
- (c) to issue, under conditions prescribed by regulation, certified copies of deeds or other documents registered or filed in the deeds registry;
- (d) if in his opinion any deed or other document submitted to him has become illegible or unserviceable, to require that a certified copy thereof be obtained to take its place.

7. (1) Save as is otherwise provided in this Act or in any other law no registered deed of grant, deed of transfer, certificate of title or other deed conferring or conveying a title to immovable property or any real right in immovable property other than a mortgage bond, and no cession of any registered bond not made as security, shall be cancelled by the registrar except upon an order of court.

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

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

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

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

- (a) by a legal practitioner, notary public or conveyancer in connection with any deed which he has been instructed to prepare, attest or lodge in such registry; or
- (b) by any sheriff of the high court or messenger of a subordinate court or his deputy in connection with the exercise of his duties as such.

9. The Minister may by notice in the *Gazette* make regulations for giving effect to the provisions, purposes and principles of this Act, and in particular, but without prejudice to the generality of the foregoing, prescribing —

- (a) the fees of office (if any) to be charged in respect of any act, matter or thing required or permitted to be done in or in relation to the deeds registry, including any report made to the court by the registrar in connection with any application or action to which he is not a party;
- (b) the fees and charges of conveyancers and notaries public in connection with the preparation, passing and registration of deeds or other documents registered or filed or intended for registration or filing in the deeds registry and the fees and charges of any other legal practitioners in connection with the preliminary work required for the purpose of any such deed or other document and the fees and charges in connection with the taxation of any such fees or charges;
- (c) the manner and form in which and the qualifications of the person by whom any deed or other document required or permitted to be lodged, registered or filed in the deeds registry shall be prepared, lodged, executed, registered, filed or delivered, and the time within which any deed shall be executed;
- (d) the manner and form in which endorsements or entries required by this Act or any other law to be made on registered deeds or other documents or in the registers shall be made thereon or therein;
- (e) the particular documents which, when produced in the deeds registry, shall be attested or witnessed, and the manner in which any such documents shall be attested or witnessed;
- (f) the manner and form in which plots or portions of plots in urban areas, reserves and townships or similar areas may be registered;

- (g) the manner and form in which plots and portions of plots in areas used for trade, commerce or industry or similar areas may be registered;
- (h) the manner and form in which information which is required by law to be furnished to the registrar shall be recorded in the deeds registry, the manner and form in which information permitted by law to be furnished by the registrar to the public shall be furnished and the manner and form in which the identity of persons shall be established;
- (i) the conditions upon which legal practitioners, notaries, conveyancers and other persons may conduct any search in the deeds registry, and the precautions which shall be taken to ensure preservation of the records from damage by improper handling or otherwise;
- (j) the conditions under which copies of deeds and other documents registered in the deeds registry may be issued for judicial purposes, or purposes of information or in substitution of deeds or other documents which have been lost, destroyed, defaced or damaged and the conditions under which extracts from registers or from any documents registered or filed in the deeds registry may be furnished;
- (k) the manner and form in which consent shall be signified to any cancellation, cession, part payment, release or amendment of or other registerable transaction affecting any bond or other document registered in the deeds registry;
- (l) the conditions under which a copy of a power of attorney may be accepted by the registrar in lieu of the original;
- (m) the forms of deeds which shall be used in circumstances not provided for in this Act;
- (n) the description and form of registers to be opened and kept by the registrar, the particulars contained in any registered deed which shall be entered in any specified register, the form in which the particulars required to be entered in any specified register shall be entered therein, the form in which the folios of any specified register shall be framed, the number of folios to be included in a volume, and the nature and quality of the covers of the volume;
- (o) the manner and form in which any records filed in the deeds registry shall be bound; and
- (p) any matter which under this Act is required or permitted to be prescribed.

PART II—REGISTRATION

10. (1) The registrar shall as soon as may be after the commencement of this Act, prepare, open and keep the prescribed registers.

Prescribed
registers

(2) Until such time as any prescribed register has been prepared and opened, the registrar shall continue to keep the corresponding register in use in the registry immediately prior to the commencement of the regulations prescribing the description and form of the registers to be opened and kept by the registrar, and to make therein the like entries as were customarily made therein prior to such commencement.

When
registration
takes place

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

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

(2) If by inadvertence the registrar's signature has not been affixed to a deed executed or attested by him, or to the registration endorsement in respect of the registration of a deed, document or power of attorney lodged for registration, at the time at which the signature should have been affixed in the ordinary course, the registrar may affix his signature thereto when the omission is discovered, and the deed, document or power of attorney shall thereupon be deemed to have been registered at the time aforesaid.

