

GENERAL NOTICES

NOTICE 143 OF 2001

It is hereby notified that the Premier has assented to the following Act, which is hereby published for general information:-

Act No. 4 of 2001: North West Land Administration

NORTH WEST LAND ADMINISTRATION ACT, 2001

To provide for the acquisition and disposal of land by the North West Provincial Government and for matters incidental thereto

PREAMBLE

It is reasonably necessary for, or is incidental to, the effective exercise of its powers concerning certain matters listed in Schedule 4 to the Constitution that immovable property be acquired by the North West Provincial Government, or that immovable property be disposed of by the said Government;

The North West Province is the repository of legislative powers incidental to the powers vested in it in terms of Schedule 5 of the Constitution;

The implementation of national or provincial legislation by the North West Provincial Government may require that immovable property be so acquired or disposed of:

(English text signed by the Premier) assented to on 26 June 2001

BE IT ENACTED by the Legislature of the North West Province, as follows:

1. Definitions

In this Act, unless the context otherwise indicates -

"acquire" includes the purchase, expropriation, exchange, receipt through donation or leasing of immovable property, the conclusion of any form of land availability agreement in respect of immovable property and the registration of a real personal right in respect of immovable property in favour of the North West Provincial Government and "acquisition" has a corresponding meaning;

"Constitution" means the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996);

"current market value" means the economic value of provincial state land as reflected in a current valuation certificate issued by a sworn valuator less than twelve months prior to the disposal of that land;

"dispose" includes the sale, exchange, donation or letting of provincial state land (including the allocation of provincial state land free of charge for a period of time), the conclusion of any form of land availability agreement in respect of immovable property with any person and the registration of any real or personal right in respect of provincial state land, and "disposal" has a corresponding meaning;

"Executive Council" means the Executive Council of the North West Provincial Government referred to in section 132 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);

"immovable property" includes any right in or over immovable property;

"Provincial Government" means the government of the North West Province which is recognised as a province of the Republic of South Africa in terms of section 103(1)(h) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), and "North West Province" has a corresponding meaning;

"Premier" means the Premier acting in consultation with the other members of the Executive Council;

"provincial state land" means any immovable property which vests in the North West Provincial Government in accordance with the provisions of section 239(1) of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993) and Item 28(1) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), together with any immovable property acquired by the Provincial Government pursuant to this Act;

"Registrar" means the Registrar of Deeds as defined in the Deeds Registries Act, 1937 (Act No. 47 of 1937);

"this Act" includes the regulations; and

"transferee" means any person who acquires provincial state land in terms of section 3.

## 2. Acquisition of immovable property

(1) The Premier may subject to the provisions of subsection (3), acquire immovable property on such terms and conditions he or she deems fit.

(2) Immovable property acquired in terms of subsection (1) must be registered in the name of the Provincial Government.

(3) The provisions of subsection (1) do not constitute an exemption from complying with any obligation imposed in terms of any registered condition of title.

(4) The procedure provided for in terms of the Expropriation Act, 1975 (Act No. 63 of 1975) shall apply *mutatis mutandis* to the expropriation of land under subsection (1), and in the case of acquisition of land by means of expropriation, a reference in the said Act to-

(a) "Minister" shall be construed as a reference to the Premier, or the relevant member of the Executive Council or the relevant officer to whom the power referred to in subsection (1) had been assigned by the Premier under section 9.

## 3. Disposal of provincial state land

(1) The Premier may subject to the provisions of subsections (2) and (3), dispose of provincial state land on such terms and conditions as he or she deems fit.

(2) The Premier shall publish in the Provincial Gazette and in a newspaper circulating in the Province a notice calling upon interested parties to submit, within 21 days of the date of the said notice, any representations which they wish to make regarding such proposed disposal: Provided that the afore going provision does not apply to any disposal concerning the leasing of provincial state land for a period not exceeding twelve months without an option to renew.

(3) The Premier shall, in addition to the notices to be published in terms of subsection (2), cause to be delivered to-

- (a) the occupants, if any, of the provincial state land to be disposed of;
- (b) the chief executive officer of the local government for the area in which the provincial state land to be disposed of is situated;
- (c) the North West Provincial Heads of Department of the Department of Local Government and Public Works respectively;
- (d) the North West Provincial Head of Department of the Department of Agriculture, if the provincial state land is applied or intended to be applied for agricultural purposes; and
- (e) any other Head of Department which enjoys an interest in the relevant Provincial State land, a copy of the notice referred to in subsection (1), and must advise those persons that they may, within 21 days of receipt of such notice, make written representations regarding the proposed disposal.

(4) (a) The notices referred to in subsections (2) and (3) must include the following information regarding the provincial state land concerned:

- (i) the full title deed description of such land, including the title deed number, the administrative district in which the provincial state land is situated and, if applicable, the nature of any right in or over such land;
- (ii) the current zoning of such land, and
- (iii) the actual current use of such land.

(b) The notice referred to in paragraph (a) must include an office address at which full details concerning the provincial state land in question and the proposed disposal may be obtained.

(5) Notwithstanding the provisions of section 2, in respect of immovable property owned by the Province, where a certificate is produced by a competent authority as contemplated by item 28 (1) of the Constitution, which certificate states that immovable property is owned by the province, a registrar of deeds shall make such entries or endorsements in or on any relevant register, title deed or other document to register that immovable property in the name of that government.

