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GOVERNMENT GAZETTE

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DEPARTMENT OF THE PRIME MINISTER

DEPARTEMENT VAN DIE EERSTE MINISTER

No. 1159. 11 June 1975. No. 1159. 11 Junie 1975.

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:—

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring gegee het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 49 of 1975: Sale of Land on Instalments Amendment Act, 1975.

No. 49 van 1975: Wysigingswet op die Verkoop van Grond op Afbetaling, 1975.

Act No. 49, 1975

SALE OF LAND ON INSTALMENTS AMENDMENT ACT, 1975.

ACT

To amend the Sale of Land on Instalments Act, 1971, so as to define or further define certain expressions; to further regulate the required and permissible contents of contracts; to make further provision for the rights of purchasers under contracts; to prescribe a further requirement for the cession and assignment by the seller of rights and obligations under a contract; to further define the circumstances in which the seller may take action against the purchaser; and to further regulate certain matters relating to the death or insolvency of the owner of land sold under a contract, and the sale in execution of such land; and to provide for matters connected therewith.

(Afrikaans text signed by the State President.)
(Assented to 4 June 1975.)

BE IT ENACTED by the State President, the Senate and the House of Assembly of the Republic of South Africa, as follows:—

Amendment of
section 1 of
Act 72 of 1971.

1. Section 1 of the Sale of Land on Instalments Act, 1971 (hereinafter referred to as the principal Act), is hereby amended—

- (a) by the deletion of the definition of “cession”;
- (b) by the insertion before the definition of “contract” of the following definition:

“‘agreement’ means any agreement for the sale, exchange, donation or other disposal of land, and includes a contract;”;
- (c) by the substitution for the definition of “contract” of the following definition:

“‘contract’ means a written contract of purchase and sale of land under which the purchase price interest or any other charges is or are payable in more than two instalments over a period of one year or longer, whether or not such contract is subject to any suspensive or resolute condition;”;
- (d) by the substitution for the definition of “interest” of the following definition:

“‘interest’ means the aggregate of any valuable consideration, excepting the purchase price, in which, in the case of an intermediate transaction, the intermediary’s profit is included, and the costs referred to in section 6 (3) (b) which by virtue of a contract have been paid or are payable by a purchaser directly or indirectly to a seller or to or on

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WET

Tot wysiging van die Wet op die Verkoop van Grond op Afbetaling, 1971, ten einde sekere uitdrukkings te omskryf of nader te omskryf; die vereiste en toelaatbare inhoud van kontrakte verder te reël; verdere voorsiening vir die regte van kopers kragtens kontrakte te maak; 'n verdere vereiste vir die sessie en oormaking deur die verkoper van regte en verpligtings kragtens 'n kontrak voor te skryf; die omstandighede nader te omskryf waaronder die verkoper stappe teen die koper kan doen; en sekere aangeleenthede betreffende die dood of insolvensie van die eienaar van grond wat kragtens 'n kontrak verkoop is, en die verkoop in eksekusie van sodanige grond, verder te reël; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

(Afrikaanse teks deur die Staatspresident geteken.)
(Goedgekeur op 4 Junie 1975.)

DAAR WORD BEPAAL deur die Staatspresident, die Senaat en die Volksraad van die Republiek van Suid-Afrika, soos volg:—

1. Artikel 1 van die Wet op die Verkoop van Grond op Afbetaling, 1971 (hieronder die Hoofwet genoem), word hierby gewysig—

Wysiging van
artikel 1 van
Wet 72 van 1971.

(a) deur die omskrywing van „grond” deur die volgende omskrywing te vervang:

„grond” grond wat hoofsaaklik vir woondoeleindes gebruik word of bestem is om hoofsaaklik aldus gebruik te word, en ook 'n onverdeelde aandeel in sodanige grond en by die toepassing van hierdie omskrywing word grond hoogstens drie-en-twintig hektaar groot en wat deel uitmaak van 'n gebied beoog in artikel 2 (a) (ii), geag, tensy die teendeel bewys word, grond te wees wat hoofsaaklik vir woondoeleindes gebruik word of bestem is om hoofsaaklik aldus gebruik te word;”

(b) deur na die omskrywing van „grond” die volgende omskrywing in te voeg:

„intermediêre transaksie”—

(a) 'n ooreenkoms waarkragtens grond wat kragtens 'n kontrak gekoop is, vervreem word voordat dit aan die koper kragtens die kontrak getranspoteer is; of

(b) 'n kontrak waarkragtens grond waarvan die reg om transport te eis kragtens 'n ooreenkoms verkry is, verkoop word voordat dit getranspoteer is aan die persoon wat sodanige reg verkry het;”

(c) deur die omskrywing van „kontrak” deur die volgende omskrywing te vervang:

„kontrak” 'n skriftelike koopkontrak van grond waarkragtens die koopprys rente of enige ander gelde

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behalf of any person between himself and the seller;”;

- (e) by the insertion after the definition of “interest” of the following definitions:

“‘intermediary’, in relation to an intermediate transaction, means any person who purchased or purchases any land under a contract and who has alienated or alienates that land under an agreement before it is transferred to him or who acquired or acquires under an agreement the right to claim transfer of any land and who has sold or sells that land under a contract before it is transferred to him;

“‘intermediate transaction’ means—

- (a) any agreement under which land purchased under a contract is alienated before it is transferred to the purchaser under the contract; or
- (b) any contract under which land, of which the right to claim transfer has been acquired under an agreement, is sold before it is transferred to the person who has acquired such right;”;

- (f) by the substitution for the definition of “land” of the following definition:

“‘land’ means any land used or intended to be used mainly for residential purposes, including any undivided share in such land, and any land not exceeding twenty-three hectares in extent and forming part of an area contemplated in section 2 (a) (ii) shall, for the purposes of this definition, unless the contrary is proved be deemed to be land used or intended to be used mainly for residential purposes;” and

- (g) by the substitution for the definition of “purchaser” of the following definition:

“‘purchaser’ includes the person in whom the rights and obligations of the purchaser under a contract are vested, or who has under an intermediate transaction acquired the right to claim transfer of land;”.

