



# rural development & land reform

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Department:  
Rural Development and Land Reform  
**REPUBLIC OF SOUTH AFRICA**

**PROCEDURE DOCUMENT FOR PROCESSING RESTITUTION  
CLAIMS ON STATE LAND**

PROCEDURE DOCUMENT FOR PROCESSING RESTITUTION CLAIMS ON STATE LAND

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### 1. INTRODUCTION

The Separate Development Policy of the Apartheid State required a multiplicity of state organs to keep it alive. Such organs inevitably had to have the capacity to enter into ordinary transactions required to achieve the policy imperatives of the time, including land ownership.

The reconfiguration of the State during the pre-democracy negotiations constituted a rebirth of the pre-racial segregation South Africa and substantially reduced the number of governments<sup>1</sup> to the three spheres that exist today.

As the constitution<sup>2</sup> sought to allocate assets, including land, to the new governments in accordance with the new constitutional functions, the net result was that the true ownership of assets got concealed in the eyes of those whose personal and professional lives never had anything to do with historical information regarding state assets. The subsequent claims on land in terms of post 1994 legislation could not escape this reality hence it's an absolute necessity that procedures have to exist regarding how to handle claims on land held by National and Provincial Governments.

The procedures below, as already indicated above, seek to provide guidance on how to deal with land held by National and Provincial Governments. The Local Sphere has been excluded since there's never confusion regarding ownership of any land registered in a municipal government or entity.

### 2. BACKGROUND ON THE PROCEDURES

The need for guidelines was identified some years ago and a first edition was produced and accepted in June 2007 by the Office of the Chief Land Claims Commissioner and the then Directorate: Public Land Support Services. It was later observed that the said guidelines were inconsistently applied or not applied at all. This consequently resulted in a number of unresolved claims on State owned land, as those dealing with such claims did not and in some instances still do not know how to deal with processes towards and post the award of such land.

It is a common occurrence that any reference to a document as a guideline gives an impression that it simply provides general guidance and can be selectively applied or not applied at all, depending on the view of the person dealing with the subject matter which is provided for in such a document. This document is therefore carefully referred to as a 'Procedure Document for Processing Restitution Claims on State Land'.

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<sup>1</sup> ten homelands, four provincial administrations, the Houses of Delegates and Representatives and the Government of the Republic of South Africa.

<sup>2</sup> Constitution of the Republic of South Africa Act, 1993 (Act No. 200 of 1993)

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### 3. AWARD OF STATE LAND TO RESTITUTION CLAIMANTS.

Restitution of a right in State Land may be awarded to a claimant in terms of section 35 or in terms of section 42D of the Restitution of Land Rights Act, 1994. In order to register such State Land in the name of the claimant, the necessary Court Order or an agreement contemplated in section 42D must be produced.

Confusion has prevailed in the past whether the award of State Land must be in terms of the State Land Disposal Act, 1961 or in terms of the Restitution of Land Rights Act, 1994. It is unclear why it was even imagined that a claim contemplated in one law would result in an award in terms of another law whilst the former law does have provisions providing for award. This is indeed part of the justification for the existence of procedures so that similar confusion can be avoided in the future

The legal position articulated in the first sub-paragraph of paragraph 3 above is supported by a legal opinion obtained from the State Law Advisors dated 8 December 2009 and a copy of that opinion was also provided to the Office of the Chief Land Claims Commissioner.

It is common cause that the confusion outlined above did result in the award of claimed State land being made in terms of the State Land Disposal Act, 1961. The transfer of such land to claimants was therefore facilitated by the former Provincial Land Reform Offices and by the former Directorate: Public Land Support Services.

In the event there are instructions already issued to the State Attorney or any other private conveyancer by the former Provincial Land Reform Offices (Provincial Shared Service Centres) or the then Directorate: Public Land Support Services, following approval by the Minister in terms of the State Land Disposal Act, 1961, such instructions remain valid and must be concluded. It would be curious though as to why such instructions are still not yet concluded, if all the documents are in order. These cases will need to be identified and analyzed individually in order to bring them to conclusion.

### 4. CASES WHERE STATE LAND UNDER THE CONTROL OF THE DEPARTMENT OF RURAL DEVELOPMENT AND LAND REFORM (DRDLR) IS RESTORED TO CLAIMANTS.

