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KANTOOR VAN DIE STAATSPRESIDENT

No. 1262.

29 Junie 1988

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

No. 65 van 1988: Wet op Behuisingsontwikkelingskemas vir Afgetrede Persone, 1988.

STATE PRESIDENT'S OFFICE

No. 1262.

29 June 1988

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

No. 65 of 1988: Housing Development Schemes for Retired Persons Act, 1988.

Wet No. 65, 1988

WET OP BEHUISINGSONTWIKKELINGSKEMAS VIR AFGETREDE
PERSONE, 1988

WET

Om die vervreemding van sekere belange in behuisingsontwikkingskemas vir afgetrede persone te reël; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

*(Afrikaanse teks deur die Staatspresident geteken.)
(Goedgekeur op 17 Junie 1988.)*

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

Woordomskrywing

1. In hierdie Wet, tensy uit die samehang anders blyk, beteken—
 - (i) “aandeleblokskema” ’n aandeleblokskema soos omskryf in artikel 1 van 5 die Wet op die Beheer van Aandeleblokke; (xxiv)
 - (ii) “afgetrede persoon” ’n persoon wat 50 jaar oud of ouer is; (xxi)
 - (iii) “argitek” ’n argitek soos omskryf in artikel 1 van die Wet op Argitekte, 1970 (Wet No. 35 van 1970); (ii)
 - (iv) “behuisingsbelang”, met betrekking tot ’n behuisingsontwikkingskema, 10 enige reg om oordrag van die grond waarop die skema betrekking het, te eis, of om daardie grond te gebruik of te okkupeer; (x)
 - (v) “behuisingsontwikkingskema” enige skema, reëling of onderneming—
 - (a) waarvolgens behuisingsbelange vervreem word, of vir vervreemding aangebied word, slegs aan afgetrede persone of hoofsaaklik aan 15 sodanige persone, hetsy die skema, reëling of onderneming bedryf word uit hoofde van of in verband met ’n ontwikkelingskema of ’n aandeleblokskema of lidmaatskap van of deelname aan enige klub, vereniging, organisasie of ander liggaam, of die uitreiking van aandele, of andersins, maar uitgesonderd ’n eiendomstydskedelingskema; of 20
 - (b) deur die Minister by kennisgewing in die *Staatskoerant* tot ’n behuisingsontwikkingskema vir die doeleindes van hierdie Wet verklaar; (ix)
 - (vi) “bourekenaar” ’n bourekenaar soos omskryf in artikel 1 van die Wet op Bourekenaars, 1970 (Wet No. 36 van 1970); (xviii) 25
 - (vii) “eenheid” ’n eenheid soos omskryf in artikel 1 (1) van die Wet op Deeltitels; (xxvii)
 - (viii) “eiendomsagent” ’n eiendomsagent soos omskryf in artikel 1 van die Wet op Eiendomsagente, 1976 (Wet No. 112 van 1976); (viii)
 - (ix) “eiendomstydskedelingskema” ’n eiendomstydskedelingskema soos omskryf in 30 artikel 1 van die Wet op die Beheer van Eiendomstydskedeling, 1983 (Wet No. 75 van 1983); (xvi)
 - (x) “grond”, met betrekking tot ’n behuisingsontwikkingskema, grond wat hoofsaaklik vir woondoeleindes gebruik word of bestem is om hoofsaaklik aldus gebruik te word, met inbegrip van enige eenheid en enige onver- 35 deelde aandeel in grond; (xii)
 - (xi) “heffing” die bedrag betaalbaar as ’n bydrae tot die koste van die beheer, bestuur en administrasie van ’n behuisingsontwikkingskema; (xiii)
 - (xii) “hierdie Wet” ook die regulasies; (xxvi)

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ACT, 1988

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ACT

To regulate the alienation of certain interests in housing development schemes for retired persons; and to provide for matters connected therewith.

