

Namibia

Flexible Land Tenure Act, 2012

Flexible Land Tenure Regulations: Flexible Land Tenure Act, 2012

Government Notice 101 of 2018

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Flexible Land Tenure Regulations: Flexible Land Tenure Act, 2012

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Republic of Namibia
Annotated Statutes

Flexible Land Tenure Act, 2012

Flexible Land Tenure Regulations:
Flexible Land Tenure Act, 2012
Government Notice 101 of 2018

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**These regulations were made by the Minister after consultation
with the committee established in terms of section [16](#) of the Act.**

1. Definitions

Unless the context indicates otherwise, in these regulations any word to which a meaning has been assigned in the Act, bears that meaning and-

“**Act**” means the Flexible Land Tenure Act, 2012 (Act [No. 4 of 2012](#));

“**certificate of right**” means a certificate contemplated in regulation [22](#);

“**land hold plan**” means a surveying document drawn up by a land measurer on the basis of the layout plan, depicting the measurements of boundaries and areas of plots, common property and servitudes, which is filed in the Land Rights Office and serves as the designation of the location of plots referred to in section [11\(4\)](#) of the Act;

“**layout plan**” means a town planning document necessary for the approval of a land hold title scheme by the local authority, showing the relative locations of envisaged plots, common property and servitudes;

“**relevant Registrar**” means the Registrar of the Land Rights Office in which the scheme in question is situated; and

“**transaction**” means a transaction for which the Act requires that it must be recorded in the starter title register or land hold title register and includes the correction of an error in the registers.

2. General principles

- (1) A starter title scheme or a land hold title scheme must accommodate 25 to 100 households unless circumstances make it desirable to have a different number.
- (2) All persons affected by the establishment of a starter title scheme or a land hold title scheme must actively participate in the design, planning, establishment and implementation of the scheme applicable to them and their skills and capacities for that purpose must be actively developed by the relevant authority within available resources.

3. Institutional arrangements relating to Land Rights Offices

- (1) Subject to subregulation (2), the office hours for every Land Rights Office are the ordinary working hours applicable to the Public Service in Namibia.
- (2) A Registrar may, from time to time by notice published in the *Gazette* and in a newspaper circulating in the area of jurisdiction of the Land Rights Office to which he or she is appointed, and by displaying posters at the entrance to that Land Rights Office-
 - (a) determine hours during which that Land Rights Office is closed to members of the public; or
 - (b) restrict the right of access to any defined part or parts thereof to the persons identified in that notice in order to secure all documents filed of record in that Land Rights Office.
- (3) Subject to subregulation (2) and (5), members of the public have access to all Land Rights Offices during the hours determined in terms of subregulation (2) and may under the supervision of staff members employed in the Land Rights Office, inspect and copy any documents filed of record in such Office in terms of subregulation (4).
- (4) A Registrar must file or cause to be filed of record in the Land Rights Office all documents required to be prepared, lodged, received, attested or held by him or her in terms of the Act or these regulations.
- (5) Every Registrar must make such arrangements as are reasonably necessary to secure all documents against destruction, deterioration and unauthorised removal.
- (6) Every Land Rights Office must have a strong room equipped with a locking mechanism controlled by the Registrar of the office concerned and to which access is restricted except to the Registrar and any person expressly authorised by him or her and in which all documents required to be filed of record must be kept in such manner as will enable such records to be easily accessible.
- (7) Every Registrar must have a seal of office, in the format determined by the Registrar of Deeds by means of a directive issued in terms of section 6(6) of the Act, an imprint of which he or she must affix to his or her signature on any document.

4. Qualifications of land measurers

A land measurer must be registered in terms of section 16(1)(a), 16(1)(b) or 16(1)(c) of the Professional Land Surveyors', Technical Surveyors' and Survey Technicians' Act, 1993 (Act No. 32 of 1993).

5. Computer system

- (1) Subject to subregulation (2) and (3), a computer system may be used with relation to registers kept in terms of the Act and must be maintained in such a manner that the system reflects the information in the register.
- (2) The information stored in a computer system in terms of subregulation (1) is not a register referred to in section 6 of the Act.

- (3) The Registrar of Deeds must establish such procedural rules as he or she considers expedient in order to ensure that-
 - (a) all changes to the registers are reflected in the computer system;
 - (b) that only persons authorised to make changes to the data stored on the system can do so;

[The word “that” at the beginning of paragraph (b) is superfluous as it also appears in the introductory phrase.]
 - (c) the system maintains a record of all changes and by whom such changes have been made; and
 - (d) the system can be audited to determine its conformance with the registers.
- (4) Despite subregulation (2), a Registrar may produce a printed document from the computer system and such document is deemed to be a certificate referred to in regulation 6(2) or 6(3) if such document has been attested in the manner determined by the Registrar of Deeds and the person attesting the document has performed all the steps determined by the Registrar of Deeds.

6. Copies of documents

- (1) Any person may apply to the relevant Registrar for the issue of a copy of any document filed of record in the Land Rights Office or for the issue of a certificate stating any fact recorded in the registers held at the Land Rights Office against payment of the fees prescribed in regulation 33.
- (2) If the application states that the copy or certificate is required for information only, the relevant Registrar must issue the requested copy or certificate to any person against payment of the prescribed fees and the words “Issued for information only” must be written or stamped on the face of every copy so issued.
- (3) Where the copy or certificate is required for judicial purposes, it must on written application signed by a legal practitioner or a party to the legal proceedings addressed to the relevant Registrar be issued to the legal practitioner or party against payment of the prescribed fees, and the words “Issued for judicial purposes only” must be written or stamped on the face of every copy or certificate so issued.
- (4) If any certificate of right is lost or destroyed and a copy is required for any purpose other than one of those mentioned in subregulation (2) or (3) the holder of the right specified in the certificate or, if such holder is deceased, insolvent or mentally incapacitated, his or her lawful representative, may make written application to the relevant Registrar for such copy, which application must be accompanied by an affidavit describing the document and stating that it has not been pledged and it is not being detained by any one as security for debt or otherwise, but that it has been actually lost or destroyed and cannot be found though diligent search has been made therefor, and further setting forth where possible the circumstances under which it was lost or destroyed.
- (5) If-
 - (a) the Registrar is not satisfied with respect to any matter referred to in subregulation (4), he or she may call for such further evidence as he or she considers necessary; or
 - (b) it appears from the records of a Land Hold Title Register, in the case of a land hold title plot, that the plot has been mortgaged or the owner has conferred a real right there in on some person who may by virtue thereof be in possession of the document concerned, or in the case of a bond, that it has been ceded, the Registrar must require that the holder of a bond, the person on whom the real right has been conferred or the cessionary to whom the bond has been ceded, must state in writing that the document concerned is not in his or her possession and that he or she consents to the issue of a copy to the applicant.

[The two words “there in” should appears as the single word “therein”.]

- (6) On compliance with the provisions of this regulation the Registrar must, if he or she is satisfied that no good reason to the contrary exists, issue the certified copy asked for against payment of the fees prescribed for the issue of the document in question.
- (7) Before the issue of a copy under subregulation (6), the relevant Registrar must search the registers and must make suitable endorsements regarding transactions, if any, registered therein in connection with the certificate concerned.
- (8) If a copy of a certificate of right has been issued by the relevant Registrar, under subregulation (6), the original certificate, if still in existence, becomes void upon the issue of the copy.
- (9) If a certificate in respect of which a copy has been issued under subregulation (6) is subsequently found and produced to the Registrar, he or she must endorse thereon that it has become void.
- (10) If a certificate which has become void in terms of subregulation (8), comes into the possession or custody of any person who knows that a copy of that certificate has been issued in terms of subregulation (6), the person must submit, as soon as practicable, the original certificate to the registrar.

