

**DEPARTMENT OF RURAL DEVELOPMENT AND LAND REFORM
NOTICE 262 OF 2016**

The Minister for Rural Development and Land Reform hereby publishes the Communal Property Associations Amendment Bill, 2016 and the Explanatory Memorandum for public comment.

Members of the public are invited to submit written comments within 30 calendar days of the publication of this notice to the following address:

By post to: The Director-General: Rural Development and Land Reform
Attention: Adv. Sello Ramasala
Private Bag X833
PRETORIA
0001

By fax to: (012) 324 2118

By e-mail to: CPABill@drdlr.gov.za

Hand delivery: 184 Jeff Masemola Street, Pretoria, (Old Building reception).

Comments received after the closing date will not be considered.

REPUBLIC OF SOUTH AFRICA

COMMUNAL PROPERTY ASSOCIATIONS

AMENDMENT BILL, 2016

*(As introduced in the National Assembly as a section 75
Bill; Bill published in Government Gazette No. 39960 of
29 April 2016)*

(The English text is the official text of the Bill)

(MINISTER OF RURAL DEVELOPMENT AND LAND REFORM)

[B - 2016]

ISBN

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Communal Property Associations Act, 1996, so as to amend, insert and delete certain definitions; to extend the application of the Act to labour tenants who acquired land; to provide for the establishment of a Communal Property Associations Office and the appointment of a Registrar of Communal Property Associations; to provide for general plans for land administered by an association; to repeal the provisions relating to provisional associations; to provide improved protection of the rights of communities in respect of movable and immovable property administered by an association; to provide for name changes of associations; to improve the provisions relating to the management of an association that has been placed under administration; to provide clarity on the content of an annual report in respect of associations; to make provision for transitional arrangements; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:-

Amendment of section 1 of Act 28 of 1996

1. Section 1 of the Communal Property Associations Act, 1996 (Act No. 28 of 1996) (hereinafter referred to as the principal Act), is hereby amended -

- (a) by the substitution for the definition of “association” of the following definition:

“**association**” means a communal property association or an association of labour tenants to whom property has been awarded in terms of section 22 of the Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996) or a group of such associations which is registered or qualifies for registration in terms of section 8;”;

- (b) by the substitution for the definition of “**authorised officer**” of the following definition:

““**authorised officer**’ means a person designated as such by the **[Director-General]** Registrar;”;

- (c) by the substitution for the definition of “**committee**” of the following definition:

““**committee**” means a committee elected by members of an association to assist the association to manage the affairs of that association”;

- (d) by the substitution for the definition of “**community**” of the following definition:

“**community**” means a group of persons, including labour tenants contemplated in section 2(6), whose rights to a particular property are determined by shared rules under a written constitution and which wishes or is required to form an association as contemplated in section 2;”;

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

““**CPA Office**’ means the Communal Property Associations Office contemplated in section 2C and its regional offices;

- (f) by the deletion of the definition of “**holding of property in common**”;
- (g) by the deletion of the definition of “**interim committee**”;
- (h) by the insertion after the definition of “**interim committee**” of the following definition:

“**labour tenant**” means a labour tenant as defined in section 1 of the Land Reform (Labour Tenants) Act, 1996;”;

- (i) by the deletion of the definition of “**provisional association**”;
- (j) by the substitution for the definition of “**register**” of the following definition:

“**register**” means the register contemplated in section [8(3)(b)] 2C(4)(d);”;

- (k) by the insertion after the definition of “**register**” of the following definition:

“**Registrar**” means the Registrar of Communal Property Associations contemplated in section 2D(1);”;

- (l) by the deletion of the definition of “**Registration Officer**”; and

- (m) by the substitution for the definition of “**similar entity**” of the following definition:

“**similar entity**” means a trust as contemplated in the Trust Property Control Act, 1998 (Act No. 57 of 1988), a co-operative as contemplated in the Co-operatives Act, 2005 (Act No. 14 of 2005), or any other recognized association of persons or a company registered in terms of the Companies Act, 2008 (Act No. 71 of 2008);”.

Substitution of section 2 Act 28 of 1996

2. The following section is hereby substituted for section 2 of the principal Act:

“Application of Act

2. (1) The provisions of this Act shall apply to a community –

- (a) which by order of the Land Claims Court or any other competent court is entitled to restitution under the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994), where that Court has ordered restitution on condition that an association be formed in accordance with the provisions of this Act;
- (b) which is entitled to restitution in terms of Act No. 22 of 1994, and which community has entered into an agreement with the Minister as contemplated in section 42D of that Act, where the Minister has ordered restitution on condition that an association be formed in accordance with the provisions of this Act;
- (c) which is entitled to restitution in terms of Act No. 22 of 1994, and is the beneficiary of land purchased, acquired or expropriated in accordance with the provisions of section 42E of that Act, where the Minister has ordered restitution on condition that an association be formed in accordance with the provisions of this Act;
- [(b)]** (d) which is entitled to or receiving property or other assistance from the state in terms of an agreement or in terms of any law, where the Minister has approved such community in terms of subsection (2) and on condition that an association be formed in accordance with the provisions of this Act;

