

KWAZULU-NATAL LAND ADMINISTRATION ACT, 2003

(Act No. 3 of 2003)

Assented to on 2003-10-14

ACT

To make provision for the acquisition of property by the Provincial Government; to provide for the disposal of Provincial state land; to provide for the expropriation of property by the Provincial Government; to provide for the establishment and maintenance of a Provincial state land register; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Province of KwaZulu-Natal, as follows:

CHAPTER 1
DEFINITIONS

Definitions

1. In this Act, unless the context indicates otherwise –

“**acquire**” means the purchase, exchange, letting or receipt of immovable property through donation, the conclusion of a land availability agreement in respect of immovable property and the registration of a real or personal right in respect of immovable property in favour of the KwaZulu-Natal Provincial Government;

“**beneficiary**” means any person, company or organisation which acquires Provincial state land or any right thereto;

“**compensation**” means market-related compensation;

“**Constitution**” means the Constitution of the Republic of South Africa, 1996;

“**current market value**” in relation to Provincial state land, means the economic value of the land as reflected in a current valuation certificate issued by a sworn valuator less than 12 months prior to the disposal of the Provincial state land;

“**dispose**” includes the sale, exchange, donation or letting of Provincial state land (including the allocation of Provincial state land free of charge for a period of time), the conclusion of any form of land availability agreement in respect of property with any beneficiary and the registration of any real or personal right in respect of Provincial state land in favour of a beneficiary;

“**Gazette**” means the official *Provincial Gazette* of KwaZulu-Natal;

“**immovable property**” includes any interest in immovable property;

“**interest**” means a real right or entitlement or personal right;

“**land availability agreement**” means any written agreement in terms of which the right to develop property is granted to a party other than the owner of the property, at his or her own risk, and on such terms and conditions as may be agreed;

“**Minister**” means the Member of the Executive Council of the Province of KwaZulu-Natal responsible for the administration of this Act;

“**municipality**” means a municipality contemplated in section 155 of the Constitution of the Republic of South Africa, 1996, and established by and under sections 11 and 12 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), read with sections 3, 4 and 5 of the KwaZulu-Natal Determination of Types of Municipality Act, 2000 (Act No. 7 of 2000);

“**owner**” means owner as defined in section 102 of the Deeds Registries Act, 1937 (Act No. 47 of 1937);

“**Parliament**” means the Provincial Legislature of the Province of KwaZulu-Natal;

“**property**” means immovable property as defined in section 102 of the Deeds Registries Act, 1937 (Act No. 47 of 1937);

“**Provincial state land**” means —

(a) any property which vests in the Government in accordance with item 28(1) of Schedule 6 to the Constitution of the Republic of South Africa, 1996; and

(b) any property acquired by the Government pursuant to this Act;

“**public interest**” and “**public purpose**” have the meaning contemplated in section 25 of the Constitution of the Republic of South Africa, 1996;

“**Registrar**” means the Registrar of Deeds as defined in the Deeds Registries Act, 1937 (Act No. 47 of 1937);

“**regulations**” means regulations made under section 16;

“**this Act**” includes the regulations.

CHAPTER 2
OBJECTS AND APPLICATION OF ACT

Objects of Act

2. The objects of this Act are —

(a) to enable the KwaZulu-Natal Provincial Government to administer the process of —

- (i) the disposal of Provincial state land;
 - (ii) the acquisition of property; and
 - (iii) the expropriation of property,
- by the KwaZulu-Natal Provincial Government; and
- (b) to create an obligation for the establishment and maintenance of a current register of all Provincial state land by the KwaZulu-Natal Provincial Government.

Application of Act

- 3. (1) If the provisions of this Act are inconsistent with any provincial law relating to —
 - (a) the disposal of Provincial state land;
 - (b) the acquisition of property; or
 - (c) the expropriation of property,
 by the KwaZulu-Natal Provincial Government, then the provisions of this Act prevail.
- (2) This Act does not apply to Trust land referred to in, and governed by, the KwaZulu-Natal Ingonyama Trust Act, 1994 (Act No. 3 of 1994).

CHAPTER 3

ACQUISITION OF PROPERTY

Acquisition of property

- 4. (1) The Minister may, on such terms and conditions as may be required in the interest of public administration, acquire property.
- (2) Property acquired in ownership in terms of subsection (1) —
 - (a) vests in the KwaZulu-Natal Provincial Government;
 - (b) is regarded as Provincial state land as defined in section 1; and
 - (c) must be registered in the name of the KwaZulu-Natal Provincial Government.
- (3) No transfer duty, stamp duty or other fees are payable in respect of a registration in terms of subsection (2)(c).
- (4) The provisions of subsection (1) do not exempt the KwaZulu-Natal Provincial Government from complying with any obligation imposed by any registered condition of title.

