

## CHAPTER 20:12

### LAND SURVEY ACT

*Acts 12/1932, 37/1938 (s. 3), 35/1957 (ss. 20, 21 and 22), 80/1959, 14/1962 (s. 2), 45/1969, 80/1971 (s. 33), 5/1972 (Part II), 22/1976, 45/1976, 8/1980, 48/1981, 12/1987, 2/1993, 22/2001 (s. 4), 3/2007; R.G.Ns. 153/1963, 217/1970, 923/1972.*

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### **AN ACT to consolidate and amend the laws relating to the survey of land.**

[Date of commencement: 1st May, 1933.]

## PART I

### PRELIMINARY

#### **1 Short title**

This Act may be cited as the Land Survey Act [*Chapter 20:12*].

#### **2 Interpretation**

In this Act—

- “approve”, in relation to the Surveyor-General and to any general plan or diagram, means the signing of such general plan or diagram in order to signify that the requirements of this Act have been complied with in regard to such general plan or diagram;
- “beacon” means the object or mark on the ground defining or indicating a corner of a piece of land of which a general plan or diagram has been approved by the Surveyor-General;
- “bench mark” means a mark the height of which has been determined in the course of a level survey undertaken in terms of this Act or the Trigonometrical and Topographical Survey Act, 1958 (No. 2 of 1958);
- “Board” means the Survey Regulations Board established under section *eight*;
- “Chief Registrar” means the person appointed as Chief Registrar of Deeds in terms of paragraph (*a*) of subsection (1) of section 4 of the Deeds Registries Act [*Chapter 20:05*];
- “consolidation permit” means a permit to consolidate two or more properties into one granted in terms of section 41 of the Planning Act;
- “Council of Land Surveyors” means the Council of Land Surveyors established in terms of the Land Surveyors Act [*Chapter 27:06*];
- “Court” means the High Court;
- “diagram”, subject to subsection (3) of section *forty-nine*, means a document containing geometrical, numerical and verbal representations of a piece of land or a line, feature or area forming the basis for registration of a real right which has been signed by a person recognized, under any enactment then in force, as a land surveyor, or which has been approved or certified by the Surveyor-General or other officer em-

- powered under any enactment so to approve or certify a diagram, and includes a diagram or copy thereof prepared in the Surveyor-General's office and approved or certified as aforesaid or a document which has at any time, prior to the 1st May, 1933, been accepted as a diagram in the Deeds Registry or the Surveyor-General's office, but does not include a diagram framed from a compass survey;
- “general plan” means a plan which, representing the relative position and dimensions of one or more pieces of land, has been signed by a person recognized, under any enactment then in force, as a land surveyor, or which has been approved or certified as a general plan by the Surveyor-General or other officer empowered under any enactment so to approve or certify a general plan, and includes a general plan or a copy thereof prepared in the Surveyor-General's office and approved or certified as aforesaid, or a general plan which has at any time, prior to the 1st May, 1933, been accepted for registration in the Deeds Registry or the Surveyor-General's office;
- “land surveyor” means a person who is recognized as such for the purposes of this Act and registered or deemed to be registered as a land surveyor under the Land Surveyors Act [*Chapter 27:06*];
- “land survey technician” means a person registered as a land survey technician under the Land Surveyors Act [*Chapter 27:06*];
- “land surveyor-in-training” means a person registered as a land surveyor-in-training under the Land Surveyors Act [*Chapter 27:06*];
- “local authority” includes any body of persons which, being by law established, has the general control, care and management of public places;
- “local planning authority” has the meaning assigned to it in terms of subsection (1) of section 2 of the Planning Act;
- “Minister” means the Minister of Lands/and Water or any other Minister to whom the President may, from time to time, assign the administration of this Act;
- “official control point” means a permanent mark the position of which has been declared by the Surveyor-General to be an official control point;
- “owner”, in relation to land, means the person registered in the Deeds Registry as the owner of such land, and includes the liquidator of a company or the representative recognized by law of any owner who has died, become insolvent, assigned his estate, is a minor or of unsound mind or is otherwise under disability, if such liquidator or representative acts within the powers conferred on him by law; and includes the allottee of land held under provisional title and in process of alienation by the State; and also the lessee of land held under a lease for a period of ninety-nine years registered in the Deeds Registry;
- “Planning Act” means the Regional, Town and Country Planning Act [*Chapter 29:12*];
- “public place” includes any street, road, thoroughfare, sanitary passage, square or open space shown on a general plan of a township, filed in the Deeds Registry or the Surveyor-General's office, and all land, other than stands shown on the general plan, the control whereof is vested, to the entire exclusion of the owner, in a local authority or to which the owners of the stands in the township have a common right;
- “reference mark” means a survey mark of permanent construction placed by a land surveyor or under the direction of the Surveyor-General in a township to form one of a system of such marks for the purposes of connecting thereto the survey or re-survey of the pieces of land in such township, or for assistance in replacing the previously placed beacons of such pieces of land;
- “registration”, in relation to any land, means a registration of any real right in or to such land in accordance with the provisions of the law relating to the registration of deeds;
- “specified foreign licence” means a licence declared to be a specified foreign licence in terms of the Land Surveyors Act [*Chapter 27:06*];
- “specified foreign qualification” means a degree, diploma or other qualification declared to be a specified foreign qualification in terms of the Land Surveyors Act [*Chapter 27:06*];
- “specified local qualification” means a degree, diploma or other qualification declared to be a specified local qualification in terms of the Land Surveyors Act [*Chapter 27:06*];
- [Definition inserted by Act 3 of 2007]
- “stand” means every piece of land registered as a stand, lot or plot in the Deeds Registry, and includes a stand or lot forming a portion of a piece of land laid out as but not proclaimed a township, or a portion of such stand or lot;
- “subdivision permit” means a permit to subdivide any property granted in terms of section 41 of the Planning Act;
- “subdivision plan” means a plan showing the layout of a proposed subdivision or subdivisions;
- “township” means a group of pieces of land which are used for residential, industrial, commercial or similar purposes, or are intended or likely to be used for any such purpose, including a township established in terms of the Planning Act and any township established before the 1st November, 1976, in accordance with the law in force at the date of its establishment;

“town survey mark” means a survey mark of permanent construction placed under the direction of the Surveyor-General or the Director of Trigonometrical and Topographical Surveys appointed under the Trigonometrical and Topographical Survey Act, 1958 (No. 2 of 1958), in a township to form one of a system of such marks, the position of which the Surveyor-General has approved;

“trigonometrical station” means a station of the primary, secondary, tertiary or quaternary trigonometrical survey systems as classified by the Surveyor-General.