*(Afrikaans text signed by the State President.)
(Assented to 17 June 1988.)*

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

Definitions

1. In this Act, unless the context indicates otherwise—
- 5 (i) “alienate”, in relation to a housing interest, means—
(a) sell, exchange, lease, donate, grant or otherwise dispose of or place at disposal; or
(b) the making of an irrevocable offer to acquire the interest for consideration; (xxv)
- 10 (ii) “architect” means an architect as defined in section 1 of the Architects Act, 1970 (Act No. 35 of 1970); (iii)
- (iii) “consideration”, in relation to the alienation of a housing interest, means the purchase price and interest thereon (but excluding occupational interest), rent or other consideration which is payable or must be rendered in terms of the contract concerned; (xxii)
- 15 (iv) “contract” means a document in terms of which a housing interest is alienated to a retired person, and includes any agreement or agreements which together have the same import, whatever form the agreement or agreements may take; (xiv)
- 20 (v) “debilitated person” means a debilitated person as defined in section 1 of the Aged Persons Act, 1967 (Act No. 81 of 1967); (xxiv)
- (vi) “developer”—
(a) means a share block developer as defined in section 1 of the Share Blocks Control Act;
- 25 (b) means a developer as defined in section 1 (1) of the Sectional Titles Act;
- (c) in relation to a housing interest, includes any person, or his agent or successor-in-title, who alienates the interest for the first time; (xvii)
- 30 (vii) “development scheme” means a development scheme as defined in section 1 (1) of the Sectional Titles Act; (xviii)
- (viii) “estate agent” means an estate agent as defined in section 1 of the Estate Agents Act, 1976 (Act No. 112 of 1976); (viii)
- (ix) “housing development scheme” means any scheme, arrangement or undertaking—
- 35 (a) in terms of which housing interests are alienated, or are offered for alienation, only to retired persons or mainly to such persons, whether the scheme, arrangement or undertaking is operated pursuant to or in connection with a development scheme or a share block scheme or membership of or participation in any club, association, organization or other body, or the issuing of shares, or otherwise, but excluding a property time-sharing scheme; or
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- (xiii) "insolvent"—
 - (a) enigiemand wie se boedel ingevolge die Insolvensiewet, 1936 (Wet No. 24 van 1936), onder sekwestrasie is;
 - (b) enige insolvente bestorwe boedel waarmee ingevolge die bepalings van artikel 34 (2) van die Boedelwet, 1965 (Wet No. 66 van 1965), 5 gehandel word;
 - (c) enige regspersoon in likwidasie wat nie in staat is om sy skulde te betaal nie;
 - (d) enigiemand met wie se boedel gehandel word ingevolge artikel 28 (5) van die Wet op Landboukrediet, 1966 (Wet No. 28 van 1966); (xi) 10
- (xiv) "kontrak" 'n dokument ingevolge waarvan 'n behuisingsbelang aan 'n afgetrede persoon vervreem word, en ook enige ooreenkoms of ooreenkoms wat tesame dieselfde strekking het, watter vorm die ooreenkoms of ooreenkoms ook al mag aanneem; (iv)
- (xv) "koper" enige persoon aan wie 'n behuisingsbelang ingevolge 'n kontrak 15 vervreem word; (xvii)
- (xvi) "Minister" die Minister van Ekonomiese Sake en Tegnologie; (xiv)
- (xvii) "ontwikkelaar"—
 - (a) 'n aandeelblokontwikkelaar soos omskryf in artikel 1 van die Wet op 20 die Beheer van Aandeelblokke;
 - (b) 'n ontwikkelaar soos omskryf in artikel 1 (1) van die Wet op Deeltitels;
 - (c) met betrekking tot 'n behuisingsbelang, ook enige persoon, of sy agent of opvolger in titel, wat die belang vir die eerste keer vervreem; (vi)
- (xviii) "ontwikkelingskema" 'n ontwikkelingskema soos omskryf in artikel 1 (1) 25 van die Wet op Deeltitels; (vii)
- (xix) "praktisyn" 'n praktisyn soos omskryf in artikel 1 van die Wet op Prokureurs, 1979 (Wet No. 53 van 1979); (xv)
- (xx) "registreerbaar", met betrekking tot grond, vatbaar vir registrasie as die onderwerp van 'n afsonderlike titelbewys in 'n registrasiekantoor soos omskryf in artikel 102 van die Registrasie van Aktes Wet, 1937 (Wet No. 30 47 van 1937), deurdat aan die vereistes van enige wet met betrekking tot sodanige registrasie voldoen is; (xix)
- (xxi) "regulasie" 'n regulasie kragtens artikel 11 uitgevaardig; (xx)
- (xxii) "teenprestasie", met betrekking tot die vervreemding van 'n behuisingsbelang, die koopprys en rente daarop (maar met uitsluiting van okkupasie- 35 rente), huurgeld of ander teenprestasie wat ingevolge die betrokke kontrak betaalbaar is of gelewer moet word; (iii)
- (xxiii) "verkoper" enige persoon wat 'n behuisingsbelang ingevolge 'n kontrak vervreem; (xxiii)
- (xxiv) "verswakte persoon" 'n verswakte persoon soos omskryf in artikel 1 van 40 die Wet op Bejaarde Persone, 1967 (Wet No. 81 van 1967); (v)
- (xxv) "vervreem", met betrekking tot 'n behuisingsbelang—
 - (a) verkoop, verruil, verhuur, skenk, vergun of op 'n ander wyse van die hand sit of ter beskikking stel; of
 - (b) die maak van 'n onherroeplike aanbod om die belang teen 'n teen- 45 prestasie te bekom; (i)
- (xxvi) "Wet op Deeltitels" die Wet op Deeltitels, 1986 (Wet No. 95 van 1986); (xxii)
- (xxvii) "Wet op die Beheer van Aandeelblokke" die Wet op die Beheer van Aandeelblokke, 1980 (Wet No. 59 van 1980). (xxv) 50

Formaliteite ten opsigte van kontrakte

2. (1) Geen vervreemding van 'n behuisingsbelang aan 'n afgetrede persoon is, behoudens artikel 8 (2), van krag nie, tensy dit vervat is in 'n kontrak wat deur die partye daarby of deur hulle agente, handelende op hul skriftelike gesag, onderteken is. 55

(2) Die bepalings van subartikel (1) met betrekking tot ondertekening deur die agent van 'n party handelende op die skriftelike gesag van die party, doen nie afbreuk aan enige wet met betrekking tot die sluiting van 'n skriftelike kontrak deur iemand wat beweer dat hy optree as agent of trustee van 'n maatskappy of beslote korporasie wat opgerig staan te word nie. 60