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

Deeds to
follow
sequence
of their
relative
causes

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

(a) transfers of immovable property and cessions of immovable property and of real rights therein shall follow the sequence of the successive transactions in pursuance of which they are made, and if made in pursuance of testamentary disposition or intestate succession they shall follow the sequence in which the right to ownership or other real right in the immovable property accrued to the persons successively becoming vested with such right;

(b) it shall not be lawful to depart from any such sequence in recording in the deeds registry any change in the

ownership in such immovable property or such real right:

Provided that —

- (i) if the property has passed in terms of a will or through intestate succession from a deceased person to his descendants, and one or other of these descendants has died a minor and intestate and no executor has been appointed to his estate, transfer or cession of the immovable property which has vested in that descendant may be passed by the executor in the estate of the deceased person direct to the heirs **ab intestato** of the descendant;
- (ii) if the registrar is satisfied that the value of the immovable property which has vested in any heir or legatee in terms of a will or through intestate succession would be equalled or exceeded by the costs involved in transferring or ceding it to the heir or legatee, and the heir or legatee has sold the property, transfer or cession thereof may, with the consent in writing of the heir or legatee, be passed by the executor in the estate of the deceased person direct to the purchaser;
- (iii) if in the administration of the estate of a deceased person any redistribution of the whole or any portion of the assets in such estate takes place among the heirs and legatees (including ascertained fideicommissary heirs and legatees) of the deceased, or between such heirs and legatees and the surviving spouse, the executor or administrator of such estate may transfer the immovable property or cede the real rights therein direct to the persons entitled thereto in terms of such redistribution;
- (iv) in a redistribution mentioned in proviso (iii) it shall be lawful to introduce movable property not forming part of the estate for the purpose of equalising the division;
- (v) the provisions of proviso (iii) shall apply **mutatis mutandis** with reference to a redistribution of assets of the joint estate of spouses who were married in community of property and have been divorced or judicially separated, and with reference to a redistribution of assets of a partnership on dissolution of the partnership;
- (vi) if a fiduciary interest in immovable property or in a real right terminates before transfer of the immovable property or cession of the real right has been registered in favour of the fiduciary, it shall be competent to transfer the immovable property or cede the real right direct to the fidei-commissary;
- (vii) if the right of any person to claim transfer of such immovable property or cession of such real right from any other person has been vested in any third

person in terms of any judgment or order of any court (including a magistrate's court), or in terms of a sale in execution held pursuant to any such judgment or order, transfer of such immovable property or cession of such real right may be passed direct to such third person by the person against whom such right was exercisable.

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

Preparation
of deeds

13. (1) Subject to the provisions of sub-sections (2), (3) and (4) hereof, no deed of transfer, mortgage bond or certificate of title or registration of any kind mentioned in this Act shall be attested, executed or registered by the registrar unless it has been prepared by a legal practitioner, notary public or conveyancer admitted to practise within Lesotho. Such legal practitioner, notary public or conveyancer may recover the fees and charges to which he may be entitled in accordance with any regulation made under section nine.

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(2) Deeds of transfer, mortgage bonds or certificates of title or registrations of any kind mentioned in this Act where such registrations are in favour of the Government of Lesotho shall be attested, executed or registered by the registrar when prepared as set out in sub-section (1) hereof or when prepared by the [Attorney-General] or his nominee.

(3) The registrar shall within his discretion have the right to attest, execute and register original certificates of title authorising the occupation or use of land, provided such original certificate of title is presented to him in duplicate in a form prescribed by him.

(4) The registrar shall have the right to refuse to attest, execute or register any deed of transfer, mortgage bond or certificate of title or registration of any kind mentioned in this Act if such deed or document is incorrectly prepared and he shall further have the right, if in his opinion such deed or document is of so complicated a nature that it can only be prepared by a qualified conveyancer, to refuse to attest, execute or register such deed or document unless it has been prepared by a conveyancer practising or registered to practise in Lesotho.

Special
provisions
relating
to women

14. (1) Subject to the provisions of sub-section (6) hereof all deeds executed or attested by the registrar, or attested by a notary public and required to be registered in the deeds registry, and made by or on behalf of or in favour of women, shall in each case disclose the full name and status of the woman concerned, whether unmarried, married, widowed, or divorced, as the case may be. If the woman is married the full name of her husband shall also be disclosed, and if the marriage is governed by the law in force in Lesotho, it shall be stated whether the marriage

was contracted with or without community of property. If the marriage is governed by the law of any other country it shall be stated that the marriage is governed by the law of that country.

