

CONVEYANCING MATTERS

TOWNSHIP DEVELOPMENT IN TERMS OF ACT 4 OF 1984, ACT 112 OF 1991 AND ACT 113 OF 1991

At present much confusion exists regarding township development in terms of the Black Communities Development Act 4 of 1984, the Upgrading of Land Tenure Rights Act 112 of 1991 and the Less Formal Township Establishment Act 113 of 1991. In this column I endeavour to give a brief exposition of the application of the Acts governing township development.

Township development in development areas in terms of s 35(1) and (3) of Act 4 of 1984

S 35(1) townships

The township establishment and land use regulations (the regulations), enacted in terms of Act 4 of 1984, still govern the procedure to be followed for the establishment and approval of a township situated in a *development area* (referred to in s 33 of Act 4 of 1984) which was set aside for township development after 15 September 1986.

The proposed township must be situated in a local authority area, but with the consent of the minister a township may be established on land in a *development area* not yet situated in a local authority area (reg 3 of the regulations).

Once all the formalities set out in the regulations in respect of the township establishment have been complied with, application must be made to the registrar of deeds concerned for the opening of a township register

in respect of such land. This aspect is governed by the provisions of s 46 of the Deeds Registries Act 47 of 1937 and ss 7-12 of Act 112 of 1991 which are dealt with in more detail below.

If the minister is satisfied that the provisions of reg 21(2) of the regulations have been complied with, he declares the township an approved township by notice in the *Government Gazette* (reg 23(1)). As soon as the authorized officer (administrator) notifies the registrar of deeds concerned that the provisions of reg 25(2) have been complied with, registrations regarding the respective erven in such township may be effected. Leaseholds in the proposed township may, however, be granted even prior to the aforesaid notification to the registrar.

(Note: If the administrator grants his approval, a township developer can invoke the provisions of ch I or II of Act 113 of 1991, instead of the procedure set out above.)

S 35(3) townships

The regulations are not applicable to land situated in a development area if such land was set aside as a town or hostel before 15 September 1986. Townships situated on such land were deemed to be established in terms of s 35(1) of Act 4 of 1984 and there is, therefore, no necessity for any establishment procedure to be followed in respect of such townships.

Although no formalities for the establishment procedure of such townships are laid down, the provisions of s 46 of the Deeds Registries

Act still have to be complied with in respect of the opening of a township register in respect of such land.

Section 35(3) townships are regarded as formalized townships (s 1(1)(v)(a) of Act 112 of 1991), and thus the provisions of ss 7-12 of Act 112 of 1991 are also applicable to expedite the opening of such a township register (see below).

Township development in terms of Act 112 of 1991

The Upgrading of Land Tenure Rights Act does not prescribe a procedure for township development, but affords the administrator or township developer the power to expedite the opening of a township register only in respect of any formalized township. The prescriptive measures contained in ss 7-12 of the said Act are applicable only to formalized townships which are defined in s 1 of the Act as

"a township for which a general plan or general plans have been approved under a provision of any law and which

- (a) has been established or is deemed to have been established as a township under s 35 of the Black Communities Development Act 4 of 1984;
- (b) has been established as a town under s 25 or 30 of the Black Administration Act 38 of 1927; or
- (c) is to be declared a formalized township under s 15".

It is not the intention to discuss the provisions of this Act in detail, but cognizance must be taken of the

fact that s 11 provides that, before a township register can be opened, a certificate of rights to minerals must be taken out in respect of all rights to minerals held by the owner under the title deed to the land or by any other person who is the holder of or is entitled to the minerals under the land title.

Township development in terms of Act 113 of 1991

Since the commencement of the Less Formal Township Establishment Act, namely 1 September 1991, the general rule applies that in respect of townships outside development areas, townships which are not formalized townships and land which is not subject to ch III of Act 113 of 1991, the township development procedures laid down in the respective provincial ordinances are applicable, but nothing prohibits the township developer from invoking the provisions of ch I or II of Act 113 of 1991, provided the administrator grants his approval.

Township development in terms of ch I

The aim of this chapter is to create, with the consent of the administrator, a shortened procedure of township development to accommodate the high tempo of urbanization and to combat unlawful squatting by making land available for rudimentary yet adequate upgradable housing.

The administrator, local authority or any other owner of land may make land available for designation to establish a township in these circumstances. The provisions of ss 2-7 of Act 113 of 1991 must be taken into consideration when establishing such a township and once the general plan of such a township has been lodged at the deeds registry, the registrar of deeds may proceed to open a town-

ship register in respect of such land (s 6).

The provisions of s 46 of the Deeds Registries Act must be complied with when application is made to the registrar of deeds concerned for the opening of the township register.

After a township is established and a township register has been opened, ownership is passed by the township developer by virtue of a certificate of ownership (see prescribed form AAA to the Deeds Registries Act).

Township development in terms of ch II

This chapter partly fills the gaps which remained after the repeal of Act 4 of 1984. The provisions of this chapter are not linked to race and create an alternative and faster method of township development which is less sophisticated than the method provided for in the provincial ordinances.

Provincial ordinances presently provide for the following steps to be taken for the establishment of a township:

- 1 Lodgement of the township establishment application.
- 2 Public notice with the invitation to lodge objections and make representations.
- 3 Specific notice to certain bodies requesting their commentary.
- 4 Inspection of the area by the township board.
- 5 The hearing of grievances by the township board.
- 6 Recommendations by the township board to the administrator regarding the application.
- 7 A decision by the administrator.
- 8 Approval of the general plan by the surveyor-general.
- 9 Opening of the township register by the registrar of deeds.
- 10 Proclamation of the township.

This chapter enables the administrator to expedite the township development procedure by consenting to the bypassing of steps 2-6 above.

The establishment procedure for township development in terms of this chapter is contained in ss 10-17 of the Act. After these provisions have been complied with, the provisions of s 46 of the Deeds Registries Act must be applied for the opening of a township register.

Township development in terms of ch III

In this chapter provision is made for the controlled and orderly settlement and habitation of land by members of indigenous tribes.

If the administrator is of the opinion that land is suitable for communal utilization by members of a certain tribe, he may grant permission to such tribe to occupy such land. Such permission will be published in the official gazette, subject to the conditions which the administrator may impose. As the accommodation remains communal, no township register need be opened, but a general plan for the area in question must be approved.

The rights of the tribe members with regard to the land which has been allocated to them by the tribe, are governed by the indigenous laws and customs of the tribe concerned (s 24).

If the tribe, by tribal decision, desires ownership to be granted to persons to whom even on the general plan have been allocated, a township register must first be opened in accordance with the provisions of s 46 of the Deeds Registries Act (s 26). Ownership is also passed in the form of a certificate of ownership drawn in accordance with prescribed form AAA to the Deeds Registries Act.

(Note: The provisions of this chapter do not apply to land which, on or before 1 September 1991, had been allocated to an indigenous tribe or is kept in trust for such tribe (s 27).)

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