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- (b) declared a housing development scheme by the Minister by notice in the *Gazette* for the purposes of this Act; (v)
- (x) "housing interest", in relation to a housing development scheme, means any right to claim transfer of the land to which the scheme relates, or to use or occupy that land; (iv)
- 5 (xi) "insolvent" means—
- (a) any person whose estate is under sequestration in terms of the Insolvency Act, 1936 (Act No. 24 of 1936);
- 10 (b) any insolvent deceased estate which is being dealt with in terms of section 34 (2) of the Administration of Estates Act, 1965 (Act No. 66 of 1965);
- (c) any juristic person in liquidation which is unable to pay its debts;
- (d) any person whose estate is being dealt with in terms of section 28 (5) of the Agricultural Credit Act, 1966 (Act No. 28 of 1966); (xiii)
- 15 (xii) "land", in relation to a housing development scheme, means land which is used or intended to be used mainly for residential purposes, including any unit and any undivided share in land; (x)
- (xiii) "levy" means the amount payable as a contribution to the costs of the control, management and administration of a housing development scheme; (xi)
- 20 (xiv) "Minister" means the Minister of Economic Affairs and Technology; (xvi)
- (xv) "practitioner" means a practitioner as defined in section 1 of the Attorneys Act, 1979 (Act No. 53 of 1979); (xix)
- 25 (xvi) "property time-sharing scheme" means a property time-sharing scheme as defined in section 1 of the Property Time-sharing Control Act, 1983 (Act No. 75 of 1983); (ix)
- (xvii) "purchaser" means any person to whom a housing interest is alienated in terms of a contract; (xv)
- 30 (xviii) "quantity surveyor" means a quantity surveyor as defined in section 1 of the Quantity Surveyors Act, 1970 (Act No. 36 of 1970); (vi)
- (xix) "registrable", in relation to land, means capable of being registered as the subject of a separate title deed in a deeds registry as defined in section 102 of the Deeds Registries Act, 1937 (Act No. 47 of 1937), in that the requirements of any law relating to such registration have been complied with; (xx)
- 35 (xx) "regulation" means a regulation made under section 11; (xxi)
- (xxi) "retired person" means a person who is 50 years of age or older; (ii)
- (xxii) "Sectional Titles Act" means the Sectional Titles Act, 1986 (Act No. 95 of 1986); (xxvi)
- 40 (xxiii) "seller" means any person who alienates a housing interest in terms of a contract; (xxiii)
- (xxiv) "share block scheme" means a share block scheme as defined in section 1 of the Share Blocks Control Act; (i)
- 45 (xxv) "Share Blocks Control Act" means the Share Blocks Control Act, 1980 (Act No. 59 of 1980); (xxvii)
- (xxvi) "this Act" includes the regulations; (xii)
- (xxvii) "unit" means a unit as defined in section 1 (1) of the Sectional Titles Act. (vii)

Formalities in respect of contracts

- 50 2. (1) No alienation of a housing interest to a retired person shall, subject to section 8 (2), be of any force or effect, unless it is contained in a contract signed by the parties thereto or by their agents acting on their written authority.
- (2) The provisions of subsection (1) relating to the signature by the agent of a party acting on the written authority of the party, shall not derogate from any law relating to the conclusion of a contract in writing by a person professing to act as agent or trustee for a company or close corporation not yet formed.
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WET OP BEHUISINGSONTWIKKELINGSKEMAS VIR AFGETREDE
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3. Die koper met betrekking tot 'n kontrak is geregtig om die amptelike taal te kies waarin die kontrak opgestel moet word.

Inhoud van kontrak

4. (1) Sonder om afbreuk te doen aan die vereistes van enige ander wet, moet 'n 5
kontrak, indien die betrokke verkoper 'n ontwikkelaar is, die volgende bevat:
- (a) Die name van die koper en die verkoper en hulle woon- of besig-
heidsadresse in die Republiek;
 - (b) 'n beknopte beskrywing van die regsgrondslag waarop die betrokke behui-
singsbelang vervreem staan te word; 10
 - (c) die duur van die behuisingsbelang en enige ander beperkings daarop;
 - (d) 'n vermelding of die behuisingsbelang registreerbaar is;
 - (e) 'n beskrywing van die betrokke grond, met inbegrip van die erf- en
eenheidsnommer (as daar is), die grootte daarvan en die landdrosdistrik
waarin dit geleë is; 15
 - (f) 'n vermelding of die grond deur die verkoper gehou word uit hoofde van
eiendomsreg of andersins;
 - (g) indien die verkoper nie die eienaar van die grond is nie—
 - (i) die naam en adres van die eienaar;
 - (ii) die aard van die verkoper se reg op die grond; 20
 - (iii) die tydperk waarvoor die reg gehou word;
 - (iv) die verpligtinge (as daar is) van die verkoper, voortvloeiende uit die
reg; en
 - (v) 'n vermelding van die plek waar en die ure waartydens 'n dokument
wat die bestaan van die reg staaf, of 'n gewaarmerkte afskrif daarvan, 25
geïnspekteer kan word;
 - (h) indien die grond met 'n verband beswaar is—
 - (i) die naam en adres van die persoon ten gunste van wie, of, in die geval
van 'n deelnemingsverband, die naam en adres van die betrokke
benoemde maatskappy beoog in die Wet op Deelnemingsverbande, 30
1981 (Wet No. 55 van 1981), ten gunste waarvan, die verband
geregistreer is ten tyde van die sluiting van die kontrak; en
 - (ii) die uitstaande balans verskuldig deur die verbandgewer ingevolge die
verband;
 - (i) die bedrag of aard van die betrokke teenprestasie; 35
 - (j) die jaarkoers waarteen rente (as daar is) op enige balans ten opsigte van die
teenprestasie betaalbaar is;
 - (k) die bedrag, of die metode om die bedrag te bepaal, van elke paaient
betaalbaar ingevolge die kontrak ter vermindering of vereffening van die
betrokke teenprestasie (as daar is); 40
 - (l) die vervaldatum, of die metode van bepaling van die vervaldatum, van elke
sodanige paaient;
 - (m) indien 'n sertifikaat beoog in artikel 6 (1) nog nie uitgereik is ten tyde van
die sluiting van die kontrak nie, die laatste datum waarteen sodanige
sertifikaat, behoudens subartikel (2), uitgereik en aan die koper verstrekk 45
sal word;
 - (n) 'n vermelding van die plek waar en die ure waartydens reëls (as daar is)
waarvolgens die betrokke behuisingsbelang benut moet word, geïnspekteer
kan word;
 - (o) 'n verklaring— 50
 - (i) van die plasing, aard en omvang van enige fasiliteite of dienste wat in
verband met die betrokke behuisingsbelang voorsien of gelewer sal
word;
 - (ii) van die regte en verpligtinge van die koper in verband met die
benutting van daardie fasiliteite of dienste; 55
 - (iii) sonder om afbreuk te doen aan die voorgaande, of enige sodanige
fasiliteit of diens voorsiening maak vir die versorging van verswakte
persone; en
 - (iv) van die datum waarteen die fasiliteite of dienste beoog in subpara-
grawe (i) en (iii) voorsien of gelewer sal word; 60

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Language in which contract shall be drawn up

3. The purchaser in relation to a contract is entitled to choose the official language in which the contract shall be drawn up.