(2) Subject to the provisions of sub-section (6) hereof, a woman married out of community of property shall be assisted by her husband in executing any deed or other document required or permitted to be registered in the deeds registry or required or permitted to be produced in connection with any such deed or document, unless the marital power has been excluded or unless the assistance of the husband is on other grounds deemed by the registrar to be unnecessary.

(3) Subject to the provisions of sub-section (6) hereof, immovable property, bonds or other rights shall not be transferred or ceded to, or registered in the name of, a woman married in community of property, save where such property, bonds or other rights are by law or by a condition of a bequest or donation excluded from the community.

(4) Subject to the provisions of sub-section (6), if immovable property has been acquired by one or other of two spouses married in community of property in such a manner that the said property would on transfer or cession thereof become part of the joint estate, and the community has been dissolved by the death of one of the spouses before the property is transferred or ceded, the property shall be transferred or ceded to the joint estate of the spouses, pending liquidation thereof, and shall subject to the provisions of any disposition affecting the property, be deemed to be the joint property of the surviving spouse and of the estate of the deceased spouse.

(5) Subject to the provisions of sub-section (6), when immovable property or a bond is registered in the name of —

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

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

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

(6) Notwithstanding the provisions set out in the preceding sub-sections (1) to (5), the registrar shall refuse except under an order of court to attest, execute or register all deeds and documents in respect of immovable property in favour of a married woman whose rights are governed by Basuto law and custom where such registration would be in conflict with Basuto law and custom.

PART III—REGISTRATION OF IMMOVABLE PROPERTY

Land

15. (1) No deed or agreement purporting to or having the effect of conferring, conveying or transferring the right of ownership in and to land shall be executed, attested or registered in the deeds registry.

Save as is otherwise provided in the Land Act etc.

(2) Every person or body holding a certificate issued by the proper authority authorising the occupation or use of land shall within three months of the date of issue of the certificate apply to the registrar for a registered certificate of title to occupy or use.

(3) Every person or body who prior to the commencement of this Act was issued with a certificate by the proper authority authorising the occupation or use of land shall likewise apply to the registrar within a period of [nine] months from the date of commencement of this Act for a registered certificate of title to occupy or use.

(4) Failure to lodge with the registrar the said certificate of occupation or use for registration in terms of sub-sections (2) and (3) within the prescribed period or within such extended period [as the Registrar may allow (and the Registrar is hereby empowered so to allow extensions of that period) or within such period as the court may allow,] shall render the certificate null and void and of no force and effect and the rights of occupation and use shall revert back to the owner of the land, being the Basuto Nation.

[(5) Any person who fails to comply with the provisions of subsection (2) or of subsection (3) within the period prescribed therein or within that period as extended in pursuance of the provisions of subsection (4), is guilty of an offence and liable on conviction to a fine not exceeding two hundred rands or in default of payment thereof, to imprisonment for a period not exceeding twelve months. Nothing in this sub-section affects the operation of any provision of subsection (4).]

Immovable
property

16. (1) Every deed or agreement transferring rights in or to immovable property shall be registered in the deeds registry.

(2) Such registration shall only be effected after the proper authority has consented in writing to the allocation to the transferee of the right to occupy and use the land on which that immovable property is situated, which consent shall not be unreasonably withheld.

(3) Every deed or agreement transferring rights in or to immovable property shall be lodged for registration in the deeds registry within three months of the granting of the consent referred to in the preceding sub-section.

(4) Every deed or agreement transferring rights in or to immovable property and to which the proper authority consented in writing prior to the commencement of this Act shall be lodged for registration in the deeds registry within three months of the date of commencement of this Act.

Subst. by
Act 34 of
1967
sec. 3(a)

Replace by
Act 34 of
1967
sec. 3(b)

Added by
Act 34 of
1967
sec. 3(c)

(5) Failure to lodge the said deed or agreement for registration within the prescribed period or within such extended period as the registrar may allow (and the registrar is hereby empowered so to allow extensions of that period) shall render the deed or agreement null and void and of no force and effect, unless otherwise ordered by the court.

(6) Any deed or agreement executed, attested or registered contrary to the provisions of this section shall be null and void and of no force and effect.

17. (1) Deeds of transfer shall be prepared in the forms prescribed by law or by regulation and, save as in this Act or any other law provided or as ordered by the court in respect of deeds of transfer executed by the registrar, shall be executed in the presence of the registrar by the owner of the immovable property described therein or by a legal practitioner, notary or conveyancer authorised by power of attorney to act on behalf of the owner, and shall be attested by the registrar.