CHAPTER 4

DISPOSAL OF PROVINCIAL STATE LAND

Disposal of Provincial state land

- 5. (1) The Minister may —
 - (a) subject to the provisions of subsections (2), (3) and (4); and
 - (b) after due consideration of all written representations and submissions,
 dispose of Provincial state land on such terms and conditions as may be required in the interest of public administration: Provided that the provisions of paragraphs (a) and (b) do not apply to a disposal amounting to the letting of Provincial state land for a period not exceeding 12 months without an option to renew the lease.
- (2) When the Minister decides to dispose of Provincial state land in terms of subsection (1), the Minister must give notice in the *Gazette* of the intention to dispose of the land.
- (3) The notice must —
 - (a) identify the Provincial state land affected and include the following information regarding the Provincial state land —
 - (i) the full title deed description, including the title deed number, the administrative district in which the Provincial state land is situated, the extent of the land and, if applicable, the nature of any right in or over such land;
 - (ii) the current zoning of the Provincial state land;
 - (iii) the actual current use of the Provincial state land; and
 - (iv) full details of any improvements to, and structures on, the Provincial state land;
 - (b) give interested parties an opportunity to make written representations or submissions regarding the proposed disposal within a period of not less than 30 days; and
 - (c) include a physical address and contact details of a person from whom full details regarding the proposed disposal may be obtained.
- (4) The Minister must, in addition to the notice to be published in terms of subsection (2), cause a copy of such notice to be sent by registered post or delivered to —
 - (a) the occupier, if any, of the Provincial state land;
 - (b) the municipal manager of the municipality for the area in which the Provincial state land is situated;
 - (c) the Heads of Department in the KwaZulu-Natal Provincial Government responsible for —

- (i) local government;
- (ii) public works; and
- (iii) housing;
- (d) the Head of Department in the KwaZulu-Natal Provincial Government responsible for agriculture, if the Provincial state land is applied or intended to be applied for agricultural purposes; and
- (e) any other Head of Department in the KwaZulu-Natal Provincial Government which has an interest in the Provincial state land concerned,

advising those persons that they may make written representations or submissions regarding the proposed disposal within a period of not less than 30 days of receipt of the notice.

- (5) No transfer duty, stamp duty or other fees are payable in respect of a registration in terms of subsection (1).

Registrar of Deeds to note land availability agreements

Where Provincial state land is disposed of in terms of section 5(1) by means of a land availability agreement, the Registrar must —

- (a) endorse against the property concerned, that such an agreement exists, or that such an agreement existed but has been cancelled, as contemplated in section 3(1)(w) of the Deeds Registries Act, 1937 (Act No. 47 of 1937);
- (b) keep the original or a certified copy of the land availability agreement at the offices of the Registrar for record purposes; and
- (c) register a power of attorney as contemplated in section 3(1)(u) of the Deeds Registries Act, 1937, if the developer acts as agent of the KwaZulu-Natal Provincial Government.

Emptive right to re-acquire Provincial state land disposed of

- (1) Where Provincial state land is disposed of at less than the current market value, the Minister may impose a condition to the effect that neither the beneficiary, nor the successors in title to the beneficiary, may alienate such property within a period of not longer than five years from the date of the initial registration of the property in the name of the beneficiary, unless the property has first been offered for sale to the KwaZulu-Natal Provincial Government.
- (2) An offer referred to in subsection (1) must be made in writing to the Minister and must be accepted or rejected by the Minister within 60 days of receipt thereof.
- (3) If the Minister accepts the offer, the purchase price must be determined —
 - (a) by agreement between the parties; or
 - (b) if no agreement is reached within a period of 60 days after the acceptance of the offer, either party may refer the matter to a court for determination, or they may agree to refer the dispute to an arbitrator for arbitration.
- (4) The arbitrator determines the time, venue and procedures which apply in the arbitration.
- (5) The arbitrator determines the dispute and makes a written award giving reasons for such award as soon as possible after the arbitration, and his or her determination is binding.
- (6) The arbitrator may not make an award of costs.
- (7) The arbitrator is paid, out of moneys appropriated for this purpose by Parliament, such fees and allowances as the Minister may determine.
- (8) No transfer duty, stamp duty or other fees are payable in respect of a registration in terms of subsection (1) where the KwaZulu-Natal Provincial Government re-acquires Provincial state land disposed of.
- (9) The Registrar must, at the request of the Minister make such endorsement on the title deed of the property and such entries in his or her registers as may be necessary to indicate that a condition referred to in subsection (1) applies in respect of such property.
- (10) No transfer of property in respect of which a condition referred to in subsection (1) applies, may be passed to a person other than the KwaZulu-Natal Provincial Government, unless a certificate is issued by the Minister to the effect that such property has been offered for sale in terms of the said subsection and the offer has been rejected, is produced to the Registrar.