### **3 Application of Act**

This Act shall only apply to any survey used for the purpose of effecting the registration of any land in the Deeds Registry, or for re-determining the position of a curvilinear boundary, or of any beacon defining the terminal of any boundary of a piece of land registered in the Deeds Registry.

### **4 Act binding on State**

This Act shall be binding on the State in so far as any land surveyed or re-surveyed or dealt with thereunder is unalienated State land, or land which has been alienated and subsequently re-acquired by the State; and the Surveyor-General shall, for the purposes of this Act, be deemed to be the owner of any such land.

## **PART II**

### **ADMINISTRATION**

### **5 Establishment of Surveyor-General's office**

(1) There shall be established at Harare a Surveyor-General's office which shall be deemed to be a continuation of the Surveyor-General's office in existence on the 30th April, 1933.

(2) The Minister may, by notice in a statutory instrument, establish at places, other than Harare, such other additional offices of the Surveyor-General as he may deem necessary or expedient for the proper administration of this Act:

Provided that the office of the Surveyor-General which was in existence in Bulawayo on the 12th December, 1969, shall be deemed to have been established in terms of this section, and the Minister shall as soon as possible specify, by notice in a statutory instrument, the area which is served by that office.

(3) Where the Minister establishes an additional office in terms of subsection (2), he shall specify in the notice referred to in that subsection the area which shall be served by that office.

(4) The Minister may, by notice in a statutory instrument—

(a) disestablish any additional office established in terms of subsection (2);

(b) amend the area specified in terms of subsection (3) which shall be served by an additional office.

(5) Any area which is not specified in a notice made in terms of subsection (2) shall be served by the Surveyor-General's office at Harare.

(6) References in this Act or any enactment to the Surveyor-General's office in relation to any land, any matter or thing connected with land or any general plan or diagram thereof shall be construed as a reference to the Surveyor-General's office which serves the area wherein the land concerned or represented on or by the general plan or diagram is situated.

### **6 Appointment of Surveyor-General**

There shall be a Surveyor-General whose office shall be a public office and form part of the Public Service.

### **7 Duties of Surveyor-General**

(1) The Surveyor-General shall be in charge of the Surveyor-General's office and he shall, subject to this Act—

(a) supervise and control the survey and charting of land for purposes of registration in the Deeds Registry;

(b) supervise and control all matters pertaining to aerial and space surveys conducted and geoinformation obtained in relation to Zimbabwe;

(c) take charge of and preserve all records appertaining to surveys of land which were, prior to the 1st May, 1933, preserved as records in the Surveyor-General's office, or which may become, after such date, records of the Surveyor-General's office;

(d) examine all general plans and diagrams or surveys of land before any registration of such land is effected in the Deeds Registry, and approve all such plans and diagrams if he is satisfied that such surveys have been carried out in such a manner as to ensure accurate results, and that such general plans and diagrams have been prepared and the boundaries of the land surveyed have been defined in accordance with the regulations;

(e) on the diagram of any piece of land—

(i) define the geometrical figure representing any portion of such land, the transfer deed whereof has been registered in the Deeds Registry, and deduct the numerical extent of such portion;

(ii) define the geometrical figure representing any portion thereof for which a certificate of township title or a certificate of registered title has been issued, and deduct the numerical extent of such portion;

- (iii) define the geometrical figure representing that portion of the land in respect of which a real right or lease has been registered where the registration has been based on a diagram approved by the Surveyor-General;
- (f) cancel or amend in accordance with any enactment any general plan or diagram;
- (g) prepare, certify and issue at the request of any person, and on payment by such person of such fees as may be prescribed, copies of diagrams and other documents filed in his office, which are available to the public, and copies of general plans and diagrams registered in the Deeds Registry;
- (h) conduct such surveys as the Minister may direct;
- (i) prepare such maps as the Minister may direct;
- (j) take charge of and preserve all records relating to surveys conducted in accordance with paragraph (h);
- (k) prepare and maintain lists of official control points;
- (l) conduct the election referred to in paragraph (d) of subsection (2) of section *eight* in such manner as he sees fit;

and, generally, exercise all such powers and perform all such duties as are by any enactment conferred or imposed upon the Surveyor-General, and perform such other duties as the Minister may assign to him.

(2) Any officer employed in the Surveyor-General's office who is a land surveyor may, if deputed by the Surveyor-General, do any act or thing which may lawfully be done under this Act or any other enactment by the Surveyor-General.

## **8 Survey Regulations Board**

- (1) There shall be established a Survey Regulations Board.
- (2) The Board shall consist of—
  - (a) the Surveyor-General or, in his absence, a land surveyor of his department nominated by him;
  - (b) one land surveyor who is on the staff of the Surveyor-General in Harare, nominated by the Minister;
  - (c) one land surveyor who is on the staff of the Surveyor-General in Bulawayo, nominated by the Minister;
  - (d) three land surveyors, who shall hold office for a period of three years, elected by persons who are land surveyors on the date when a vacancy in such office occurs.
- (3) The Surveyor-General or, in his absence, a member of the Board nominated by him, shall be chairman of the Board.
- (4) The Chief Registrar may be co-opted as a member of the Board when, in the opinion of the chairman, regulations relating to or affecting the Deeds Registry or the registration of deeds are likely to come before the Board for consideration.
- (5) Whenever the chairman of the Board considers it necessary the Board shall hold a meeting at a time and place to be decided by the chairman.
- (6) A quorum of the Board shall be four of the members mentioned in subsection (2).
- (7) The decision of the majority of the members of the Board present at any meeting shall constitute the decision of the Board. In the event of an equality of votes the chairman shall have a casting vote in addition to his deliberative vote.