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

#### 4. Pre-emptive right of Provincial Government

(1) When the Premier disposes of provincial state land, he or she may, and if the said land is disposed of at less than that land's current market value, he or she shall impose a condition to the effect that neither the transferee, nor the successors in title of the transferee shall alienate such immovable property within a period a 5 (five) years or such longer period as the Premier may determine, from the date of registration of the immovable property into the name of the transferee who acquired such land, unless it has first been offered for sale to the Provincial Government.

(2) Any such offer shall be made in writing and shall be accepted or rejected by the Premier within a period of 60 (sixty) days after receipt

thereof.

(3) If such offer is accepted, the purchase price shall be determined-

- (a) by agreement between the Premier and the transferee; or
- (b) if the Premier and the said transferee are unable to come to an agreement within a period of 60 (sixty) days after the acceptance of the offer, by an arbitrator appointed by agreement between the Premier and the said transferee, or failing agreement, by an arbitrator appointed by the Premier, and the provisions of the Arbitration Act, 1965 (Act No. 42 of 1965), shall mutatis mutandis be applicable.

(4) The Premier may upon application exempt a transferee from a condition imposed under subsection (1), if he or she is satisfied that special circumstances exist, which justify such an exemption.

(5) The Registrar shall at the request of the Premier-

- (a) make such endorsement on the title deed of the immovable property and such entries in his or her registers as may be necessary to indicate that a condition referred to in subsection (1) applies in respect of such immovable property; and
- (b) cancel any such endorsement and entries where an exemption has been granted under subsection (4) in respect of such immovable property.

(6) No transfer of immovable property in respect of which a condition referred to in subsection (1) applies, shall be passed to a person other than the Provincial Government, unless a certificate issued by the Premier to the effect that such immovable property has been offered for sale in terms of the said subsection and the offer has been rejected, is produced to the Registrar.

#### 5. Land Capital Account

There is a Land Capital Account within the North West Provincial Revenue Fund, into which shall be paid the proceeds of any disposal of provincial state land in terms of this Act, and such proceeds may be utilised only in respect of capital expenditure.

#### 6. Provincial state land register

(1) The Premier shall ensure the establishment and maintenance of a consolidated register of all provincial state land, which shall be accessible to the public subject to the provisions of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), and shall contain the following information regarding such land:

- (a) The administrative district in which such land is situated;
- (b) the title deed description, including the title deed number of such land;
- (c) the extent of such land;
- (d) the provincial department or departments responsible for the control of the use of such land; and
- (e) the purpose for which such land is applied or is intended to be applied by the department referred to in paragraph (d).

(2) The Premier shall within 90 days after the financial year end submit an annual report to the North West Provincial Legislature, which report shall contain the following information:

- (a) The details of formal offers received from members of the public to acquire provincial state land, and
- (b) the details of all disposals of provincial state land, including-
  - (i) a full description of the provincial state land disposed of;
  - (ii) the extent of the provincial state land disposed of;
  - (iii) the names of the transferees;
  - (iv) the purchase price, if any, payable in respect of the provincial state land disposed of;
  - (v) the current market value of the provincial land disposed of;
  - (vi) any restrictive conditions imposed in respect of the provincial state land disposed of;
  - (vii) the purpose for which such land was applied prior to the disposal and, if available, the current or intended purpose for which such land is to be applied; and
  - (viii) the sum total of the payments received from the period of the report for such disposals.

(3) Notwithstanding the date of the commencement of this Act, the Premier shall submit to the North West Provincial Legislature a report contemplated by subsection (2) for the period 27 April 1994 to 31 March 2001 within 6 months from the commencement of this Act.

#### 7. Provincial state land not subject to acquisitive prescription

Notwithstanding any rule of law to the contrary, provincial state land shall not be capable of being acquired by any person by prescription.

#### 8. Execution of documents

If immovable property or provincial state land is acquired or disposed of in terms of section 2 or 3, the Premier shall sign or authorise a person to sign on behalf of the Provincial Government all the documents required by law to effect the transfer of the immovable property or provincial state land concerned.

#### 9. Assignment and delegation of powers and duties

(1) The Premier may, subject to such conditions as may be determined, either generally or in regard to specific immovable property or provincial state land or in a specified case, assign to a member of the Executive Council any power or duty conferred or imposed upon the Premier by or under this Act.

(2) A member of the Executive Council may, either generally or in regard to specific immovable property or provincial state land or in a specified case, delegate a power or duty assigned to such member in terms of subsection (1) to an officer in the service of the North West Provincial

Government.

(3) Notwithstanding the provisions of subsections (1) and (2), the duty imposed upon the Premier in terms of section 6(2) may not be assigned or delegated.

10. Regulations

The Premier-

- (a) shall make regulations regarding the norms and standards, including procedures, applicable to the acquisition, exchange, disposal and letting of provincial state land, the demolition of buildings on provincial state land, and donations of provincial state land; and
- (b) may make any other regulations considered necessary or expedient for the achievement of the purpose or objectives of this Act.

11. Validation of acts

Any transaction in relation to provincial state land which occurred after 27 April 1994 and prior to the commencement of this Act and which would have been lawfully undertaken but for the lapsing of powers of attorney or the absence of delegated authority to either the Premier, a member of the Executive Council or any officer in the service of the North West Provincial Government is deemed to have been lawfully effected.

12. Short title

This Act is called the North West Land Administration Act, 2001.