CHAPTER 5

EXPROPRIATION OF PROPERTY

Power to expropriate property for public purpose

- (1) Subject to the provisions of section 25 of the Constitution, and section 9 of this Act, the Minister may expropriate any property in the public interest and for a public purpose with regard to —
 - (a) any matter within a functional area listed in Part A of Schedule 4 to the Constitution;
 - (b) any matter within a functional area listed in Part A of Schedule 5 to the Constitution;
 - (c) any matter outside the functional areas referred to in paragraphs (a) and (b), and that is expressly assigned to provinces generally or to the Province of KwaZulu-Natal specifically; or
 - (d) any matter that is reasonably necessary for, or incidental to, the effective exercise of a power or function concerning any matter referred to in paragraphs (a) – (c) of this section.
- (2) Property expropriated in terms of this section —
 - (a) vests in the KwaZulu-Natal Provincial Government;

- (b) is regarded as Provincial state land as defined in section 1; and
 - (c) must be registered in the name of the KwaZulu-Natal Provincial Government.
- (3) No transfer duty, stamp duty or other fees are payable in respect of a registration in terms of subsection (2)(c).
- (4) The provisions of subsection (1) do not exempt the KwaZulu-Natal Provincial Government from complying with any obligation imposed by any registered condition of title.

Expropriation procedure

9. (1) When the Minister decides to expropriate property in terms of section 8, the Minister must give notice in the *Gazette* of his or her intention to expropriate.
- (2) The notice must —
- (a) identify the property affected and include the following information regarding the property —
 - (i) the full title deed description, including the title deed number, the administrative district in which the property is situated, the extent of the property and, if applicable, the nature of any right in or over such property;
 - (ii) the current zoning of the property;
 - (iii) the actual current use of the property; and
 - (iv) full details of any improvements to, and structures on, the property;
 - (b) give interested parties an opportunity to make written representations or submissions regarding the expropriation within a period of not less than 30 days;
 - (c) invite any person claiming compensation as a result of the expropriation to enter into negotiations with the Minister in that regard; and
 - (d) draw attention to the provisions of subsection (5)(a).
- (3) The Minister must, in addition to the notice to be published in terms of subsection (2), cause a copy of such notice to be sent by registered post or delivered to —
- (a) the registered owner of the property;
 - (b) the occupier, if any, of the property; and
 - (c) the municipal manager of the municipality for the area in which the property is situated,
- advising those persons that they may make written representations or submissions regarding the proposed expropriation within a period of not less than 30 days of receipt of the notice.
- (4) The Minister may, after due consideration of all written representations and submissions referred to in subsections (2)(b) and (3), expropriate the property referred to in subsection (2)(a) by notice in the *Gazette*.
- (5) (a) Any expropriation referred to in subsection (4) takes effect immediately on publication of the notice even though compensation payable in respect of such property has not been finally determined or paid.
- (b) On the date of expropriation, the ownership of the property vests in the KwaZulu-Natal Provincial Government in terms of section 8(2) and all responsibilities and obligations in respect of, amongst others, risk, costs, existing leases, maintenance, rates, taxes and levies relating to the property passes to the KwaZulu-Natal Provincial Government.
- (6) If the Minister and an owner of the property fail to reach agreement regarding the payment of compensation, either party may refer the matter to a court for determination, or they may agree to refer the dispute to an arbitrator for arbitration.
- (7) The arbitrator determines the time, venue and procedures which apply in the arbitration.
- (8) The arbitrator determines the dispute and makes a written award giving reasons for such award as soon as possible after the arbitration, and his or her determination is binding.
- (9) The arbitrator may not make an award of costs.
- (10) The arbitrator is paid, out of moneys appropriated for this purpose by Parliament, such fees and allowances as the Minister may determine.
- (11) Any claim to compensation arising from the expropriation referred to in subsection (4) must be determined as contemplated in section 25(3) of the Constitution and this section.

Withdrawal of expropriation

10. (1) If the Minister is of the opinion that it is in the public interest to withdraw an expropriation of property, the Minister may withdraw the expropriation at any time before registration of the property in terms of the Deeds Registries Act, 1937 (Act No. 47 of 1937), has taken place.
- (2) The withdrawal of the expropriation must be done by notice in the *Gazette* in the manner contemplated in section 9(2), (3) and (4), read with the necessary changes, and ownership of the property vests in the owner from whom the property was expropriated from the date of publication of the withdrawal notice.
- (3) The compensation paid to the owner must forthwith be refunded to the KwaZulu-Natal Provincial Government by the owner of the expropriated property.
- (4) The owner is entitled to claim expenses, which he or she has directly or indirectly incurred owing to such expropriation after a written notice by registered post has been sent to the Minister setting out a detailed statement of the amount of damages.

