REPUBLIC OF SOUTH AFRICA

UPGRADING OF LAND TENURE RIGHTS AMENDMENT ACT

REPUBLIEK VAN SUID-AFRIKA

WYSIGINGSWET OP DIE OPGRADERING VAN GRONDBESITREGTE

No 6, 2021

GENERAL EXPLANATORY NOTE:

[ ]	Words in bold type in square brackets indicate omissions from existing enactments.
________	Words underlined with a solid line indicate insertions in existing enactments.

ACT

To amend the Upgrading of Land Tenure Rights Act, 1991, so as to provide for the application for conversion of land tenure rights to ownership; to provide for the notice of informing interested persons of an application to convert land tenure rights into ownership; to provide for an opportunity for interested persons to object to conversion of land tenure rights into ownership; to provide for the institution of inquiries to assist in the determination of land tenure rights; to provide for application to court by an aggrieved person for appropriate relief; to provide for the recognition of conversions that took effect in good faith in the past; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 2 of Act 112 of 1991, as amended by section 30 of Act 139 of 1992

1. Section 2 of the Upgrading of Land Tenure Rights Act, 1991 (hereinafter referred to as the ''principal Act''), is hereby amended—

(a) by the substitution for the heading of the following heading:

> ''**[Conversion]** **Application for conversion of land tenure rights mentioned in Schedule 1**;'';

(b) by the substitution for subsection (1) of the following subsection:

> ''(1) **[Any land tenure right mentioned in Schedule 1 and which was granted in respect of]** Any person who is the registered holder of a land tenure right mentioned in Schedule 1 according to the register of land rights in which that land tenure right was registered in terms of the provisions of any law, or could have been a holder of that land tenure right had it not been for laws or practices that unfairly discriminated against such person, may apply to the Minister, in the prescribed manner, for the conversion of such land tenure right into ownership in respect of—
>
> *(a)* any erf or any other piece of land in a formalized township for which a township register was already opened at the commencement of this Act **[, shall at such commencement be converted into ownership]**;

ALGEMENE VERDUIDELIKENDE NOTA:

[ ]	Woorde in vet druk tussen vierkantige hake dui skrappings uit bestaande verordeninge aan.
______	Woorde met volstreep daaronder, dui invoegings in bestaande verordeninge aan.

WET

Tot wysiging van die Wet op die Opgradering van Grondbesitregte, 1991, ten einde voorsiening te maak vir aansoek om omskepping van grondbesitregte na eiendomsreg; voorsiening te maak vir kennisgewing aan belangstellende persone oor 'n aansoek om grondbesitregte in eiendomsreg te omskep; voorsiening te maak vir 'n geleentheid vir belangstellende persone om teen omskepping van grondbesitregte in eiendomsreg beswaar aan te teken; voorsiening te maak vir die instelling van ondersoeke om te help met die bepaling van grondbesitregte; voorsiening te maak vir aansoek by 'n hof deur 'n te nagekome persoon vir gepaste regshulp; voorsiening te maak vir die erkenning van omskepping wat in die verlede te goeder trou van krag geword het; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

DAAR WORD BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:—

Wysiging van artikel 2 van Wet 112 van 1991, soos gewysig deur artikel 30 van Wet 139 van 1992

1. Artikel 2 van die Wet op die Opgradering van Grondbesitregte, 1991 (hierna die ''Hoofwet'' genoem), word hierby gewysig—

(a) deur die opskrif deur die volgende opskrif te vervang:

''**[Omskepping]** **Aansoek om omskepping** **van grondbesitregte vermeld in Bylae 1**;'';

(b) deur subartikel (1) deur die volgende subartikel te vervang:

''(1) **['n Grondbesitreg vermeld in Bylae 1 wat toegeken is ten opsigte van]** Enige persoon wat die geregistreerde houer is van 'n grondbesitreg vermeld in Bylae 1 ooreenkomstig die grondregteregister waarin daardie grondbesitreg geregistreer is ingevolge die bepalings van enige wetsbepalings, of wat 'n houer van daardie grondbesitreg kon gewees het, maar nie was nie weens wetsbepalings of praktyke wat onbillik teenoor daardie persoon gediskrimineer het, kan op die voorgeskrewe wyse by die Minister aansoek doen om die omskepping van daardie grondbesitreg na eiendomsreg ten opsigte van—

(a) 'n erf of 'n ander stuk grond in 'n geformaliseerde dorp waarvoor by die inwerkingtreding van hierdie Wet 'n dorpregister reeds geopen is**[, word by sodanige inwerkingtreding in eiendomsreg omskep]**;

(b) any erf or any other piece of land in a formalized township for which a township register is opened after the commencement of this Act**[, shall at the opening of the township register be converted into ownership]**; or

(c) any piece of land which is surveyed under a provision of any law and does not form part of a township **[, shall at the commencement of this Act be converted into ownership,**

and as from such conversion the ownership of such erf or piece of land shall vest exclusively in the person who, according to the register of land rights in which that land tenure right was registered in terms of a provision of any law, was the holder of that land tenure right immediately before the conversion].''; and

(c) by the insertion after subsection (1) of the following subsections:

"(1A) *(a)* The Minister shall on receipt of such application cause to be published in the *Gazette*, one local newspaper, relevant social media and at the local municipality office a notice, as prescribed, which informs all interested persons of the application for conversion.