Form and manner of execution of deeds of transfer

(2) Deeds of transfer in respect of property of the Government of Lesotho may be executed in the presence of the registrar by the [Attorney-General], who is hereby empowered to act on behalf of the Government of Lesotho, or by a person authorised by power of attorney under the hand of the responsible Minister to act on behalf of the Government of Lesotho.

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18. (1) In any transfer lodged in the deeds registry relating to immovable property which is an asset in a joint estate, the surviving spouse shall be joined in his or her personal capacity with the executor of the estate of the deceased spouse except—

Transfer from joint estate

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

(2) The provisions of sub-section (1) shall only apply to estates which are administered by the Master in terms of the Administration of Estates Proclamation as amended.

19. (1) Two or more persons each owning a different portion of immovable property may not transfer those portions of immovable property to one or more persons by the same deed of transfer, unless such transfer is authorised by the provisions of a law or by an order of court.

Transfer of two or more portions of immovable property by one deed

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

Provided that each portion of immovable property is described in a separate paragraph.

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

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

Transfer of
undivided
shares in
immovable
property by
one deed

20. (1) Immovable property held by one person may be transferred by one deed from that person to two or more other persons in undivided shares.

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

Special
provisions
relating to
transfer of
undivided
shares

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

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

Transfer
from firm
or
partnership

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

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

Certificate
of registered
title taking
place of
lost or
destroyed
deed

23. (1) If the title deed of any immovable property has been lost or destroyed and the registry duplicate of such title deed has also been lost or destroyed, the registrar shall, on written application by the owner of the immovable property, accompanied by a diagram of the immovable property, if no diagram thereof

is filed in the registry, execute a certificate of registered title in respect of such immovable property in accordance with the diagram of the immovable property.

(2) Before issuing the certificate the registrar shall, at the expense of the applicant, publish in the prescribed form notice of intention to issue the certificate in two consecutive issues of the *Gazette* and in two consecutive issues of a newspaper circulating in Lesotho.

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

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

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

24. (1) Every agreement of lease or sub-lease of rights in or to immovable property which when entered into was for a period of not less than three years, or for the natural life of the lessee, or any other person mentioned in the lease or sub-lease, or which is renewable from time to time for periods which together with the first period amount in all to not less than three years, shall be registered in the deeds registry.

Leases over
immovable
property

(2) Such registration shall only be effected after the proper authority has consented in writing to the lessee occupying and using the land to which the lease refers, which consent shall not be unreasonably withheld.

(3) Every agreement of lease or sub-lease of rights in or to immovable property and to which the proper authority has consented in writing shall be lodged for registration in the deeds registry within three months of the granting of such consent.

(4) Every agreement of lease or sub-lease of rights in or to immovable property and to which the proper authority consented in writing prior to the commencement of this Act shall be lodged for registration in the deeds registry within three months of the date of commencement of this Act.

(5) Failure to lodge such lease or sub-lease for registration within the prescribed period or within such extended period as the court may allow, shall render the agreement of lease or sub-lease null and void and of no force and effect.

(6) Any agreement of lease or sub-lease of rights in or to immovable property executed, attested or registered contrary to the provisions of this section shall be null and void and of no force and effect.

Termination
of
registered
lease or
sub-lease

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

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

Cessions of
leases and
sub-leases

26. No cession of a lease or sub-lease shall be registered in the deeds registry unless the lease or sub-lease has been registered therein.

PART IV—BONDS

Certain
transactions
forbidden

27. (1) No mortgage bond or agreement hypothecating land shall be executed, attested or registered, and any mortgage bond or agreement executed, attested or registered, contrary to the provisions of this section shall be null and void and of no force and effect.

(2) No transfer or cession of any right in or to land as security for a debt or other obligation shall be executed, attested or registered and if so executed, attested or registered shall be null and void and of no force and effect.

Mortgage
bond
hypothecat-
ing
immovable
property

28. (1) No mortgage bond or agreement hypothecating immovable property shall be of force and effect unless the proper authority has consented thereto, which consent shall however not be unreasonably withheld.

(2) Subject to the consent of the proper authority a mortgage bond shall be executed in the presence of the registrar by the owner of the immovable property therein described or by a legal practitioner, notary or conveyancer duly authorised by such owner by power of attorney and shall be attested by the registrar.

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

(4) Bonds intended to secure loans for building purposes shall be deemed to be bonds to secure existing debts.

(5) If in a bond purporting to secure a future debt the amount of an existing debt is mentioned, such existing debt shall

be deemed to be secured as part of the maximum amount intended to be secured by the bond.

(6) Save as authorised by any other law or by an order of court, debts or obligations to more than one creditor arising from different causes may not be secured by one bond.