- (5) (a) If the Minister and an owner of the property fail to reach agreement regarding the payment of expenses, either party may refer the matter to a court for determination, or they may agree to refer the dispute to an arbitrator for arbitration.
- (b) If the dispute is referred to arbitration, the provisions of section 9(7) – (10) apply with the necessary changes.

CHAPTER 6

PROVINCIAL STATE LAND REGISTER

Provincial state land register

11. (1) The Minister must establish and maintain a consolidated register of all Provincial state land.
- (2) The register referred to in subsection (1) must —
- (a) subject to the provisions of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), be accessible to the public; and
- (b) contain the following information regarding Provincial state land —
- (i) the full title deed description, including the title deed number, the administrative district in which the land is situated, the extent of the land and, if applicable, the nature of any right in or over such land;
- (ii) the current zoning of the land;
- (iii) the actual current use of the land;
- (iv) the intended use of the land;
- (v) full details of any improvements to, and structures on, the land; and
- (vi) the department or departments of the KwaZulu-Natal Provincial Government responsible for the control and use of the land.

CHAPTER 7

GENERAL PROVISIONS

Provincial state land not subject to acquisitive prescription

2. Notwithstanding any law to the contrary, Provincial state land is not subject to acquisitive prescription.

Execution of documents

3. Any document required to give effect to —
- (i) the disposal of Provincial state land;
- (ii) the acquisition of property; or
- (iii) the expropriation of property,
- by the Minister must be signed by the Minister on behalf of the KwaZulu-Natal Provincial Government.

Annual report

4. (1) The Minister must, within 90 days of the end of a financial year, submit an annual report to Parliament.
- (2) The report referred to in subsection (1) must contain the following information —
- (a) the full details of all written offers received from any person to acquire Provincial state land;
- (b) the purpose and full details of all disposals of Provincial state land in terms of section 5, including —
- (i) the full title deed description, including the title deed number, the administrative district in which the land is situated, the extent of the property and, if applicable, the nature of any right in or over such land;
- (ii) the full name and identity number of the beneficiary;
- (iii) the purchase price, if any, payable in respect of the land;
- (iv) the current market value of the land;
- (v) any restrictive condition imposed in respect of the land; and
- (vi) the purpose for which the land was used prior to the disposal and, if available, the current or intended purpose for which the land is to be used;
- (c) the purpose and full details of all acquisitions of property in terms of section 4 and any re-acquisition of Provincial land in terms of section 6, including —
- (i) the full title deed description, including the title deed number, the administrative district in which the property is situated, the extent of the property and, if applicable, the nature of any right in or over such property;
- (ii) the purchase price, if any, payable in respect of the property;
- (iii) the current market value of the property;
- (iv) any restrictive condition imposed in respect of the property;
- (v) the purpose for which the property was used prior to the acquisition or re-acquisition and, if available, the current or intended purpose for which the property is to be used;

- (d) the purpose and full details of all expropriations of property in terms of section 8, including —
 - (i) the full title deed description, including the title deed number, the administrative district in which the property is situated, the extent of the property and, if applicable, the nature of any right in or over such property;
 - (ii) the full name and identity number of the previous owner of the property;
 - (iii) the purchase price or compensation paid in respect of the property;
 - (iv) the current market value of the property;
 - (v) any restrictive condition imposed in respect of the property; and
 - (vi) the purpose for which the property was used prior to the expropriation and, if available, the current or intended purpose for which the property is to be used; and
- (e) the sum total of the payments for the period of the report —
 - (i) received by the KwaZulu-Natal Provincial Government for disposals of Provincial state land in terms of section 5;
 - (ii) made by the KwaZulu-Natal Provincial Government for acquisition of property in terms of section 4 and any re-acquisition of Provincial land in terms of section 6; and
 - (iii) made by the KwaZulu-Natal Provincial Government for expropriation of property in terms of section 8.

Delegation of powers, duties and functions

15. (1) The Minister may either generally or in regard to specific property, Provincial state land or in a specified case, delegate a power, duty or function to an officer in the service of the KwaZulu-Natal Provincial Government.
- (2) A delegation referred to in subsection (1) does not —
- (a) divest the Minister of the power or function delegated, and the Minister may at any time amend or set aside any decision made thereunder; and
 - (b) prevent the exercise of the power or the performance of the duty or function concerned by the Minister.

Regulations

16. The Minister may make regulations —
- (a) regarding the norms and standards, including procedures, applicable to the acquisition, expropriation, exchange, disposal and letting of Provincial state land, the demolition of buildings on Provincial state land, and donations of Provincial state land;
 - (b) regarding the establishment and maintenance of the Provincial state land register; and
 - (c) regarding any other matter the Minister considers necessary, appropriate or expedient for the achievement of the purpose or objects of this Act.

Short title and Commencement

17. This Act is called the KwaZulu-Natal Land Administration Act, 2003 and will come into operation on a date to be fixed by the Premier by notice in the *Gazette*.
-