



## rural development & land reform

Department  
Rural Development and Land Reform  
REPUBLIC OF SOUTH AFRICA

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### CHIEF REGISTRAR'S CIRCULAR NO. 3 OF 2018

#### RESTITUTION OF LAND RIGHTS ACT, 1994 (ACT NO. 22 OF 1994)

##### 1. Application of this Circular and withdrawal of CRC 1 of 2017

The purpose of this Circular is to more clearly set out transfer of land provisions and the application of such provisions on The Restitution of Land Rights Act, 1994 (Act No. 22 of 1994) (hereinafter referred to as "RLRA"), in order to address alleged inconsistent application thereof in Deeds Registries. CRC 1 of 2017 is hereby withdrawn and substituted with this Circular. CRC 18 of 2014 and CRC 2 of 1995 that was previously withdrawn remain withdrawn.

##### 2. Commencement and Purpose of the Act

The Act came into operation on 2 December 1994.

The purpose of the Act is to provide for the restitution of rights in land to persons or communities dispossessed of such rights after 19 June 1913 as a result of past racially discriminatory laws or practices; to establish a Commission on Restitution of Land Rights and a Land Claims Court; and to provide for matters connected therewith.

##### 3. Impact of certain provisions of the Restitution of Land Rights Act (RLRA) on deeds registration in terms of the Deeds Registries Act (DRA)

###### 3.1. Agreement between land owner and claimant

If, in respect of a valid claim, an agreement has been reached between the land owner, whether without or as a result of arbitration, and whereby it is agreed that the claimant is entitled to the restoration of property concerned, transfer thereof by the owner to the claimant must be effected by an ordinary Deed of Transfer in the prescribe form E to the regulations of the DRA.

### 3.2. Court Orders

3.2.1 If no agreement between an owner of land and a claimant could be reached, the Regional Land Claims Commissioner can, after certain requirements have been met, refer the matter to the Land Claims Court (section 14 of RLRA). An order of the said Court has the same powers as a High Court regarding the application of the DRA (section 35(7) of the RLRA).

3.2.2 The Land Claims Court may in terms of section 35 of the RLRA make an array of orders such as, but not limited to:

i) The land or portion thereof must be restored to the claimant.

In this instance registration of transfer of the relevant land must be by means of an ordinary Deed of Transfer in the prescribed form E to the DRA, unless the Court orders the Registrar of Deeds to transfer the land, in which event form H to the regulations of the DRA must be used.

ii) That the State, where necessary, acquires or expropriates land in order to make an award to a claimant.

In this instance the State must acquire or expropriate the land concerned. In terms of section 42A of RLRA such land vest in the State who must then in terms of the said section transfer the land to the claimant.

Section 42A(1) of the RLRA reads as follows:

*"Where, in terms of this Act, land is acquired or expropriated in order to restore or award the land to a claimant, such land vests in the State, which must transfer it to the claimant." (My underlining)*

In view of the above, the following acts of registrations are required in providing the State with a title deed, namely :

- If all the land held under a title deed was acquired or expropriated by the State, a transfer by endorsement in terms of section 16 of the DRA;
- If only part or portion of land held under a title deed was acquired or expropriated, a transfer in terms of section 31 of the DRA.

Land acquired as above and then to be transferred to a claimant, must be transferred as follows:

- Deed of Transfer in the prescribed form E to the DRA; or
- Deed of Grant as provided for in section 18 of the DRA

**3.3. Acquisition of land by the Minister in terms of section 42E and disposal thereof in terms of section 42D**

- 3.3.1. In term of section 42E the Minister, (or delegate), may purchase, acquire in any other manner or, consistent with the provisions of section 3 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), expropriate land or a portion of land under certain circumstances.