7. Parties must appear in person

- (1) Subject to section 9(6) of the Act and to regulation 8, the parties to any transaction must appear in person before the relevant Registrar or a registration officer authorised in writing by the relevant Registrar to verify the transaction.
- (2) The registrar or registration officer may put any question to the parties and must render all necessary assistance to them.
- (3) When a person appears before a Registrar or registration officer as contemplated in subregulation (1), he or she must put such questions to the person and discuss the matter with the person concerned in order to satisfy himself or herself of the transaction that the person intends to perform and that the person concerned understands the nature of the transaction.
- (4) For the purposes of this regulation, a person includes the executor of an estate or the curator of an insolvent estate or of a person under legal disability.
- (5) When a party to a transaction is a minor, the minor must be accompanied by his or her parent or guardian.
- (6) When an error is corrected a reference to a party in this regulation is construed as a reference to any person having an interest in the matter provided that an error may be corrected without the appearance of any person if the correction of the error does not affect the right of any person: Provided further that if a person has been given reasonable notice of the intention to correct an error and that person has failed to appear before the Registrar, the error may be corrected without the appearance of the person concerned.

8. Power of attorney

- (1) If a person is unable to appear personally before the relevant Registrar or a registration officer as contemplated in regulation 7(1), or if the person is a juristic person, the person must draw up a power of attorney in the form determined by the Registrar of Deeds authorising another person to appear before the Registrar or registration officer on his or her behalf.
- (2) If a person appears on behalf of another person (other than a juristic person) the person granting the power of attorney must also provide an affidavit in which he or she declares that he or she grants the power of attorney and also state the reason why it is not possible to appear in person before the Registrar or registration officer.
- (3) The Registrar or registration officer may question the representative under oath to satisfy himself or herself that the person appearing before him or her has actually been authorised by the party in question.

- (4) If the Registrar or registration officer is not satisfied that the person appearing before him or her is properly authorised, he or she must refuse to register the transaction in question.

9. General provisions relating to registers

- (1) The Starter Title and the Land hold Title Register must consist of files made of durable material containing leafs of a convenient size which files must include-
 - (a) a master file;
 - (b) a holders file;
 - (c) such number of document files as the Registrar of Deeds may determine in which documents relating to the scheme are filed; and
 - (d) such other files as the Registrar of Deeds may direct.
- (2) Subject to the explicit provisions of these regulations the form and layout of information in the files referred to in subregulation (1) must be as determined by the Registrar of Deeds.
- (3) The Registrar of Deeds may determine that any additional information must be recorded in the files referred to in subregulation (1).
- (4) The master file for starter title registers is constructed in the manner specified in regulation 10.
- (5) The master file for land hold titles is constructed in the manner specified in regulation 11.
- (6) The holders file is a file containing an alphabetical list of all the holders of starter title and land hold title rights in Namibia.

10. Starter title register

- (1) The master file for the starter title register must contain such number of leafs for every scheme as are necessary to record all the information which must be recorded as required by these regulations.
- (2) On the first leaf for every scheme, the general information relating to the scheme must be recorded together with a reference number indicating where any document relating to such general information is filed.
- (3) The general information for a starter title scheme must include-
 - (a) the name of the scheme;
 - (b) the name of the relevant authority;
 - (c) the date on which the establishment of the scheme has been approved by the relevant authority;
 - (d) the date on which the scheme has been established;
 - (e) the reference number of the document containing the conditions imposed on the scheme under section 12(6) of the Act;
 - (f) the reference number of the constitution of the scheme;
 - (g) a unique number allocated to the scheme in a manner determined by the Registrar of Deeds; and
 - (h) a description of the block of the scheme which is sufficient to identify it unambiguously.
- (4) The general information must be followed by a table in which the particulars of all the holders of rights in the scheme are recorded.
- (5) The table referred to in subregulation (4) must contain a row for every rights holder in the scheme.

- (6) The table referred to in subregulation (4) must include the following columns-
- (a) a column containing a serial number for every row with the heading “number”;
 - (b) a column containing the distinctive serial number allocated in terms of regulation 16(1)(c) with the heading “number of right”;
 - (c) a column containing the full name of the rights holder with the heading “name of holder”;
 - (d) a column with the heading “married” containing the word “yes” or “no” as the case may be;
 - (e) a column with the heading “nature of marriage” containing the words “in community of property”, “out of community of property” or “under customary law” as the case may be;
 - (f) a column containing the name of the spouse of the rights holder;
 - (g) a column with the heading “Nature of transaction” in which the nature of the transaction is recorded or if it is the first allocation, the words “First allocation” is entered or if an error is corrected, the words “error correction” is entered;

[The verb “is” in its second and third uses in paragraph (g) should be “are” to be grammatically correct: “the words ‘First allocation’ are entered’ and “the words ‘error correction’ are entered”.]

- (h) a column containing the reference number of any document filed with relation to the transaction;
 - (i) a column with the heading “Responsible officer” in which the name and surname of the person who has entered the information is recorded;
- [The verb “is” should be “are” to be grammatically correct: “name and surname... are recorded”.]**
- (j) a column containing the date on which the information is entered in the register; and
 - (k) columns with the headings “previous row” and “replaced by” in which is marked “n/a” for the first allocation of a right and is used as specified in subregulation (8) for subsequent transactions.
- (8) If a right is transferred or if an error is corrected, the first empty row in the master file must be completed with the new information filled in and-
- (a) the serial number of the row containing the old information must be entered in the cell of the new row below the heading “previous row”; and
 - (b) the serial number of the new row must be entered in the cell of the old row below the column heading “replaced by”.

[Please note: numbering as in original.]

- (9) Every leaf must have a number in the top right hand corner formed from the number of the scheme and the number of the leaf in the scheme.
- (10) If a leaf is full, the words “continued on next leaf no” followed by the number of the new leaf must be entered at the bottom of the full leaf.
- (11) Information must be entered in the registers only by the relevant Registrar or by a registration officer.
- (12) Information must be entered in the registers in clear and legible hand writing and the relevant Registrar or registration officer must put his or her name in the cell below the column with the heading “responsible officer”.

[The term “handwriting” should be written as one word instead of two.]

11. Land hold title register

- (1) The master file for the land hold title register must have such number of leafs for every scheme as may be necessary to enter the information required by this regulation.
- (2) The first leaf of the scheme must contain the general information relating to the scheme which information must include-
 - (a) the name of the scheme;
 - (b) the name of the relevant authority;
 - (c) the date on which the establishment of the scheme has been approved by the relevant authority;
 - (d) the date on which the scheme has been established;
 - (e) the reference number of the document containing the conditions imposed on the scheme under section [13\(6\)](#) of the Act;
 - (f) the reference number of the constitution of the scheme;
 - (g) the number of plots in the scheme;
 - (h) a unique number allocated to the scheme in a manner determined by the Registrar of Deeds; and
 - (i) a description of the block of the scheme which is sufficient to identify it unambiguously.
- (3) Following the general information, the file must contain one or more leafs for each plot in the scheme.
- (4) The first leaf for a plot must contain general information relating to the plot followed by a table containing a row for every transaction performed in respect of the plot.
- (5) The general information relating to the plot must include-
 - (a) the number of the plot in the scheme;
 - (b) a list of co-ordinates specifying the boundaries of the plot; and
 - (c) the reference number for the document specifying the conditions that relate to that plot imposed under section [13\(6\)](#) of the Act.
- (6) The table referred to in subregulation [\(4\)](#) must contain the following columns-
 - (a) a column containing a serial number for every row with the heading “number”;
 - (b) a column containing the full name of the rights holder with the heading “name of holder”;
 - (c) a column with the heading “married” containing the word “yes” or “no” as the case may be;
 - (d) a column with the heading “nature of marriage” containing the words “in community of property”, “out of community of property” or “under customary law” as the case may be;
 - (e) a column containing the name of the spouse of the rights holder;
 - (f) a column with the heading “Nature of transaction” in which the nature of the transaction is recorded or if it is the first allocation, the words “First allocation” is entered or if an error is corrected, the words “error correction” is entered;

[The verb “is” in its second and third uses in paragraph [\(g\)](#) should be “are” to be grammatically correct: “the words ‘First allocation’ are entered” and “the words ‘error correction’ are entered”.]

