

REPUBLIC OF SOUTH AFRICA

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# EXPROPRIATION BILL

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*(As introduced in the National Assembly (proposed section 76); explanatory summary of Bill and prior notice of its introduction published in Government Gazette No. 43798 of 9 October 2020))*  
*(The English text is the official text of the Bill)*

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(MINISTER OF PUBLIC WORKS AND INFRASTRUCTURE)

[B 23—2020]

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# BILL

**To provide for the expropriation of property for a public purpose or in the public interest; to provide for certain instances where expropriation with nil compensation may be appropriate in the public interest; and to provide for matters connected therewith.**

## PREAMBLE

**WHEREAS** section 25 of the Constitution of the Republic of South Africa, 1996, provides as follows:

### “Property

**25.** (1) No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.

(2) Property may be expropriated only in terms of law of general application—

- (a) for a public purpose or in the public interest; and
- (b) subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court.

(3) The amount of the compensation and the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances, including—

- (a) the current use of the property;
- (b) the history of the acquisition and use of the property;
- (c) the market value of the property;
- (d) the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and
- (e) the purpose of the expropriation.

(4) For the purposes of this section—

- (a) the public interest includes the nation’s commitment to land reform, and to reforms to bring about equitable access to all South Africa’s natural resources; and
- (b) property is not limited to land.

(5) The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.

(6) A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.

(7) A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is

entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress.

(8) No provision of this section may impede the state from taking legislative and other measures to achieve land, water and related reform, in order to redress the results of past racial discrimination, provided that any departure from the provisions of this section is in accordance with the provisions of section 36(1).

(9) Parliament must enact the legislation referred to in subsection (6).”; and

**WHEREAS** section 33(1) of the Constitution provides that everyone has the right to administrative action that is lawful, reasonable and procedurally fair; and

**WHEREAS** section 34 of the Constitution provides that everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum; and

**WHEREAS** uniformity across the nation is required in order to deal effectively with these matters;

**AND IN ORDER TO ENABLE** expropriation in accordance with the Constitution,

**B**E IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

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**CHAPTER 1****DEFINITIONS AND APPLICATION OF ACT**

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**Definitions**

- 1.** (1) In this Act, unless the context indicates otherwise—
- “**claimant**” means a person who has lodged a claim for compensation with an expropriating authority arising from or in connection with an expropriation of property;
- “**Constitution**” means the Constitution of the Republic of South Africa, 1996; 40
- “**court**” means—
- (a) a High Court within whose area of jurisdiction a property is situated;
  - (b) a Magistrate’s Court within whose area of jurisdiction a property is situated, having competent jurisdiction and designated as such in terms of paragraph (b)(ii) in the definition of ‘court’ in section 1, read with section 9A, of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000); or 45

- (c) in the case of intangible property, the court within whose area of jurisdiction the owner of that property is ordinarily resident or has its principal place of business within the Republic;
- “date of expropriation”** means the date mentioned in the notice of expropriation, which date must not be earlier than the date of service of such notice; 5
- “deliver”**, in relation to any document, means to deliver by hand, facsimile transmission or post as contemplated in section 24(3) and (4);
- “Department”** means the Department of Public Works and Infrastructure;
- “Director-General”** means the Director-General of the Department;
- “disputing party”** means an owner, holder of a right, expropriated owner or expropriated holder who does not accept the amount of compensation offered in terms of section 14(1) or 15(1);
- “expropriated holder”** means a holder of an unregistered right in property, which right has been expropriated by notice in terms of section 8(1) or in terms of section 9(1)(b);
- “expropriating authority”** means an organ of state or a person empowered by this Act or any other legislation to acquire property through expropriation; 15
- “expropriation”** means the compulsory acquisition of property by an expropriating authority or an organ of state upon request to an expropriating authority, and “expropriate” has a corresponding meaning;
- “holder of a right”** means the holder of an unregistered right in property; 20
- “land parcel”** means land that has been surveyed and is either registered or yet to be registered in a deeds registry;
- “Master”** means the Master of the High Court;
- “Minister”** means the Minister responsible for Public Works and Infrastructure;
- “notice of expropriation”** means a notice contemplated in section 8; 25
- “organ of state”** means an organ of state as defined in section 239 of the Constitution;
- “owner”**, where the ownership of the property or right in question is registered, means the person in whose name such property or right is registered, and—
- (a) if the owner of any property or registered right in land is deceased, means the executor of his or her estate and if no executor has been appointed or his or her appointment has lapsed, the Master; 30
- (b) if the estate of the owner of any property or registered right in land has been sequestrated, means the provisional or final trustee of his or her insolvent estate, as the case may be, or if no such appointment has been made, the Master; 35
- (c) if the owner of any land or registered right in property is a company that is being wound up, means the provisional or final liquidator of that company, or if no such appointment has been made, the Master;
- (d) if any property or registered right in property is vested in a liquidator or trustee in terms of any other law, means that liquidator or trustee; 40
- (e) if the owner of any property or registered right in property is otherwise under a legal disability, means his or her representative by law;
- (f) if any land or registered right in property has been attached in terms of an order of a court, means the sheriff or deputy sheriff, as the case may be;
- (g) in the case of a public place, road or street under the control of a municipality, means that municipality; 45
- (h) for the purposes of section 5, includes a lawful occupier of the land concerned; and
- (i) includes the authorised representative of the owner, which authorised representative is ordinarily resident in the Republic; 50
- “possession”** includes the exercise of a right;
- “prescribed”** means prescribed by regulation;
- “property”** means property as contemplated in section 25 of the Constitution;
- “public interest”** includes the nation’s commitment to land reform, and to reforms to bring about equitable access to all South Africa’s natural resources in order to redress the results of past racial discriminatory laws or practices; 55
- “public purpose”** includes any purposes connected with the administration of the provisions of any law by an organ of state;
- “registered”** means registered or recorded with a government office in which rights in respect of land, minerals or any other property are registered or recorded for public record in terms of any law; 60
- “regulation”** means a regulation made in terms of section 28;