- [(c)] (e)** **[approved by the Minister in terms of subsection (2), and]** to which any property has been donated, sold or otherwise disposed of by any other person, where the Minister has approved such community in terms of subsection (2) and on condition that an association be formed in accordance with the provisions of this Act;
- [(d)] (f)** approved by the Minister in terms of subsection (2), and which is a group acquiring land or acquiring rights to land and which wishes to form an association in accordance with the provisions of this Act;
- (g)** to which any property has been awarded in terms of section 22 of the Land Reform (Labour Tenants) Act, 1996, where the Minister has approved such community in terms of subsection (2) on condition that an association be formed in accordance with the provisions of this Act; and
- (h)** contemplated in subsection (5).

(2) The Minister may, with due regard to the objects of this Act, approve a community contemplated in paragraph **[(c) or] (d), (e) (f) or (g)** of subsection (1) for the purposes of this Act if he or she is satisfied that **[the community is disadvantaged and that]** it is in the public interest that such approval be given, having regard to the nature and current use of the land.

(3) The Minister may on application by a similar entity and on advice of the Registrar, or by order of any court, and having had due regard to the objects of this Act and the public interest, by notice in the *Gazette*, and subject to such qualifications or conditions as he or she may determine –

- (a)** make **[the provisions of section 8, 9, 10, 11, 12, 14 or 16, or any subsection thereof,]** any provision of this Act applicable to such entity; or

(b) declare such entity to be an association as contemplated in this Act and make any provision of this Act applicable to such an association: Provided that such an entity must, within three months from the date on which it has been declared an association, apply for deregistration in accordance with the provisions of the relevant Act in terms of which it was registered and provide the Registrar with copies of such application and upon deregistration, with copies of the correspondence confirming such deregistration.

(4) For the purposes of subsection (3)(a), any reference to an association shall be deemed to be a reference to the entity in question.

(5) Where a community has, prior to or after the commencement of this Act, established a similar entity through a democratic process, the **[Director-General]** Registrar may, if such community wishes to establish an association contemplated in this Act, exempt such community from such provisions of section 6, 7 or 8 as may place an unnecessary burden on the community, having regard to the procedure that was followed by the community in establishing such entity.”.

(6) For purposes of subsection (1)(g), a community to which property has been awarded in terms of section 22 of the Land Reform (Labour Tenants) Act, 1996 includes labour tenants who resided on a farm or farms adjacent to one another but were not the owners of such farms.

(7) A condition by the Minister that an association be formed as contemplated in section 2(1) shall only be made after a community has taken a resolution to form an association and informed the Minister of such a resolution.

Insertion of sections 2A, 2B, 2C, 2D and 2E in Act 28 of 1996

3. The following sections are hereby inserted after Section 2 of the principal Act:

“Transfer of property

2A. The Minister must transfer property contemplated in section 2 in the name of the community or the name preferred by the community.

General plan for property

2B. (1) Before property contemplated in Section 2 is registered in terms of the Deeds Registries Act, 1937 (Act No. 47 of 1937), the Department shall have a general plan for such property prepared and approved in terms of the Land Survey Act, 1997 (Act No. 8 of 1997).

(2) The general plan contemplated in subsection (1) shall outline parts of the property reserved for-

(a) economic, social, environmental and sustainable development and infrastructure investment for the entire community;

(b) crop fields, grazing land, water ways, wood lands, conservation, recreational and any other purpose for the entire community;

(c) the provision of economic, social and other services for the entire community; and

(d) sub-divided portions for residential, industrial and commercial purposes.

(3) The Minister may *prescribe* the format for the general plan.

Establishment of CPA Office

2C. An office called the Communal Property Associations Office is hereby established within the Department.

Appointment and conditions of service of Registrar

2D. (1) The Minister must, subject to the laws governing the public service, appoint a person as the Registrar of Communal Property Associations.

(2) The Registrar may, with the consent of the Director-General, establish a regional office for any area as may be agreed to by the Director-General, and may subject to the laws governing the public service, appoint a Deputy Registrar for each such office, to perform the functions of the Registrar in such office, subject to the control of the Registrar.

(3) The Registrar shall have minimum qualifications and experience as well as skills as may be determined by the Minister.

(4) The remuneration of the Registrar must be determined by the Minister in consultation with the Minister of Finance.

(5) The Director-General shall in consultation with the Registrar designate any person within the Department with relevant qualifications to perform duties in the office of the Registrar or the Deputy Registrar.