- (g) a column containing the reference number of any document filed with relation to the transaction;
 - (h) such columns as the Registrar of Deeds considers necessary indicating whether a plot is subject to a mortgage and indicating whether any servitudes are registered in favour or against the plot, which columns must be duplicated with each new row unless the transaction changes the information, in which case the new information must be entered;

[The word “of” appears to have been omitted after the words “in favour”.]
 - (i) a column with the heading “Responsible officer” in which the name and surname of the person who has entered the information is recorded; and

[The verb “is” should be “are” to be grammatically correct: “name and surname... are recorded”.]
 - (j) a column containing the date on which the information is entered in the register.
- (7) If a transaction is performed, the first empty row in the table referred to in subregulation (4) must be completed with the information relating to that transaction.
- (8) For the purposes of subregulation (7) transaction means the following acts-
- (a) the transfer of rights;
 - (b) the registration of a mortgage bond;
 - (c) the cancellation, cession or amendment of a mortgage bond;
 - (d) the creation of a servitude;
 - (e) the cancellation or amendment of a servitude; or
 - (f) the correction of an error.
- (9) Every leaf must have a number in the top right hand corner-
- (a) formed from the number of the scheme and the number of the leaf in the scheme if the leaf is part of the general information; and
 - (b) formed from the number of the scheme, the number of the plot and the number of the leaf in the information relating to the specific plot.
- (10) If a leaf is full, the words “continued on next leaf no” followed by the number of the new leaf must be entered at the bottom of the full leaf.
- (11) Information must be entered in the registers only by the relevant Registrar or by a registration officer.
- (12) Information must be entered in the registers in clear and legible hand writing and the relevant Registrar or registration officer must put his or her name in the cell below the column with the heading “responsible officer”.

[The term “handwriting” should be written as one word instead of two.]

12. Blockerf

- (1) The Registrar of Deeds must on receipt of a notice in terms of sections 12(2) or 13(2) of the Act notify the Surveyor-General of the establishment of the scheme in question.
- (2) The Surveyor-General must on receipt of the notice referred to in subregulation (1) endorse the designation of the land as a blockerf on the diagram or general plan thereof.

13. Steps before approval of starter title scheme

- (1) Before the approval of the establishment of a starter title scheme is considered in terms of section [12\(1\)](#) of the Act, the applicant must, if it is not the relevant authority, lodge such documentation as the relevant authority may require together with the application to establish a starter title scheme in terms of section [11\(1\)](#) of the Act.
- (2) Upon receipt of the documentation referred to in subregulation [\(1\)](#), the relevant authority must comply with section [11\(7\)](#), [\(8\)](#) and [\(9\)](#) of the Act and compile an explanatory report which must record all matters relevant to its consideration of the establishment of the scheme concerned.
- (3) As soon as possible after the approval of the establishment of the scheme concerned, the relevant authority must submit the report referred to in subregulation [\(2\)](#), together with such other information as it deems necessary, to the relevant Registrar.

14. Steps before approval of land hold title scheme

- (1) The person applying for the establishment of a land hold title scheme, must, subject to the Act and these Regulations, in collaboration with the relevant authority if the applicant is not the relevant authority, and after consultation with the persons included or to be included in the list referred to in section [11\(5\)](#) of the Act, prepare a layout plan in respect of the block concerned and he or she must-
 - (a) determine the location of plots on the block on which such scheme is to be established;
 - (b) as far as is reasonably possible determine the location of the plots in a way requiring the least relocation of existing buildings and structures used by the households as their homes or for domestic purposes;
 - (c) indicate on that layout plan the location of every plot, the location of common property (which might include streets or public places) and servitudes that require such indication for its adequate specification, as well as any existing servitudes on the block;

[The pronoun “its” should be “their” to accord with the noun “servitudes”.]
 - (d) allocate to each plot, public place and street a distinctive serial number which number must be indicated on the plan; and
 - (e) sign the layout plan and indicate thereon the date on which it was prepared.
- (2) Before the approval of the land hold title scheme concerned is considered in terms of section [13\(1\)](#) of the Act, the applicant must, if it is not the relevant authority, lodge such documentation as the relevant authority may require together with the layout plan with the relevant authority for the completion of the application to establish a land hold title scheme in terms of section [11\(1\)](#) of the Act.
- (3) If the relevant authority is not the initiator of the land hold title scheme concerned, it may require an applicant to make the amendments and adjustments to the layout plan which it thinks are necessary.
- (4) Upon receipt of the documentation referred to in subregulation [\(2\)](#), the relevant authority must comply with section [11\(7\)](#), [\(8\)](#) and [\(9\)](#) of the Act and compile an explanatory report which must record all matters relevant to its consideration of the establishment of the scheme concerned.
- (5) As soon as possible after the approval of the establishment of the scheme concerned, the relevant authority must submit the report referred to in subregulation [\(4\)](#) together with such other information as it deems necessary, to the relevant Registrar.

15. Establishing of association and adoption of name

- (1) As soon as possible after the establishment of a starter title scheme or a land hold title scheme has been approved by the relevant authority, it must instruct an officer in its employ to call a meeting of the persons to whom rights will be allocated in the scheme for the purpose of establishing an association for the scheme as contemplated in section 18 of the Act.
- (2) The officer instructed as contemplated in subregulation (1), must ensure that the proceedings at the meeting are democratic and participatory.
- (3) The officer instructed in terms of subregulation (1) must extensively assist the intended members of the association to design and prepare the constitution of the association: Provided that if the persons resident on a scheme are members of an existing association, that association may be converted into the association of the scheme.
- (4) At the meeting referred to in subregulation (1) each prospective holder has one vote for each holding or plot as the case may be.
- (5) At the meeting referred to in subregulation (1) the members must also propose a name by which the scheme must be known.
- (6) The name proposed must be submitted to the relevant authority who must reject the name if-
 - (a) the name is offensive or undesirable;
 - (b) the name is the name of a starter title scheme or land hold title scheme in the area of jurisdiction of the relevant authority in whose jurisdiction the scheme is situated; or
 - (c) the name is the name of a juristic person, or contains a trademark or any name to which a person has any form of intellectual property.
- (7) The officer instructed in terms of subregulation (1) must submit a copy of the constitution to the local authority together with a request to approve the proposed name.