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

Requirements
in case of
bonds
intended
to secure
future debts

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

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

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

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

Cession of
bond to
secure future
advances

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

Exclusion
of general
clauses in
mortgage
bonds

32. No bond shall be passed in favour of any person as the agent of a principal.

No bond to
be passed in
favour of
an agent

33. (1) If a bond is passed by two or more mortgagors no release from the bond —

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

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

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

(2) No bond may be passed in favour of two or more persons in which it is stipulated that the share of one holder shall rank prior in order of preference to the share of another, nor may any transaction be registered which would have the effect of giving preference to one share in a bond over another share.

34. (1) No transfer of mortgaged immovable property shall be attested or executed by the registrar, and no cession of a mortgaged lease of immovable property, or of any mortgaged real right in immovable property, shall be registered until the

Transfer of
hypothecated
immovable
property

bond has been cancelled or the immovable property, lease, or right has been released from the operation of the bond with the consent in writing of the holder thereof, or unless, in the case of such mortgage bonds which have been lost or destroyed, the registrar has on application by the registered holder thereof, cancelled the entry in his register in respect of such bond:

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

- (a) in execution of the judgment of any court by the competent officer, or
- (b) by the trustee of an insolvent estate, an executor administering and distributing an estate as insolvent in terms of the Administration of Estates Proclamation, the liquidator of a company which is unable to pay its debts and which is being wound up by or under the supervision of the court; or
- (c) in any other circumstances in this Act or in any other law specially provided or as ordered by the court.

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

Substitution
of debtor
in respect
of a bond

35. (1) If the owner (in this section referred to as the transferor) of immovable property which is hypothecated under a registered mortgage bond other than a mortgage bond to secure the obligations of a surety (not being a person referred to in paragraph (b) of sub-section (1) of section **thirty-four**) transfers to another person the whole of the immovable property hypothecated thereunder, and has not reserved any real right in such immovable property, the registrar may, notwithstanding the provisions of sub-section (1) of the said section, register the transfer and substitute the transferee for the transferor as debtor in respect of the bond:

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

(2) In registering the transfer the registrar shall —

- (a) make, in the appropriate register —
 - (i) an entry setting forth that the debt of the transferor secured by the bond is cancelled; and
 - (ii) an entry setting forth that the transferee has become the debtor in respect of the bond;
- (b) annex one duplicate of the written consent referred to in sub-section (1) to the bond and file the other with the registry duplicate thereof;
- (c) endorse up the bond in the prescribed form —
 - (i) the name of the transferee;
 - (ii) the date and number of the transfer;
 - (iii) a reference to the said written consent; and

(iv) that the transferee has been substituted for the transferor as debtor in respect of the bond; and

(d) make on the transfer deed an endorsement of mortgage containing the date and number of the bond and the amount due in terms thereof.

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

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

(a) to a person who would not himself be competent to mortgage it; or

(b) to two or more persons, unless they take transfer of the immovable property in undivided shares and renounce, in the written consent referred to in sub-section (1) the exception *de duobus vel pluribus reis debendi*; or

(c) to a woman, unless she renounces, in the said written consent, any special legal exceptions which she would otherwise be entitled to raise.

36. No hypothecation of a lease or sub-lease shall be registered in the deeds registry unless such hypothecation is effected by means of — Hypothecation of leases and sub-leases

(a) a mortgage bond, if the lease or sub-lease is immovable property; or

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

37. (1) For the registration of a notarial bond specially hypothecating a registered lease or sub-lease the deed of lease or sub-lease shall be produced to the registrar. Notarial bonds hypothecating leases or sub-leases

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

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

38. (1) If it appears from the liquidation account of any estate which has been sequestrated or from the vouchers relating thereto that a payment has been made to any creditor on account of a registered bond, the Master shall notify the payment to the registrar who shall thereupon write off the amount thereof in the appropriate register, on the registry duplicate of the bond and also if possible on the original bond. The holder of the bond shall deliver the bond to the Master, who shall forward it to the registrar in order that the amount paid may be written off thereon. Returns by master in connection with insolvent estates and further provisions relative to insolvent estates

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

- (a) the name and address of every person who has been rehabilitated after the sequestration of his estate; and
- (b) the immovable property and registered bonds appearing in the schedules lodged with the Master by or on behalf of such person or in the liquidation account of his estate;

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

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

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

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

(5) If by virtue of the provisions of the law relating to insolvency an insolvent has been re-invested with the ownership of any property, such property may not be transferred, mortgaged or otherwise dealt with by the insolvent until an endorsement, in the manner prescribed, that the property has been restored to him, has been made by the registrar on the title deeds of the property.