The Regional Land Claims Commissioner or the Chief Director: Land Restitution Support shall keep a register of claims on State Land which shall be shared with the Chief Director: State Land Administration and PSSCs in order to facilitate the identification of land parcels falling under this category. The said register will comprise of fields of information prescribed by the Chief Director: State Land Administration, in consultation with the Regional Land Claims Commissioner or the Chief Director: Land Restitution Support and the PSSC.

Where State land under management and control of DRDLR is being restored to claimants, the procedures discussed below shall apply.



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- 4.1 The Regional Land Claims Commissioner or Chief Director: Land Restitution Support and the Chief Director: Provincial Shared Service Centre (PSSC) shall establish a provincial committee called the **Claim Research Committee**, hereinafter referred to as the CRC.
- 4.2 The CRC shall comprise of members of a provincial State Land Administration Sub-Directorate, members of the Regional Land Claims Commissioner's Office and members of the Surveyor General, where membership of the latter is considered essential. The Director: Operations or anyone acting under delegation by the Director shall chair the meetings of the CRC.
- 4.3 The CRC shall consider claims on DRDLR land as well as claims on private land where such land is, for whatever legitimate reasons, to be transferred to the State.
- 4.4 The CRC shall, as a matter of principle, not deal with the merits of the claim. The members of the State Land Administration Sub-Directorate, in their capacity as representatives of the land owner, are however entitled to raise questions of validity in the event they have information that is contrary to what is alleged in the Research Report.
- 4.5 The Committee shall meet once a month to do amongst other things, the following:
  - 4.5.1 Review the draft Research Report, prior to submission to the Regional Land Claims Commissioner. This is meant to confirm the description of properties prior to publication of the claim. Custodianship and existence of other interested parties will also be confirmed at this stage so as to facilitate compliance with section 11(6) of the Restitution of Land Rights Act, 1994.
  - 4.5.2 Monitor actions that each office has committed itself to do. These actions may relate to certificates contemplated in Item 28(1) of Schedule 6 in the Constitution of the Republic of South Africa Act, 1996 (Act No. 108 of 1996), other competing claims in terms of the Land Reform (Labour Tenants) Act, 1996 and so forth.
- 4.6 Though some of the functions have already been mentioned above, the Committee shall essentially address the following:
  - 4.6.1 Which properties are involved?
  - 4.6.2 Are the properties surveyed?
  - 4.6.3 If surveyed, are they registered?
  - 4.6.4 If not surveyed, is there a plan to survey them?



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- 4.6.5 If registered, in which name are they registered?
- 4.6.6 Which Department is the custodian?
- 4.6.7 Has a vesting certificate been issued?
- 4.6.8 Are the original title deeds available or are the deeds lost? If lost, PSSCs will, through the Chief Directorate: State Land Administration, instruct the State Attorney to obtain certified copies of lost title deeds in terms of Regulation 68(1) of the Deeds Registries Act, 1937. This will ensure that lost deeds will not delay the transfer of properties to the claimants.
- 4.6.9 Are there maps, aerial photos and SG Diagrams available of the land in question?
- 4.6.10 Is the land being leased and what is the duration of such an agreement?
- 4.6.11 Is the land included in an area of jurisdiction of a tribe, community, and if so, documentary evidence to that effect must be located.
- 4.6.12 Are there other persons who may have informal land rights on the land concerned?
- 4.7 The section 42D submission, once compiled, must go through the National Quality Control Committee or the Chief Director: State Land Administration in the event of urgent submissions that may have been exempted by the Director General or the Minister from going through the National Quality Control Committee.
- 4.8 The section 42D memorandum must provide for the Minister to authorise the Director: Property Research and State Land Administration Support / Chief Director: State Land Administration (CD: SLA) to sign such documents that will give effect to the transfer of the land to the claimants, except the agreement contemplated in s42D.
- 4.9 The section 42D memorandum must also request the Minister to enter into an agreement envisaged in section 42D and such agreement must be attached to the memorandum. Alternatively, the memorandum may request the Minister to authorise the Regional Land Claims Commissioner / Chief Director: Land Restitution Support to sign such agreement on behalf of the Minister.
- 4.10 The Minister or the representative of the Minister will sign the section 42D Agreement / Settlement Agreement in his / her capacity as an interested party (owner of the land) also in his / her capacity as the Minister envisaged

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in section 42D(1) of the Restitution of Land Rights Act, 1994.