(b) The Minister must inform in writing, the affected parties of the progress of such application.

(1B) The notice as contemplated in subsection (1A) must provide all interested persons—

(a) with an opportunity to object to the conversion; and

(b) time frames within which to object to the conversion, which must not be less than one calendar month.

(1C) An objection to a conversion may be lodged in the prescribed manner with the Minister.

(1D) The Minister must, upon receipt of an application or objection contemplated in subsections (1A) and (1B), designate a person as contemplated under section 24D in order to assist the Minister in determining the facts relating to the conversion of land tenure rights and the objection thereto, in order to assist the Minister in determining the facts and to make a decision relating to the conversion of land tenure rights, the objection thereto and the vesting of ownership.

(1E) The person designated in terms of subsection (1D) shall—

(a) have the powers of a designated person contemplated in section 24D; and

(b) assist the parties in mediating on the objection and report to the Minister on the outcome of such mediation.''.

Amendment of section 4 of Act 112 of 1991

2. Section 4 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) Notwithstanding anything to the contrary contained in any law but subject to subsections (2) and (3), a land tenure right mentioned in Schedule 1 and which has been granted in respect of any erf or any other piece of land in a formalized township for which a township register has not yet been opened shall bestow, pending the conversion thereof into ownership in terms of section 2 (1)*(b)* as soon as a township register is opened, on the person who is, according to a register of land rights of the township, the holder thereof, or could have been the holder thereof but for laws or practices that unfairly discriminated against such person, all rights and powers as if he or she is the owner of the erf or the land in respect of which the land tenure right has been granted.''.

(*b*) 'n erf of 'n ander stuk grond in 'n geformaliseerde dorp waarvoor 'n dorpregister na die inwerkingtreding van hierdie Wet geopen word**[, word by die opening van die dorpregister in eiendomsreg omskep]**; of

(*c*) 'n stuk grond wat kragtens 'n wetsbepaling opgemeet is en nie deel van 'n dorp uitmaak nie**[, word by die inwerkingtreding van hierdie Wet in eiendomsreg omskep,**

en vanaf sodanige omskepping berus die eiendomsreg van so 'n erf of stuk grond uitsluitend by die persoon wat, volgens die grondregteregister waarin daardie grondbesitreg ingevolge 'n wetsbepaling geregistreer is, die houer van daardie grondbesitreg onmiddellik voor die omskepping was]."; en

(*c*) deur die volgende subartikels na subartikel (1) in te voeg:

"(1A) (*a*) Die Minister moet, by ontvangs van sodanige aansoek, 'n kennisgewing, soos voorgeskryf, in die *Staatskoerant*, een plaaslike koerant, tersaaklike sosiale media en by die plaaslike munisipaliteit se kantoor laat publiseer wat alle belangstellende persone inlig van die aansoek om omskepping.

(*b*) Die Minister moet die geraakte partye skriftelik van die vordering van sodanige aansoek verwittig.

(1B) In die kennisgewing in subartikel (1A) beoog, moet alle belangstellende persone—

(*a*) 'n geleentheid gegun word om teen die omskepping beswaar te maak; en

(*b*) tydsbestekke gegee word waarbinne teen die omskepping beswaar gemaak moet word, wat minstens een kalendermaand moet wees.

(1C) 'n Beswaar teen 'n omskepping kan op die voorgeskrewe wyse by die Minister ingedien word.

(1D) Die Minister moet, by ontvangs van 'n aansoek of beswaar in subartikels (1A) en (1B) beoog, 'n persoon soos beoog in artikel 24D aanstel ten einde die Minister te help om die feite rakende die omskepping van grondbesitregte en die beswaar daarteen vas te stel, ten einde die Minister by te staan om die feite vas te stel en 'n beslissing te maak oor die omskepping van grondbesitregte, die beswaar daarteen en die vestiging van eiendomsreg.

(1E) Die persoon ingevolge subartikel (1D) aangewys, moet—

(*a*) die bevoegdhede van 'n aangewese persoon beoog in artikel 24D hê; en

(*b*) die partye bystaan met bemiddeling oor die beswaar en by die Minister verslag doen oor die uitslag van sodanige bemiddeling.".