Amendment of
section 2 of
Act 72 of 1971.

2. Section 2 of the principal Act is hereby amended by the substitution in paragraph (a) for the words preceding subparagraph (i) of the following words:

- “(a) subject to the provisions of sections 11 and 14, apply to a contract under which the purchaser is a natural person or is the estate of the purchaser who has died or is insolvent, and which relates to land which—”.

Amendment of
section 4 of
Act 72 of 1971.

3. Section 4 of the principal Act is hereby amended—

- (a) by the substitution for paragraph (a) of subsection (1) of the following paragraph:

“(a) the names of the purchaser and the seller and their addresses in the Republic or the territory of South West Africa;” and

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by wyse van meer as twee paalemente oor 'n tydperk van een jaar of langer betaalbaar is, hetsy sodanige kontrak aan 'n opskortende of ontbindende voorwaarde onderhewig is of nie;"

- (d) deur die omskrywing van „koper” deur die volgende omskrywing te vervang:

„„koper” ook die persoon op wie die regte en verpligtinge van die koper kragtens 'n kontrak oorgegaan het, of wat die reg om transport van grond te eis, deur 'n intermedieë transaksie verkry het;"

- (e) deur na die omskrywing van „koper” die volgende omskrywing in te voeg:

„„ooreenkoms” 'n ooreenkoms vir die verkoop, ruil, skenking of ander vandiehandsetting van grond, en ook 'n kontrak;"

- (f) deur die omskrywing van „rente” deur die volgende omskrywing te vervang:

„„rente” die totaal van alle geldwaardige teenprestasies, uitgesonderd die koopprys, waarby, in die geval van 'n intermedieë transaksie, die tussenpersoon se wins inbegrepe is, en die in artikel 6 (3) (b) bedoelde koste, wat deur 'n koper uit hoofde van 'n kontrak regstreeks of onregstreeks aan 'n verkoper of aan of ten behoeve van enige persoon tussen hom en die verkoper betaal is of betaalbaar is;"

- (g) deur die omskrywing van „sessie” te skrap; en

- (h) deur voor die omskrywing van „verkoper” die volgende omskrywing in te voeg:

„„tussenpersoon”, met betrekking tot 'n intermedieë transaksie, 'n persoon wat grond kragtens 'n kontrak gekoop het of koop en wat daardie grond, voordat dit aan hom getranspoteer is, kragtens 'n ooreenkoms vervreem het of vervreem, of wat kragtens 'n ooreenkoms die reg verkry het of verkry om transport van grond te eis, en wat daardie grond voordat dit aan hom getranspoteer is, kragtens 'n kontrak verkoop het of verkoop;"

2. Artikel 2 van die Hoofwet word hierby gewysig deur Wysiging van paragraaf (a) die woorde wat subparagraaf (i) voorafgaan deur artikel 2 van die volgende woorde te vervang: Wet 72 van 1971.

- „(a) behoudens die bepalings van artikels 11 en 14, van toepassing op 'n kontrak waarby die koper 'n natuurlike persoon is of die boedel is van die koper wat oorlede of insolvent is, en wat betrekking het op grond wat—”.

3. Artikel 4 van die Hoofwet word hierby gewysig—

Wysiging van artikel 4 van Wet 72 van 1971.

- (a) deur paragraaf (a) van subartikel (1) deur die volgende paragraaf te vervang:

„(a) die name van die koper en die verkoper en hulle adresse in die Republiek of die gebied Suidwes-Afrika;" en

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(b) by the insertion after paragraph (i) of subsection (1) of the following paragraphs:

“(iA) a reference to the right of the purchaser under section 10 to accelerate payments in terms of the contract and to claim transfer of the land against payment of the amounts referred to in section 4 (1) (g);

(iB) a reference to the limitation, in terms of section 13, of the right of the seller to take action by reason of any failure on the part of the purchaser to fulfil an obligation under the contract;

(iC) a reference to the right of the purchaser under section 72 of the Insolvency Act, 1916, Amendment Act, 1926 (Act No. 29 of 1926), to demand transfer of the land after payment of not less than fifty per cent of the purchase price, on condition of registration of a mortgage bond over the land;”.

Amendment of section 5 of Act 72 of 1971.

4. Section 5 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Within one month after the conclusion of a contract, the seller shall hand to the purchaser or send to him by prepaid registered post, a copy thereof and the seller shall not be entitled to make any charge for the making of such copy or for complying with the provisions of this subsection.”.

Amendment of section 6 of Act 72 of 1971, as amended by section 1 of Act 72 of 1972.

5. Section 6 of the principal Act is hereby amended—

(a) by the substitution for subsection (2) of the following subsection:

“(2) No seller shall in connection with a contract stipulate for, demand or receive interest at a rate which is higher than the rate prescribed by the Minister of Economic Affairs by regulation from time to time for the purposes of this subsection.”; and

(b) by the addition of the following subsection:

“(4) When the purchaser has paid in full the amounts referred to in section 4 (1) (g), no interest shall be payable in terms of the contract in respect of any period after the date of such payment.”.

Substitution of section 7 of Act 72 of 1971.

6. The following section is hereby substituted for section 7 of the principal Act:

“Invalidity of certain provisions.