Contents of contract

- 5 4. (1) Without derogating from the requirements of any other law, a contract, if the seller concerned is a developer, shall contain the following:
- (a) The names of the purchaser and the seller and their residential or business addresses in the Republic;
 - 10 (b) a concise description of the legal basis upon which the housing interest concerned is to be alienated;
 - (c) the duration of the housing interest and any other limitations thereon;
 - (d) a statement as to whether the housing interest is registrable;
 - (e) a description of the land concerned, including the erf and unit number (if any), the extent thereof and the magisterial district in which it is situated;
 - 15 (f) a statement as to whether the land is held by the seller by virtue of ownership or otherwise;
 - (g) if the seller is not the owner of the land—
 - (i) the name and address of the owner;
 - 20 (ii) the nature of the seller's right to the land;
 - (iii) the period for which the right is being held;
 - (iv) the obligations (if any) of the seller, arising from the right; and
 - (v) a statement of the place where and the hours during which a document which confirms the existence of the right, or a certified copy thereof, may be inspected;
 - 25 (h) if the land is encumbered by a mortgage bond—
 - (i) the name and address of the person in favour of whom, or, in the case of a participation bond, the name and address of the relevant nominee company contemplated in the Participation Bonds Act, 1981 (Act No. 55 of 1981), in favour of which, the mortgage bond is registered at the time the contract is concluded; and
 - 30 (ii) the outstanding balance owing by the mortgagor in terms of the mortgage bond;
 - (i) the amount or nature of the consideration concerned;
 - 35 (j) the annual rate at which interest (if any) is to be paid on any balance in respect of the consideration;
 - (k) the amount, or the method of determining the amount, of each instalment payable in terms of the contract in reduction or settlement of the consideration concerned (if any);
 - 40 (l) the due date, or the method of determining the due date, of each such instalment;
 - (m) if a certificate contemplated in section 6 (1) has not been issued at the time the contract is concluded, the latest date by which such certificate, subject to subsection (2), will be issued and furnished to the purchaser;
 - 45 (n) a statement of the place where and the hours during which rules (if any), in accordance with which the housing interest concerned is to be utilized, may be inspected;
 - (o) a statement—
 - (i) of the location, nature and extent of any facilities or services which are to be provided or rendered in connection with the housing interest concerned;
 - 50 (ii) of the rights and obligations of the purchaser in connection with the utilization of those facilities or services;
 - (iii) without derogating from the above, as to whether any such facility or service provides for the care of debilitated persons; and
 - 55 (iv) of the date by which the facilities or services contemplated in subparagraphs (i) and (iii) will be provided or rendered;

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- (p) 'n vermelding van die amptelike taal wat deur die koper kragtens artikel 3 gekies is;
 - (q) die datum waarop die koper geregtig sal word om die behuisingsbelang te benut;
 - (r) indien van toepassing, die datum waarop die risiko van die behuisingsbelang op die koper sal oorgaan;
 - (s) 'n vermelding van die verpligting (as daar is) van of die verkoper of die koper om die onderwerp van die kontrak te verseker;
 - (t) 'n vermelding—
 - (i) van enige bedrag wat ingevolge enige wet ten opsigte van die grond 10 betaalbaar is as begiftigings-, verbeterings- of waardevermeerderingsheffing, 'n ontwikkelingsbydrae of enige soortgelyke belasting, en 'n aanduiding van die persoon aan wie en die persoon deur wie dit betaalbaar is; of
 - (ii) dat geen bedrag beoog in subparagraaf (i) ten opsigte van die grond 15 betaalbaar is nie, indien dit die geval is;
 - (u) 'n aanduiding van die party wat aanspreeklik is vir die betaling van die koste van die opstel van die kontrak en (indien van toepassing) die oordrag van die grond;
 - (v) indien die verkoper die eienaar van die grond is, 'n onderneming deur hom 20 dat die grond nie met 'n verband of 'n verdere verband beswaar sal word nie, na gelang van die geval;
 - (w) indien van toepassing, die tydperk waarbinne die koper verplig is of gedwing kan word om oordrag van die grond te neem teen gelyktydige betaling van alle bedrae wat deur hom ingevolge die kontrak verskuldig is; 25
 - (x) 'n raming, vir 'n tydperk van drie jaar vooruit, van alle uitgawes vir die beheer, bestuur en administrasie van die behuisingsontwikkelskema en alle betrokke dienste en fasiliteite, en 'n aanduiding van die persoon of persone wat vir die betaling daarvan aanspreeklik sal wees, en 'n vermelding dat benewens enige heffing beoog in paragraaf (y) die koper nie vir die 30 betaling van enige sodanige uitgawes aanspreeklik sal wees nie;
 - (y) 'n vermelding van die grondslag waarop enige heffing betaalbaar deur die koper bereken gaan word, en 'n raming, vir 'n tydperk van twee jaar vooruit, van die bedrag van die heffing;
 - (z) 'n verwysing na die regte en regsmiddels van die koper ingevolge subartikel 35 (3) en artikels 8 en 9;
 - (aa) 'n vermelding van die persentasie van die totale getal behuisingsbelange in die betrokke behuisingsontwikkelskema wat voorbehou word vir vervreemding slegs aan afgetrede persone;
 - (bb) 'n beknopte oorsig van die bestuurstruktuur of voorgestelde bestuurstruktuur van die betrokke behuisingsontwikkelskema;
 - (cc) die verdere besonderhede wat by regulasie voorgeskryf word.
- (2) Die datum in 'n kontrak vermeld ingevolge subartikel (1) (m), mag nie later wees nie as twee jaar vanaf die datum van sluiting van die kontrak.
- (3) Indien die verkoper, om watter rede ook al, teen die datum in subartikel (1) 45 (m) vermeld nie in staat is om die sertifikaat in daardie subartikel vermeld te verstrek nie, kan die koper, die kontrak opsê, in welke geval die partye geregtig is op die regshulp waarvoor in artikel 8 voorsiening gemaak word, of kan die koper die kontrak in stand hou, in welke geval geen rente ingevolge die kontrak deur hom betaalbaar is nie vanaf die betrokke datum tot tyd en wyl die sertifikaat aan hom 50 verstrek word.
- (4) Die datum vermeld in 'n kontrak ingevolge subartikel (1) (r), mag nie vroeër wees nie as die datum vermeld ingevolge subartikel (1) (q).
- (5) 'n Bepaling in 'n kontrak waardeur—
- (a) iemand wat namens die verkoper opgetree het in verband met die sluiting 55 van die kontrak of die onderhandelings wat die sluiting van die kontrak voorafgegaan het, as die agent van die koper aangestel word of geag word aangestel te wees;
 - (b) die verkoper vrygestel word van aanspreeklikheid vir enige 'handeling, versuim of voorstelling deur enigiemand wat namens hom optree; 60
 - (c) die aanspreeklikheid van die verkoper om die koper teen uitwinning te vrywaar, beperk of uitgesluit word;