[The reference to “local authority” may have been intended to be “relevant authority”, which is the term used elsewhere in this regulation, and particularly in subregulations (8)-(9) which concern the same subject-matter as this subregulation.]
- (8) If the relevant authority rejects the name or is of the opinion that the constitution of the association does not comply with the provisions of these regulations or the Act, the officer must call a further meeting to propose a new name or amend the constitution.
- (9) After the constitution has been adopted and the name has been approved by the relevant authority, a copy of the constitution under cover of a certificate issued by the officer instructed under subregulation (1) in which he or she certifies that-
 - (a) he or she has performed his or her duties prescribed by this regulation;
 - (b) the constitution has been adopted by a meeting of the persons to whom rights will be allocated; and
 - (c) stating the name of the scheme proposed by the persons to whom rights will be allocated, must be submitted to the relevant Registrar.

16. Steps after approval of establishment of starter title scheme

- (1) After receipt of the documents referred to in regulation 13(3) and after the payment of the fees referred to in regulation 33(3), the relevant Registrar must designate a land measurer who must-
 - (a) determine the location of the starter title rights to be allocated in the starter title scheme on the block/erf on which the scheme is to be established;

- (b) as far as is reasonably possible and in consultation with the intended holders of starter title rights determine the locations in a way requiring the least relocation of existing buildings and structures used by the households as their homes or for domestic purposes;
- (c) allocate a distinctive serial number to each location in the scheme;
- (d) mark each building, or the most substantial building if there are more than one, erected and occupied by the household of each person to be included in the list referred to in section [12\(9\)](#) of the Act with that serial number in a durable material to ensure the permanence of such marking; and

[The verb “are” should be “is” to be grammatically correct: “if there is more than one”.]

- (e) determine a reference point which specifies the location for each starter title right as contemplated in section [9\(1\)\(a\)](#) of the Act with an accuracy of at least 1 meter.
- (2) The land measurer must deliver the following documents, duly signed and dated and endorsed with the name of the scheme to the relevant Registrar-
- (a) a report on the determination under subregulation [\(1\)](#);
 - (b) a list of the distinctive serial numbers referred to in subregulation [\(1\)\(c\)](#) and coordinates of the reference points contemplated in subregulation [\(1\)\(e\)](#); and
 - (c) a certificate issued and signed by him or her stating that the co-ordinates have been checked directly in the field and that he or she is satisfied of the correctness thereof.
- (3) The relevant Registrar may at any time direct a land measurer to amend or correct the information contained in the list of the distinctive serial numbers and co-ordinates of the reference points filed of record if, in the opinion of that registrar, circumstances in the applicable starter title scheme warrant such amendment or correction, and such amended or corrected list together with the field notes associated with such work must be filed of record in the Land Rights Office.

[The inconsistent capitalisation of the term “registrar” is reproduced above as it appears in the *Government Gazette*.]

- (4) Before issuing a direction under subregulation [\(3\)](#), the relevant Registrar must notify the holder of any starter title right or other right affected by that direction and consider the information provided by that person.
- (5) If the relevant Registrar is satisfied with the documents referred to in subregulation [\(2\)](#), he or she must file them of record in the Land Rights Office and proceed to comply with section [12\(8\)](#) to [\(12\)](#) of the Act.

17. Steps after approval of establishment of land hold title scheme

- (1) The relevant authority must together with the notice provided for in section [13\(2\)](#) and [\(8\)](#) of the Act, deliver a copy of the explanatory report compiled in terms of regulation [14\(4\)](#) to the Registrar of Deeds and the relevant Registrar.
- (2) The notice and the attached copy of the explanatory report must be filed of record in the Land Rights Office.
- (3) On receipt of the documents referred to in subregulation [\(1\)](#) and after the payment of the fees prescribed by regulation [33\(4\)](#), the relevant Registrar must forthwith apply to the Registrar of Deeds to open a land hold title register and cause all the particulars relating to the scheme to be entered in the applicable land hold title register.
- (4) As soon as possible after the relevant Registrar has received the documentation referred to in subregulation [\(1\)](#), he or she must designate a land measurer to prepare a land hold plan which is the description of the plots referred to in section [11\(4\)](#) of the Act.

- (5) The land measurer referred to in subregulation (4), must-
- (a) obtain all available information in respect of any previous surveys of the blockerf concerned and of the adjoining pieces of land from the office of the Surveyor-General who must, if he or she is in a position to do so, supply that information to the land measurer;
 - (b) survey the internal boundaries of all plots, streets and other public places shown on the layout plan in accordance with the regulations made in terms of the Land Survey Act, 1993 (Act No. 33 of 1993) which survey must be done to an accuracy required by at least Class C in terms of such Regulations; and

[The inconsistent capitalisation of the term “regulations” is reproduced above as it appears in the *Government Gazette*.]

- (c) prepare the land hold plan, depict the location of any servitude referred to in section 10(5)(c) or (d) of the Act on the plan, endorse the land hold plan with the name of the scheme to which it applies, and sign and date the plan.
- (6) The land measurer must lodge the land hold plan with the Surveyor-General for his or her confirmation that the land hold plan complies with the Land Survey Act together with the following documents-
- (a) a report on the survey and on incidental matters;
 - (b) a co-ordinate list;
 - (c) the original field book;
 - (d) all calculations and computations, including relevant processing results and reports;
 - (e) a copy of the layout plan used by him or her; and
 - (f) a certificate from the responsible land measurer stating that-
 - (i) the land hold plan is consistent with the layout plan on which it is based;
 - (ii) the consistency of information and plot areas have been checked directly from the land hold plan;
 - (iii) the co-ordinates of beacons appearing on the land hold plan have been checked against the co-ordinate list and the calculations of the fixes of such beacons; and
 - (iv) he or she has satisfied himself or herself of the correctness of such checks.
- (7) After the Surveyor-General has approved the land hold plan, he or she must return the approved plan to the land measurer who must provide a copy thereof to the relevant authority and the original must be filed in the Land Rights Office.
- (8) The Registrar must examine the land hold plan and satisfy himself or herself that-
- (a) it is substantially consistent with the layout plan on which it is based; and
 - (b) it incorporates the conditions imposed by the relevant authority in terms of section 13(6) of the Act in so far as such inclusion is appropriate.
- (9) The Registrar may consult with the relevant authority to confirm that the land hold plan is consistent with the layout plan.
- (10) A Registrar may if in his or her opinion circumstances in the applicable land hold title scheme warrant that amendment or correction, instruct a land measurer accordingly.
- (11) A land measurer who has been instructed in terms of subregulation (10), must after consultation with the Surveyor-General and after notifying the holder of any plot or other right affected by that direction, amend or correct the information depicted on that land hold plan and that amended or

corrected land hold plan together with the field notes must be filed of record in the Land Rights Office.

18. Proposal to upgrade scheme

- (1) A proposal to adopt a resolution-
 - (a) to upgrade a starter title scheme to a land hold title scheme;
 - (b) to upgrade a starter title scheme to full ownership; or
 - (c) to upgrade a land hold title scheme to full ownership,must be supported by at least 10% of the right holders in the scheme concerned.
- (2) The proposal referred to in subregulation (1) must be recorded in writing and must be signed by each person who supports the proposal and the full name in block capitals together with the distinctive serial number allocated to the right held by him or her must be recorded with his or her signature on the proposal.
- (3) The proposal must be submitted to the relevant authority, the relevant Registrar and the chairperson of the management committee of the association of the scheme.
- (4) The chief executive officer of the relevant authority must designate an officer to attend the meeting and the relevant Registrar must designate a registration officer to attend the meeting or may personally attend the meeting as such representative.
- (5) The chairperson must together with the representative of the relevant authority and of the Land Rights Office determine the date of the meeting to consider the proposal.
- (6) The chairperson of the management committee of the association of the scheme must convene a meeting of all the right holders for the date determined in terms of subregulation (5) by written notice delivered to every such member.
- (7) Despite any provision to the contrary in the constitution of the association of the scheme, a quorum at a meeting to upgrade a scheme is 75% of the right holders in the scheme.
- (8) If a resolution to upgrade a scheme is adopted, that resolution must be recorded in writing and must be signed by each rights holder who voted in favour of the adoption of the resolution whose full name in block capitals and the distinctive serial number allocated to the right held by him or her must be recorded with his or her signature and the chair person must lodge the original of that resolution with the application to upgrade the scheme to the relevant authority.