7. (1) Subject to the provisions of subsection (2), no contract entered into after the commencement of the Sale of Land on Instalments Amendment Act, 1975, shall contain a provision whereby—

(a) any person who acted on behalf of the seller in connection with the conclusion of the contract or the negotiations which preceded the conclusion of the contract, is appointed or deemed to have been appointed as the agent of the purchaser; or

(b) the purchaser, if he fails to fulfil any obligation in terms of the contract, forfeits any claim in respect of necessary expenditure he has incurred, with or without the authority of the registered owner or seller of the land, in regard to the preservation of the land or any improvement thereon or in respect of any improvement which enhances the market value of the land and was

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- (b) deur na paragraaf (i) van subartikel (1) die volgende paragrawe in te voeg:

„(iA) 'n verwysing na die reg van die koper kragtens artikel 10 om betalings ingevolge die kontrak te vervroeg en om transport van die grond teen betaling van die in artikel 4 (1) (g) bedoelde bedrae te eis;

(iB) 'n verwysing na die beperking, ingevolge artikel 13, van die verkoper se reg om stappe te doen weens 'n versuim deur die koper om 'n verpligting kragtens die kontrak na te kom;

(iC) 'n verwysing na die reg van die koper kragtens artikel 72 van die „Insolventie Wet, 1916, Wijzigingswet, 1926“ (Wet No. 29 van 1926), om, op voorwaarde van registrasie van 'n verband oor die grond, transport van die grond na betaling van minstens vyftig persent van die koopprys te eis;”.

4. Artikel 5 van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang: Wysiging van artikel 5 van Wet 72 van 1971.

„(1) Die verkoper moet binne een maand na die sluiting van 'n kontrak aan die koper 'n afskrif daarvan oorhandig of per vooruitbetaalde geregistreerde pos stuur, en die verkoper is nie geregtig om vergoeding te vra vir die maak van sodanige afskrif of vir nakoming van die bepaling van hierdie subartikel nie.”.

5. Artikel 6 van die Hoofwet word hierby gewysig—

- (a) deur subartikel (2) deur die volgende subartikel te vervang: Wysiging van artikel 6 van Wet 72 van 1971, soos gewysig deur artikel 1 van Wet 72 van 1972.

„(2) 'n Verkoper beding, eis of ontvang nie rente met betrekking tot 'n kontrak nie teen 'n koers wat hoër is as die koers deur die Minister van Ekonomiese Sake van tyd tot tyd vir die doeleindes van hierdie subartikel by regulasie voorgeskryf.”; en

- (b) deur die volgende subartikel by te voeg:

„(4) Wanneer die koper die in artikel 4 (1) (g) bedoelde bedrae ten volle betaal het, is geen rente ingevolge die kontrak ten opsigte van enige tydperk na die datum van sodanige betaling betaalbaar nie.”.

6. Artikel 7 van die Hoofwet word hierby deur die volgende artikel vervang: Vervanging van artikel 7 van Wet 72 van 1971.

„Ongeldigheid van sekere bepalinge.

7. (1) Behoudens die bepalinge van subartikel (2), mag geen kontrak wat na die inwerkingtreding van die Wysigingswet op die Verkoop van Grond op Afbetaling, 1975, aangegaan word, 'n bepaling bevat nie waardeur—

- (a) iemand wat namens die verkoper opgetree het in verband met die sluiting van die kontrak of die onderhandelings wat die sluiting van die kontrak voorafgegaan het, aangestel word of geag word aangestel te wees as gevolmagtigde van die koper; of

- (b) die koper, indien hy versuim om 'n verpligting ingevolge die kontrak na te kom, 'n vordering verbeur ten opsigte van noodsaaklike uitgawes deur hom aangegaan, met of sonder magtiging van die geregistreerde eienaar of verkoper van die grond, met betrekking tot die bewaring van die grond of 'n verbetering daarop, of ten opsigte van 'n verbetering wat die markwaarde van die grond verhoog en deur hom op die

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effected by him on the land with the express or implied consent of the said registered owner or seller; or

the liability of the seller to indemnify the purchaser against eviction is restricted or excluded; or

(d) the purchaser is obliged to take transfer of the land before the date or the expiry of the period stated in the contract in terms of section 4 (1) (g); or

(e) the purchaser is obliged to accept a mortgage bond over the land for the payment of the outstanding balance of the purchase price plus interest and any of the costs referred to in section 6 (3) (b), which is arranged on his behalf by the seller or his agent, on conditions as to the rate of interest and redemption which are more onerous than the terms which at the time when transfer is to be taken, apply in respect of a loan, secured by a first mortgage bond over land, which is granted by a building society.

(2) The provisions of subsection (1) (d) shall not apply if the seller has arranged for a mortgage bond to be granted to the purchaser on conditions as to the rate of interest and redemption which are not more onerous than the terms which at the time when transfer is or is to be taken, apply in respect of a loan, secured by a first mortgage bond over land, which is granted by a building society, to secure payment of the unpaid balance of the amounts referred to in section 4 (1) (g)."

Substitution of section 10 of Act 72 of 1971.

7. The following section is hereby substituted for section 10 of the principal Act:

"Right of purchaser to accelerate payments, and claim transfer of land.

10. (1) The purchaser shall at all times be entitled—

- (a) to make a payment before the due date on which it has to be made in terms of the contract; or
- (b) to make larger payments than the payments for which the contract provides; or
- (c) to claim transfer of land against payment of the amounts referred to in section 4 (1) (g) and, if applicable, after the date or event referred to in section 4 (1) (p).