## **9 Regulations**

- (1) The Board may, with the approval of the Minister, make regulations prescribing—
  - (a) subject to subsection (2), the fees to be paid by an owner of land for any survey of such land, including any records relating to such survey, the manner in which and the person by whom such fees may be taxed, the costs of such taxation and by whom they shall be borne;
  - (b) the manner in which surveys shall be performed and the manner and form in which the records of such surveys shall be prepared and furnished to the Surveyor-General;
  - (c) the degree of accuracy to be obtained and the limit of error to be allowed in surveys and re-surveys of land;
  - (d) the diagrams and general plans required in connection with the registration of any land in the Deeds Registry, the manner of preparing such diagrams and general plans, the information to be recorded thereon and the number of such diagrams and general plans to be supplied;
  - (e) the form and dimensions of beacons, reference marks, bench marks and trigonometrical stations, the manner of marking the same for identification and the manner of their construction, erection, protection, maintenance and repair;
  - (f) the procedure to be followed in arbitration proceedings under this Act and the powers and duties of arbitrators appointed under this Act;
  - (g) the manner in which the cadastral surveys of land shall be based upon town survey marks or trigonometrical stations where such exist and the manner in which official control points may be used in such surveys;

- (h) the manner of re-surveying stands in any township, or any part thereof, or sections or blocks of land other than such stands, for the purpose of re-adjusting the boundaries and establishing the beacons thereof, and the manner of recovering the costs of such re-surveys;
  - (i) the steps to be taken by the Surveyor-General to test the accuracy of surveys, the results of which are recorded on diagrams which have been or are intended to be registered in the Deeds Registry, and, in the event of such surveys being inaccurate, to cause correct diagrams to be framed and the relative title deeds to be endorsed or rectified;
  - (j) the testing of surveying instruments and of measuring tapes to be used in the survey of land;
  - (k) the unit of measure to be used on general plans and diagrams;
  - (l) the nature, form and period, not exceeding two years, of training in practical survey work, and of the apprenticeship, if any, to be undergone by any person before such person shall be recognized as a land surveyor, and the form of the contract of any such apprenticeship and the manner in which any such contract shall be registered;
  - (m) the fee to be paid for the certificate mentioned in subsection (5) of section *twelve*;
- and, generally, as to any matter appertaining to the surveying and charting of land, and for carrying out the objects and purposes of this Act.

(2) Regulations in terms of subsection (1) shall provide for the publication, in such manner as may be specified in the regulations, of a tariff of fees payable for any matter referred to in paragraph (a) of that subsection.

(3) Penalties not exceeding a fine of level four may be prescribed for the contravention of any regulation.

[Subsection as amended by section 4 of Act No. 22 of 2001]

## 10 Office fees

Notwithstanding anything contained in any other enactment, the Minister may, by notice in a statutory instrument, prescribe the fees to be charged in respect of any act or matter required or permitted to be performed or dealt with in or in connection with the Surveyor-General's office.

## PART II

### RECOGNITION AND DUTIES OF LAND SURVEYORS

## 11 Recognition as a land surveyor

(1) Subject to the provisions of subsection (2), no person shall be recognized for the purposes of this Act or be entitled to practise as a land surveyor unless there has been issued to him the certificate referred to in subsection (5) of section *twelve* and unless he has been registered as a land surveyor under the Land Surveyors Act [*Chapter 27:06*].

(2) Any person who, immediately before the 18th March, 1988, was recognized and had the right to practise as a land surveyor shall, on and after such date, be recognized for the purposes of this Act and shall be entitled to practise as a land surveyor if he is registered as such under the Land Surveyors Act [*Chapter 27:06*].

## 12 Training leading to recognition

(1) Any person who has been registered under the Lands Surveyors Act [*Chapter 27:06*] as a land surveyor-in-training may, in writing, apply to the Surveyor-General to be notified of the period of practical training referred to in subsection (2) and the Surveyor-General shall assess the period and, in writing, notify the applicant accordingly.

(2) The period of practical training to be undertaken by a land surveyor-in-training shall be—

(a) in the case of a person who holds a specified local or foreign qualification, the period prescribed by the Board in terms of paragraph (i) of subsection (1) of section *nine*; or

[Paragraph substituted by Act 3 of 2007]

(b) in the case of a person who holds a specified foreign licence, such period, if any, that the Surveyor-General at his discretion may specify;

and the period shall be deemed to commence with effect from the date specified by the Surveyor-General.

(3) On completion to the satisfaction of the Surveyor-General of the period, if any, of practical training referred to in subsection (2), the land surveyor-in-training concerned shall undertake an examination set by the Surveyor-General on the laws in force in Zimbabwe relating to the survey, registration and transfer of land.

(4) If a land surveyor-in-training passes the examination referred to in subsection (3) to the satisfaction of the Surveyor-General, he shall carry out such a trial survey as the Surveyor-General may require:

Provided that the Surveyor-General may exempt a person who holds a specified foreign licence from this requirement.

(5) Where a land surveyor-in-training completes the trial survey to the satisfaction of the Surveyor-General, or where the Surveyor-General has exempted a land surveyor-in-training from the requirement to undertake a trial survey, the Surveyor-General shall on receipt of the prescribed fee, issue to the land surveyor-in-training concerned a certificate that he is entitled to be registered as a land surveyor under the Land Surveyors Act [*Chapter 27:06*]:

Provided that any certificate of recognition issued to any person by the Surveyor-General which was in force immediately before the 18th March, 1988, shall be deemed to be a certificate of recognition issued in terms of this subsection.

### **13 Duties of surveyor and non-liability of State**

(1) A land surveyor shall—

- (a) carry out every survey undertaken by him in such manner as will ensure accurate results, and in accordance with this Act; and
- (b) be responsible to the Surveyor-General for the correctness of every survey carried out by him or under his supervision, and of every general plan and diagram which bears his signature; and
- (c) deposit with the Surveyor-General, for the purpose of being permanently filed in the Surveyor-General's office, such records as may be prescribed relative to every survey carried out by him after the 1st May, 1933, for the purpose of, or in connection with, any registration of land in the Deeds Registry, and relative to every general plan or diagram prepared as a result of any such survey, and relative to every survey carried out by him after such date for the replacement of a lost beacon; and
- (d) when required by the Surveyor-General, without delay, correct in any survey carried out by such land surveyor after the 1st May, 1933, or in any work appertaining thereto, any error which is in excess of the prescribed limits of error, and take such steps as may be necessary to ensure the amendment of any diagram, general plan and title deed based on such incorrect survey, and to adjust the position of any beacon which he has placed in accordance with such incorrect survey.

(2) As soon as practicable after the 1st May, 1933, the Surveyor-General shall examine all such records as are mentioned in paragraph (c) of subsection (1) before approving any general plan or diagram to which such records refer.

(3) Neither the State nor any officer thereof shall be liable for any defective survey or work appertaining thereto performed by a land surveyor, notwithstanding that a general plan or diagram relating to such survey or work has been approved by the Surveyor-General or accepted for registration in the Deeds Registry.