Functions of the Registrar

2E. The Registrar is responsible for the administration of the CPA Office and any regional office, and must –

- (a) provide assistance to communities and associations for the purposes of this Act;

- (b) register associations, subject to the provisions of this Act, and keep record of all certificates of registration issued, copies of such certificates issued or addendums to such certificates issued in accordance with the provisions of section 8(3);
- (c) ensure compliance by associations with the provisions of this Act;
- (d) keep a register of registered associations and entities to which provisions of this Act have been made applicable in terms of section 2(3)(a), including entities declared as associations in terms of section 2(3)(b);
- (e) safeguard the register referred to in paragraph (d) and the seal referred to in section 3;
- (f) keep record of any bank account opened in the name of an association and any letter issued in terms of section 9(1)(e)(iii);
- (g) keep record of any delegation made in terms of this Act and regularly review such delegations;
- (h) collect and keep record of any information required for the purposes of the annual report referred to in section 17;
- (i) regularly advise the Minister and Director-General respectively on the review of any regulations prescribed or fees determined in terms of this Act;
- (j) on request, provide members of the public with copies of the constitution of any association or similar entity, or with information contained in the register or any other relevant records, in accordance with and subject to the provisions of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000);

- (k) impress the seal referred to in section 3 on any certificate of registration referred to in section 8(3)(a), on any copy of a certificate of registration referred to in section 8(3)(b), or on any addendum referred to in section 8(3)(c), on any letter referred to in section 9(1)(e)(iii) and on any other document as may be prescribed; and
- (l) perform any other functions assigned to the Registrar in this Act, directed by any court, prescribed by the Minister, or as may be requested by the Minister or Director-General to achieve the objects of this Act.

Substitution of section 4 of Act 28 of 1996

4. The following section is hereby substituted for section 4 of the principal Act:
“Exemption from liability

4. No act or omission of whatever nature by the Director-General, **[Registration Officer]** Registrar or any officer or other person performing functions under the authority of the Director-General or **[Registration Officer]** Registrar, as the case may be, in terms of this Act, shall subject the Director-General, the **[Registration Officer]** Registrar, or any such officer or person to any liability for any loss or damage sustained by any person as a result of any such act or omission, unless such act or omission was in bad faith or constituted gross negligence.”.

Deletion of section 5 of Act 28 of 1996

5. Section 5 of the principal Act is hereby deleted.

Substitution of section 6 of Act 28 of 1996

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

“Drafting of constitution

6. (1) A community wishing to **[procure the registration of]** register an association under this Act may apply to the **[Director-General]** Registrar for assistance in the preparation of a draft constitution.

(2) The **[Director-General shall]** Registrar must, after receiving an application in terms of subsection (1), designate any officer in the **[Department of Land Affairs]** CPA Office or any other suitable person to provide the community with such assistance as may be required and available for the preparation of a draft constitution.

(3) A community **[may]** must submit a draft constitution to the **[Director-General]** Registrar for consideration.

(4) The **[Director-General]** Registrar may suggest amendments to such draft constitution in order to make it comply with the provisions of section 9, and shall notify the community of the reasons for such suggestions.”.

Amendment of section 7 of Act 28 of 1996

7. Section 7 of the principal Act is hereby amended –

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

“(1) When a community **[or a provisional association]** wishes to adopt a constitution it shall notify the **[Director-General]** Registrar accordingly and shall convene a meeting or meetings in such manner as may be prescribed for the adoption of constitutions; Provided that a constitution shall only be adopted by at least 60% of the total number of households with ownership or leasehold rights present or represented at the meeting voting in favour of such adoption.”;

- (b) by the insertion in subsection (2) after paragraph (c) of the following paragraph:

“(cA) the election of members of the association, whether all members of the community above 18 years who were present at the meeting exercised their right freely to elect members of the association;”

- (c) by the substitution in subsection (2) for paragraph (f) of the following paragraph:

“(f) any other matter which the Minister may prescribe or which may be relevant to the exercise of the **[Director-General’s]** Registrar’s discretion.”;

- (d) by the substitution for subsections (3) and (4) of the following subsections respectively:

“(3) The community **[or provisional association shall]** must, as soon as practicable after the adoption of the constitution, submit it together with the prescribed information to the **[Director-General]** Registrar.

(4) Any person claiming to have been excluded from participation in the process of preparation and adoption of the constitution or claiming that the process was not fair may lodge a complaint with the **[Director-General]** Registrar, who may, if he or she is satisfied on reasonable grounds that the complaint is material, refuse to **[cause]** register the association **[to be registered]** until the issue has been resolved to the satisfaction of the **[Director-General]** Registrar.”.

- (e) by the addition of the following subsection:

“(5) A community that has registered a constitution and an association acquires juristic personality.”

Amendment of section 8 of Act 28 of 1996

8. Section 8 of the principal Act is hereby amended –

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

“(1) The **[Director-General shall]** Registrar must consider an application for registration of an association together with any prescribed information, the report referred to in section 7(2) and the constitution adopted by the association.”;

(b) by substitution in subsection (2) for paragraph (b) of the following paragraph:

“(b) the association has is its main object the **[holding of property in common]** administration and management of communal land on behalf of a community.”;

(c) by the substitution in subsection (2) for the words following paragraph (f) of the following words:

“Provided that the **[Director-General]** Registrar may cause an association to be registered if he or she is satisfied that –“;

(d) by the substitution for subsections (3), (4) and (5) of the following subsections respectively:

“(3)(a) If the **[Director-General]** Registrar is satisfied that the association qualifies for registration he or she **[shall refer the application, constitution and his or her own written consent, to the Registration Officer, who shall]** must register the association in the prescribed manner, allocate a registration number, and issue a certificate of registration.