(2) If in terms of a contract the seller is to transfer land to the purchaser against payment of the amounts referred to in section 4 (1) (g), a banker's guarantee or a guarantee by a building society furnished by the purchaser for payment of the said amounts against transfer for the purpose of performing the contract, shall be deemed to be payment of such amounts: Provided that this subsection shall not be construed so as to absolve the purchaser from the payment of interest in terms of the contract up to the date of the implementation of the guarantee."

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grond met die uitdruklike of stilswyende toestemming van genoemde geregistreerde eienaar of verkoper aangebring is; of

- (c) die aanspreeklikheid van die verkoper om die koper teen uitwinning te vrywaar, beperk of uitgesluit word; of
- (d) die koper verplig word om transport van grond te neem voor die datum of die verstryking van die tydperk wat ingevolge artikel 4 (1) (g) in die kontrak vermeld word; of
- (e) die koper verplig word om 'n verband oor die grond vir die betaling van die uitstaande saldo van die koopprys plus rente en enige van die kostes in artikel 6 (3) (b) bedoel, wat namens hom deur die verkoper of sy gevolmagtigde gereël word, te aanvaar op voorwaardes aangaande die rentekoers en delging wat swaarder is as die voorwaardes wat op die tydstip waarop transport geneem moet word, van toepassing is ten opsigte van 'n lening, versekureer deur 'n eerste verband oor grond, wat deur 'n bouvereniging toegestaan word.

(2) Die bepaling van subartikel (1) (d) is nie van toepassing nie indien die verkoper gereël het dat 'n verband aan die koper toegestaan word op voorwaardes aangaande die rentekoers en delging wat nie swaarder is nie as die voorwaardes wat op die tydstip waarop transport geneem word of moet word, van toepassing is ten opsigte van 'n lening, versekureer deur 'n eerste verband oor grond, wat deur 'n bouvereniging toegestaan word ter versekering van die betaling van die onbetaalde saldo van die in artikel 4 (1) (g) bedoelde bedrae.”

7. Artikel 10 van die Hoofwet word hierby deur die volgende artikel vervang:

Vervanging van
artikel 10 van
Wet 72 van 1971.

„Reg van
koper om
betalings te
vervroeg, en
transport
van grond
te eis.

10. (1) Die koper is te alle tye geregtig—

- (a) om 'n betaling te maak voor die vervaldag waarop dit ingevolge die kontrak gemaak moet word; of
- (b) om groter betalings te maak as dié waarvoor die kontrak voorsiening maak; of
- (c) om transport van grond te eis teen betaling van die in artikel 4 (1) (g) bedoelde bedrae en, indien van toepassing, na die datum of gebeurtenis in artikel 4 (1) (p) bedoel.

(2) Indien die verkoper ingevolge 'n kontrak grond aan die koper moet transporteer teen betaling van die in artikel 4 (1) (g) bedoelde bedrae, word 'n bankwaarborg of 'n waarborg deur 'n bouvereniging wat deur die koper vir betaling van bedoelde bedrae teen transport met die doel om die kontrak na te kom, verstrekk is, geag betaling van sodanige bedrae te wees: Met dien verstande dat hierdie subartikel nie so uitgelê word nie dat dit die koper vrystel van die betaling van rente ooreenkomstig die kontrak tot op die datum van die uitvoering van die waarborg.”

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Substitution of
section 11 of
Act 72 of 1971.

8. The following section is hereby substituted for section 11 of the principal Act:

“Transfer of
land to
purchaser
under
intermediate
transaction.

11. (1) Any purchaser of land under an intermediate transaction shall, after the commencement of the Sale of Land on Instalments Amendment Act, 1975, notwithstanding the provisions of any law to the contrary but subject to the provisions of subsection (2) of this section and section 12 of the Transfer Duty Act, 1949 (Act No. 40 of 1949), be entitled to claim transfer of the land from the registered owner direct to himself.

(2) No land shall, by virtue of the provisions of subsection (1), be transferred from the registered owner direct to a purchaser thereof under an intermediate transaction, except where—

(a) the purchaser to whom transfer is to be effected has fulfilled his obligations in terms of the agreement under which he has acquired the right to claim transfer of the land; and

(b) a final order of sequestration or liquidation has been given in respect of the estate of any intermediary entitled to claim transfer of the land before it is transferred to the said purchaser or the circumstances contemplated in section 14 (3) or (4) exist.

(3) The specification in the deed of transfer concerned of any relevant intermediate transaction or final order of sequestration or liquidation, and of any particulars thereof, shall, if certified to be correct by a conveyancer, be deemed to be correct unless the contrary is proved.

(4) Any person who has acquired from an intermediary or an intermediary's successor in title the right to claim transfer of land, may dispose of such right as he may dispose of any other asset.

(5) Any purchaser of land under an intermediate transaction shall inform the registered owner of such intermediate transaction.

(6) When the right to claim transfer of land has been or is acquired under an intermediate transaction and the intermediary has not assigned to the purchaser the obligations coupled with the right to claim transfer of the land—

(a) the purchaser may, as from the date of the intermediate transaction or the commencement of the Sale of Land on Instalments Amendment Act, 1975, as the case may be, if the intermediary fails to fulfil his obligations under the agreement under which he acquired the right to claim transfer of the land, perform the said obligations of the intermediary to the registered owner or other creditor, and such performance by the purchaser of the obligations of the intermediary to the registered owner or other creditor shall be deemed to be a valid performance by the intermediary of his said obligations to the registered owner or other creditor and to the same extent by the purchaser of his obligations to the intermediary; and

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8. Artikel 11 van die Hoofwet word hierby deur die volgende artikel vervang:

Vervanging van
artikel 11 van
Wet 72 van 1971.

„Transport
van grond
aan koper
kragtens
intermediêre
transaksie.