### **14 Duties of surveyor when registration has ceased or been cancelled**

(1) The Surveyor-General may, by notice in writing, direct any person whose registration as a land surveyor in terms of the Land Surveyors Act [*Chapter 27:06*] has ceased or been cancelled, to employ, at his own expense, within such period as may be specified in the notice, a land surveyor for the purpose of ensuring—

- (a) correction of any defect or omission that related to his duties in terms of section *thirteen*;
- (b) compliance with his responsibilities in terms of section *thirteen*;
- (c) compliance with any requirement that might have been made of him in terms of section *thirteen*;

on or before the day his registration ceased or was cancelled.

(2) Where any direction given in terms of subsection (1) is not complied with the Surveyor-General may employ a land surveyor to comply with the direction and the costs so incurred shall become a debt due to the State by the person to whom the direction was given.

### **15 Suspension or cancellation of right to practise as surveyor**

(1) Subject to subsection (2), if a land surveyor—

- (a) signs, except as provided in section *thirty-one*, a general plan or a diagram of any piece of land in respect of which—
  - (i) he has not carried out or personally supervised the field operations either by his presence in the field or by exercising control by personal instruction; and
  - (ii) he has not carefully examined, and satisfied himself of the correctness of, the entries in any field book, and the calculations, working plans and other records in connection therewith, which may have been made by any other person; or
- (b) signs a defective general plan or diagram knowing it to be defective; or
- (c) repeatedly performs, whether personally or by his land surveyor-in-training or land survey technician, through negligence or incompetence, defective surveys or surveys to which adequate checks have not been applied; or
- (d) makes, whether personally or by his land surveyor-in-training or land survey technician, any entry in a field book, copy of a field book or other document which purports to have been derived from actual observation or measurement in the field when it was not in fact so derived; or
- (e) supplies erroneous information to the Surveyor-General in connection with any survey, boundaries or beacons of land, knowing it to be erroneous or without taking reasonable steps to ascertain its accuracy; or
- (f) is, in the opinion of the Surveyor-General, guilty of such improper or disgraceful conduct as to render him liable to disciplinary action;

the Minister, acting on the advice of the Surveyor-General, shall lodge a charge against such land surveyor with the Council of Land Surveyors for the purpose of an inquiry in terms of section 23 of the Land Surveyors Act [Chapter 27:06].

(2) A land surveyor may adopt the co-ordinates and description of an official control point.

#### **16 Unauthorized practice as surveyor**

(1) No person, except a land surveyor entitled to practise as such, shall—

- (a) perform any survey for the purpose of preparing any diagram or general plan to be filed or registered in the Deeds Registry or referred to in any manner whatsoever in any other document to be so filed or registered; or
- (b) perform any survey affecting the delimitation of the boundaries or the location of the beacons of any land registered or to be registered in the Deeds Registry; or
- (c) hold himself out in any manner whatever as a land surveyor.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or both such fine and such imprisonment.

[Subsection as amended by section 4 of Act No. 22 of 2001]

#### **17 Performance of work by land-surveyors-in-training and land survey technicians**

(1) Subject to this section, nothing contained in this Act shall be construed as prohibiting—

- (a) the employment by a land surveyor of a land surveyor-in-training or land survey technician on; or
- (b) the performance by a land surveyor-in-training or land survey technician of;

work which may, in terms of rules made under the Land Surveyors Act [Chapter 27:06] be performed by the land surveyor-in-training or land survey technician concerned.

(2) Any work performed by a land surveyor-in-training or land survey technician in terms of this Act, as read with rules made under section 34 of the Land Surveyors Act [Chapter 27:06] shall be carried out on the instructions and under the guidance of a land surveyor who shall bear full responsibility for all such work performed:

Provided that no land surveyor shall—

- (a) instruct and guide more than two land surveyors-in-training at any one time; or
- (b) until such time as the cancellation, suspension or disqualification is terminated, employ any land surveyor-in-training or land survey technician—
  - (i) whose registration has been cancelled in terms of the Land Surveyors Act [Chapter 27:06]; or
  - (ii) who has been suspended or disqualified from practising as such in terms of the Land Surveyors Act [Chapter 27:06];

to perform any survey work.

(3) Any land surveyor who contravenes the proviso to subsection (2) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act No. 22 of 2001]

### **PART IV**

#### **ORIGINAL SURVEYS AND RE-SURVEYS**

#### **18 Original survey of land**

(1) If a land surveyor carries out a survey of any piece of land to which a title deed has been issued, but of which a diagram has not previously been registered, he shall deliver or transmit to the Surveyor-General for examination and filing of record in the Surveyor-General's office—

- (a) his certificate that the corner points of such piece of land are defined by beacons complying with the regulations, and a minute description of each such beacon as it existed at the commencement of such survey, and, if the land surveyor has rebuilt any such beacon or substituted another beacon for it, the reason therefor and a minute description of the beacon after such rebuilding or substitution;
- (b) such original records or copies thereof as may be prescribed relative to such survey and such further proofs of the accuracy of such survey and of the correct identification of the original beacons of such piece of land or of their positions as the Surveyor-General may require, and any other information which such land surveyor may consider material and useful or which the Surveyor-General may require.

(2) No diagram of any such piece of land shall be approved unless—

- (a) if such piece of land is surrounded by, or situate within, the prescribed distance from any secondary or tertiary triangulation stations, the survey of such piece of land has been based upon two or more such stations in such manner as may be prescribed:

Provided that this paragraph shall not apply to a stand;

- (b) there has been lodged with the Surveyor-General a document (in this section referred to as the agreement) as far as practicable in the form set out in the Schedule, signed by the owner of such piece of land or by his duly authorized agent, by every owner of land contiguous thereto (in this section referred to as

a contiguous owner) or by his duly authorized agent, and by two competent witnesses to each signature, being persons of either sex above the age of fourteen years, one of whom may be the land surveyor performing the survey:

Provided that—

- (i) in respect of any beacon or boundary which is under this Act or any other enactment deemed to have been lawfully established, or in respect of any beacon or boundary common to such piece of land and to unalienated State land, or to land situate outside Zimbabwe, no such agreement shall be necessary;
  - (ii) in respect of such contiguous land which is held by two or more owners in undivided shares, it shall be sufficient if the agreement is signed by the owners of not less than a three-fourths share in such land;
- (c) there has been lodged with the Surveyor-General by such land surveyor his certificate that to the best of his knowledge and belief the boundaries of such piece of land have not by agreement between the owner of such piece of land and a contiguous owner been so changed as to effect a transfer of any land otherwise than in accordance with law.