[(b) The Registration Officer shall keep a register of registered provisional associations, associations and similar entities to which the provisions of this Act have been made applicable in terms of section 2(3).

(c) On request and on payment of the prescribed fee the Registration Officer shall provide members of the public with information contained in the register and with a copy of the constitution of any registered association or similar entity.]

(b) The Registrar shall, if a certificate of registration contemplated in paragraph (a) is lost or destroyed, on written application by the association and on payment of the fees determined by the Director-General, issue the association with a copy of the certificate filed in the Registrar's Office and must indicate on such copy that it is a true copy of the original certificate.

(c) The name of an association may be changed in accordance with the prescribed procedure and if the Registrar is satisfied that such procedure has been followed, he or she may issue an addendum to the certificate of registration, indicating the new name of the association.

(d) When the name of an association is changed as contemplated in paragraph (c), the Registrar must inform the Registrar of Deeds in whose area of jurisdiction the immovable property which is administered by the association is situated, and the Registrar of Deeds must endorse the community's title deed to reflect the new name of the association.

(4) If the **[Director-General]** Registrar is not satisfied that the association qualifies for registration he or she shall notify the community of the steps to be taken to procure the registration of the association.

(5) The **[Director-General]** Registrar may assist a community to deal with any issue which is to be addressed in order to procure the registration of the association.”;

- (e) by the substitution in subsection (6) for paragraph (c) of the following paragraph:

“(c) the association my, subject to the provisions of its constitution [-

(i) **acquire and dispose of immovable property and real rights therein; and**

(ii) **encumber such immovable property or real rights by mortgage, servitude, or lease or in any other manner”]** administer and manage communal land on behalf of a community.

- (f) by the deletion in subsection (6) of paragraph (f);

- (g) by the deletion of subsection (8);

- (h) by the substitution for subsections (10) and (11) of the following subsections respectively:

“(10) No amendment of a constitution of an association registered under this Act shall be valid or binding until it has been **[accepted by the Director-General in writing and lodged with the Registration Officer]** lodged with and accepted in writing by the Registrar.

(11) The provisions of sections 6 and 7 and subsections (1) to (5) of this section, shall apply **[mutatis mutandis]** with the necessary changes, with regard to any proposed amendment of the constitution of an association registered under this Act: Provided that the **[Director-General shall]** Registrar shall waive compliance with the provisions of section 7 if he or she is satisfied that the amendment was adopted in terms of the constitution, that the nature of the amendment is such that compliance with those provisions is not necessary, and that the amendment does not have a material adverse effect on the rights of members.”.

Amendment of section 9 of Act 28 of 1996

9. Section 9 of the principal Act is hereby amended –

(a) by the substitution in subsection (1) for subparagraph (ii) of paragraph (a) of the following subparagraph:

“(ii) any decision to amend the constitution or dissolve the association, or to dispose of or to encumber **[the property of the association]** communal property, requires an inclusive decision-making process and is subject to the provisions of section 12(1); and”;

(b) by the substitution in subsection (1) for the words preceding subparagraph (i) of paragraph (b) of the following words:

“(b) **[equality of]** fair and non-discriminatory membership, in that –“;

(c) by the substitution in subsection (1) for paragraph (d) of the following paragraph:

“(d) fair access to **[the property of the association]** communal property, in that-

(i) the association shall **[manage property owned, controlled or held by it]** administer and manage communal property for the benefit of the members in a participatory and non-discriminatory manner;

(ii) a member may not be excluded from access to or use of any part of **[the associations’ property]** communal land which has been allocated for such member’s exclusive or the communal use except in accordance with the procedures set out in the constitution; and

- (iii) the association may **[not] only** sell, donate or encumber **[the property of the association]** communal land, or any substantial part of it, **[without the consent of a majority of the members present at a general meeting of the association]** in accordance with the provisions of section 12(1);”;
- (d) by the substitution in subsection (1) for subparagraphs (iii) and (iv) of paragraph (e) of the following subparagraphs respectively:
- “(iii) all the cash of the association shall be deposited in an account opened in the name of the association with a bank registered in terms of the Banks Act, 1990 (Act No. 94 of 1990), **[or a mutual bank registered in terms of the Mutual Banks Act, 1993 (Act No. 124 of 1993), or with the Post Office Savings Bank contemplated in section 52 of the Post Office Act, 1958 (Act No. 44 of 1958)]** the South African Postbank Limited Act, 2010 (Act No. 9 of 2010), or such other institution as may be approved by the Director-General: Provided that –
- (aa) an association may only open an account upon receipt of an original letter issued and signed by the Registrar, confirming that the association complies with the provisions of this Act, that it has been registered in terms of this Act and containing such other information as may be prescribed;
- (bb) the letter referred to in subparagraph (aa) must be addressed to the specific bank or institution where the association wishes to open an account and shall only be valid for the period indicated in the letter; and
- (cc) the association must, within 14 days from opening such an account, provide the Registrar with the account number and such other details as may be required by the Registrar;

- (iv) the association may not purchase or acquire for consideration **[shares other than shares]** securities other than securities which are listed on a licensed **[stock]** exchange as **[defined in the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985)]** contemplated in section 9 of the Financial Markets Act, 2012 (Act No. 19 of 2012);”.
- (e) by the substitution for subsection (7) of the following subsection:

”(7) A person **[appointed to a committee of an association shall stand in a fiduciary relationship to the members of the association.]** appointed or elected to an association or committee shall stand in a fiduciary relationship to the community.