11. (1) Na die inwerkingtreding van die Wysigingswet op die Verkoop van Grond op Afbetaling, 1975, is 'n koper van grond kragtens 'n intermediêre transaksie geregtig om, ondanks andersluidende bepalings van die een of ander wet maar behoudens die bepalings van subartikel (2) van hierdie artikel en artikel 12 van die Wet op Hereregte, 1949 (Wet No. 40 van 1949), transport van die grond van die geregistreerde eienaar regstreeks aan homself te eis.

(2) Geen grond word uit hoofde van die bepalings van subartikel (1) van die geregistreerde eienaar aan die koper daarvan kragtens 'n intermediêre transaksie regstreeks getranspoteer nie, behalwe waar—

(a) die koper aan wie getranspoteer moet word sy verpligtings ingevolge die ooreenkoms waarkragtens hy die reg verkry het om transport van die grond te eis, nagekom het; en

(b) 'n finale bevel tot sekwestrasie of likwidasië gegee is ten opsigte van die boedel van 'n tussenpersoon geregtig om transport van die grond te eis voordat dit aan bedoelde koper getranspoteer word, of die omstandighede in artikel 14 (3) of (4) beoog, bestaan.

(3) Die vermelding in die betrokke akte van transport van 'n relevante intermediêre transaksie of finale bevel tot sekwestrasie of likwidasië, en van besonderhede daarvan, word, indien deur 'n transportbesorger as juis gewaarmerk, geag juis te wees tensy die teendeel bewys word.

(4) Iemand wat van 'n tussenpersoon of van 'n tussenpersoon se regsopvolger die reg om transport van grond te eis, verkry het, kan oor sodanige reg beskik soos hy oor 'n ander bate kan beskik.

(5) 'n Koper van grond kragtens 'n intermediêre transaksie stel die geregistreerde eienaar van sodanige intermediêre transaksie in kennis.

(6) Wanneer die reg om transport van grond te eis kragtens 'n intermediêre transaksie verkry is of word en die tussenpersoon nie die verpligtings wat gepaard gaan met die reg om transport van die grond te eis, aan die koper oorgemaak het nie—

(a) kan die koper vanaf die datum van die intermediêre transaksie of die inwerkingtreding van die Wysigingswet op die Verkoop van Grond op Afbetaling, 1975, na gelang van die geval, indien die tussenpersoon nie sy verpligtings kragtens die ooreenkoms waarkragtens hy die reg verkry het om transport van die grond te eis, nakom nie, bedoelde verpligtings van die tussenpersoon teenoor die geregistreerde eienaar of ander skuldeiser nakom en word so 'n nakoming deur die koper van die verpligtings van die tussenpersoon teenoor die geregistreerde eienaar of ander skuldeiser geag 'n geldige nakoming deur die tussenpersoon van sy bedoelde verpligtings teenoor die geregistreerde eienaar of ander skuldeiser en in dieselfde mate deur die koper van sy verpligtings teenoor die tussenpersoon te wees; en

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(b) the intermediary or the estate of the intermediary who has died or is insolvent, shall not be entitled to recover from the purchaser again any payment made in good faith by the purchaser on behalf of the intermediary to the registered owner or other creditor.

(7) Within one month after the conclusion of any intermediate transaction, the intermediary concerned shall hand to the purchaser or send to him by pre-paid registered post the receipt for transfer duty payable in respect of the transaction by which the intermediary acquired and any other preceding intermediary concerned had acquired the right to claim transfer of the land.

(8) If an intermediary fails to comply with the provisions of subsection (7) and if, after the purchaser has requested him in writing to furnish the purchaser with the said receipts for transfer duty, he remains in default to do so for more than fourteen days, the purchaser shall, in respect of the period from the conclusion of the intermediate transaction under which he acquired the right to claim transfer of the land from the intermediary, to the date of the receipt of the transfer duty receipts by the purchaser, not be liable for payment of interest in terms of such intermediate transaction.

(9) The purchaser who, in order to obtain transfer of the land, pays the transfer duty and transfer costs which are payable by the intermediary or any predecessor of the intermediary, shall be entitled to sign on behalf of such intermediary or such predecessor all the documents required in connection with the payment of the transfer duty or the transfer and may recover the amounts so paid from the intermediary or the predecessor concerned."

Amendment of
section 12 of
Act 72 of 1971.

9. Section 12 of the principal Act is hereby amended by the insertion after subsection (1) of the following subsection:

"(1A) Such consent shall not be granted except with specific reference to a particular assignee and shall not be unreasonably withheld."

Amendment of
section 13 of
Act 72 of 1971.

10. Section 13 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) No seller shall, by reason of any failure on the part of the purchaser to fulfil an obligation under a contract, be entitled to enforce any provision of the contract for the acceleration of the payment of any instalment of the purchase price, to terminate the contract or to institute an action for damages, unless he has by letter handed over to the purchaser and for which an acknowledgement of receipt has been obtained, or sent by registered post to him at his address required to be stated in the contract in terms of section 4 (1) (a), or at his changed address of which notice is required to be given in terms of section 16, as the circumstances may require, informed the purchaser of the failure in question and made demand to the purchaser to carry out the obligation in question within a period stated in such demand, not being less than thirty days, and the purchaser has failed to comply with such demand."

Substitution of
section 14 of
Act 72 of 1971.

11. The following section is hereby substituted for section 14 of the principal Act:

"Sale in
execution of
land which
has been
sold under
a contract,

14. (1) If land which has been sold under a contract, is sold by the trustee or liquidator of the insolvent estate of the registered owner of the land, or is sold in execution to meet one or more claims against that owner or his estate, the person who

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(b) is die tussenpersoon of die boedel van die tussenpersoon wat oorlede of insolvent is, nie geregtig om 'n betaling wat te goeder trou deur die koper namens die tussenpersoon aan die geregistreerde eienaar of ander skuldeiser gemaak is, weer op die koper te verhaal nie.