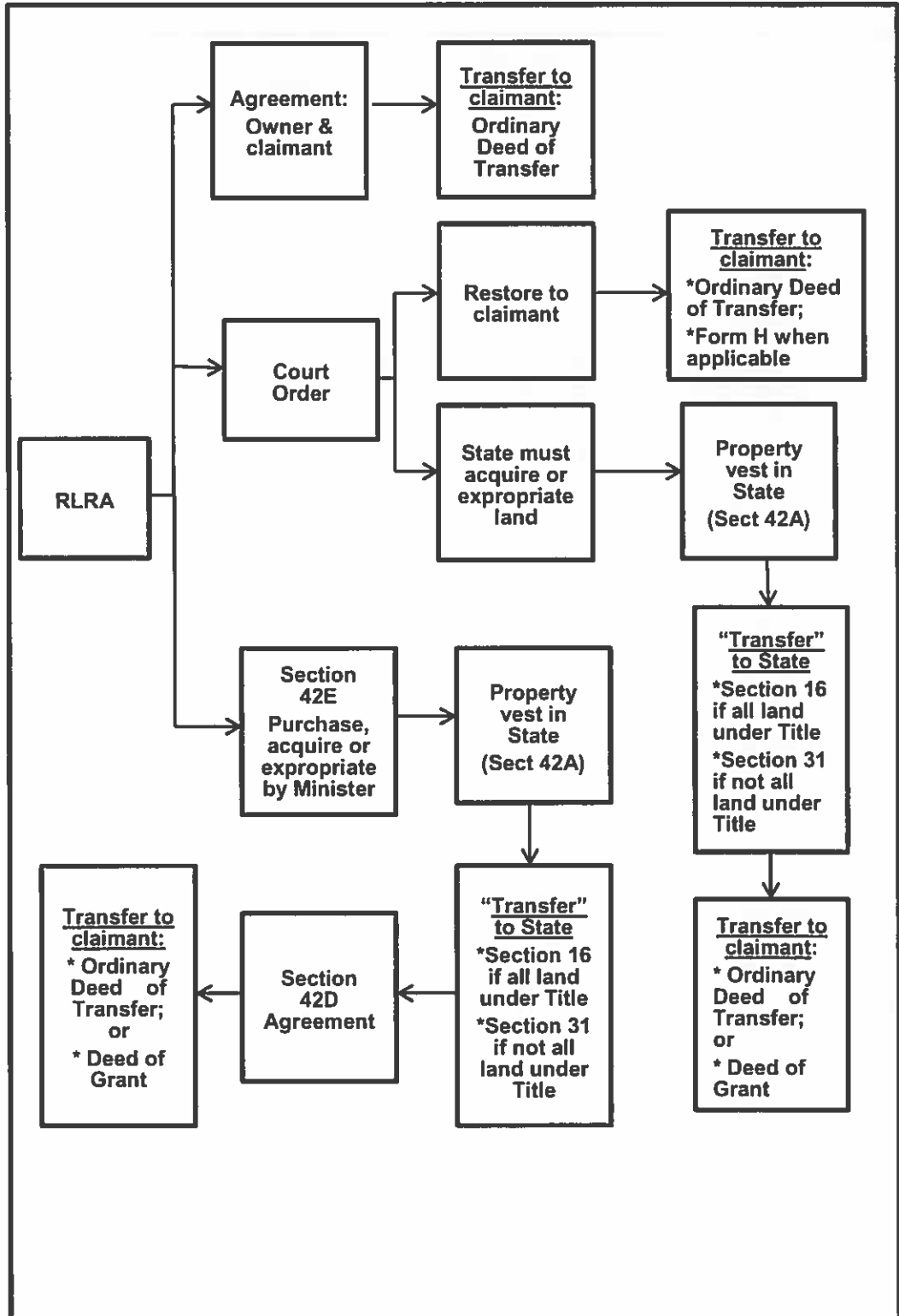
Land acquired in terms of section 42E vest in the State, (see section 42A), and the following acts of registrations are required in order to give effect to such vesting, namely:

- If all the land held under a title deed was acquired or expropriated by the State, a transfer by endorsement in terms of section 16 of the DRA;
- If only part or portion of land held under a title deed was acquired or expropriated, a transfer in terms of section 31 of the DRA.

- 3.3.2. In terms of section 42D the Minister, (or delegate), may under certain circumstances enter into an agreement with a claimant who is entitled to restitution, and award to the claimant land or a portion of land. In terms of section 42A quoted above, the State must transfer the land to the claimant. Transfer can be effected in the following manner, namely:

- Deed of Transfer in the prescribed form E to the DRA; or
- Deed of Grant as provided for in section 18 of the DRA

3.3.3 Graphic presentation



### **3.4 Certain laws not applicable in respect of land restored or awarded**

3.4.1. The laws governing the subdivision of agricultural land shall not apply in respect of any subdivision undertaken in order to restore or award land to any claimant in terms of the Act (section 42B(1) RLRA).

- Examiners must ensure that reference is made on the diagram that the laws governing the subdivision of agricultural land are not applicable.

*It must be noted that the State and land under RLRA is not exempt from the Spatial Planning and Land Use Management Act, 2013 (SPLUMA). Any act of registration resulting from a land development application must therefore be accompanied by a certificated of the relevant Municipality, as required by section 53 of SPLUMA*

3.4.2 Section 42B(2) of RLRA determines that the laws governing the establishment of townships shall not apply to land restored or awarded to any claimant in terms of the Act, as long as that land is predominantly occupied by that claimant.

- An exemption from complying with the provisions of the above legislation can only be granted upon the lodgement of proof to the effect that the relevant land is predominantly occupied by that claimant. A letter by the Chief Director: Restitution Support or by the Regional Land Claims Commissioner is sufficient in this regard.

### **3.5 Rights in land**

In terms of the RLRA rights in land may also be acquired, expropriated, allocated etc. The registration/cession of rights in land must be done by Notarial Deeds as provided for in the DRA, and it is deemed not necessary to discuss such registrations/cessions in this circular.

### **3.6. Transfer duty**

In terms of section 42A(2) of the RLRA, read with Section 9 (1) (n) of the Transfer Duty Act No. 40 of 1949, registrations of transfer of land in terms of the Act are exempt from Transfer duty and may be registered without the need to lodge a transfer duty receipt or an exemption certificate from South African Revenue Services, (in this regard see the attached Directive issued by SARS dated 14 January 1999, referenced 2/2/1, as well as CRC 14 of 2000).

### **3.7 Registration Fees**

Only transfers of land in terms of section 42A(1) of the RLRA are automatically exempt from registration fees. In respect other transfers, unless

a directive referred to in section 42(2) of the RLRA is lodged with the particular transfer of land, registration fees are payable.

Office fees are payable in respect of the registration of all rights in land *vide* Notarial Deeds, unless a directive referred to in section 42(2) of the RLRA is lodged with the particular transaction.



**CHIEF REGISTRAR OF DEEDS**

**DATE:** 19/4/2018

REFERENCE : A6/2/P

RINGBINDER : 68

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