Substitution of section 10 of Act 28 of 1996

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

“Information, [conciliation] dispute resolution and other assistance

10. (1) The **[Director-General]** Registrar may have forms, pamphlets and other documents prepared and distributed in order to promote the achievement of the objects of this Act.

(2) The **[Director-General]** Registrar may, of his or her own accord or at the request of a community, an association**[, a provisional association]** or any member thereof, appoint **[a conciliator]** any person who is experienced in dispute resolution and who is acceptable to the parties to a dispute to assist in resolving any issues for the purpose of the preparation or adoption of a constitution or to resolve a dispute between a community and an association [or provisional association and its members] or between members or committee members of an association: Provided that if the parties to the dispute do not reach agreement on the person to be appointed, the **[Director-General]** Registrar may appoint a person who in his or her opinion has adequate experience in or knowledge [in conciliating community disputes] of dispute resolution.

(3) A **[conciliator]** person appointed in terms of subsection (2) shall attempt to resolve the dispute -

- (a) by mediating the dispute;
- (b) by **[fact-finding]** determining facts relevant to the resolution of the dispute;
- (c) by making a recommendation to the parties to the dispute;
- (d) in any other manner that he or she considers appropriate.

(4) The **[conciliator shall]** person appointed in terms of subsection (2) must report to the **[Director-General]** Registrar and the parties on the result of his or her **[conciliation]** dispute resolution and make recommendations in relation thereto: Provided that any recommendation accepted by the Registrar shall be binding on the association.

(5) All discussions taking place and all disclosures and submissions made during the **[conciliation]** dispute resolution process shall be privileged, unless the parties agree to the contrary.

(6) The **[Director-General]** Registrar may from time to time appoint persons or organisations acceptable to a community and with relevant knowledge or expertise to provide assistance and support to such community for the purposes of section 6.

(7) Any person contemplated in subsection (2) or (6) who is not in the full-time service of the state may from **[moneys appropriated by Parliament for this purpose]** the funds of the Department, be paid such remuneration and allowances in respect of the services rendered as **[may be determined by the Minister in consultation with the Minister of Finance]** the Minister, with the concurrence of the Minister of Finance, may determine from time to time.

(8) The Minister may, in consultation with the Minister of Finance institute other programmes for the provision of assistance to communities or associations **[or provisional associations]** for the purposes of this Act.”

Substitution of section 11 of Act 28 of 1996

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

“Monitoring and inspection

11. (1) An association **[or provisional association]** registered under this Act **[shall] must**, at the prescribed times, furnish prescribed documents and information to the **[Director-General] Registrar** in order to enable him or her to monitor compliance with the provisions of the relevant constitution and this Act.

(2) The **[Director-General] Registrar** may undertake an inspection of the affairs of an association **[or provisional association]**.

(3) The **[Director-General] Registrar** may, for the purposes of this section -

(a) inspect and remove for copying any records, reports and other documents relating to the affairs of an association **[or provisional association]**;

(b) subpoena persons who may have relevant information or documentation in respect of the affairs of an association **[or provisional association]** to appear before him or her to provide information or documentation in relation to the affairs of the association **[or provisional association]**, if the attendance of such persons cannot reasonably be procured otherwise.

(4) A subpoena issued in terms of subsection (3)(b) shall be served in accordance with the manner prescribed for the service of subpoena in terms of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944).

(5) Any person who is duly subpoenaed in terms of subsection (3)(b) and who fails, without lawful excuse, to appear or to provide the required information or documentation, shall be guilty of an offence and liable to the punishment provided in the said Magistrates' Courts Act, 1944, for failure to comply with a subpoena issued in terms of that Act.

(6) If a dispute arises within an association **[or provisional association the Director-General]** the Registrar may, of his or her own accord, or at the request of a member of the association **[or provisional association]** –

- (a) undertake an enquiry into the activities of the association **[or provisional association]**, in which event he or she shall take reasonable steps to ensure that interested parties are made aware of the enquiry and of its outcome;
- (b) advise the association **[or provisional association]** and the members of their respective rights and obligations;
- (c) make a **[conciliator]** person contemplated in section 10(2) available to assist in the resolution of the dispute;
- (d) on good cause shown, dissolve a committee or relieve a committee member of his or her duties and require members of the association to conduct an election for a new committee or appoint a new member, if the integrity, impartiality or effectiveness of the committee or any member of the committee is in question;
- (e) appoint an interim committee from amongst members of the association pending the election of a new committee and the interim committee shall have-
 - (i) all the powers of the a committee; and
 - (ii) an official designated by the Registrar as one of its members.