- 4.11 The approved memorandum, once received by the Chief Land Claims Commissioner, must be provided to the CD: SLA prior to being sent to the Chief Director: Land Restitution Support or the Chief Land Claims Commissioner must provide the CD: SLA with a copy of the approved memorandum (including attachments) immediately upon receipt of such memorandum.
- 4.12 The Regional Land Claims Commissioner / Chief Director: Land Restitution Support shall, immediately upon receipt of the approved memorandum, commence with land transfer processes.
- 4.13 The Regional Land Claims Commissioner / Chief Director: Land Restitution Support shall instruct the Office of the State Attorney to facilitate the transfer. In the event of limited capacity in the Office of the State Attorney, private conveyancers may be instructed.
- 4.14 The CD: SLA or Director Property Research and State Land Administration Support will be responsible for signing transfer documents.
- 4.15 The Senior State Land Advisors in the office of CD: SLA shall receive and examine transfer documents from the appointed conveyancer prior to them being signed by any of the delegated officials.
- 4.16 For the land transfer processes to work smoothly, the Regional Land Claims Commissioner / Chief Director: Land Restitution Support must ensure that the following documents are available:
  - 4.16.1 Agreement contemplated in section 42D or Court Order contemplated in section 35;
  - 4.16.2 Proof of registration of the transferee, if it's a juristic person or certified copy of the identity document and marriage certificate or divorce decree in the event of a transfer to a natural person;
  - 4.16.3 Proof of authority of the signatory to sign transfer documents on behalf of the transferee;
  - 4.16.4 Contact details of the transferee (telephone; fax numbers; postal and physical addresses, whichever is available); and
  - 4.16.5 Valuation Report indicating the market related value of the land concerned. In the absence of a valuation report written by a sworn land valuer, there must be some other acceptable document or formula that discloses the value of the property.
- 4.17 The documents mentioned at 4.16.2 – 4.16.4, in the event of a transfer to a

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juristic person, presuppose that the process to get the juristic person / legal entity established must have been finalized or must have been at final stage prior to submitting the section 42D memorandum to the Minister. This must be so in order to avoid a delayed transfer post ministerial approval.

- 4.18 The relevant Regional Land Claims Commissioner or the Chief Director: Land Restitution Support shall ensure that the transferee has legal capacity to transact at the time of transfer and shall also facilitate the signing of documents by the said transferee.
  - 4.19 The PSSC will take care of outstanding rates and taxes on the land concerned.
  - 4.20 The CD: SLA will provide the appointed conveyancer with the original title deed, upon receipt of a written request from such the appointed conveyancer.
  - 4.21 The Regional Land Claims Commissioner / Chief Director: Land Restitution Support shall send to the CD: SLA a copy of confirmation of the transfer of the land to the claimants immediately (within 5 working days) upon receipt of such confirmation from the conveyancer concerned.
- 5. CASES WHERE STATE LAND UNDER THE CONTROL OF OTHER CUSTODIANS (NATIONAL AND PROVINCIAL CUSTODIAN DEPARTMENTS) IS RESTORED TO CLAIMANTS.**
- 5.1 Claims on State Land falling under any custodian, other than DRDLR, where transfer has not taken place due to lack of guidance, shall be brought to the Provincial State Land Vesting and Disposal Committee (PSLVDC) for guidance.
  - 5.2 The PSLVDC will consider the same issues outlined in paragraph 4 above in order to facilitate a smooth award and transfer process.
  - 5.3 The relevant custodian will ensure that all documents which are ordinarily provided by the land owner in a conveyancing process are provided. This will however require the Regional Land Claims Commissioner's Office to maintain constant visibility in the PSLVDC so as to monitor performance and ensure accountability on the side of custodians.
  - 5.4 It routinely occurs in the case of land controlled by the Department of Public Works that an approval in terms of the State Land Disposal Act, 1961 is signed by the Minister of Public Works. This approval tends to delay transfer processes since it normally takes the form of donation, which then require Treasury approval in terms of Treasury Regulations.
  - 5.5 Engagements of custodians at the level of PSLVDC will clear any confusion



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and lead to the signing of the agreement contemplated in section 42D, which will effectively prevent the possibility of another irregular approval by a custodian in terms of legislation administered by such a custodian.