[The term “chairperson” should be written as one word instead of two.]

- (9) The representative of the Land Rights Office must prepare a report setting out his or her observations in relation to-
 - (a) whether the notice of the meeting was effective in ensuring the presence of the right holders at the meeting;
 - (b) the number of right holders present at the meeting;
 - (c) whether the proceedings at the meeting were conducted in a fair and democratic manner and if not, the reasons for such observation;
 - (d) the number of right holders who voted in favour of and the number who voted against the adoption of the resolution; and
 - (e) the views of any dissenting persons.

19. Upgrading starter title rights to land hold title rights

- (1) On receipt of the application in terms of regulation [18\(9\)](#) for the upgrade of a starter title scheme to a land hold title scheme, the relevant authority must-
 - (a) examine the application to satisfy itself that the application has been made lawfully and complies with the Act and these Regulations;
 - (b) if it is not so satisfied, consult with the applicants in order to rectify any defect in the application and thereafter either grant the application or, for good and proper reason, reject it and provide the applicants with its reasons therefor in writing; and
 - (c) if the application is granted, proceed with the upgrade.
- (2) The upgrade must be completed in accordance with regulation [17](#) and section [14](#) of the Act, with appropriate changes.
- (3) The Certificates of Starter Title Right issued to every holder of a starter title right in the scheme being upgraded must be surrendered to the relevant Registrar against the issue of-
 - (a) a Certificate of Land Hold Title Right in respect of the upgraded land hold title scheme; or
 - (b) a Certificate of Starter Title Right in a similar scheme in respect of a starter title right issued to a holder of such right who did not agree to the upgrade as contemplated in section [14\(2\)](#) of the Act.
- (4) On receipt of the Certificates of Starter Title Right in terms of subregulation [\(2\)](#), the relevant Registrar must endorse thereon that the starter title right recorded therein has been cancelled.
- (5) A starter title scheme will be deemed to have been upgraded to a land hold title scheme in compliance with subregulation [\(3\)](#) and the opening of a land hold title register in terms of regulation [17\(3\)](#).

[The cross-reference should be to subregulation [\(3\)](#) instead of subregulation [\(2\)](#).]

[The term “in compliance” may have been intended to read “upon compliance”. Also, the cross-reference to regulation [17\(3\)](#) should possibly be a cross-reference to regulation [20\(2\)\(a\)](#), which covers the opening of a land hold title register in the event of an upgrade.]

20. Cancellation of starter title register and opening of land hold title register

- (1) The relevant Registrar must notify the Registrar of Deeds of the upgrading of the relevant starter title scheme to a land hold title scheme.
- (2) On receipt of the notice in terms of subregulation [\(1\)](#), the Registrar of Deeds must-
 - (a) close the starter title register opened in respect of the cancelled starter title scheme and open a land hold title register and enter therein the information arising from the upgrade; and
 - (b) notify the Surveyor-General of such upgrade who must endorse such fact on the diagram or general plan of the applicable block.

21. Upgrade to full ownership

- (1) After the relevant authority has approved the application to upgrade a starter title scheme or land hold title scheme to full ownership, it must proceed to subdivide the block in accordance with the applicable laws.
- (2) The relevant authority must ensure that the land hold plan and all other documents, plans and schemes are updated to provide for the new erven and new public places to be created by the subdivision.

- (3) Subject to subregulation (4), after compliance with section 15(2) of the Act and with subregulation (2) in respect of a block of land on which a starter title scheme or a land hold title scheme has been established, the relevant authority must deliver a notice to the relevant Registrar and the Registrar of Deeds giving notice of the upgrade whereupon-
- (a) deeds must be prepared by the Registrar of Deeds in such a manner that the rights and obligations created by servitudes, restrictive conditions and mortgages are preserved as far as possible;
 - (b) the Certificates of Starter Title Right or the Certificates of Land Hold Title Right issued to every holder of a right in the scheme being upgraded must be surrendered to the Registrar of Deeds against the issue of a deed in the erf created by the upgrade or the issue of a certificate of right in a similar scheme;
 - (c) the starter title right or the land hold title right held by any person in respect of the scheme concerned being upgraded to full ownership is extinguished simultaneously with the issue to the former holder of such rights of a title deed or with the payment of fair compensation in terms of section 15(4) of the Act;
 - (d) the relevant Registrar must-
 - (i) note the extinction of the relevant starter title or land hold title right on any Certificate of Starter Title Right or any Certificate of Land Hold Title Right;
 - (ii) make all such alterations, amendments, endorsements and entries in the registers and records kept in the Land Rights Office as may be necessary; and
 - (iii) in the case of a land hold title register, cancel the land hold plan; and
 - (e) the Registrar of Deeds must-
 - (i) close the starter title register or the land hold title register and notify the Surveyor-General and the relevant authority concerned in writing that the register has been closed;
 - (ii) register all erven in the name of the persons entitled thereto.
- (4) Any mortgage bond registered against any land hold title right to be upgraded to full ownership must be cancelled simultaneously with such upgrade and a mortgage bond subject to substantially similar conditions must be registered against the erf in question.
- (5) Every servitude referred to in section 10(5)(c) or (d) of the Act, and every restrictive condition imposed under section 12(6) or 13(6) of the Act, must be registered over or in favour of such erven as are appropriate, unless such servitude or restrictive condition becomes unnecessary due to the conversion of the scheme to full ownership.

22. Certificate of right

- (1) Subject to this regulation the Registrars must issue certificates of right in the form approved by the Registrar of Deeds to-
- (a) the holder of a starter title right;
 - (b) the holder of a land hold title right;
 - (c) the holder of a mortgage bond; or
 - (d) the holder of a servitude contemplated in section 10(5)(d) of the Act.
- (2) All certificates referred to in subregulation (1) must-
- (a) indicate the Land Rights Office issuing the certificate;
 - (b) state the name and number of the scheme concerned;

- (c) state the number of the right;
 - (d) state all particulars of the holder of the right to which the certificate relates which are recorded in the register held in the Land Rights Office; and
 - (e) be signed by the relevant Registrar.
- (3) A certificate of right may have such security features including water marks, bar codes, serial numbers or checksums as the Registrar of Deeds may determine and any certificate lacking such security features may be regarded as invalid.

[The term “watermarks” should be written as one word instead of two.]

- (4) A certificate of land hold title must-
- (a) indicate whether the title is subject to a mortgage and must in respect of every mortgage indicate all particulars required by subregulation (5);
 - (b) indicate whether the plot is subject to a servitude contemplated in section 10(5)(d) of the Act and in respect of every servitude record all the information referred to in subregulation (6);
 - (c) indicate whether the plot is a servient plot in respect of a servitude contemplated in section 10(5)(c) of the Act, and if it is the case, indicate the number of the dominant plot; or
 - (d) indicate whether the plot is the dominant plot in respect of a servitude contemplated in section 10(5)(c) of the Act, and if it is the case, indicate the number of the servient plot.
- (5) The certificate of right issued to a bond holder in respect of a mortgage bond must-
- (a) contain all the information recorded in the land hold title register in respect of the plot and the holder of the right;
 - (b) contain all the information recorded in the land hold register in respect of the person in favour of whom the bond has been issued; and
 - (c) indicate the reference number of the document recording the conditions subject to which the mortgage has been granted.
- (6) The certificate of right issued to a bond holder in respect of a servitude referred to in section 10(5)(c) of the Act, must-
- (a) contain all the information recorded in the land hold title register in respect of the plot and the holder of the right;
 - (b) contain all the information recorded in the land hold register relating to the person in whose favour the servitude has been granted; and
 - (c) indicate the reference number of the document recording the conditions subject to which the servitude has been granted.
- (7) A Registrar may, on request of the holder of a certificate of right and after payment of the prescribed fees, make an endorsement thereon if any error is discovered or the marital status of the holder thereof or any particular indicated thereon has changed.