(3) The Surveyor-General may, unless otherwise directed by an order of the court, refuse to approve a diagram of any such piece of land if he has reasonable grounds for believing that any area not owned by the owner of that piece of land has been included within the boundaries thereof as defined in such diagram, or that payment of any taxes or duties has been or will be evaded by any registration in the Deeds Registry based upon such diagram.

(4) If any contiguous owner fails to sign the agreement within a period of one month from the date upon which he or his duly authorized agent was called upon to sign the agreement, the owner of such piece of land or his duly authorized agent shall serve upon such contiguous owner or his duly authorized agent a notice in writing, informing him that if he fails, within a further period of one month from the date of service of such notice, to lodge with the Surveyor-General an objection to the boundaries or beacons of such piece of land as set forth in the agreement which he was called upon to sign, he will be deemed to have agreed to such boundaries and beacons:

Provided that—

- (i) if such contiguous owner is outside Zimbabwe when so called upon to sign such agreement and when so served with such notice, such periods of one month shall each be extended to three months;
  - (ii) if the address of any such contiguous owner cannot be ascertained by diligent inquiries, the publication of such notice in one issue of a statutory instrument and once every week during two consecutive weeks in a newspaper, to be approved of by the Surveyor-General, circulating in the district within which such piece of land is situate shall be deemed to be a service of such notice for the purposes of this subsection.
- (5) The service of the notice referred to in subsection (4) shall, subject to proviso (ii) to that subsection, be effected by personal delivery or by registered post, and in the case of service by registered post, the date of service shall be deemed to be the date upon which the letter containing such notice would, in the ordinary course, reach the post office from which it is to be delivered to the addressee thereof.

(6) Whenever—

- (a) a contiguous owner has failed to sign the agreement; and
- (b) the Surveyor-General has been satisfied by such proof as he may deem necessary that the provisions of subsection (4) have been complied with; and
- (c) no objection to any beacon or boundary adopted in the survey of such piece of land has been lodged with the Surveyor-General by such contiguous owner within the period mentioned in the notice served upon him in terms of subsection (4); and
- (d) the other requirements of this Act have been complied with in regard to the survey of such piece of land and the diagram thereof;

the Surveyor-General shall approve such diagram.

(7) If any contiguous owner has failed to sign the agreement and has, within the period mentioned in any such notice as is referred to in subsection (4), lodged with the Surveyor-General an objection to any beacon or boundary adopted in the survey of such piece of land, or to the diagram thereof, the Surveyor-General may, if every person affected by such objection undertakes in writing to accept the award of an arbitrator or arbitrators to be appointed by the Surveyor-General as final and conclusive upon all matters in dispute in connection with any such beacon or boundary, and in regard to the costs of or incidental to such arbitration, appoint such arbitrator or arbitrators to determine such matters and costs, and his or their award thereon shall thereupon be final and conclusive.

(8) If any person who has lodged any such objection fails so to undertake, he may, if he was in Zimbabwe upon the date upon which he was called upon to accept the award of an arbitrator or arbitrators as aforesaid, within one month, and if he was not in Zimbabwe on such date, within three months after such date, institute an action in the Court to determine any such matter, or if the State is one of the persons affected by such objection, proceed to arbitration in respect of any such matter under any other enactment relating to the settlement of dis-

putes by arbitration; and if he fails within such period to institute such action or to proceed to such arbitration, as the case may be, he shall be deemed to have agreed to such beacons, boundaries and diagram.

### **19 Diagram of land surveyed under direction of Surveyor-General**

(1) Section *eighteen*, other than subsections (7) and (8) thereof, shall not apply in regard to the survey under the direction of the Surveyor-General of any piece of land to which no title deed has been issued and which is not represented on any diagram registered in the Deeds Registry or the Surveyor-General's office, but before approving the diagram of any such land the Surveyor-General shall cause a notice to be published in one issue of a statutory instrument and once every week during two consecutive weeks in a newspaper circulating in the district in which such land is situate, stating that a diagram of such land is lying for inspection at the Surveyor-General's office and that if no objection is received within thirty days from the first publication of such notice, such diagram will be approved by the Surveyor-General:

Provided that such publication shall not be required if, in the opinion of the Surveyor-General, the rights of any contiguous owner will not be adversely affected by the approval of such diagram.

(2) If within such period any owner of land contiguous to the land represented by such diagram lodges with the Surveyor-General an objection to such diagram or to any beacon or boundary adopted in the survey of such last-mentioned land, and any dispute arising from such objection cannot be settled by agreement of the parties thereto, subsections (7) and (8) of section *eighteen* shall apply, *mutatis mutandis*.

### **20 Rectification of title deeds after determination of boundary dispute**

(1) Whenever a dispute in regard to any boundary or beacon of contiguous pieces of land has been finally determined by the judgment of the Court or by the award of arbitrators, the owners of any land affected by such judgment or award, or such of them as may be specially directed thereby, shall take such steps as may be necessary in accordance with the law relating to the registration of deeds to procure either the endorsement or rectification of the relative title deeds thereof, as the Surveyor-General may direct:

Provided that such endorsement or rectification shall be based upon a diagram correctly representing the boundaries and beacons of such land as determined by such judgment or award.

(2) Any such judgment or award shall determine in what proportions the costs of any survey for the purpose of framing such diagram or otherwise giving effect to such judgment or award, and of such endorsement or rectification, shall be borne by the owners of any land affected by such judgment or award.

(3) The Surveyor-General shall furnish the Registrar with a description of any land in respect of which an endorsement or rectification of the existing title is required in terms of subsection (1), and thereafter no registration of such land or any portion thereof or undivided share therein shall be effected in the Deeds Registry until the owner has taken such steps as may be necessary in accordance with the law relating to the registration of deeds to procure the endorsement or rectification of the relative title deeds thereof.

