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No. 10439

KANTOOR VAN DIE STAATSPRESIDENT

STATE PRESIDENT'S OFFICE

No. 1942.

17 September 1986

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

No. 93 van 1986: Wysigingswet op die Landbank, 1986.

No. 1942.

17 September 1986

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

No. 93 of 1986: Land Bank Amendment Act, 1986.

Wet No. 93, 1986

WYSIGINGSWET OP DIE LANDBANK, 1986

ALGEMENE VERDUIDELIKENDE NOTA:

[] Woorde in vet druk tussen vierkantige hake dui skappings uit bestaande verordenings aan.

Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordenings aan.

WET

Tot wysiging van die Landbankwet, 1944, ten einde die Minister van Finansies te magtig om die besoldiging van 'n raadslid van die Land- en Landboubank van Suid-Afrika wat as voorsitter op 'n vergadering van die raad optree, te bepaal; sekere aanpassings met betrekking tot die regsmiddele van die Bank teen nalatige skuldenaars te maak; en die strawwe in die geval van die belemmering of verhinderende van die inbeslagneming of verkoping van goed deur die Bank te verhoog; en om vir bykomstige aangeleenthede voorsiening te maak.

(Afrikaanse teks deur die Staatspresident geteken.)
(Goedgekeur op 5 September 1986.)

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

Wysiging van artikel 2 van Wet 13 van 1944, soos gewysig deur artikel 1 van Wet 42 van 1951, artikel 1 van Wet 13 van 1953, artikel 1 van Wet 60 van 1957, artikel 1 van Wet 47 van 1959, artikel 5 van Wet 31 van 1969, artikel 1 van Wet 41 van 1972, Proklamasie 147 van 1979 en artikel 1 van Wet 89 van 1985.

Wysiging van artikel 7 van Wet 13 van 1944, soos gewysig deur artikel 2 van Wet 13 van 1953.

Wysiging van artikel 34 van Wet 13 van 1944, soos vervang deur artikel 3 van Wet 52 van 1975 en gewysig deur artikel 5 van Wet 89 van 1985.

1. (1) Artikel 2 van die Landbankwet, 1944 (hieronder die Hoofwet genoem), word hierby gewysig deur in subartikel (1) voor die omskrywing van "personeel" die volgende omskrywing 5 in te voeg:

“‘balju’ ’n balju, adjunk-balju of waarnemende balju ooreenkomstig die bedoeling van die Wet op Balju's, 1986;”.

(2) Subartikel (1) tree in werking op die datum waarop die 10 Wet op Balju's, 1986, in werking tree.

2. Artikel 7 van die Hoofwet word hierby gewysig deur subartikel (2) deur die volgende subartikel te vervang:

“(2) ’n Lid van die raad (behalwe die voorsitter) wat op ’n vergadering daarvan as voorsitter optree, ontvang uit die 15 fondse van die bank, benewens die salaris en toelaes in artikel 10 vermeld, [’n bedrag van een ghienie] die vergoeding van tyd tot tyd deur die Minister bepaal vir elke dag of deel van ’n dag waarop hy aldus optree.”.

3. (1) Artikel 34 van die Hoofwet word hierby gewysig— 20

(a) deur paragraaf (e) van subartikel (2) deur die volgende paragraaf te vervang:

“(e) die skuldenaar oorlede is en met sy boedel ingevolge die bepalings van artikel 34 [(2) of (5)] van die Boedelwet, 1965 (Wet No. 66 van 1965), ge- 25 handel gaan word, of dit gesekwestreer is; of”;

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GENERAL EXPLANATORY NOTE:

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

ACT

To amend the Land Bank Act, 1944, so as to authorize the Minister of Finance to determine the remuneration payable to a member of the Board of the Land and Agricultural Bank of South Africa who presides at a meeting of the board; to make certain adjustments relating to the Bank's remedies against defaulting debtors; and to increase the penalties in the event of the obstruction or hindering of the attachment or sale of any property by the Bank; and to provide for incidental matters.