23. Transfer of rights

- (1) Subject to the Act and to these Regulations, a starter title right and a land hold title right are transferred by-
- (a) the completion of a form as determined by the Registrar of Deeds and the delivery thereof to the relevant Registrar when the parties or their representatives appear before the registrar as contemplated in regulation 7 read with regulation 8;

- (b) the entry of the information in the relevant register in the manner prescribed by these regulations; and
 - (c) the issue to the transferee of a Certificate of Starter Title Right or a Certificate of Land Hold Title Right and the cancellation of the starter title certificate or land hold title certificate held by the transferor.
- (2) If the Registrar proceeds as contemplated in section 9(6) of the Act, he or she must comply with that subsection and with subregulation (1) to the extent to which that is possible.
- (3) On receipt of the form referred to in subregulation (1)(a) and before proceeding in terms of subregulation (1)(b), the Registrar must satisfy himself or herself-
 - (a) if the transaction relates to a starter title right, that the person to whom the rights are to be transferred is not then the holder of a starter title right in any starter title scheme or the owner of any immovable property or land hold title right in Namibia;
 - (b) that such transfer is not a contravention of any condition imposed in terms of section 12(6) of the Act if the transaction involves a starter title right or of section 13(6) of the Act if the transaction relates to land hold title right;
 - (c) that the person who intends to transfer the right is the holder of the right in question;
 - (d) that the representative appearing before the Registrar has been authorised to perform the transaction in question; and
 - (e) that there is no mortgage on the plot or the mortgage holder has consented to the transaction.
- (4) The Registrar must provide such assistance to the transferor and transferee as may be necessary-
 - (a) in the preparation, execution and registration of any transaction contemplated in subregulation (1);
 - (b) to ensure compliance with any law regulating or applicable to the sale or transfer of such rights; and
 - (c) in ensuring that any financial obligations between the parties or to any other party arising from or associated with such transaction, including any holder of a bond are settled.

[There should be a comma after the phrase “including any holder of a bond” to offset that phrase properly.]

24. Mortgage bonds

- (1) A mortgage bond on a land hold title plot is registered, cancelled, ceded or amended by-
 - (a) the completion of a form as determined by the Registrar of Deeds and the delivery thereof to the relevant Registrar when the parties or their representatives appear before the registrar as contemplated in regulation 7 read with regulation 8;
 - (b) the owner of the plot and the holder of the bond signing a document containing the conditions subject to which the mortgage is granted during the appearance in terms of paragraph (a) and the filing of that document in the Land Rights Office: Provided that the document referred to in this paragraph may incorporate a document referred to in subregulation (5) by reference;
 - (c) the entry of the information in the relevant register in the manner prescribed by these regulations; and
 - (d) the cancellation of the certificates of right which do not reflect the state of affairs after the registration and the replacement thereof with new certificates reflecting the state of affairs after the registration.

- (2) The following particulars must be registered in a land hold title register in respect of a mortgage bond-
 - (a) the personal details of the holder of the bond (full name and identity number of a natural person or the full name, registration number of a juristic person); and
 - (b) subject to subregulation (5), the terms and conditions agreed to by the holder of the bond and the holder of the land hold title right which apply to a mortgage bond registered in accordance with subregulation (1) and any subsequent amendment thereof, which must include-
 - (i) the nature of the debt secured by the bond;
 - (ii) the full monetary value of the debt secured by the bond; and
 - (iii) the date on which the debt secured by the bond is to be fully repaid or discharged.
- (3) Any person may on application to a relevant Registrar lodge a copy of the standard conditions applicable to loans granted by that person in a Land Rights Office.
- (4) On receipt of an application in terms of subregulation (3), the Registrar concerned must file a copy of such conditions in his or her permanent records and assign a distinctive reference number thereto.
- (5) Any mortgage bond registered subsequent to compliance with subregulation (4) may refer to such standard conditions by the reference number ascribed thereto instead of repeating such conditions in the document referred to in subregulation (1)(b).

25. Transfer of mortgaged plot

- (1) A Registrar may not register the transfer of a plot encumbered by a mortgage until the bond has been cancelled or the plot has been released from the operation of the bond with the written consent of the holder of the bond.
- (2) If the certificate of right in respect of a bond which must be cancelled in terms of subregulation (1) has been lost or destroyed, then the Land Rights Office's duplicate of the certificate of right in respect of the bond must be cancelled before the Registrar may attest or execute the transfer.
- (3) No cancellation of a bond, or release of a plot from the operation of a bond in terms of subregulation (1), is necessary if the transfer or cession referred to in that subsection is made-
 - (a) by a competent officer in the execution of a judgement of a Court;
 - (b) by the trustee of an insolvent estate;
 - (c) by the executor administering and distributing an estate in terms of section 34 of the Administration of Estates Act, 1965 (Act No. 66 of 1965) or any other law providing for the administration and distribution of the estate of a deceased person;
 - (d) by the liquidator of a company or of a close corporation which is unable to pay its debts and is being wound up by, or under the supervision of, the High Court; or
 - (e) as required by an order of Court.

26. Servitudes

- (1) A servitude referred to in section 10(5)(c) of the Act is registered, cancelled, ceded or amended in any manner by the-
 - (a) completion of a form as determined by the Registrar of Deeds and the delivery thereof to the relevant Registrar when the parties or their representatives appear before the registrar as contemplated in regulation 7 read with regulation 8;

- (b) owner of the plot and the beneficiary of the servitude signing a document containing the conditions subject to which the servitude during the appearance in terms of paragraph (a) and the filing of that document in the Land Rights Office;

[The wording of paragraph (b) appears to have omitted some words. It was probably intended to read as follows, mirroring subregulation (2)(b) below: “(b) owner of the plot and the beneficiary of the servitude signing a document containing the conditions subject to which the servitude is granted during the appearance in terms of paragraph (a) and the filing of that document in the Land Rights Office;”.]

- (c) entry of the information in the relevant register in the manner prescribed by these regulations; and
 - (d) cancellation of the certificates of right which do not reflect the state of affairs after the registration and the replacement thereof with new certificates reflecting the state of affairs after the registration.
- (2) A servitude referred to in section 10(5)(d) of the Act is registered, cancelled, ceded or amended in any manner by the-
- (a) completion of a form as determined by the Registrar of Deeds and the delivery thereof to the relevant Registrar when the parties or their representatives appear before the registrar as contemplated in regulation 7 read with regulation 8;
 - (b) owner of the dominant and the servient plot signing a document containing the conditions subject to which the servitude is granted during the appearance in terms of paragraph (a) and the filing of that document in the Land Rights Office;
 - (c) entry of the information in the relevant register in the manner prescribed by these regulations; and
 - (d) cancellation of the certificates of right which do not reflect the state of affairs after the registration and the replacement thereof with new certificates reflecting the state of affairs after the registration.
- (3) If the relevant Registrar is of the opinion that it is necessary for the proper description of the servitude, he or she must appoint a land measurer to perform the necessary measurements and to indicate the necessary particulars relating to the servitude on the land hold plan.
- (4) The person in whose favour a servitude referred to in section 10(5)(c) of the Act is granted must pay the fees for the measurements referred to in subregulation (3) before the servitude is registered.
- (5) The holder of the dominant plot must in the case of a servitude referred to in section 10(5)(d) of the Act pay the fees for the measurements referred to in subregulation (3) before the servitude is registered.
- (6) If a servitude is created while the scheme is being established, subregulation (1) to (5) do not apply to that creation.

