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# SWAZILAND GOVERNMENT GAZETTE EXTRAORDINARY

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(2) Where immovable property referred to in the subsection (1) is hypothecated under a registered mortgage section 44(2)(3) and (4) shall apply."

***Section 65 of principal Act***

4. Section 65 of principal Act is replaced with following new section-

*"Reservation of personal servitudes*

65. A personal servitude may be reserved by condition in a deed of transfer of land if the reservation-

- (a) is in favour of the transferor; or
- (b) is in favour of the transferor and the spouse of the transferor or the survivor of the two parties where they are married in community of property; or
- (c) is in favour of the surviving spouse where the transfer is made from the joint estate of the spouses married in community of property."

***Section 84 of the principal Act***

5. Section 84 of the principal Act is amended by substituting for subsection (2) the following new subsection-

"(2) An antenuptial contract entered into by an intended spouse domiciled in Swaziland at the time of the marriage and which contract was executed elsewhere than in Swaziland it shall be attested by a notary public or otherwise entered into in accordance with the law and practice of the country in which it is executed and shall be registered in the Deeds Registry within six months after the time of its execution or within such extended period as the court may on application allow.

***" Section 90 of the principal Act***

6. Section 90 of the principal Act is replaced by the following new section-

*"Attestation of deeds and documents*

90. Any person above the age of sixteen years is competent to witness a document intended for registration or filing or production in the Deeds Registry."

- (iii) whether the marriage was contracted in or out of community of property;
- (iv) whether the marriage is governed by the law of any other country.

(2) Immovable property or other real right may be transferred or ceded to, or registered in the joint estate of persons married in community of property unless such property or real right is by law or by a condition of a bequest or donation excluded from the community.

(3) Where immovable property or other real right that is not excluded from the community is transferred or ceded to or registered in the name of a spouse married in community of property neither spouse may, alone deal with the immovable property or other real right unless that spouse has the written consent of the other spouse or has been authorised by an order of the court to so deal with the immovable property or other real right.

(4) Where immovable property has been acquired by either spouse married in community of property in such a manner that the property would on transfer or cession form part of the joint estate but if before the transfer or cession of the property the marriage has been dissolved by the death of one of the spouses, the property shall be transferred or ceded to the joint estate of the spouses, pending liquidation, and shall, subject to any disposition affecting the property, it shall be deemed to be the joint property of the surviving spouse and the estate of the deceased spouse.

(5) Where immovable property or a bond is registered in the name of -

- (a) a person who has married since the registration of the property or other real right; or
- (b) a person who at the time of the registration of the property or bond was married out of community of property or whose marriage was at that time of the registration governed by the law of any country other than Swaziland but and since the registration of the property has been widowed or divorced, the Registrar may, on written application by that person and upon production of proof to the satisfaction of the Registrar by the production of the relevant deed and written proof of the change in her status, effect the necessary changes in the deed and in the registers but where there are two or more inter-dependent deeds, all such deeds shall be produced to the Registrar for endorsement."

### ***Section 45 of the principal Act***

3. Section 45 of the principal Act is replaced by the following new section-

*"Endorsement of deeds where the marriage is dissolved by divorce.*

45. (1) Where immovable property or other real right is registered in the Deeds Registry in the name of one of the spouses married in community of property but who have since been divorced and the spouse in whose name the property is registered has lawfully acquired the share of the former spouse in the property or other real right, the Registrar may on written application by such spouse supported by documentary proof of full payment of all taxes, duties, fees and quit rent, if any, and such other documentary proof as the Registrar considers necessary, endorse on the title deeds relating to the property or bond that such spouse is entitled to deal with the property or bond and that spouse shall deal with the property or bond as if the share of the former spouse in the property or other real right has been formally transferred or ceded to that spouse.

## THE DEEDS REGISTRY (AMENDMENT) ACT, 2012

(Act No. 2 of 2012)



I ASSENT

MSWATI III  
King of Swaziland14<sup>th</sup> JUNE, 2012AN ACT  
ENTITLED

AN ACT to amend the Deeds Registry Act, 1968 to provide for the equality of natural persons to own property, execute deeds and other instruments and to witness registrable documents in their own right.

ENACTED by the King and the Parliament of Swaziland.

*Short title and commencement*

1. (1) This Act may be cited as the Deeds Registry (Amendment) Act, 2012 and shall be read as one with the Deeds Registry Act, 1968 referred to in this Act as 'the principal Act'.

(2) This Act shall come into force on the date of publication in the gazette.

*Section 16 of the Principal Act*

2. Section 16 of the principal Act is replaced by the following new section-

*"Registration of immovable property or real right by natural persons*

16. (1) Every deed made by or on behalf of or in favour of another person which is executed or attested by the Registrar or a notary public and which shall be registered in the Deeds Registry shall state -

- (a) the full name and status of that person concerned, whether unmarried, married, widowed, or divorced;
- (b) if the person is married, the -
  - (i) the full name of the spouse;
  - (ii) type of marriage, whether civil or customary;