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- (p) a statement of the official language chosen by the purchaser under section 3;
- (q) the date on which the purchaser will become entitled to utilize the housing interest;
- 5 (r) if applicable, the date upon which the risk of the housing interest will pass to the purchaser;
- (s) a statement of the obligation (if any) of either the seller or the purchaser to insure the subject matter of the contract;
- (t) a statement—
- 10 (i) of any amount which in terms of any law is payable in respect of the land as endowment, betterment or enhancement levy, a development contribution or any similar imposition, and an indication of the person to whom and the person by whom it is payable; or
- (ii) that no amount contemplated in subparagraph (i) is payable in respect
- 15 of the land, if such is the case;
- (u) an indication of the party who is liable for the payment of the costs of the drafting of the contract and (if applicable) the transfer of the land;
- (v) if the seller is the owner of the land, an undertaking by him that the land
- 20 will not be encumbered or further encumbered by a mortgage bond, as the case may be;
- (w) if applicable, the period within which the purchaser is obliged or may be compelled to take transfer of the land against simultaneous payment of all amounts owed by him in terms of the contract;
- (x) an estimate, for a period of three years in advance, of all expenditure for the
- 25 control, management and administration of the housing development scheme and all services and facilities concerned, and an indication of the person or persons who will be liable for the payment thereof, and a statement that over and above any levy contemplated in paragraph (y), the purchaser will not be liable for the payment of any such expenditure;
- (y) a statement of the basis upon which any levy payable by the purchaser is to
- 30 be calculated, and an estimate, for a period of two years in advance, of the amount of the levy;
- (z) a reference to the rights and remedies of the purchaser in terms of subsection (3) and sections 8 and 9;
- 35 (aa) a statement as to the percentage of the total number of housing interests in the housing development scheme concerned which is reserved for alienation to retired persons only;
- (bb) a concise outline of the management structure or proposed management structure of the housing development scheme concerned;
- 40 (cc) such further particulars as may be prescribed by regulation.
- (2) The date stated in a contract in terms of subsection (1) (m), shall not be later than two years from the date of conclusion of the contract.
- (3) If, for any reason whatsoever, the seller is unable, by the date referred to in subsection (1) (m), to furnish the certificate referred to in that subsection, the
- 45 purchaser may cancel the contract, in which event the parties shall be entitled to the relief provided for in section 8, or the purchaser may abide by the contract, in which event no interest shall be payable by him in terms of the contract as from the date in question until such time as the certificate is furnished to him.
- (4) The date stated in a contract in terms of subsection (1) (r), shall not be earlier
- 50 than the date stated in terms of subsection (1) (q).
- (5) A provision in a contract 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 is deemed to have been appointed as
- 55 the agent of the purchaser;
- (b) the seller is exempted from liability for any act, omission or representation by any person acting on his behalf;
- (c) the liability of the seller to indemnify the purchaser against eviction is restricted or excluded;

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(d) die koper hom by voorbaat verbind om toe te stem tot die oormak deur die verkoper van sy verpligtings ingevolge 'n kontrak, is van nul en gener waarde.

(6) 'n Roukoopbeding in 'n kontrak waarvolgens die koper geag word die kontrak weens die een of ander doen of late van sy kant te beëindig het en hy, as gevolg daarvan, aanspreeklik is vir enige verbeuring of vir die betaling van 'n boete of skadevergoeding of vir die lewering of verrigting van enigiets, of enige ander beding met dieselfde strekking, is onderworpe aan die Wet op Strafbedinge, 1962 (Wet No. 15 van 1962), asof daardie beding 'n strafbeting beoog in daardie Wet is.

Fasiliteite vir versorging van verswakte persone word geag ouetehuse te wees

5. Indien enige fasiliteit in artikel 4 (1) (o) beoog hoofsaaklik vir die versorging van verswakte persone in stand gehou staan te word, word die fasiliteit geag 'n ouetehuis te wees soos omskryf in artikel 1 van die Wet op Bejaarde-Persone, 1967 (Wet No. 81 van 1967), en is artikels 3 en 4 van daardie Wet *mutatis mutandis* ten opsigte van daardie fasiliteit van toepassing.