[The singular word “subregulation” should be the plural word “subregulations”.]

- (7) The location of a servitude must be depicted on the land hold plan of the relevant land hold title scheme.
- (8) The depiction or otherwise of the servitudes on the land hold plan must be made in accordance with the Land Survey Act, 1993 (Act No. 33 of 1993), and regulations made thereunder, and must contain sufficient information to enable the location of such servitude to be identified on the land concerned.

27. Constitution of associations

- (1) The constitution of the association of the scheme concerned must be administered by a management committee elected at the annual general meeting from the members of the association.
- (2) The constitution must provide that-
 - (a) the management committee must consist of office-bearers and ordinary committee members;
 - (b) the number of members in the management committee must an odd number of members;

[The word “be” appears to have been omitted in the phrase “must be an odd number of members”.]
 - (c) the management committee must consist of a chairperson, a vice-chairperson, a secretary and a treasurer;
 - (d) the chairperson presides at the meetings of the management committee and at general meetings of the association and that in his or her absence, the vice-chairperson must so preside and that when neither the chairperson nor the vice-chairperson is present at the meeting concerned, the committee or association must elect another member to preside at the meeting concerned;
 - (e) a quorum at a meeting of the management committee must be the majority of the members required to be on the management committee if there are no vacancy;

[The phrase “if there are no vacancy” should be either “if there is no vacancy” or “if there are no vacancies”.]
 - (f) subject to subregulation (3), a quorum at a general meeting of the association (that is not a meeting to consider the upgrading of the scheme) is 75% of the members of the association: Provided that the constitution may provide for a system whereby members may authorise other members to vote on their behalf and all persons who has provided such authorisations are counted to determine whether there is a quorum at the meeting concerned: Provided further that such a system may not be used for a meeting considering the upgrade of a scheme;

[The verb “has” should be “have” in the phrase “and all persons who has provided such authorisations”.]
 - (g) the secretary must keep minutes of all the meetings of the management committee and all general meetings of the association; and
 - (h) the treasurer must prepare documents reflecting the money standing to the credit of the association and reflecting the income and expenditure of the association.
- (3) The constitution may provide, that if a quorum was not obtained as contemplated in subregulation (2)(f), the meeting may be postponed and may make any reasonable provisions relating to the quorum at such a postponed meeting: Provided that different arrangements may be made for different classes of general meetings.
- (4) Subject to the Act and these regulations, the constitution must provide for the following matters-
 - (a) the name of the association which may be the same as the name of the scheme;
 - (b) the address of the association;

- (c) the period that must elapse between annual general meetings of the association must be held, which period may not be more than fourteen months after the last annual general meeting;

[The words “must be held” are superfluous.]

- (d) the manner in which the annual general meeting and other general meetings must be called and the procedure whereby notice of those meetings must be given;
- (e) reasonable measures whereby access to minutes of the management committee and financial statements of the association must be provided to the members of the association;
- (f) procedures at meetings of the association and the management committee including the method whereby the members must vote: Provided that subject to the Act, decisions must be taken by a simple majority;
- (g) the method of amendment of the constitution: Provided that the constitution may only be amended at a general meeting of the association.

28. Election of management committee of association

- (1) When the management committee of the association is to be elected, oral nominations must be requested for every position and for every nomination a right holder different from the one who nominated the person must second that nomination.
- (2) If the number of nominations is equal to the number of persons to hold the position in question, the chair person must declare the nominated persons duly elected.

[The term “chairperson” should be written as one word instead of two.]

- (3) If the number of persons nominated exceeds the number of persons to hold the position in question, the members present must vote and the person with the most votes is duly elected, until all the positions are filled.
- (4) If two or more persons received an equal number of votes and that number is the largest number of votes for a nominated person not yet elected as contemplated in subregulation (3), all those persons are duly elected.
- (5) If two or more persons received an equal number of votes and that number is the largest number of votes for a nominated person not yet elected as contemplated in subregulation (3) or (4), and the number of positions to be filled is smaller than the number of those persons and some members have already been elected as provided by subregulation (3) or (4), a further vote must be held for the remaining positions in which only the persons who received an equal number of votes participate.
- (6) If-
 - (a) the number of positions to be filled is equal to the number of persons referred to in subregulation (5); or
 - (b) the number of votes is still equal after a vote in accordance with subregulation (5), the person presiding at the meeting has a casting vote in respect of every position still to be filled.
- (7) The voting for the management committee must be by show of hands, unless five members request a secret ballot in which case every person must indicate his or her vote on a ballot and the ballots must be counted in a manner that the counting can be observed by those members who desire to observe the counting or if the requesters request that it must be done, the ballots must be counted by the relevant Registrar or a registration officer nominated by him or her.
- (8) If a request is made under subregulation (7) that the votes must be counted by the relevant Registrar or a registration officer, the meeting must be postponed and the request must be

forwarded to the relevant Registrar who must make arrangements for the further conducting of the meeting so that the counting can occur in the manner directed by him or her.

29. Application to enforce restrictive condition

- (1) An application to the Registrar to enforce a restrictive condition in terms of section [17\(1\)](#) of the Act must be made in writing and contain-
 - (a) the full names and identity number or registration number (if any) of the applicant;
 - (b) the physical and postal address of the applicant;
 - (c) a description of the restrictive condition requiring enforcement;
 - (d) a detailed description of the alleged failure by any person or persons to observe or comply with such restrictive condition with sufficient particulars to enable the matter to be determined;
 - (e) the full names and addresses where available of the persons allegedly not complying with the restrictive condition; and
 - (f) a description of the prejudice suffered by the applicant as a consequence of the failure to observe or comply with the restrictive condition.
- (2) The relevant Registrar must examine the application and, if properly made, within 14 days of the receipt of the application-
 - (a) acknowledge receipt of the application in writing;
 - (b) cause the complaint to be investigated; and
 - (c) notify the person or persons alleged to be in breach of the restrictive condition and call on that person or those persons in writing to respond to such complaint within 14 days of the receipt of such notice.
- (3) If, after the investigation of the complaint by the Registrar and receipt of a response in terms of subregulation [\(2\)\(c\)](#), the complaint has not been resolved, the Registrar must convene a hearing to adjudicate the complaint within 14 days of the expiry of the period of 14 days referred to in subregulation [\(2\)\(c\)](#) to which the applicant and the person alleged to be in breach of the restrictive condition must be summoned.
- (4) Each party to such application is entitled to make verbal or written representations to the Registrar.
- (5) The Registrar must issue any order made in terms of section [17\(3\)](#) of the Act in writing under his or her signature and seal of office and must give a copy thereof to the applicant and any person with a right to have such order enforced.

30. Procedure on appeal

- (1) Any person intending to appeal in terms of section [19](#) of the Act against a decision of a Registrar must within 90 days from the date on which he or she has been informed of the decision in question, deliver a notice of appeal (together with one copy for the appellant as well as one copy for every person referred to in subregulation [\(3\)](#) containing the information required by subregulation [\(5\)](#) to the magistrate's court of the district in which the scheme in question is situated.