- [(g)]** (f) initiate proceedings contemplated in section 13; or
- [(h)]** (g) take such other reasonable measures as he or she considers appropriate in the circumstances.

(7) No person convicted of an offence in the Republic or elsewhere which involves dishonesty or any other offence for which he or she has been sentenced to imprisonment without the option of a fine shall be elected as a committee member or if such person has already been elected to be a member, he or she shall resign as a member.

[(7)] (8) When acting in terms of subsection (6) the **[Director-General]** Registrar shall be guided by the aim of resolving the dispute in accordance with the provisions of the constitution of the association.

[(8)] (9) The identity of a member making a request in terms of subsection (6) or the fact that a request has been made by a member need not be disclosed if there are reasonable grounds for believing that such member may be victimised.

[(9)] (10) If the membership of a member has been terminated, the association **[or provisional association shall]** must inform the **[Director-General]** Registrar and provide **[the Director-General]** him or her with the prescribed information relating to the termination.”.

Substitution of section 12 of Act 28 of 1996

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

“Approval for certain transactions

12. (1) An association may not **[dispose of or encumber or conclude any prescribed transaction in respect of the whole or any part of the immovable property of the association, or any real rights in respect thereof,] –**

- (a) sell, donate or encumber communal land or immovable property of the community or any real rights in respect thereof, or conclude any transaction including any prescribed transaction in respect thereof, or purchase any immovable property, without the written consent of the Minister and without a resolution supported by at least 60% of the total number of households with ownership or leasehold rights present at a meeting where such resolution was adopted: Provided that if an association decides to sell communal land or immovable property, notice of such intention must be given to the Director-General and the Department shall have the first option to purchase such immovable property: Provided further that the Department must, within three months from the date of receipt of such notice, inform the association whether it intends purchasing the immovable property or not, and if it decides to purchase, such purchase must be concluded within nine months from the date of receipt of the notice;
- (b) sell, donate or encumber any movable property, or purchase any movable property, without the consent of the majority of members of the community present at a general meeting of members and, if such movable property was bought or is to be bought through financial assistance provided by the Department, without the consent of the Registrar; or
- (c) enter into any lease agreement in respect of any immovable property without the consent of the Registrar: Provided that the Registrar may only provide such consent if, in his or her opinion, the provisions of the lease agreement, including the lease period, the rental to be paid and the purposes for which the property is to be used, are reasonable and in the best interest of the community.

(2) **[Such consent]** The consent referred to in subsection (1)(a), (b) and (c) may be given in respect of a series of transactions, without identifying each individual transaction.

(3) Any disposal, mortgage, encumbrance, purchase or prescribed transaction in contravention of subsection (1) shall be voidable.

(4) A member who alleges that an association has concluded a transaction contrary to the provisions of subsection (1) may request the **[Director-General]** Registrar to assist him or her in challenging the validity of such transaction.

(5) The **[Director-General]** Registrar may, if he or she considers it desirable having regard to the nature and seriousness of the allegation, make a **[conciliator]** person contemplated in section 10(2) available to assist in the resolution of the dispute.

(6) The **[Director-General shall]** Registrar must, at the request of an association, appoint an authorised officer to attend a general meeting of an association and to take such other steps as may be necessary in order to certify that a transaction referred to in subsection (1) has been duly approved at a general meeting and is in accordance with the constitution of the association.”.

Substitution of section 13 of Act 28 of 1996

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

“Administration, liquidation and deregistration

13. (1)(a) A division of the **[Supreme]** High Court or a Magistrate’s Court having jurisdiction in respect of the area in which the property of the association is situated **[or the area in which the land which may be acquired by a provisional association is situated,]** may, on application made by the Director-General, Registrar, an association **[or provisional association]** or any member thereof, or any other interested person, place the association **[or provisional association]** under the administration of the **[Director-General]** Registrar or grant a liquidation order in respect of an association **[or**

provisional association], where the association **[or provisional association]**, because of insolvency or maladministration or for any other cause is unwilling or unable to pay its debts or is unable to meet its obligations, or when it would otherwise be just and equitable in the circumstances.

(b) If an association is placed under the administration of the Registrar as contemplated in paragraph (a), the Registrar must, subject to any conditions as the Court, Minister or Director-General may determine, administer and manage the affairs of the association and perform the functions of the association in accordance with the provisions of this Act: Provided that if the Registrar is unable to administer or manage the affairs of such an association or if it would be in the best interest of the association that it be administered or managed by another person, the Registrar may, in consultation with the Director-General, appoint any competent person to administer and manage the affairs of the association and to perform the functions of the association in accordance with the provisions of this Act: Provided further that any person so appointed shall act under the supervision of the Registrar.

(c) Any competent person contemplated in paragraph (b) who is not in the full-time service of the state may from funds of the Department, be paid such remuneration and allowances in respect of the services rendered as the Minister, with the concurrence of the Minister of Finance, may determine from time to time.