(7) Binne een maand na die aangaan van 'n intermediêre transaksie, oorhandig die betrokke tussenpersoon of stuur hy per vooruitbetaalde geregistreerde pos aan die koper die kwitansie vir hereregte wat betaalbaar is ten opsigte van die transaksie waardeur die tussenpersoon en enige ander voorafgaande betrokke tussenpersoon die reg verkry het om transport van die grond te eis.

(8) Indien 'n tussenpersoon versuim om aan die bepalings van subartikel (7) te voldoen en indien hy, nadat die koper hom skriftelik gevra het om genoemde hereregtekuitansies aan die koper te verstrek, vir meer as veertien dae in gebreke bly om dit te doen, is die koper, ten opsigte van die tydperk vanaf die sluiting van die intermediêre transaksie waarkragtens hy die reg om transport van die grond te eis van die tussenpersoon verkry het, tot die datum waarop die hereregtekuitansies deur die koper ontvang word, nie aanspreeklik vir die betaling van rente ingevolge dié intermediêre transaksie nie.

(9) Die koper wat, ten einde transport van die grond te verkry, die hereregte en koste van transport betaal wat deur die tussenpersoon of 'n voorganger van die tussenpersoon verskuldig is, is geregtig om namens sodanige tussenganger of sodanige voorganger al die stukke vereis in verband met die betaling van die hereregte of die transport te onderteken en kan die aldus betaalde bedrae op die tussenpersoon of die betrokke voorganger verhaal."

9. Artikel 12 van die Hoofwet word hierby gewysig deur na subartikel (1) die volgende subartikel in te voeg:

Wysiging van
artikel 12 van
Wet 72 van 1971.

„(1A) Sodanige toestemming word nie, behalwe met uitdruklike verwysing na 'n bepaalde regsverkrygende, verleen nie en word nie onredelik weerhou nie."

10. Artikel 13 van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

Wysiging van
artikel 13 van
Wet 72 van 1971.

„(1) Geen verkoper is, weens 'n versuim deur die koper om 'n verpligting kragtens 'n kontrak na te kom, geregtig om 'n bepaling van die kontrak vir die vervroeging van die betaling van 'n paaient van die koopprys af te dwing, die kontrak te beëindig of om 'n aksie om skadevergoeding in te stel nie, tensy hy per brief aan die koper oorhandig en waarvoor 'n erkenning van ontvangs verkry is of per aangetekende pos aan hom gestuur na die adres wat in die kontrak ingevolge artikel 4 (1) (a) vermeld moet word, of na sy veranderde adres waarvan kennisgewing ingevolge artikel 16 gegee moet word, na gelang van omstandighede, die koper van die betrokke versuim kennis gegee het en van die koper geëis het dat hy die betrokke verpligting moet nakom binne 'n in die kennisgewing vermelde tydperk, wat nie minder as dertig dae is nie, en die koper versuim het om aan die kennisgewing te voldoen."

11. Artikel 14 van die Hoofwet word hierby deur die volgende artikel vervang:

Vervanging van
artikel 14 van
Wet 72 van 1971.

„Verkoop in eksekusie van grond wat kragtens 'n kontrak 14. (1) Indien grond wat kragtens 'n kontrak verkoop is, deur die kurator of likwidateur van die insolvente boedel van die geregistreerde eienaar van die grond, verkoop word, of in eksekusie verkoop word om aan een of meer regsvorderings teen daardie

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and death or insolvency of registered owner of such land. acquired under an agreement the right to claim transfer of that land from that owner or the estate of that owner who has died or is insolvent or, if such person is deceased or insolvent, his deceased or insolvent estate, shall, apart from any other claim which he or his deceased or insolvent estate may prove against the said owner or his deceased or insolvent estate, also be entitled to prove a claim against the said owner or his deceased or insolvent estate which shall be met from the proceeds of the land and which shall rank in preference directly after a claim which is secured by a mortgage bond over the land in question, for the portion of the purchase price which such person or his deceased or insolvent estate has paid under the agreement plus interest calculated at five per cent per annum on the said portion in respect of the period from the conclusion of the agreement to the date upon which the land is so sold by the trustee or liquidator or in execution.

(2) Subject to the provisions of any law or the common law under which certain juristic acts which an insolvent has entered into before the sequestration or liquidation of his estate, may be rescinded by a court of law, the trustee or liquidator of the estate of an insolvent who is the registered owner of land which has been sold under a contract, or the judgment creditor of a registered owner who has by virtue of a writ in execution against the immovable property of the registered owner attached land which has been sold under a contract, shall call upon the purchaser, or upon the intermediary or upon both, as the case may be, by written notice if the address of the purchaser or of the intermediary is known, or by two consecutive notices in a newspaper circulating in the district in which the address referred to in section 16 is situate and by notice in the *Gazette*, if such address is not known, to take transfer of the land, and if such purchaser or intermediary does not so take transfer of the land, it shall be sold by the trustee or liquidator or in execution, subject to the claim of the person referred to in subsection (1).

(3) When land sold under a contract is attached by virtue of a writ of execution against the immovable property of the registered owner or when land sold under a contract is registered in the name of any person in respect of whose estate a final order of sequestration or liquidation has been given, and that land is not encumbered by a mortgage bond, that land shall without prejudice to the rights of any person who purchased it from an intermediary, if any, be transferred into the name of the person who has the right to claim transfer of the land and who makes arrangements to the satisfaction, as the case may be, of the deputy sheriff or the messenger of the court, before the land is sold in execution, or of the Master of the Supreme Court under whose supervision the liquidation of the estate of the insolvent is taking place, within six months after the purchaser or the intermediary, or both, as the case may be, has or have been called upon in terms of subsection (2) to take transfer, for the payment of the outstanding balance under the agreement plus interest to the date of the registration of transfer.