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

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

- (a) estates administered and distributed as insolvent in terms of the special provisions of the Administration of Estates Proclamation; and
- (b) companies which are unable to pay their debts and are liquidated or wound up by or under the supervision of the court under the laws relating to companies.

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

Endorsement
of bond
after sale in
execution

PART V—NOTARIAL BONDS

40. (1) No notarial bond or agreement which purports to hypothecate rights in or to immovable property or the right to occupy immovable property or land shall be executed or registered in the deeds registry.

Notarial
bonds
hypothecating
movable
property

(2) Subject to the provisions of sub-section (3) hereof, no notarial bond or agreement hypothecating movable property generally or specially shall be registered unless it has been attested by a notary public and unless it has been tendered to the registrar for registration within a period of two months after the date of its execution or within such extended period as the court may on application allow.

(3) No notarial bond or agreement hypothecating movable property generally or specially and executed outside Lesotho shall be registered unless it has been attested by a notary public or has otherwise been entered into in accordance with the law of the place of execution and unless it has been tendered to the registrar for registration within six months after the date of its execution or within such extended period as the court may on application allow.

(4) The registrar shall not register except upon an order of court and within such further period as the court may direct—

(a) any notarial bond hypothecating movable property generally or specially which has not been tendered for registration in terms of sub-section (2) or sub-section (3); or

(b) any notarial bond hypothecating movable property generally or specially which has been tendered for registration in terms of sub-section (2) or sub-section (3) and has been rejected by the registrar and not re-tendered within the respective periods prescribed in the said sub-sections.

(5) If the registrar suspends or refuses registration pending the submission of further information in order to enable him to determine whether any person mentioned in the bond is or is not a person whose name appears in any register or document in the deeds registry, such suspension or refusal of registration shall not be deemed to be a rejection of the notarial bond for the purposes of this section.

(6) If the notarial bond —

(a) was executed in Lesotho; or

(b) was executed elsewhere but has not yet been registered elsewhere;

there shall be tendered for registration —

(i) a signed original for filing of record as the registry duplicate; and

(ii) a further original or grosse or a copy of the bond certified by a notary public.

(7) If the notarial bond was executed outside Lesotho and has been registered in the deeds registry of another country, there shall be tendered —

(a) the issued original, grosse or copy registered in the deeds registry of such other country for endorsement; and

(b) a further duplicate original or grosse or copy thereof certified by a notary public for filing of record as the registry duplicate.

(8) A notarial bond hypothecating movable property generally or specially shall be deemed to be registered at the time when the entry thereof is made in the appropriate register in the deeds registry.

(9) Every notarial bond shall disclose —

(a) the place at and the date on which it was executed, as well as the place where the notary public practises; and

(b) the place where the debtor resides and the place or places, if any, where he carries on business.

Prospecting grants

41. (1) Every duly executed prospecting grant shall be registered in the deeds registry.

(2) Every prospecting grant shall clearly define the area of land in respect of which the grant is made, and shall be lodged for registration in the deeds registry within three months of such grant.

(3) Every prospecting grant made prior to the commencement of this Act shall be lodged for registration in the deeds registry within three months of the date of commencement of this Act.

(4) Failure to lodge a prospecting grant for registration within the prescribed period or within such extended period as the registrar may allow (and the registrar is hereby empowered so to allow extensions of that period) shall render that prospecting grant null and void and of no force and effect, unless otherwise ordered by the court.

(5) If the rights under a prospecting grant are for a defined period with a right of renewal for a further period, registration of the grant shall be effective for that defined period only:

Provided that if the holder of those rights under a prospecting grant lodges such grant in the deeds registry before the expiration of the said defined period together with an affidavit in terms of sub-section (6), or within one month

after the expiration of the defined period together with the proper authority's written consent to such endorsement, the registrar shall endorse upon the register and upon the grant and the registry duplicate thereof a statement that the said holder claims to have exercised his right of renewal for the period mentioned in the said affidavit, and the endorsement so made shall, as from the date thereof, be effective notice of the claim to all interested persons, other than the proper authority, whose written consent to such endorsement has not been produced.

(6) The affidavit referred to in sub-section (5) shall be made by the holder of the rights under a registered prospecting grant or by his duly authorised agent, and shall state that the holder has fulfilled all such conditions of the grant as entitled him to a renewal of the grant and that he has duly exercised his right to renew the same.