[A closing bracket appears to have been omitted after the phrase “(together with one copy for the appellant as well as one copy for every person referred to in subregulation [\(3\)](#))”.]

- (2) On receipt of the notice referred to in subregulation [\(1\)](#), the clerk of the magistrate's court must-
 - (a) affix a stamp of the court to the notice and all copies referred to in subregulation [\(1\)](#); and

- (b) assign a unique number to the appeal, which number must be indicated on the original copy and all copies of the notice.
- (3) Within seven days of having lodged an appeal to the magistrate's court, the appellant must deliver a copy of the notice of appeal to the relevant Registrar and to any other person with a substantial interest in the outcome of the appeal.
- (4) After delivering a notice of appeal in terms of subregulation (3) the appellant must obtain a written acknowledgement of receipt from the Registrar and such persons and deliver that to the magistrate's court to prove that such delivery has been made.
- (5) The magistrate may direct an appellant to deliver the notice of appeal to such additional persons who, in the opinion of the magistrate, have a substantial interest in the outcome of the appeal and to whom the appellant has not delivered a copy of the notice of appeal and in such event the magistrate must postpone the matter to permit those persons to deliver replies within 30 days from the receipt of the notice of appeal.
- (6) The notice of appeal must set out concisely and distinctly the grounds of appeal together with-
 - (a) the full name and identity number or registration number (if any) of the appellant;
 - (b) the physical and postal address of the appellant;
 - (c) the telephone number where the appellant can be contacted;
 - (d) the name of the Registrar and the physical address of the Land Rights Office of which he or she is the Registrar;
 - (e) the full name and physical address of each other person on whom the notice of appeal is to be delivered;
 - (f) the decision of the Registrar appealed against, the date or dates upon which it was made and the circumstances under which it was made; and
 - (g) the reasons why the decision appealed against is incorrect or defective.
- (7) The Registrar or any other person whose rights may be affected by that appeal may, within 30 days of receiving the notice of appeal deliver a written notice of reply.

[There should be a comma after the phrase "within 30 days of receiving the notice of appeal" to offset that phrase properly.]
- (8) The notice of reply must be delivered to the court, the appellant and every person to whom a copy of the notice of appeal has been delivered.
- (9) The notice of reply must include-
 - (a) the full name and identity number or registration number (if any) of the party delivering the notice of reply;
 - (b) the physical address of that party;
 - (c) the telephone number where that party may be contacted; and
 - (d) a statement in reply to the grounds of appeal.
- (10) The appellant must after the period of reply has expired, request the clerk of the magistrate's court concerned to determine a date for the hearing of the appeal which date must be at least 14 days from the date of the request.
- (11) If a request referred to in subregulation (9) has not been made within 30 days from the expiry of the period for making a reply, the appeal will lapse.

[The cross-reference to subregulation (9) appears to have been intended to refer to subregulation (10).]

- (12) The appellant must within seven days from the determination of the date of the hearing, deliver a notice of the date of the hearing to every person who has made a reply to the notice of appeal.
- (13) Except as is provided for in these Regulations, the procedure on appeal must comply with the rules of the magistrate's court as if the appeal is a civil trial.

31. Powers of magistrate's court on appeal

- (1) The magistrate's court exercising appellate jurisdiction in terms of section 19 of the Act may-
 - (a) dispose of an appeal without the hearing of evidence if the question in dispute is a question of law only;
 - (b) receive further evidence either in the form of affidavit or as oral evidence as the magistrate thinks appropriate;
 - (c) refer the matter back to the Registrar for further hearing with such instructions in regard to further evidence or otherwise as the magistrate may consider necessary; and
 - (d) confirm, amend or set aside the decision which is the subject of the appeal and make any decision which the Registrar might have made.
- (2) A magistrate must provide full reasons for any decisions made in terms of subregulation (1).

32. Summoning of witnesses

- (1) If a witness is summoned to attend a hearing, the summons must be in a form determined by the Registrar of Deeds and must-
 - (a) state the time and place of the hearing; and
 - (b) state the fact that failure to attend is a criminal offence and state the penalty therefor.
- (2) A summons referred to in subregulation (1) may be served by a registration officer or by any person entitled to serve a summons in a criminal trial.
- (3) The rules relating to-
 - (a) the method of service of a summons; and
 - (b) the paying of witness fees,

is applicable to a summons referred to in subregulation (1) as though the witness is a witness for the State in a criminal trial: Provided that witness fees must be paid by the Ministry employing the relevant Registrar.

[The verb "is" should be "are": "rule... are".]

33. Fees

- (1) Except in respect of measurements referred to in subregulation (10) and searches or inspections referred to in subregulation (11)(b), an action for which the payment of a fee is required may only be performed after the applicable fee has been paid.
- (2) The fees payable in terms of this regulation are payable either to the office of the Registrar of Deeds, or at the Land Rights Office of the relevant Registrar as may be determined by the Registrar of Deeds.
- (3) The fees to be paid in respect of the creation of a starter title scheme are-
 - (a) N\$50 for the opening of the register; and

- (b) N\$25 for the receipt of the endorsed copy of the deed of the blockerf, and must be paid by the relevant authority which may recover the fees from the prospective owners.
- (4) The fees to be paid in respect of the creation of a land hold title scheme are-
 - (a) N\$50 for the opening of the register;
 - (b) N\$25 for the receipt of the endorsed copy of the deed of the blockerf;
 - (c) N\$50 for the creation of the land hold plan, and must be paid by the relevant authority which may recover the fees from the prospective owners.
- (5) On the upgrade of a land hold scheme to full ownership, a fee of N\$50 is payable for the cancellation of the land hold plan which fee must be paid by the relevant authority which may recover the fee from the right holders.
- (6) The fee for the transfer of a starter title right or a land hold title right is N\$150.
- (7) The fee-
 - (a) for the registration of a mortgage bond is N\$150; and
 - (b) for any other action referred to in regulation [24\(1\)](#) is N\$35.
- (8) The fee for the registration of a servitude is N\$150 in addition to the amounts referred to in subregulation [\(10\)](#).
- (9) The fee for any action referred to in regulation [26\(1\)](#) or [26\(2\)](#) other than the registration of a servitude is N\$75 in addition to any fees referred to in subregulation [\(10\)](#).
- (10) The fees for measurements contemplated in regulation [26\(3\)](#) are 60% of the fees payable to a professional surveyor for the same work.
- (11) The fee for the inspection of documents filed in a Land Rights Office or for the search of information (whether stored on a computer system or not) is-
 - (a) N\$15 if the information relates to one rights holder; and
 - (b) N\$15 per hour or part thereof, if the search or inspection relates to more than one rights holder.
- (12) The fee for the provision of a certificate or copy referred to in regulation [6](#) is-
 - (a) N\$15 for a certificate or copy referred to in regulation [6\(3\)](#) or regulation [6\(4\)](#); and
 - (b) N\$40 for a copy referred to in regulation [6\(6\)](#).
- (13) The Registrar may, despite the fee prescribed by subregulation 12(b) issue to any person free of charge a copy of any document which has inadvertently been lost, destroyed, defaced or damaged by him or her upon submission of an application by the relevant holder thereof or his or her lawful representative.

[There should be a comma after the phrase “despite the fee prescribed by subregulation 12(b)” to offset that phrase properly.]
- (14) A fee of N\$35 is payable for an endorsement referred to in regulation [22\(7\)](#).