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verkoop is,
en dood of
insolvensie
van ge-
registreerde
eienaar van
sodanige
grond.

eienaar of sy boedel te voldoen, is die persoon wat kragtens 'n ooreenkoms die reg verkry het om transport van daardie grond te eis van daardie eienaar of die boedel van daardie eienaar wat oorlede of insolvent is, of, indien sodanige persoon oorlede of insolvent is, sy bestorwe of insolvente boedel, afgesien van enige ander vordering wat hy of sy bestorwe of insolvente boedel teen bedoelde eienaar of sy bestorwe of insolvente boedel mag bewys, ook geregtig om 'n vordering teen bedoelde eienaar of sy bestorwe of insolvente boedel te bewys waaraan uit die opbrengs van die grond voldoen moet word en wat in rangorde staan direk na 'n vordering wat met 'n verband oor die betrokke grond versekureer is, vir die gedeelte van die koopprys wat sodanige persoon of sy bestorwe of insolvente boedel kragtens die ooreenkoms afbetaal het plus rente bereken teen vyf persent per jaar op bedoelde gedeelte ten opsigte van die tydperk vanaf die sluiting van die ooreenkoms tot op die datum waarop die grond aldus deur die kurator of likwidateur of in eksekusie verkoop word.

(2) Behoudens die wets- of regsbepalings waarvolgens sekere regshandelinge wat 'n insolvent voor sekwestrasie of likwidasië van sy boedel aangegaan het, deur 'n geregshof nietig verklaar kan word, sê die kurator of likwidateur van die boedel van 'n insolvent wat die geregistreerde eienaar is van grond wat ingevolge 'n kontrak verkoop is, of die vonniskskuldeiser van 'n geregistreerde eienaar wat ingevolge 'n lasbrief vir eksekusie teen die onroerende goed van die geregistreerde eienaar beslag gelê het op grond wat ingevolge 'n kontrak verkoop is, die koper of die tussenpersoon of albei, na gelang van die geval, indien die adres van die koper of van die tussenpersoon bekend is, by skriftelike kennisgewing, of, indien sodanige adres nie bekend is nie, by twee agtereenvolgende kennisgewings in 'n koerant in omloop in die distrik waarin die adres waarna in artikel 16 verwys word, geleë is en by kennisgewing in die *Staatskoerant*, aan om transport van die grond te neem, en indien sodanige koper of tussenpersoon nie aldus transport van die grond neem nie, word dit, behoudens die vordering van die in subartikel (1) genoemde persoon, deur die kurator of likwidateur of in eksekusie verkoop.

(3) Wanneer daar uit hoofde van 'n lasbrief vir eksekusie teen die onroerende goed van die geregistreerde eienaar, beslag gelê word op grond wat kragtens 'n kontrak verkoop is of wanneer grond wat kragtens 'n kontrak verkoop is, geregistreer is op naam van iemand ten opsigte van wie se boedel 'n finale bevel tot sekwestrasie of likwidasië gegee word, en daardie grond nie met verband beswaar is nie, word daardie grond sonder benadeling van die regte van enige persoon wat dit van 'n tussenpersoon gekoop het, as daar is, getranspoteer op naam van die persoon wat die reg het om transport van die grond te eis en wat reëlings tot bevrediging, na gelang van die geval, van die adjunk-balju of geregsbode, voordat die grond in eksekusie verkoop word, of van die Meester van die Hooggeregshof onder wie se toetsig die bereddering van die boedel van die insolvent geskied, binne ses maande na die aansegging van die koper of die tussenpersoon of albei, na gelang van die geval, ingevolge subartikel (2) om transport te neem, tref vir die betaling van die uitstaande saldo kragtens die ooreenkoms plus rente tot die datum van die registrasie van transport.

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(4) When in the circumstances referred to in subsection (3) the land sold under a contract is encumbered by a mortgage bond, the land shall, failing any other arrangement relating to the transfer thereof to the purchaser, be transferred, without prejudice to the rights of any purchaser who purchased the land from any intermediary, if any, to the person who has the right to claim transfer of the land and who makes arrangements to the satisfaction, as the case may be, of the deputy sheriff or messenger of the court, as contemplated in the said subsection, or of the Master concerned, within thirty days after the purchaser or intermediary, or both, as the case may be, has or have been called upon in terms of subsection (2) to take transfer, for the payment of the outstanding balance under the mortgage bond plus interest to the date of the registration of transfer and such costs of sequestration and administration and such other amounts as rank in preference prior to the claim secured by the mortgage bond, or of the outstanding balance under the agreement plus interest to the date of the registration of transfer, whichever of the two amounts may be the larger and all other costs in connection with transfer, as well as for the signing of all the documents required in connection with transfer: Provided that if the holder of a mortgage bond over the land has taken out a writ of execution in respect of the land, the person who takes transfer shall also pay the actual amount paid by the mortgagee or for which he is liable in respect of the attachment of the land, before he is entitled to transfer of the land.

(5) If a person referred to in subsection (4) has, by virtue of the arrangements he was required to make under that subsection, paid more than the outstanding balance under the agreement plus interest to the date of the registration of transfer, he may recover the difference between the two said amounts from the person from whom he acquired the right to claim transfer of the land."

Substitution of section 16 of Act 72 of 1971.