- 5.6 Whereas it is a common practice that the owner appoints a conveyancer, the Commission on Restitution of Land Rights (Commission) needs to ensure that the section 42D agreement provides scope for the Commission to manage the transfer process.
- 5.7 In the case of properties controlled by the Department of Public Works, the Minister of the said department routinely assigns signing powers and temporal administration of the claimed immovable assets to the Department of Rural Development and Land Reform until the date of transfer. The Department of Public Works argues that this practice is necessitated by the delay that occurs on the side of the Commission whenever claimed State Land has to be transferred to claimants.
- 5.8 In the event of the assignment discussed at 5.7 above, the Commission shall bring information regarding such assignment to the attention of the CD: SLA within 30 days of the Commission having been notified by the Department of Public Works. Any delay in relaying this information has implications for the asset register of the Department of Rural Development and Land Reform and also for the timeous transfer of the relevant land to the claimant.

### **6. CASES WHERE SECTION 42D MEMORANDA HAVE ALREADY BEEN APPROVED WITHOUT ANY INTERACTION BETWEEN THE COMMISSION AND THE CUSTODIAN.**

The cases referred to here will fall either in paragraph 4 or paragraph 5 scenarios hence the procedures applicable in the said paragraphs will equally apply here.

### **7. CASES WHERE PRIVATE LAND IS ACQUIRED AND REGISTERED IN THE NAME OF THE STATE PRIOR TO TRANSFER TO THE CLAIMANTS.**

- 7.1 The possibility of private land being registered in the name of the State shall be brought before the Claim Research Committee before it occurs.
- 7.2 The CRC shall first consider mechanisms to remedy the situation that brings about the possible transfer of claimants' land to the State. In the event of there being no immediate solution, the CRC will consider appropriate arrangements for the interim management of such land.
- 7.3 The appropriate arrangements shall include the production of a detailed handover plan that provides for site inspections and compilation of assets registers. This plan shall also provide for the safeguarding of improvements and movable assets, if any.

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- 7.4 Paragraph 7.3 shall also apply in expropriated immovable assets. In this regard, the Chief Director: Land Restitution Support shall provide the CD: SLA with copies of expropriation notices within five working days of such notice being served to the land owner and the approved memorandum showing the amount of compensation to be paid to the landowner.
- 7.5 Within 21 calendar days from the date of registration of the immovable assets, the Chief Director: Land Restitution Support shall provide the CD: SLA / Director: State Land Systems and Data Management with original Title Deed(s), SG Diagram (where available), approved section 42D memorandum, Settlement Agreement, signed Sale Agreement (where it exists) and Valuation reports. In those instances where different portions or different land parcels are acquired, the valuation report should show a value for each land parcel.
- 7.6 In the event of the Chief Director: Land Restitution Support neglecting to collect the original title deed from the conveyancer or losing it prior to its submission to the CD: SLA / Director: State Land Systems and Data Management, s/he shall become personally liable for the payment of costs associated with an application to the Deeds Office for the replacement of the lost original title deed [Regulation 68(1) application].
- 7.7 Once the claimants are, in the opinion of the Chief Director: Land restitution Support, ready to take transfer, the process outlined from paragraph 4.13 to 4.21 shall equally apply here.

**8. CONCLUSION.**

The procedures outlined above are a product of discussions and consensus between the Commission on Restitution of Land Rights and the Land Reform and Administration / Land Tenure and Administration Branch of the Department of Rural Development and Land Reform. Any changes that may become necessary in future shall be subjected to discussions by the same parties prior to approval by the Director General.

The procedures are binding between the parties and any breach of the procedures by any employee of the offices concerned shall be regarded as misconduct.

**SIGNED BY THE DIRECTOR GENERAL OF THE DEPARTMENT OF RURAL DEVELOPMENT AND LAND REFORM IN PRETORIA ON THE DATE MENTIONED BELOW.**

  
**MR P M SHABANE**  
**DIRECTOR GENERAL**  
DATE: *21/12/2013*

DG INITIALS \_\_\_\_\_  