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

(8) If a document purporting to be a prospecting grant contains any ambiguity and such document is in the opinion of the registrar liable to be interpreted as constituting a mining grant or lease or mining rights, the registrar may register that document as a prospecting grant if a supplementary document executed by the proper authority explaining to the satisfaction of the registrar the purport and effect of the prospecting grant is lodged at the deeds registry, and such document shall after having been so lodged be deemed to form part of the prospecting grant to which it relates.

(9) Where, in the circumstances provided for in this section, a prospecting grant has been duly registered in the deeds registry, no further prospecting grant or grants shall be registered in respect of the same area of land and in respect of the same mineral or minerals until such time as the duly registered prospecting grant has lapsed by effluxion of time or has been cancelled in terms of section **forty-three**. If a further grant has or grants have been registered contrary to the provisions of this section, that further grant or those further grants shall be null and void and of no force or effect.

42. (1) Every duly executed mining grant shall be registered in the deeds registry. Mining grants

(2) Every mining grant shall clearly define the area of land in respect of which the grant is made, and shall be lodged for registration in the deeds registry within three months of such grant.

(3) Every mining grant made prior to the commencement of this Act shall be lodged for registration in the deeds registry within three months of the date of commencement of this Act.

(4) Failure to lodge a mining grant for registration within the prescribed period or within such extended period as the registrar may allow (and the registrar is hereby empowered so to allow extensions of that period) shall render that mining grant null and void and of no force and effect, unless otherwise ordered by the court.

(5) If the rights under a mining grant are for a defined period with a right of renewal for a further period, registration of the grant shall be effective for that defined period only:

Provided that if the holder of those rights under a mining grant lodges such grant in the deeds registry before the expiration of the said defined period together with an affidavit in terms of sub-section (6), or within one month after the expiration of the defined period together with the proper authority's written consent to such endorsement, the registrar shall endorse upon the register and upon the grant and the registry duplicate thereof a statement that the said holder claims to have exercised his right of renewal for the period mentioned in the said affidavit, and the endorsement so made shall, as from the date thereof, be effective notice of the claim to all interested persons, other than the proper authority, whose written consent to such endorsement has not been produced.

(6) The affidavit referred to in sub-section (5) shall be made by the holder of the rights under a registered mining grant or by his duly authorised agent, and shall state that the holder has fulfilled all such conditions of the grant as entitled him to a renewal of the grant and that he has duly exercised his right to renew the same.

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

(8) Where, in the circumstances provided for in this section, a mining grant has been duly registered in the deeds registry, no further mining grant or grants shall be registered in respect of the same area of land and in respect of the same mineral or minerals until such time as the duly registered mining grant has lapsed by effluxion of time or has been cancelled in terms of section **forty-three**. If a further grant has or grants have been registered contrary to the provisions of this section, that further grant or those further grants shall be null and void and of no force or effect.

43. Upon the written request of the proper authority, the rights under a prospecting grant or under a mining grant —
- (a) the registration of which has under sections **forty-one** and **forty-two** ceased to be of effect; or
 - (b) to the renewal of which no claim has been lodged at the deeds registry, or which, if such a claim has been lodged, has lapsed by effluxion of time;

Cancellation of registration on expiry of prospecting or mining grant or failure to renew

the registrar shall cancel the entries in the registers relating to the grant.

PART VI—ANTENUPTIAL CONTRACTS

44. Every antenuptial contract executed before and not registered at the commencement of this Act or executed after the commencement of this Act, shall be registered in the manner and within the time mentioned in section **forty-five** and unless so registered shall be null and void and of no force and effect as against any person who is not a party thereto.

Antenuptial contracts to be registered

45. (1) An antenuptial contract executed in Lesotho shall not be registered unless it has been attested by a notary public and unless it has been tendered for registration in the deeds registry within two months after the date of its execution or within such extended period as the court may on application allow.

Manner and time of registration of antenuptial contracts

- (2) An antenuptial contract executed outside Lesotho shall not be registered unless it has been attested by a notary public or has been otherwise entered into in accordance with the law of the place of execution, and unless it has been tendered for registration in the deeds registry within six months after the date of its execution or the commencement of this Act, whichever may be the later date, or within such extended period as the court may on application allow.

- (3) Unless an antenuptial contract has been tendered for registration in terms of sub-section (1) or sub-section (2), or if so tendered and rejected by the registrar and not re-tendered within the respective periods prescribed in the said sub-sections, the contract shall not be registered except upon an order of court and within such further period as the court may direct:

Provided that if the registrar suspends or refuses registration pending the submission of further information in order to enable him to determine whether any party to the contract is or is not a person whose name appears in any register or document in the deeds registry, such suspension or refusal of registration shall not be deemed to be rejection of the said contract.