12. The following section is hereby substituted for section 16 of the principal Act:

"Addresses of purchaser and seller.

16. The addresses stated in any contract in terms of section 4 (1) (a) shall serve as *domicilium citandi et executandi* of the parties for all purposes of the contract, and notice of a change of such an address shall be given in writing and shall be delivered or sent by prepaid registered post by one party to the other, in which case such changed address shall serve as such *domicilium citandi et executandi* of the party who has given such notice."

Substitution of section 17 of Act 72 of 1971.

13. The following section is hereby substituted for section 17 of the principal Act:

"Relief that court may grant in regard to contracts.

17. (1) Notwithstanding the provisions of any law to the contrary but subject to any other powers that any court may have, if a contract does not substantially comply with any one of the provisions of section 3, 4, 6, 7 (1), 10, 12 or 13, a court within whose area of jurisdiction the land referred to in the contract is situated, shall, if appropriate proceedings are instituted by the purchaser within a period of two years from the date upon which the contract was entered into, be competent—

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(4) Wanneer in die in subartikel (3) bedoelde omstandighede die grond wat kragtens 'n kontrak verkoop is, met 'n verband beswaar is, word die grond, by ontstentenis van 'n ander reëling met betrekking tot die transport daarvan aan die koper, sonder benadeling van die regte van 'n koper wat die grond van 'n tussenpersoon gekoop het, as daar is, getranspoteer op naam van die persoon wat die reg het om transport van die grond te eis en wat reëlings tot bevrediging, na gelang van die geval, van die adjunk-balju of geregsbode, soos in genoemde subartikel bedoel, of van die betrokke Meester, binne dertig dae na die aansegging van die koper of tussenpersoon of albei, na gelang van die geval, ingevolge subartikel (2) om transport te neem, tref vir die betaling van die uitstaande saldo kragtens die verband plus rente tot die datum van die registrasie van transport en die sekwestrasie- en administrasiekoste en ander bedrae wat in rangorde staan vóór die vordering wat met die verband versekureer is, of van die uitstaande saldo kragtens die ooreenkoms plus rente tot die datum van die registrasie van transport, watter van die twee bedrae ook al die grootste is en al die ander koste in verband met transport, asook vir die ondertekening van al die dokumente wat in verband met transport vereis word: Met dien verstande dat indien die houer van 'n verband oor die grond 'n lasbrief vir eksekusie ten opsigte van die grond uitgeneem het, die persoon wat transport neem ook die werklike bedrag deur die verbandhouer betaal of waarvoor hy aanspreeklik is ten opsigte van die beslaglegging op die grond, moet betaal voordat hy op transport van die grond geregtig is.

(5) Indien 'n in subartikel (4) bedoelde persoon uit hoofde van die reëlings wat hy kragtens daardie subartikel moes tref, meer betaal het as die uitstaande saldo ingevolge die ooreenkoms plus rente tot die datum van die registrasie van transport, kan daardie persoon die verskil tussen die twee bedoelde bedrae op die persoon van wie hy die reg verkry het om transport van die grond te eis, verhaal."

12. Artikel 16 van die Hoofwet word hierby deur die volgende artikel vervang:

„Adresse van koper en verkoper.

16. Die adresse wat ingevolge artikel 4 (1) (a) in 'n kontrak vermeld word, dien as *domicilium citandi et executandi* van die partye vir alle doeleindes van die kontrak, en 'n kennisgewing van 'n verandering van so 'n adres word skriftelik gegee en word afgelewer of word per vooruitbetaalde geregistreerde pos deur die een party aan die ander gestuur, in welke geval sodanige veranderde adres dien as *domicilium citandi et executandi* van die party wat sodanige kennisgewing gegee het."

Vervanging van artikel 16 van Wet 72 van 1971.

13. Artikel 17 van die Hoofwet word hierby deur die volgende artikel vervang:

„Regshulp wat hof met betrekking tot kontrakte kan verleen.

17. (1) Indien 'n kontrak nie wesenlik aan die een of ander van die bepalings van artikel 3, 4, 6, 7 (1), 10, 12 of 13 voldoen nie, is 'n hof binne wie se regsgebied die in die kontrak genoemde grond geleë is, ondanks andersluidende wetsbepalings maar behoudens enige ander bevoegdheid wat 'n hof besit, bevoeg om, indien 'n gepaste geding deur die koper ingestel word binne 'n tydperk van twee jaar vanaf die datum waarop die kontrak aangegaan is—

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- (a) to reduce the rate of interest payable by the purchaser in terms of the contract to such rate as it may deem just and equitable in the circumstances;
- (b) to grant an order for rectification of the contract;
- (c) to declare the contract to be void *ab initio*; or
- (d) to grant such alternative relief as it may deem fit.

(2) A magistrate's court shall have jurisdiction to grant any relief contemplated in subsection (1)."

Short title and commencement.

14. This Act shall be called the Sale of Land on Instalments Amendment Act, 1975, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

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- (a) die rentekoers deur die koper ingevolge die kontrak betaalbaar, tot die koers te verminder wat die hof in die omstandighede regverdig en billik ag;
 - (b) 'n bevel vir rektifikasie van die kontrak toe te staan;
 - (c) die kontrak van die begin af nietig te verklaar; of
 - (d) die alternatiewe regshulp te verleen wat hy goedvind.
- (2) 'n Landdroshof is bevoeg om enige regshulp in subartikel (1) beoog, te verleen."

14. Hierdie Wet heet die Wysigingswet op die Verkoop van Kort titel en Grond op Afbetaling, 1975, en tree in werking op 'n datum wat inwerkingtreding. die Staatspresident by proklamasie in die *Staatskoerant* bepaal.