(d) Any expenses relating to the administration and management of the affairs of an association which has been placed under the administration of the Registrar, shall be defrayed from any funds held by the association and should such funds be insufficient, from funds of the Department as may be made available by the Director-General.

[(2) The Director-General shall, pursuant to an administration order referred to in subsection (1), have such powers to manage the affairs of the association or provisional association as the Court, subject to the provisions of this Act, may determine.]

(3) The **[Director-General]** Registrar may, upon written application by an association **[or provisional association]**, cause such an association **[or provisional association]** to be deregistered, if he or she is satisfied that –

- (a) a resolution in favour of deregistration was adopted at a meeting attended by a substantial number of the members of the association **[or provisional association]**;
- (b) the resolution was adopted by **[a majority of]** at least 60% of the members present or represented at the meeting; and
- (c) all relevant matters which reasonably have to be addressed prior to deregistration, including the way in which the assets and liabilities of the association **[or provisional association]** will be dealt with, have been addressed.

(4) Where the Court orders the liquidation of an association **[or provisional association]**, it shall make such order as to the distribution of the assets of the association **[or provisional association]** as it deems just and equitable, having considered any recommendations which the Director-General or Registrar may make in this regard.

(5) The Minister may prescribe the procedure to be followed in an application contemplated in subsection (1), and set out the powers and duties of the Director-General, the **[Registration Officer]** Registrar, the association, members and interested parties in those situations.”.

Amendment of section 14 of Act 28 of 1996

14. Section 14 of the principal Act is hereby amended –

- (a) by the deletion in subsection (1) of paragraph (e);
- (b) by the addition in subsection (1) of the following paragraphs:
 - (f) breaches the provisions of the constitution;

- (h) interferes with the work of the competent person contemplated in section 13 or an interim committee contemplated in section 11; or
- (i) destroys, without the consent of the Registrar, any documents which may serve as proof of an investment, encumbrance, alienation or disposal of communal land or property.
- (c) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“The **[Director-General]** Registrar shall, if so requested by the committee or the association –“;

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

“(3) In a prosecution **[under section 1 of the Trespass Act, 1959 (Act No. 6 of 1959), and in]** or any proceedings for the eviction of any person from **[property owned, controlled or managed]** communal land administered and managed by an association, a certificate issued by the **[Director-General]** Registrar in terms of subsection (2) shall be *prima facie* proof of the correctness of the contents thereof.”.

Substitution of section 15 of Act 28 of 1996, as amended by section 6 of Act 61 of 1998

15. The following section is hereby substituted for section 15 of the principal Act:

“Delegation of powers and assignment of duties [by Director-General]

15. (1) The **[Director-General]** Registrar may –

- (a) delegate to any officer of the CPA Office or Department **[of Land Affairs or, with the prior approval of the Premier of the province concerned, to any officer in the service of that provincial government,]** any power conferred upon him or her by or under this Act, either generally or in

association;

- (b) authorise any such officer to perform any duty assigned to him or her by or under this Act.

(2) Any delegation under this section shall not prevent the exercise of the relevant power by the **[Director-General]** Registrar himself or herself, and the **[Director-General]** Registrar shall be entitled to rescind, review or withdraw any decision or action taken by any person to whom he or she has delegated any power.”.

Substitution of section 16 of Act 28 of 1996

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

“Appeals

16. Any person aggrieved by a decision of the Registrar or Director-General may in the prescribed manner appeal to the Minister, who may uphold the appeal in whole or in part and rescind or vary the decision, or dismiss the appeal.”.

Substitution of section 17 of Act 28 of 1996

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

“Annual report [by Director-General]

17. (1) The **[Director-General shall in every calendar year]** Registrar must annually and in respect of the preceding financial year, submit to the Minister a report complying with the provisions of subsection (2), concerning associations **[and provisional associations]** and the extent to which the objects of this Act are being achieved, and the Minister **[shall] must** table the report in Parliament.

(2) The report contemplated in subsection (1) must indicate the total number of associations registered since the commencement of this Act and in respect of the reporting year, contain information in respect of –

- (a) the number of associations registered in compliance with the provisions of section 2(1), including but not limited to the names of the associations, the number of members thereof, and information relating to the immovable property administered and managed by the associations including but not limited to, descriptions of the immovable property and information relating to the provisions of section 12(1);
- (b) the number of similar entities declared as associations in terms of section 2(3) or to which the provisions of this Act have been made applicable as contemplated in section 2(3), including the names of the similar entities or declared associations, the number of members thereof, and information relating to the immovable property administered and managed by such entities or declared associations including but not limited to, descriptions of the immovable property and information relating to the provisions of section 12(1);
- (c) the number of associations deregistered and the reasons therefor;
- (d) any dispute dealt with in accordance with the provisions of this Act, including information in respect of the nature of the dispute, the person appointed to resolve any dispute and the recommendations made by such person and accepted by the Registrar;
- (e) the number of associations placed under administration, the reasons therefor, any conditions applicable thereto and the financial implications thereof;

- (f) persons found guilty of any offence as contemplated in section 14, including but not limited to the nature of the offence and the sanction imposed;
- (g) any appeals lodged in accordance with the provisions of section 16, including but not limited to the nature of the appeal and the decision of the appeal authority;
- (h) the budget and expenses of the CPA Office;
- (i) any matter as may be directed by the Minister or Director-General; and
- (j) any matter deemed necessary by the Registrar.”.