(Afrikaans text signed by the State President.)
(Assented to 5 September 1986.)

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

1. (1) Section 2 of the Land Bank Act, 1944 (hereinafter referred to as the principal Act), is hereby amended by the insertion 5 in subsection (1) before the definition of "staff" of the following definition:

"sheriff" means a sheriff, deputy sheriff or acting sheriff within the meaning of the Sheriffs Act, 1986;"

(2) Subsection (1) shall come into operation on the date on 10 which the Sheriffs Act, 1986, comes into operation.

Amendment of section 2 of Act 13 of 1944, as amended by section 1 of Act 42 of 1951, section 1 of Act 13 of 1953, section 1 of Act 60 of 1957, section 1 of Act 47 of 1959, section 5 of Act 31 of 1969, section 1 of Act 41 of 1972, Proclamation 147 of 1979 and section 1 of Act 89 of 1985.
2. Section 7 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) A member of the board (other than the chairman) who presides at any meeting thereof, shall out of the funds 15 of the bank receive, in addition to the salary and allowances mentioned in section 10 [a fee of one guinea], such remuneration as may from time to time be determined by the Minister for each day or part of a day on which he so presides."

Amendment of section 7 of Act 13 of 1944, as amended by section 2 of Act 13 of 1953.
3. (1) Section 34 of the principal Act is hereby amended—

(a) by the substitution for paragraph (e) of subsection (2) 20 of the following paragraph:

"(e) the debtor is deceased and his estate is about to be dealt with in terms of the provisions of section 34 25 [(2) or (5)] of the Administration of Estates Act, 1965 (Act No. 66 of 1965), or has been sequestrated; or";

Amendment of section 34 of Act 13 of 1944, as substituted by section 3 of Act 52 of 1975 and amended by section 5 of Act 89 of 1985.

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- (b) deur paragraaf (b) van subartikel (3) deur die volgende paragraaf te vervang:

“(b) na verstryking van sewe dae nadat terugbetaling van die voorskot per aangetekende brief gevorder is, gerig na die adres van die skuldenaar wat in die vorm van aansoek om die voorskot aangegee is, sonder geregtelike proses ’n **[geregsbode]** balju of enige ander persoon deur die raad vir die doel aangewys, aansê om soveel van die roerende goed van die skuldenaar in beslag te neem en (hetsy sodanige **[geregsbode]** balju of sodanige ander persoon ’n gelisensieerde afslaer is al dan nie) by openbare veiling te verkoop as wat nodig is om die bedrag te delg wat ten opsigte van die voorskot, tesame met rente en koste ten aansien daarvan, verskuldig is, of kan die raad self die goed waarop aldus beslag gelê is, by openbare tender verkoop op die voorwaardes wat hy bepaal;”;

- (c) deur paragraaf (c) van subartikel (3) deur die volgende paragraaf te vervang:

“(c) indien daar na die verkoping van al die beskikbare roerende goed van die skuldenaar ingevolge paragraaf (b), nog ’n bedrag ten opsigte van die voorskot en genoemde rente en koste verskuldig is, na behoorlike kennisgewing aan verbandhouders, en sonder geregtelike proses, maar behoudens die bepalinge van subartikel (4), op enige onroerende goed van die skuldenaar beslag lê deur skriftelike kennisgewing daarvan per geregistreerde brief, gerig aan die skuldenaar na die adres bedoel in paragraaf (b), en aan die betrokke registrateur van aktes, wat die beslaglegging in sy registers moet laat aanteken, en kan die raad na goeddunke, maar behoudens die bepalinge van genoemde subartikel (4), genoemde onroerende goed op die voorwaardes wat hy billik ag, by openbare veiling laat verkoop deur ’n afslaer of ’n balju **[of onderbalju]**, hetsy daardie balju **[of onderbalju]** ’n gelisensieerde afslaer is al dan nie;”;

- (d) deur subartikel (9) deur die volgende subartikel te vervang:

“(9) Iemand wat die inbeslagneming of verkoping van goed ingevolge subartikel (3) belemmer of verhinder, is aan ’n misdryf skuldig en by ’n eerste skuldigbevinding strafbaar met ’n boete van hoogstens **[tweehonderd]** tweeduisend rand of met gevangenisstraf vir ’n tydperk van hoogstens ses maande of met beide sodanige boete en sodanige gevangenisstraf en by ’n tweede of daaropvolgende skuldigbevinding strafbaar met ’n boete van hoogstens vyfduisend rand of met gevangenisstraf vir ’n tydperk van hoogstens twee jaar of met beide sodanige boete en sodanige gevangenisstraf;”;

- (e) deur die volgende subartikel na subartikel (9) in te voeg:

“(10) Ondanks andersluidende wetsbepalings is ’n landdroshof bevoeg om ’n straf waarvoor in subartikel (9) voorsiening gemaak word, op te lê.”

- (2) Subartikel (1) (b) en (c) tree in werking op die datum waarop die Wet op Balju's, 1986, in werking tree.

Wysiging van artikel 55 van Wet 13 van 1944, soos gewysig deur artikel 11 van Wet 46 van 1965, artikel 11 van Wet 5 van 1968,

4. (1) Artikel 55 van die Hoofwet word hierby gewysig—

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

“(e) die skuldenaar oorlede is en sy boedel ingevolge die bepalinge van artikel 48 (3) van die Boedelwet, 1913 (Wet No. 24 van 1913), of artikel 34 **[(2) of (5)]** van die Boedelwet, 1965 (Wet No. 66 van

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- (b) by the substitution for paragraph (b) of subsection (3) of the following paragraph:

“(b) after the expiry of seven days after demand for the repayment of the advance has been made by registered letter, addressed to the address of the debtor stated in the form of application for the advance, without recourse to a court of law, require any **[messenger of the court] sheriff** or any other person designated by the board for the purpose, to attach and (whether or not such **[messenger of the court] sheriff** or such other person is a licensed auctioneer) sell by public auction so much of the movable property of the debtor as may be necessary to liquidate the amount owing in respect of the advance, together with interest and costs in respect thereof, or the board may itself sell the property so attached by public tender and on the conditions which it may determine;”;

- (c) by the substitution for paragraph (c) of subsection (3) of the following paragraph:

“(c) if, after the sale of all the available movable property of the debtor in terms of paragraph (b), an amount in respect of the advance and the said interest and costs is still owing, after due notice to mortgagees, and without recourse to a court of law, but subject to the provisions of subsection (4), attach any immovable property of the debtor by written notice thereof by registered letter, addressed to the debtor at the address referred to in paragraph (b), and to the registrar of deeds concerned, who shall cause a note of the attachment to be made in his registers, and the board may in its discretion, but subject to the provisions of subsection (4), and upon such conditions as it may deem to be just, cause to be sold by public auction, through an auctioneer or a sheriff **[or a deputy sheriff]**, whether or not such sheriff **[or deputy sheriff]** is a licensed auctioneer, the said immovable property;”;

- (d) by the substitution for subsection (9) of the following subsection:

“(9) Any person who obstructs or hinders the attachment or sale of any property in terms of subsection (3) shall be guilty of an offence and, on a first conviction, liable to **[on conviction of]** a fine not exceeding two **[hundred] thousand** rand or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment and, on a second or subsequent conviction, liable to a fine not exceeding five thousand rand or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment;”;

- (e) by the insertion after subsection (9) of the following subsection:

“(10) Notwithstanding anything to the contrary in any law contained, a magistrate's court shall have jurisdiction to impose any sentence provided for in subsection (9).”.

(2) Subsection (1) (b) and (c) shall come into operation on the date on which the Sheriffs Act, 1986, comes into operation.

