



## UNDER THE SPOTLIGHT: THE UPGRADING OF LAND TENURE RIGHTS AMENDMENT ACT

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In terms of the now-abolished colonial law, the Native Black Administration Act of 1927, succession and inheritance of rights to property was afforded to males who were at the time considered to be the “head of the family”. Such laws have historically discriminated against women.

During a time in South Africa’s history where Apartheid was on the verge of ending, to achieve political settlement, the Upgrading of Land Tenure Rights Act was passed to allow for the automatic upgrading of rights in terms of any deed of grant or right of leasehold into rights of ownership which was to be formalised by means of registration in the Deeds Registry.

The dawn of democracy placed a constitutional obligation on Parliament to ensure that legislation was passed which allowed for a person or community whose tenure was legally insecure (due to past racially discriminatory laws), to acquire tenure that was legally secure and promoted redress and equality.

On 30 October 2018, Section 2(1) of the Upgrading of Land Tenure Rights Act 112 of 1991 (Hereinafter referred to as “The Act”) was declared unconstitutional insofar as Section 2(1) automatically converted

holders of any deed of grant or right of leasehold into holders of rights of ownership as being in violation of women's rights in terms of Section 9(1) of the Constitution of the Republic of South Africa which states that everyone is equal before the law and has the right to equal protection and benefit of the law.<sup>1</sup>

The upgrading of Land Tenure Rights Amendment Act came into effect on 1 June 2024.

The decision to amend the Land Tenure Rights Amendment Act was initially suspended by the Constitutional Court for a period of 18 months to afford Parliament the opportunity to establish a procedure to rectify the unconstitutional provisions of Section 2(1) of the Upgrading of Land Tenure Rights Act 112 of 1991.

The Upgrading of Land Tenure Rights Amendment Bill was designed to provide for the conversion of land tenure rights (i.e. leasehold), to ownership which highlighted the need for a new procedure to be outlined.

#### **PROCEDURE:**

The procedure for the Upgrading of the Land Tenure Rights Act 112 of 1991 in terms of the Amended Act and the Regulations:

- Any person who is the registered holder of a land tenure right 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.<sup>2</sup>
- The Minister shall, deliberate as to whether he/she shall object thereto, and consider the vesting of ownership as set out in Section 2(1D) of the Act, inform the Registrar of such decision as set out in Form 4 of the Annexure to the Act.<sup>3</sup>
- Any person aggrieved by a conversion of land tenure right may approach the court for an order setting aside such conversion and registration of the land tenure right or that is just and equitable.<sup>4</sup>
- All rights automatically converted prior to 27 April 1994 remains valid and are not voidable.
- All transfers of ownership as of 27 April 1994 and which falls within the ambit of Section 14A(2) of the Amendment Act 6 of 2021 remains valid and are not voidable and the remedy as set out in Section 14A(1) is not to avail aggrieved persons.

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<sup>1</sup> RAHUBE v RAHUBE AND OTHERS 2019 (2) SA 54 (CC)

<sup>2</sup> Section 1(b) of the Upgrading of the Land Tenure Rights Amendment Act 6 of 2021 read with Regulation 2 of Act No 112 of 1991

<sup>3</sup> Regulation 5 of Act 112 of 1991

<sup>4</sup> Section 14A 1 of the Amendment Act 6 of 2021

Application for the conversion of land tenure rights to ownership, is therefore only necessary in respect of townships opened after the commencement of the Land Tenure Rights Amendment Act 112 of 1991.

On 29 November 2024, the Chief Registrar released a Circular to serve as a directive on the implementation of the Upgrading of Land Tenure Rights Amendment Act 112 of 1991 and provide guidance on the implementation of the Act ([REGISTRARS-CIRCULAR-NO-1-OF-2024-ULTRA-291124RRV.pdf](#))

Although the government's efforts to address the plight of women's inability to own land yields little fruit, the newly amended act may conflict with customary law tenure systems and those which have been developed outside of the formal Deeds Registry System.

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