Beperking op ontvangs van teenprestasie

6. (1) Behoudens subartikel (3) en ondanks enige ander wet, mag geen ontwikkelaar uit hoofde van 'n kontrak enige teenprestasie of enige gedeelte daarvan ontvang nie, tensy—

(a) 'n argitek of 'n bouerekenaar 'n sertifikaat uitgereik het dat die betrokke behuisingsontwikkelingskema wesenlik in ooreenstemming met enige toepaslike amptelik goedgekeurde bouplanne en dorpsbeplanningskema en toepaslike verordeninge van 'n plaaslike owerheid opgerig is, en voldoende voltooï is vir die doeleindes van benutting van die betrokke behuisingsbelang; en

(b) 'n afskrif van daardie sertifikaat en 'n afskrif van die kontrak aan die betrokke koper verstreë is.

(2) Enigiemand wat enige bepaling van subartikel (1) oortree, is skuldig aan 'n misdryf en by skuldigbevinding strafbaar met 'n boete van hoogstens R10 000 of met gevangenisstraf vir 'n tydperk van hoogstens vyf jaar of met daardie boete sowel as daardie gevangenisstraf.

(3) Subartikel (1) is nie van toepassing nie op die ontvangs van enige bedrag—

(a) wat die koper uit hoofde van 'n kontrak toevertrou aan 'n praktisyn of 'n eiendomsagent in sy hoedanigheid as sodanig, om vir die voordeel van die ontwikkelaar in die trustrekening van die praktisyn of eiendomsagent gehou te word totdat die sertifikaat vermeld in subartikel (1) uitgereik is en 'n afskrif daarvan aan die koper verstreë is; of

(b) wat uit hoofde van 'n kontrak aan die ontwikkelaar betaal word indien, voor sodanige betaling, die koper voorsien is van 'n onherroeplike en onvoorwaardelike waarborg deur 'n bankinstelling wat anders as voorlopig geregistreer is kragtens die Bankwet, 1965 (Wet No. 23 van 1965), 'n onderlinge bouvereniging wat anders as voorlopig geregistreer is kragtens die Wet op Onderlinge Bouverenigings, 1965 (Wet No. 24 van 1965), 'n bouvereniging wat anders as voorlopig geregistreer is kragtens die Wet op Bouverenigings, 1986 (Wet No. 82 van 1986), of 'n geregistreerde versekerer soos omskryf in artikel 1 van die Versekeringswet, 1943 (Wet No. 27 van 1943), waarvolgens die bankinstelling, onderlinge bouvereniging, bouvereniging of versekerer onderneem om genoemde bedrag aan die koper terug te betaal indien die sertifikaat in subartikel (1) vermeld nie uitgereik en aan die koper verstreë word binne die tydperk in artikel 4 (1) beoog nie.

(4) Indien, onder die omstandighede beoog in subartikel (3), die ontwikkelaar 'n insolvent word voordat die sertifikaat vermeld in subartikel (1) uitgereik word, word enige bedrag in 'n trustrekening gehou ingevolge paragraaf (a) van subartikel (3) of waarvan die terugbetaling gewaarborg is ingevolge paragraaf (b) van daardie subartikel, onmiddellik betaalbaar aan die betrokke koper deur die betrokke praktisyn, eiendomsagent, bankinstelling, onderlinge bouvereniging, bouvereniging of versekerer.

Beperking op vervreemding van behuisingsbelange

7. (1) Nadat 'n behuisingsbelang uit hoofde van 'n kontrak aan 'n afgetrede persoon oorgedra of op 'n ander wyse in hom gevestig is, mag niemand daardie

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(d) the purchaser binds himself in advance to agree to an assignment by the seller of his obligations in terms of a contract, shall be null and void.

(6) A *rouwkoop* stipulation in a contract in terms of which the purchaser is deemed to have terminated the contract on account of any act or omission on his part and he, in consequence thereof, is liable for any forfeiture or for the payment of a penalty or damages or for the delivery or performance of anything, or any other stipulation of like import, shall be subject to the Conventional Penalties Act, 1962 (Act No. 15 of 1962), as if that stipulation were a penalty stipulation contemplated in that Act.

10 Facilities for care of debilitated persons deemed to be homes for the aged

5. If any facility contemplated in section 4 (1) (o) is to be maintained mainly for the care of debilitated persons, the facility shall be deemed to be a home for the aged as defined in section 1 of the Aged Persons Act, 1967 (Act No. 81 of 1967), and sections 3 and 4 of that Act shall apply *mutatis mutandis* in respect of that facility.

15 Restriction on receipt of consideration

6. (1) Subject to subsection (3) and notwithstanding any other law, no developer may by virtue of a contract receive any consideration or any part thereof, unless—

(a) an architect or a quantity surveyor has issued a certificate that the housing development scheme concerned has been erected substantially in accordance with any applicable officially approved building plans and town-planning scheme and applicable local authority by-laws, and is sufficiently completed for the purposes of utilization of the housing interest concerned; and

(b) a copy of that certificate and a copy of the contract have been furnished to the purchaser concerned.

(2) Any person who contravenes any provision of subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding R10 000 or to imprisonment for a period not exceeding five years or to both that fine and that imprisonment.

(3) Subsection (1) shall not apply to the receipt of any amount—

(a) which the purchaser by virtue of a contract entrusts to a practitioner or an estate agent in his capacity as such, to be kept, for the benefit of the developer, in the trust account of the practitioner or estate agent until the certificate referred to in subsection (1) has been issued and a copy thereof has been furnished to the purchaser; or

(b) which by virtue of a contract is paid to the developer if, before such payment, the purchaser was furnished with an irrevocable and unconditional guarantee by a banking institution registered otherwise than provisionally under the Banks Act, 1965 (Act No. 23 of 1965), a mutual building society registered otherwise than provisionally under the Mutual Building Societies Act, 1965 (Act No. 24 of 1965), a building society registered otherwise than provisionally under the Building Societies Act, 1986 (Act No. 82 of 1986), or a registered insurer as defined in section 1 of the Insurance Act, 1943 (Act No. 27 of 1943), in terms of which the banking institution, mutual building society, building society or insurer undertakes to repay the said amount to the purchaser, if the certificate referred to in subsection (1) is not issued and furnished to the purchaser within the period contemplated in section 4 (1) (m).