### **21 Rules for arbitrators**

In deciding what are the true and correct beacons or boundaries common to two contiguous pieces of land, an arbitrator appointed under this Act shall take into consideration the particular circumstances of each particular case, but shall generally be guided by the following principles—

- (a) the original beacons of a piece of land, as erected or adopted at the original survey thereof, if any, shall be deemed to define the true boundaries of such land as granted or transferred, notwithstanding that such beacons may not correspond with the original diagram or may not include the extent of land which the title deed of such land purports to convey;
- (b) when well-ascertained beacons have, for an uninterrupted period of not less than thirty years, been recognized by the parties to the dispute, or their predecessors in title, as the true and correct beacons, such beacons shall be taken to be the original beacons:

Provided that no land which is clearly not included nor intended to be included in the title deed of a piece of land may be included in a new diagram of that piece of land, notwithstanding that it may have been used or occupied for the period of prescription by the owner of such piece of land, or his predecessors in title, to the exclusion of others;

- (c) if any land included within the original beacons and boundaries of a grant has afterwards been included within the beacons and boundaries of a later grant, the right to the overlap conferred by the older grant shall, subject to paragraph (b), prevail.

### **22 Approval of diagram of portion of unsurveyed land**

No diagram of any portion of an unsurveyed piece of land registered in the Deeds Registry shall be approved by the Surveyor-General until a survey has been made of the whole of such piece of land and a new title deed has been registered on the basis of such survey.

### **23 Replacing incorrect diagram by new diagram after re-survey**

(1) Whenever it is alleged that the diagram or diagrams of any land registered or filed in the Deeds Registry or the Surveyor-General's office (in this section referred to as the existing diagram or diagrams) does or do not

correctly represent the boundaries of such land, the owner thereof may apply to the Surveyor-General for the cancellation of the existing diagram or diagrams and the approval in lieu thereof of a new diagram of such land:

Provided that section *eighteen* shall apply, *mutatis mutandis*, in regard to such new diagram and to all matters in connection therewith, or with the survey upon which it is based, and that it shall not be approved unless those provisions have been complied with.

(2) A land surveyor performing the re-survey of such land for the purpose of preparing such new diagram shall, in addition to the other documents required by section *eighteen* to be delivered or transmitted to the Surveyor-General, deliver or transmit to him for the purpose of being filed of record in the Surveyor-General's office a report with an explanatory plan, clearly setting forth the degree or particulars in which such re-survey differs from the survey upon which the existing diagram or diagrams was or were based as disclosed by such diagram or diagrams and containing such other information as such land surveyor may deem useful or the Surveyor-General may require.

(3) Upon approval of such new diagram by the Surveyor-General, the owner of the land shall take such steps as may be necessary, in accordance with the law relating to the registration of deeds, to procure either the endorsement or the rectification of the existing title deed thereof, as the Surveyor-General may direct.

(4) The Surveyor-General shall furnish the Registrar with a description of the land in respect of which an endorsement or rectification of the existing title deed is required in terms of subsection (3), and thereafter no registration of such land or any portion thereof or undivided share therein shall be effected in the Deeds Registry until such endorsement or rectification has been made.

(5) If it appears from such re-survey that an existing diagram is correct, the Surveyor-General shall endorse thereon a certificate that the land represented thereby has been re-surveyed and that the existing diagram has been found to be correct, and thereupon the beacons and boundaries of such piece of land shall be deemed to have been lawfully established in accordance with section *thirty-three*:

Provided that section *eighteen* shall apply, *mutatis mutandis*, in the same manner as if such re-survey were a survey and as if such endorsement were an approval of a diagram for the purposes of that section, and that such endorsement shall not be made unless those provisions have been complied with.

## **24 Re-survey of block of land other than township**

(1) Whenever—

- (a) the owners of not less than one-half of a section or block of land, other than land referred to in Part VI, consisting of more than one registered piece of land apply to the Minister for a re-survey of such section or block; and
- (b) the Surveyor-General reports that the boundaries of the several pieces of land constituting such section or block are confused and need re-adjustment;

the Minister may order that such section or block be re-surveyed under the direction of the Surveyor-General.

(2) No beacons or boundaries which have become lawfully established in accordance with the provisions of section *thirty-three* shall be affected by any re-survey or any other act performed under this section.

(3) Whenever in the course of a re-survey ordered under this section a dispute arises as to the boundaries of any such pieces of land, the Surveyor-General may give notice in writing to every person who is a party to such dispute that he proposes to appoint an arbitrator for the purpose of determining such dispute. The provisions of subsection (5) of section *eighteen* shall apply, *mutatis mutandis*, in regard to such notice.

(4) Any such person may, if he was in Zimbabwe upon the date when such notice was served upon him, within one month, and if he was not in Zimbabwe, within three months, after such date, institute an action in the Court to determine such dispute or, if the State is one of the parties to such dispute, proceed to arbitration in respect thereof under the law relating to the settlement of disputes by arbitration; and if none of such persons institutes any such action or arbitration proceedings within such periods, the Surveyor-General may appoint an arbitrator to determine such dispute, and the award of such arbitrator in regard to such dispute and in regard to all costs thereof or incidental thereto shall be final.

(5) The costs of and incidental to any re-survey ordered under this section shall in the first instance be defrayed from moneys appropriated for the purpose by Act of Parliament and the Minister may thereafter recover those costs in such manner as may be prescribed by regulation from each owner of any such piece of land in accordance with a schedule framed by the Surveyor-General, apportioning such costs among all such owners.

(6) Upon payment by the owner of any such piece of land of all costs due by him in respect of a re-survey ordered under this section, the Surveyor-General shall cancel the existing diagram of such piece of land and shall issue to him a new diagram in place thereof.

(7) The Surveyor-General shall not approve a general plan representing such pieces of land based upon a re-survey under this section until a copy thereof has been available for inspection during a period of six weeks at his office and at the office of the district administrator of the district within which such land is situate, and until he has published, in two consecutive issues of a statutory instrument and once every week during two consecutive

weeks in a newspaper circulating in such district, a notice stating his intention to approve such general plan and calling upon persons interested who object to such approval to lodge such objection with the Surveyor-General:

Provided that the Surveyor-General may approve any such general plan without publishing such notice, if every owner of any land affected by such re-survey has agreed in writing to such general plan or to the beacons and boundaries adopted in such re-survey, or if such general plan is in accordance with a judgment or award under subsection (4) in an action or arbitration proceedings to which every such owner was a party.

(8) If within four weeks from the date of the last publication of such notice no such objection has been so lodged by any person other than a person who was a party to an action or arbitration proceedings under subsection (4), the Surveyor-General may approve such general plan and, after such approval, he shall, by notice in a statutory instrument, declare that such general plan has been approved.

(9) If within such period of four weeks any such objection has been so lodged, subsections (7) and (8) of section *eighteen* and the proviso to subsection (3) of section *thirty-one* shall apply, *mutatis mutandis*.