4. (1) Section 55 of the principal Act is hereby amended—

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

“(e) the debtor being deceased, his estate is about to be dealt with under the provisions of section 48 (3) of the Administration of Estates Act, 1913 (Act No. 24 of 1913), or section 34 **[(2) or (5)]** of the Admin-

Amendment of section 55 of Act 13 of 1944, as amended by section 11 of Act 46 of 1965, section 11 of Act 5 of 1968,

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artikel 14 van
Wet 31 van 1969,
artikel 6 van
Wet 41 van 1972,
Proklamasie
147 van 1979,
artikel 6 van
Wet 88 van 1981
en artikel 6 van
Wet 89 van 1985.

- 1965), mee gehandel staan te word, of as insolvent
gesekwestreer is; of”;
- (b) deur in paragraaf (b) van subartikel (2) die woorde wat
paragraaf (i) van die voorbehoudsbepaling voorafgaan
deur die volgende woorde te vervang: 5
- “(b) na terugvordering van die voorskot, per geregi-
streerde brief gerig aan die skuldenaar se adres,
soos in die vorm van aansoek om die voorskot aan-
gegee, en indien die grond of ander sekuriteit aan
iemand anders as die bank verhipotekeer is, na be- 10
hoorlike kennisgewing aan die verbandhouer, en
sonder geregtelike proses, die sekuriteit vir die
voorskot of ’n deel daarvan in beslag neem deur
skriftelike kennisgewing daarvan per geregistreer-
de brief aan die skuldenaar gerig aan bogenoemde 15
adres en aan die betrokke registrateur van aktes,
wat die beslaglegging in sy registers moet laat aan-
teken, en kan die raad na goeddunke bedoelde se-
kuriteit of ’n deel daarvan op die voorwaardes wat
hy billik ag, by publieke veiling verkoop deur ’n 20
afslaer of ’n balju **[of onderbalju]**, hetsy daardie
balju **[of onderbalju]** ’n gelisensieerde afslaer is al
dan nie: Met dien verstande dat—”;
- (c) deur paragraaf (ii) van die voorbehoudsbepaling by
paragraaf (b) van subartikel (2) deur die volgende 25
paragraaf te vervang:
- “(ii) onder die omstandighede in subartikel (1) (c), (d),
(e), (f), (gA), (gB) of (gC) genoem, die raad be-
doelde sekuriteit of ’n deel daarvan aldus in beslag
kan neem en verkoop sodra hy dit raadsaam ag na- 30
dat die boedel van die skuldenaar finaal gesekwe-
streer of afgestaan is, of die skuldenaar gevonniss
is, of die eiendom eksekutabel verklaar of in be-
slag geneem is, of die onderwerp van ’n opdrag
kragtens artikel 37 (1) van die Wet op Landbou- 35
krediet, 1966, geword het, of die boedel van die
skuldenaar ingevolge die bepalings van artikel 48
(3) van die Boedelwet, 1913, of artikel 34 **[(2) of
(5)]** van die Boedelwet, 1965, mee gehandel word,
of ’n kennisgewing ingevolge artikel 22 van die 40
Wet op Landboukrediet, 1966, met betrekking tot
die skuldenaar gepubliseer is, of, indien bedoelde
skuldenaar ’n maatskappy is, bedoelde maatskap-
py onder geregtelike bestuur geplaas is of gelijkwi-
deer of gederegistreer word of, indien bedoelde 45
skuldenaar ’n beslote korporasie is, bedoelde be-
slote korporasie gelijkwider of gederegistreer
word;” en
- (d) deur subartikel (3) deur die volgende subartikel te ver-
vang: 50
- “(3) Geen eiendom wat aan die bank verhipotekeer
is, kan deur **['n geregsbode, of]** ’n balju, of die kurator
van ’n insolvente boedel, of die boedelredder van ’n af-
gestane boedel, of die eksekuteur wat met die boedel
van ’n oorlede persoon handel ingevolge die bepalings 55
van artikel 48 (3) van die Boedelwet, 1913, of artikel 34
[(2) of (5)] van die Boedelwet, 1965, of ’n beredderaar
of ’n kurator wat kragtens artikel 27 of 28 van die Wet
op Landboukrediet, 1966, gekies of aangestel is, of die
geregtelike bestuurder of die likwidateur van ’n maat- 60
skappy of beslote korporasie, verkoop word nie, tensy
die bank skriftelik tot die verkoping toestem of versuim
het om daardie verhipotekeerde eiendom te verkoop
binne ses maande na ontvangs van ’n kennisgewing van
daardie **[bode,]** balju, kurator van die insolvente boe- 65
del, boedelredder, eksekuteur, beredderaar, of daardie
aldus aangestelde of gekose kurator, of geregtelike be-
stuurder of likwidateur, na gelang van die geval, ten ef-
fekte dat op die verhipotekeerde eiendom beslag gelê
is, of dat die boedel van die skuldenaar finaal gesekwe-