(4) If, in the circumstances contemplated in subsection (3), the developer becomes an insolvent before the certificate referred to in subsection (1) is issued, any amount kept in a trust account in terms of paragraph (a) of subsection (3) or the repayment of which was guaranteed in terms of paragraph (b) of that subsection, shall immediately become payable to the purchaser concerned by the practitioner, estate agent, banking institution, mutual building society, building society or insurer concerned.

Restriction on alienation of housing interests

7. (1) After a housing interest has been transferred to or has otherwise been vested in a retired person by virtue of a contract, no person shall alienate that interest to any

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belang aan iemand anders as 'n afgetrede persoon vervreem nie, behalwe met die skriftelike toestemming van al die houters van behuisingsbelange in die betrokke behuisingsontwikkelingskema.

(2) Enigiemand wat subartikel (1) oortree, is skuldig aan 'n misdryf en by skuldigbevinding strafbaar met 'n boete van hoogstens R1 000 of met gevangenisstraf vir 'n tydperk van hoogstens ses maande of met daardie boete sowel as daardie gevangenisstraf. 5

Gevolge van kontrakte wat nietig is of opgesê word

8. (1) Ondanks enige ander wet, maar behoudens enige bevoegdheid wat 'n hof besit en behoudens subartikel (2), is enige persoon wat gedeeltelik of ten volle 10 geprester het ingevolge 'n kontrak wat ingevolge artikel 2 (1) nietig is of wat kragtens hierdie Wet nietig verklaar is of opgesê is, geregtig om wat hy ingevolge die kontrak geprester het op die ander party te verhaal, en indien die betrokke verkoper 'n ontwikkelaar is—

- (a) kan die koper bykomend op die ontwikkelaar verhaal— 15
 - (i) rente teen die koers by regulasie voorgeskryf op enige betaling wat hy ingevolge die kontrak gedoen het, vanaf die datum van betaling tot die datum van verhaling;
 - (ii) 'n redelike vergoeding vir—
 - (aa) noodsaaklike uitgawes deur hom aangegaan, met of sonder die 20 magtiging van die eienaar van die betrokke grond of die ontwikkelaar, met betrekking tot die bewaring van die grond; of
 - (bb) enige verbetering wat die markwaarde van die grond verhoog en deur hom aangebring is met die uitdruklike of stilswyende toestemming van genoemde eienaar of ontwikkelaar; en 25
- (b) kan die ontwikkelaar bykomend op die koper verhaal—
 - (i) 'n redelike vergoeding vir die okkupasie of benutting van die grond wat die koper mag gehad het;
 - (ii) vergoeding vir enige skade wat opsetlik of nalatiglik deur die koper of enigiemand vir wie se dade die koper aanspreeklik is, aan die grond 30 veroorsaak is.

(2) Enige vervreemding wat nie aan artikel 2 (1) voldoen nie, is in alle opsigte van die begin af geldig indien die koper ingevolge die vervreemding die volle teenprestasie gelewer het en die betrokke grond aan die koper oorgedra is of die betrokke behuisingsbelang op 'n ander wyse in hom gevestig is. 35

Regshulp wat hof ten opsigte van kontrakte kan verleen

9. (1) Indien 'n kontrak nie wesenlik aan artikels 3 en 4 (1) voldoen nie, of indien 'n verkoper versuim het om enige verpligting ingevolge 'n kontrak na te kom of enige bepaling van 'n regulasie oortree het of versuim het om daaraan te voldoen, en 'n koper bewys dat hy as gevolg daarvan enige nadeel gely het, is 'n hof in wie se 40 regsgebied die grond waarop die kontrak betrekking het, geleë is, ondanks enige ander wet, maar behoudens enige ander bevoegdheid wat die hof besit, en mits 'n gepaste geding deur die koper ingestel word binne 'n tydperk van drie jaar vanaf die datum waarop die kontrak gesluit is, bevoeg om—

- (a) die rentekoers wat ingevolge die kontrak aan die verkoper betaalbaar is, tot 45 die koers te verminder wat die hof onder die omstandighede regverdig en billik ag;
- (b) 'n bevel vir regstelling van die kontrak toe te staan;
- (c) die kontrak van die begin af nietig te verklaar; of
- (d) die alternatiewe regshulp te verleen wat die hof goedvind. 50

(2) 'n Landdroshof het, ongeag die waarde van die betrokke behuisingsbelang, jurisdiksie om enige regshulp in subartikel (1) beoog, te verleen.

Verband geregistreer oor grond na sluiting van kontrak

10. Wanneer enige grond ingevolge 'n kontrak verkoop is, word 'n verbandhouer in wie se guns 'n verband oor daardie grond te eniger tyd na die sluiting van die 55 betrokke kontrak geregistreer word, geag onherroepelik en onvoorwaardelik toe te

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person other than a retired person, except with the written consent of all the holders of housing interests in the housing development scheme concerned.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding R1 000 or to imprisonment for a period not exceeding six months or to both that fine and that imprisonment.

Consequences of contracts which are void or are cancelled

8. (1) Notwithstanding any other law, but subject to any power that a court may have and subject to subsection (2), any person who has performed partially or in full in terms of a contract which is of no force or effect in terms of section 2 (1) or which has been declared void or has been cancelled under this Act, is entitled to recover from the other party what he has performed in terms of the contract, and, if the seller concerned is a developer—

(a) the purchaser may in addition recover from the developer—

(i) interest at the rate prescribed by regulation on any payment that he made in terms of the contract, from the date of the payment to the date of recovery;

(ii) a reasonable compensation for—

(aa) necessary expenditure he had incurred, with or without the authority of the owner of the land concerned or of the developer, in relation to the preservation of the land; or

(bb) any improvement which enhances the market value of the land and was effected by him with the express or implied consent of the said owner or developer; and

(b) the developer may in addition recover from the purchaser—

(i) a reasonable compensation for the occupation or utilization the purchaser may have had of the land;

(ii) compensation for any damage caused intentionally or negligently to the land by the purchaser or any person for whose actions the purchaser may be liable.