## PART V

### DIVISION SURVEYS

#### 25 Subdivision of land

(1) Where any land is to be subdivided to effect separate registration of one or more portions of that land in the Deeds Registry, and the land is—

- (a) unalienated State land or land which has been alienated and has been or is to be re-acquired by the State, the Minister responsible for the administration of such land shall forward to the Surveyor-General two copies of the relevant subdivision plan, and the Surveyor-General shall instruct a land surveyor to undertake the survey;
- (b) owned by and falls within the jurisdiction of an authority which is a local planning authority for the purposes of Part V of the Planning Act, the local planning authority shall forward a copy of the relevant subdivision plan to the Surveyor-General and the Registrar of Deeds and shall instruct a land surveyor to undertake the survey;
- (c) land which is not referred to in paragraph (a) or (b), the owner shall, after obtaining such subdivision permit as may be required in terms of section 40 of the Planning Act, instruct a land surveyor to undertake the survey.

(2) Where a local planning authority has, in terms of subsection (7) of section 40 of the Planning Act forwarded to the Surveyor-General a copy of a subdivision permit for the creation of more than one subdivision, the Surveyor-General shall advise the person to whom the subdivision permit has been granted and the Registrar of Deeds, in respect of the whole of the land covered by the subdivision permit, his requirement in relation to diagrams, the general plan or the general plan and diagrams and, where appropriate, the taking out by the owner of a certificate of title in terms of the Deeds Registries Act [*Chapter 20:05*].

(3) Where the Surveyor-General has received a copy of a subdivision plan in terms of paragraph (a) or (b) of subsection (1) he shall advise the land surveyor authorised to undertake the survey, in respect of the whole of the land covered by the subdivision plan his requirement in relation to diagrams, the general plan or the general plan and diagrams.

#### 26 Approval of survey records relating to subdivision

(1) The Surveyor-General shall not approve the survey records, diagrams or general plan relating to the subdivision of any land unless—

- (a) the documents in accordance with his requirements referred to in subsection (2) or (3) of section *twenty-five* have been lodged; and
- (b) he has compared the survey records submitted with the subdivision plan and is satisfied that the subdivisions as surveyed do not differ materially with regard to shape or area from those contemplated in the subdivision plan; and
- (c) the period during which an appeal in connection with any subdivision permit concerned could have been lodged in terms of section 44 of the Planning Act has expired or, if an appeal has been so lodged, the appeal has been finally determined.

(2) Notwithstanding the provisions of subsection (1), where the Surveyor-General has in terms of subsection (2) of section *twenty-five* required the owner to take out a certificate of title in terms of the Deeds Registries Act [*Chapter 20:05*], the Surveyor-General shall first determine the approval of the diagram of the whole of the land covered by the subdivision permit concerned for annexure to the certificate of title and then, after being satisfied that the certificate of title has been registered, he shall next determine the approval of the diagrams or the general plan or the general plan and diagrams of the subdivisions concerned.

(3) Upon the approval of any survey records, including any diagram or the general plan or the general plan and diagrams relating to a subdivision plan, the Surveyor-General shall notify the Registrar of Deeds and the local planning authority of his approval.

(4) Upon being notified by the Surveyor-General in terms of subsection (3), the Registrar of Deeds shall delete from the relevant title deed any condition which conflicts with the provisions of a subdivision permit forwarded to him by the local planning authority.

(5) Where the Surveyor-General approves a diagram of land that has been set aside for road or public purposes in terms of section 41 of the Planning Act, he shall submit the diagram to the Registrar of Deeds.

(6) Where land has been set aside for road purposes in terms of a subdivision permit and—

(a) no diagram has been called for in terms of subsection (2) of section *twenty-five*; and

(b) no certificate dispensing with a diagram has been issued in terms of section *forty-nine*;

the Surveyor-General shall on all copies of the diagram of the land of which the road is a part—

(i) cause the geometrical figure of the land so set aside to be defined; and

(ii) make an endorsement to the effect that the ownership of the land so set aside has vested in terms of section 41 of the Planning Act;

and notify the Registrar of Deeds in writing of his action.

(7) On receipt of a diagram referred to in subsection (5) of land which has been set aside for road or public purposes or on receipt of a certificate issued in terms of section *forty-nine* in respect of such land, the Registrar of Deeds shall issue to the appropriate authority, title, in a form approved by him, in respect of such land.

(8) On receipt of notification in terms of subsection (6) the Registrar of Deeds shall make an endorsement on the relevant title deed to the effect that the ownership of the land set aside for road purposes has vested in the appropriate authority in terms of subsection (6).

(9) In this section—

“appropriate authority” has the meaning assigned to it in subsection (8) of section 41 of the Planning Act.

## **27 Definition of geometrical figure and deduction of numerical extent of subdivision**

Upon separate registration being effected of any subdivision of a piece of land registered in the Deeds Registry, the Surveyor-General shall define on a copy of the diagram of the land so divided belonging to the owner of the remaining extent, and on the copy of such diagram registered in the Deeds Registry or on that filed in the office of the Surveyor-General, the geometrical figure representing such subdivision and deduct its numerical extent:

Provided that in such cases as may be prescribed, such definition and deduction may be made on a general plan instead of on such diagram.

## **28 Rectification of errors ascertained by re-survey or division**

If on the re-survey of any land or the survey of land for the purpose of division (in this section referred to as the re-survey) the numerical data derived from the re-survey are found to differ from those numerical data on the diagram of the land upon which any registration has been based, the Surveyor-General shall—

(a) when the difference is beyond the prescribed limit of error, approve a new diagram of the land in accordance with the re-survey as if the piece of land represented on the said diagram were a piece of land such as is referred to in section *eighteen* or in subsection (1) of section *twenty-three* if section *eighteen* and subsection (2) of section *twenty-three* have, *mutatis mutandis*, been complied with in regard thereto and to all matters in connection therewith:

Provided that every piece of land, a beacon or boundary whereof has a bearing on the piece of land represented on the said diagram, shall be deemed to be contiguous to such last-mentioned piece of land for the purposes of paragraph (b) of subsection (2) of section *eighteen*;

(b) when the difference is not beyond the prescribed limit of error and he is satisfied that the re-survey has been more accurately performed than the previous survey and that the positions of the beacons and boundaries adopted in both such surveys are identical, approve a new diagram of the land or a diagram of any portion thereof, prepared in accordance with the re-survey;

(c) when the difference is beyond the prescribed limit of error in respect of certain only of the beacons and boundaries while the numerical data of the remaining beacons and boundaries either agree or do not differ beyond the said limit, approve a new diagram of the land or a diagram of any portion thereof prepared in accordance with the re-survey, if the provisions referred to in paragraph (a) have been complied with in regard to those beacons and boundaries the data whereof differ beyond the prescribed limit, and the conditions referred to in paragraph (b) are present in regard to all other beacons and boundaries:

Provided that the Surveyor-General may at his discretion approve the diagram without compliance with the provisions of paragraph (b) of subsection(2) of section *eighteen* in respect of any beacon or boundary in regard to which there is documentary evidence in his office proving that the position determined for such beacon or boundary is correct:

Provided that if he approves a new diagram of the whole piece of land, subsections (3) and (4) of section *twenty-three* shall apply, *mutatis mutandis*, in regard to such new diagram.