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istration of Estates Act, 1965 (Act No. 66 of 1965), or has been sequestrated as insolvent; or”;

section 14 of Act 31 of 1969, section 6 of Act 41 of 1972, Proclamation 147 of 1979, section 6 of Act 88 of 1981 and section 6 of Act 89 of 1985.

- (b) by the substitution in paragraph (b) of subsection (2) for the words preceding paragraph (i) of the proviso of the following words:

“(b) after demand by registered letter, addressed to the address of the debtor stated in the form of application for the advance, has been made for the repayment of the advance, and, if the land or other security is mortgaged to any person other than the bank, after due notice to the mortgagee, and without recourse to a court of law, attach the whole or any part of the security for the advance by giving written notice thereof by registered letter, to the debtor to the address as stated above and to the registrar of deeds concerned, who shall cause a note of the attachment to be made in his registers, and the board may in its discretion sell by public auction, through an auctioneer or a sheriff **[or his deputy]**, whether or not such sheriff **[or his deputy]** is a licensed auctioneer, the whole or any part of the said security upon such conditions as it may deem just: Provided that—”;

- (c) by the substitution for paragraph (ii) of the proviso to paragraph (b) of subsection (2) of the following paragraph:

“(ii) in the circumstances mentioned in subsection (1) (c), (d), (e), (f), (gA), (gB) or (gC), the board may so attach and sell the whole or any part of such security as soon after the debtor's estate has been finally sequestrated or assigned, or the debtor has been sentenced, or the property has been declared executable or attached or become the subject of a direction under section 37 (1) of the Agricultural Credit Act, 1966, or the debtor's estate is being dealt with under the provisions of section 48 (3) of the Administration of Estates Act, 1913, or section 34 **[(2) or (5)]** of the Administration of Estates Act, 1965, or a notice has been published with reference to the debtor under section 22 of the Agricultural Credit Act, 1966, or, if such debtor is a company, such company has been placed under judicial management or is being wound up or is being deregistered or, if such debtor is a close corporation, such close corporation is being wound up or is being deregistered, as the board may deem expedient;” and

- (d) by the substitution for subsection (3) of the following subsection:

“(3) No property mortgaged to the bank shall be sold by a **[messenger of the court, or]** sheriff, or the trustee of an insolvent estate, or the assignee of an assigned estate, or the executor dealing with the estate of a deceased person under the provisions of section 48 (3) of the Administration of Estates Act, 1913, or section 34 **[(2) or (5)]** of the Administration of Estates Act, 1965, or a liquidator or trustee elected or appointed under section 27 or 28 of the Agricultural Credit Act, 1966, or the judicial manager or the liquidator of a company or close corporation, unless the bank agrees in writing to such sale or has failed to sell such mortgaged property within six months after receipt of a notice from that **[messenger,]** sheriff, trustee of the insolvent estate, assignee, executor, that liquidator or trustee so elected or appointed or that judicial manager or liquidator, as the case may be, to the effect that the property mortgaged has been attached, or that the estate of the debtor has been finally sequestrated or assigned or is being dealt