46. There shall be tendered for registration —

- (a) a signed original contract or an equivalent thereof according to the law of the country where it was executed, bearing the attestation of the notary public, or otherwise duly authenticated as required by law, for filing of record as the registry duplicate; and

Form and manner in which antenuptial shall be tendered for registration

- (b) a further signed original similarly attested or authenticated or a grosse or copy of the original contract certified by a notary public.

Postnuptial
execution of
an
antenuptial
agreement

47. Notwithstanding the provisions of sections **forty-four** and **forty-five**, the court may, subject to such conditions as it deems desirable, authorise postnuptial execution of a notarial contract having the effect of an antenuptial contract, if the terms thereof were agreed upon between the intended spouses before the marriage, and may order the registration within a specified period, of any contract so executed.

PART VII—GENERAL

Taxes and
transfer
duty to be
paid before
transfer of
immovable
property

48. (1) No deed of grant or transfer of immovable property shall be registered unless accompanied by a receipt or certificate of a competent public revenue officer that transfer duty as assessed by the Registrar-General in terms of the Transfer Duty Act has been paid and that all other taxes, duties or fees (if any) payable to the Government on the property to be granted or transferred have been paid.

(2) If immovable property has been settled upon or donated to an intended spouse in terms of an antenuptial contract, no transfer or cession of such property by the donor to any person other than the donee and no mortgage thereof by the donor shall be executed, attested or registered by the registrar unless the transfer duty (if any) payable on the settlement or donation has been paid.

Exemption
from
fees of
office and
stamp duty

49. Notwithstanding the provisions of this Act, the regulations, or of any other law in force, no fees of office or stamp duty shall be payable in respect of any deed or document registered in the deeds registry in terms of which rights in or to immovable property and movable property are acquired by—

- (a) the Government of Lesotho including any Ministry or department of the Government of Lesotho;
- (b) an ecclesiastical, charitable or educational institution of a public character in respect of property acquired for ecclesiastical, charitable or educational purposes exclusively; and
- (c) any institution or body in respect of property acquired for the purpose of a public hospital.

Registration
of
change
of name

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

Provided that—

- (a) if the old name appears in another deed or other docu-

ment registered in the registry, that deed or other document shall be likewise endorsed, and in either case corresponding entries shall be made in the registers;

- (b) the registrar shall, except in the case of a person or partnership whose name has been changed in accordance with the provisions of any law, refuse to make the endorsements until the applicant has published a notice in a form approved of by the registrar of the application once in the **Gazette** and three times in a newspaper approved by him;
- (c) if any objection to the making of the endorsement is in the opinion of the registrar **bona fide** and sufficiently material, and is lodged with the registrar not later than one week after the last publication in the **Gazette** or newspaper, whichever may be the later publication, the registrar may refuse to make the endorsement except upon the authority of an order of court, and the court shall have jurisdiction to make such order in the matter as it may deem just.

(2) No change in the name of any immovable property shall be recorded in the deeds registry, except if required by the registrar or other competent public officer in order to record a new designation as a result of the introduction of a system of land numbering where no such system previously existed.

51. Any female person who would, if she were a male person, be competent to witness any document intended for registration or filing or production in the deeds registry, shall be competent to witness any such document, and any such document which has been witnessed before the commencement of this Act by a female person, shall be as valid as if she had been a male person.

Women
witnesses
to deeds

52. Any power of attorney executed within Lesotho shall, if it purports to give authority to pass, cede, amend or cancel a deed capable of being registered or to perform any act proper to be performed in a deeds registry, be attested either by two witnesses above the age of fourteen years, competent to give evidence in any court of law in Lesotho, or by a magistrate, [District Administrator], Justice of the Peace, Commissioner of Oaths or a notary public duly described as such:

Attestation
of powers
of attorney
in Lesotho

GN 119/1970

Provided that no person shall be competent to attest any power of attorney under which he is appointed as an agent or derives any benefit.

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

Execution
of deeds by
prospective
owners

Notice to
registrar of
application
to court

54. Before any application is made to the court for authority or an order involving the performance of any act in the deeds registry, the applicant shall give the registrar at least seven days' notice before the hearing of such application and the registrar may submit to the court such report thereon as he may deem desirable to make.

Substituted
copy of lost
deed
supersedes
original
which must
be
surrendered
on recovery

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

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

Exemption
from liability
for acts or
omissions in
deeds
registry

56. No act or omission of the registrar or of any other officer employed in the deeds registry shall render the Government or such registrar or officer liable for damage sustained by any person in consequence of such act or omission:

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

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

Formal
defects

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

Repeal of
Proclamation
68 of 1957

58. The Deeds Proclamation is hereby repealed.