Substitution of section 18 of Act 28 of 1996

18. The following section is hereby substituted for section 18 of the principal Act:

“Regulations and fees

18. (1) The Minister may make regulations intended to give effect to the implementation of this Act including the regulations relating to:

- (a) the management of associations; and
- (b) the management of business affairs conducted by or on behalf associations.

(2) Any regulation made under subsection (1) may in respect of any contravention thereof or failure to comply therewith prescribe a penalty of a fine or imprisonment for a period not exceeding five years, or both such fine and imprisonment.

(3) The Director-General may, after consultation with the Registrar and in consultation with the National Treasury, determine any fees payable in terms of this Act and publish such fees in the Gazette.

Insertion of section 18A in Act 28 of 1996

19. The following section is hereby inserted after section 18 of the principal Act:

“Transitional provisions

18A. (1) All functions which were, immediately before the commencement of this Act, performed by the Registration Officer, hereby vest in the Registrar.

(2) Any provisional association which at the commencement of this Act has not yet adopted a constitution and has not been registered as an association, must adopt a constitution and be registered as an association within 12 months from the date of commencement of this Act: Provided that the Director-General may, on application made by the provisional association or the Registrar prior to the expiry of the period of 12 months, extend the period with a further 12 months: Provided further that no further extension may be granted and should such a provisional association not adopt a constitution and be registered as an association, it shall cease to exist and any immovable or movable property or any other assets administered and managed by a provisional association must be dealt with by the Registrar in any manner he or she deems appropriate or as may be directed by the Minister, having due regard to the public interest.

(3) Any right of a provisional association to administer land prior to the repeal of section 5, remains in force during the period of 12 months or extended period of 12 months referred to in subsection (2) and may not be alienated during such period or extended period.

(4) A provisional association referred to in subsection (2) is a juristic person with the capacity to sue or be sued.

(5) Any association which has been placed under administration of the Director-General prior to the commencement of this Act, shall, from the date of appointment of the Registrar, be under administration of the Registrar and subject to any conditions which may have been determined in accordance with the provisions of section 13.

(6) The Director-General shall, in consultation with the Minister, appoint a competent officer of the Department to perform the functions of the Registrar from the date of commencement of this Act, until the post of Registrar is filled.

(7) Communal land registered in the name of an association must, within 24 months from the date of commencement of this Act, be registered in the name of association and the name of the community or name preferred by the community.

Amendment of Schedule to Act 28 of 1996

20. The Schedule to the principal Act is hereby amended by-

(a) the insertion after item 3 of the following item:

“3A. Election of members of the association for a term not exceeding five years .”

(b) by the substitution for items 4, 7, 11, 12, 13, 14 and 15 of the following items respectively:

“4. [Land or property to be owned by the association, if known]
Communal land to be administered and managed by the association, if known.

7. The rights of members to [the use of the association’s property] communal land.

11. Whether community members may sell, donate or encumber property and if so, to whom.

12. The nature of a community member’s right, whether ownership, lease or right to use and what [What] happens to such member’s right on his or her death.

13. How the committee is to be elected, its term of office which shall not exceed five years, its powers, the powers of members in relation to decisions made by the committee, the power of members to remove the committee or members of the committee, and payment (if any) of the committee members.

14. Subject to the provisions of section 12(1), how [How] and when the Annual General Meeting is to be called, the quorum or other measure of representativity at an Annual General Meeting, and procedure at a Annual General Meeting.

15. Subject to the provisions of section 12(1), General Meetings: How and when General Meetings are to be called, the quorum or other measure of representativity at a General Meeting, and procedure at a General Meeting.”.

Substitution of long title of Act 28 of 1996

21. The following long title is hereby substituted for the long title of the principal Act:

“To enable communities, which include labour tenants who have acquired land, to form juristic persons, to be known as communal property associations in order to **[acquire, hold and]** administer and manage property on a basis agreed to by members of a community in terms of a written constitution; to provide for the establishment of the Communal Property Associations Office, to provide for the appointment and functions of the Registrar; and to provide for matters connected therewith.”.

Substitution of Preamble of Act 28 of 1996

22. The following Preamble is hereby substituted for the Preamble of the principal Act:

“**WHEREAS** it is desirable that [**disadvantaged**] communities should be able to establish appropriate legal institutions through which they may [**acquire, hold**] administer and manage property in common;

AND WHEREAS it is necessary to ensure that such institutions are established and managed in a manner which is non-discriminatory, equitable and democratic and that such institutions be accountable to their members;

AND WHEREAS it is necessary to ensure that members of such institutions are protected against abuse of power by other members;”.

Short title

23. This Act is called the Communal Property Associations Amendment Act, 2016.

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