(2) Any alienation which does not comply with section 2 (1), shall in all respects be valid *ab initio* if the purchaser has in terms of the alienation rendered the full compensation and the land concerned has been transferred to the purchaser or the housing interest concerned has otherwise been vested in him.

Relief that court may grant in respect of contracts

9. (1) Notwithstanding any other law, but subject to any other power that a court may have, if a contract does not substantially comply with sections 3 and 4 (1), or if a seller has failed to meet any obligation under a contract or has contravened or has failed to comply with any provision of a regulation, and a purchaser proves that he has in consequence thereof suffered any prejudice, a court in whose area of jurisdiction the land to which the contract relates is situated, provided appropriate proceedings are instituted by the purchaser within a period of three years from the date upon which the contract was concluded, is competent—

(a) to reduce the rate of interest payable to the seller 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, notwithstanding the value of the housing interest concerned, have jurisdiction to grant any relief contemplated in subsection (1).

Mortgage Bond registered over land after conclusion of contract

10. When any land has been sold in terms of a contract, a mortgagee in whose favour a mortgage bond over that land is registered at any time after the conclusion of the contract concerned, shall be deemed to have consented irrevocably and

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gestem het, ten gunste van die koper ingevolge genoemde kontrak of iemand aan wie daardie grond daarna vervreem word, tot die aflossing van sy verband, of die vrystelling van die grond van sy verband.

Regulasies

11. (1) Die Minister kan regulasies uitvaardig— 5
- (a) wat die inligting voorskryf wat in enige advertensie in verband met die vervreemding van 'n behuisingsbelang vervat moet word;
 - (b) wat die inligting voorskryf wat skriftelik deur 'n ontwikkelaar aan 'n koper bekend gemaak moet word voor ondertekening van 'n kontrak deur die koper; 10
 - (c) betreffende die vervreemding van behuisingsbelange en die beheer oor die bedryf van behuisingsontwikkelskemas, met inbegrip van die betaling van heffings en die instelling van heffingsfondse;
 - (d) betreffende die vrystelling van enige persoon of kategorie persone van enige bepaling van hierdie Wet; 15
 - (e) betreffende die oprigting en benutting van fasiliteite of dienste beoog in artikel 4 (1) (o);
 - (f) wat die rentekoers vir die doeleindes van artikel 8 (1) (a) (i) voorskryf;
 - (g) wat voorskryf dat die geheel of enige gedeelte van die Wet op Verveemding van Grond, 1981 (Wet No. 68 van 1981), op die vervreemding van 20 behuisingsbelange of op gespesifiseerde kategorieë behuisingsbelange van toepassing is of nie daarop van toepassing is nie;
 - (h) betreffende enige aangeleentheid wat ingevolge hierdie Wet by regulasie voorgeskryf moet of kan word, of nodig of dienstig geag word om aldus voorgeskryf te word ten einde die oogmerke van hierdie Wet te verwesen- 25 lik.

(2) 'n Regulasie kan strawwe voorskryf vir 'n oortreding daarvan of versuim om daaraan te voldoen wat 'n boete van R6 000 of gevangenisstraf vir 'n tydperk van drie jaar nie te bowe gaan nie.

(3) 'n Regulasie kragtens paragraaf (c) of (e) van subartikel (1) kan voorsiening 30 maak vir die toepassing daarvan ook ten opsigte van behuisingsontwikkelskemas wat te eniger tyd voor die inwerkingtreding van hierdie Wet opgerig is.

Kort titel en inwerkingtreding

12. Hierdie Wet heet die Wet op Behuisingsontwikkelskemas vir Afgetrede Persone, 1988, en tree in werking op 'n datum deur die Staatspresident by 35 proklamasie in die *Staatskoerant* vasgestel.

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unconditionally in favour of the purchaser in terms of the said contract or any person to whom that land is subsequently alienated, to the discharge of his mortgage bond or the release of the land from his mortgage bond.

Regulations

- 5 11. (1) The Minister may make regulations—
- (a) prescribing the information to be contained in any advertisement in connection with the alienation of a housing interest;
 - (b) prescribing the information which should be disclosed in writing by a developer to a purchaser before the signature of a contract by the purchaser;
 - 10 (c) regarding the alienation of housing interests and the control over and the operation of housing development schemes, including the payment of levies and the establishment of levy funds;
 - (d) regarding the exemption of any person or category of persons from any provision of this Act;
 - 15 (e) regarding the establishment and utilization of facilities or services contemplated in section 4 (1) (o);
 - (f) prescribing the rate of interest for the purposes of section 8 (1) (a) (i);
 - 20 (g) prescribing that the whole or any part of the Alienation of Land Act, 1981 (Act No. 68 of 1981), shall or shall not apply to the alienation of housing interests or to specified categories of housing interests;
 - (h) regarding any matter which is required or permitted to be prescribed by regulation, or is considered necessary or expedient to be so prescribed in order to achieve the objects of this Act.
- 25 (2) A regulation may prescribe penalties for a contravention thereof or failure to comply therewith, not exceeding a fine of R6 000 or imprisonment for a period of three years.
- (3) A regulation under paragraph (c) or (e) of subsection (1) may provide for the application thereof also in respect of housing development schemes erected at any
30 time before the commencement of this Act.

Short title and commencement

12. This Act shall be called the Housing Development Schemes for Retired Persons Act, 1988, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