Wysiging van artikel 4 van Wet 112 van 1991

2. Artikel 4 van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

"(1) Ondanks andersluidende wetsbepalings maar behoudens subartikels (2) en (3), verleen 'n grondbesitreg vermeld in Bylae 1 wat toegeken is ten opsigte van 'n erf of 'n ander stuk grond in 'n geformaliseerde dorp waarvoor 'n dorpregister nog nie geopen is nie, hangende die omskepping daarvan tot eiendomsreg ingevolge artikel 2(1)(*b*) sodra 'n dorpregister geopen word, aan die persoon wat volgens 'n grondregteregister van die dorp die houer daarvan is, of die houer daarvan kon gewees het as dit nie was vir wetsbepalings of praktyke wat onbillik teenoor daardie persoon gediskrimineer het nie al die regte en bevoegdhede asof hy of sy die eienaar is van die erf of die grond ten opsigte waarvan die grondbesitreg toegeken is.".

Insertion of section 14A in Act 112 of 1991

3. The following section is hereby inserted in the principal Act after section 14:

"**Court applications**

14A. (1) Notwithstanding the provisions of this Act or any other law, any person aggrieved by a conversion of a land tenure right which took effect from 27 April 1994 may approach the court for an order—

(a) setting aside such conversion and registration of land tenure right; or

(b) that is just and equitable.

(2) Transfers of ownership of any erf or any other piece of land from 27 April 1994 in which a land tenure right had been converted in respect of—

(a) any erf or any other piece of land purchased by third parties acting in good faith;

(b) any erf or any other piece of land which has been inherited by a third party acting in good faith and the estate has been finalized in terms of the law of succession and the Reform of Customary Law of Succession and Regulation of Related Matters Act, 2009 (Act No. 11 of 2009), has been applied; or

(c) any erf or any other piece of land which has been converted to ownership in favour of a woman in terms of this Act acting in good faith, remain valid.".

Substitution of section 25A of Act 112 of 1992, as inserted by section 1 of Act 61 of 1998 and substituted by section 46 of Act 11 of 2004

4. The following section is hereby substituted for section 25A of the principal Act:

"**Application of Act**

25A. As from coming into operation of the Land Affairs General Amendment Act, 1998, the provisions of this Act, excluding sections 19 and 20, shall apply throughout the Republic.".

Short title and commencement

5. This Act is called the Upgrading of Land Tenure Rights Amendment Act, 2021, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

Invoeging van artikel 14A in Wet 112 van 1991

3. Die volgende artikel word hierby na artikel 14 in die Hoofwet ingevoeg:

"**Hofaansoeke**

14A. (1) Ondanks die bepalings van hierdie Wet of enige andersluidende wetsbepaling, kan enige persoon wat te na gekom voel deur 'n omskepping van 'n grondbesitreg wat vanaf 27 April 1994 van krag geword het, die hof nader vir 'n bevel—

(a) wat daardie omskepping en registrasie van grondbesitreg tersyde stel; of

(b) wat billik en regverdig is.

(2) Oordragte van eienaarskap van enige erf of enige ander stuk grond sedert 27 April 1994 waarin 'n grondbesitreg omskep is ten opsigte van—

(a) enige erf of ander stuk grond te goeder trou deur derde partye gekoop;

(b) enige erf of ander stuk grond wat deur 'n derde party geërf is, wat te goeder trou gehandel het en waar die boedel ingevolge die erfreg afgehandel is en die 'Reform of Customary Law of Succession and Regulation of Related Matters Act, 2009' (Wet No. 11 van 2009), toegepas is; of

(c) enige erf of enige ander stuk grond wat ingevolge hierdie Wet te goeder trou ten gunste van 'n vrou na eiendomsreg omskep is, bly geldig.".

Vervanging van artikel 25A van Wet 112 van 1992, soos ingevoeg deur artikel 1 van Wet 61 van 1998 en vervang deur artikel 46 van Wet 11 van 2004

4. Artikel 25A van die Hoofwet word hierby deur die volgende artikel vervang:

"**Toepassing van Wet**

25A. Met ingang van die inwerkingtreding van die Algemene Wysigingswet op Grondsake, 1998, is die bepalings van hierdie Wet, met uitsondering van artikels 19 en 20, regdeur die Republiek van toepassing.".

Kort titel en inwerkingtreding

5. Hierdie Wet heet die Wysigingswet op die Opgradering van Grondbesitregte, 2021, en tree in werking op 'n datum deur die President by proklamasie in die *Staatskoerant* bepaal.