## **29 Diagram of exact fraction of land**

When a surveyed piece of land which is held in undivided shares is divided for the purpose of partition, the Surveyor-General may withhold his approval of a diagram purporting to represent an exact fraction of the total area of such surveyed piece of land until he is satisfied that such total area has been ascertained by a re-survey of the whole of such piece land.

## **PART VI** **TOWNSHIPS**

## **30 Re-survey of townships**

(1) Where the recognized boundaries of the pieces of land which compose a township do not conform with the boundaries shown on the diagrams or general plan representing such pieces of land, the Minister may cause the township or any defined portion thereof to be re-surveyed and a new general plan thereof to be prepared in accordance with such re-survey.

(2) Such re-survey shall be carried out and such general plan shall be prepared under the direction of the Surveyor-General by a land surveyor or land surveyors appointed by him in consultation with the local authority, if any, of such township.

(3) Before such re-survey is commenced, the Surveyor-General shall cause a notice of such intended re-survey to be published in one issue of a statutory instrument and once every week during two consecutive weeks in a newspaper circulating in the district in which such township is situate, and to be posted outside the office of the local authority of such township or, if there is no such local authority, outside the office of the district administrator.

(4) During such re-survey a sufficient number of permanent reference marks shall be established at intervals throughout or in the vicinity of the area re-surveyed to enable the positions of the corner points of all pieces of land therein to be accurately recovered at any time, and it shall be lawful to place such reference marks in or on any building or other permanent structure or in any other place within or in the vicinity of the area re-surveyed under this section.

(5) The owner of any property damaged by the placing of any such reference mark thereon shall be entitled to compensation for such damage.

(6) Such reference marks shall be placed in position under the direction and supervision of the Surveyor-General or his deputy and shall conform with the prescribed specifications, which may vary for different townships.

(7) If the area re-surveyed under this section is situate within the jurisdiction of a local authority, such local authority shall be responsible for the maintenance of all such reference marks, and any destruction of or damage to any such reference mark shall be made good by the Surveyor-General at the expense of such local authority.

(8) All costs of and incidental to such re-survey, including any compensation paid or due under subsection (5), shall in the first instance be defrayed from moneys appropriated for the purpose by Act of Parliament and, if the area re-surveyed is situate within the jurisdiction of a local authority, the Minister may recover from that local authority such proportion of those costs as may have been agreed upon, prior to the commencement of the re-survey, between the Minister and that local authority or, failing such agreement, such proportion as the Minister may determine, and the amount so recovered by the Minister may be recovered by such local authority from the owners of land situate within the area re-surveyed, and any part of such costs not so recovered by the Minister from such local authority shall be recovered from such owners in such manner as may be prescribed.

(9) If the area re-surveyed is not situate within the jurisdiction of a local authority, the costs referred to in subsection (8), or such part thereof as the Minister deems equitable, shall be recovered from the owners of land situate within such area in such manner as may be prescribed.

(10) The amount payable by the owners of land in terms of subsection (8) or (9) shall be apportioned among all such owners in accordance with a schedule to be framed by the Surveyor-General.

## **31 Approval of new general plan**

(1) The Surveyor-General shall not approve a new general plan of a township or of a defined portion thereof, re-surveyed under section *thirty*, until a copy thereof has, during a period of six weeks, been available for inspection at his office and at the office of the local authority within whose jurisdiction the area re-surveyed is situate or, if there is no local authority, at the office of the district administrator of the district in which such area is situate, and until notice of his intention to approve the same has been published by the Surveyor-General in two consecutive issues of a statutory instrument and once every week during two consecutive weeks in a newspaper circulating in the district in which such area is situate, calling upon persons interested to lodge in writing at his office any objection they may have to the approval of the new general plan.

(2) If within four weeks from the date of the last publication of the said notice no such objection has been so lodged, the Surveyor-General may approve the new general plan, and upon such approval he shall, by notice in a

statutory instrument, declare that such general plan has been approved and publish the schedule referred to in subsection (10) of section *thirty*.

(3) If within such period of four weeks any objection to the new general plan has been so lodged, the provisions of subsections (7) and (8) of section *eighteen* shall apply, *mutatis mutandis*:

Provided that the Surveyor-General may approve and make use of a general plan or general plans of such portions of the area re-surveyed as are not affected by such objection, and generally may take any steps in regard to such portions as if no such objection had been lodged.

### **32 New general plan supersedes erroneous diagrams**

(1) Whenever a new general plan of a township or portion thereof has been approved under the provisions of section *thirty-one*, the Surveyor-General shall furnish the Registrar with a list of all pieces of land shown thereon, and thereafter no transfer or endorsement or any other act affecting the registration of any such piece of land or any portion thereof or undivided share therein shall be effected in the Deeds Registry until a diagram agreeing with such new general plan has been approved and the owner has taken such steps as may be necessary in accordance with the law relating to the registration of deeds, to procure the endorsement or rectification of his title deed.

(2) The owner of any piece of land may, on application to the Surveyor-General, obtain a new diagram representing such piece of land on production of a certificate by the appropriate authority to the effect that any amount due by such owner in terms of subsection (8) or (9) of section *thirty* in respect of such piece of land has been paid by him and, the Surveyor-General shall, on payment of the prescribed fees, cause such new diagram to be prepared from the date recorded on such new general plan.

## **PART VII**

### **BEACONS AND BOUNDARIES**

### **33 Beacons and boundaries lawfully established**

(1) Notwithstanding anything contained in any law, the position of any beacon or boundary deemed in terms of this section to have been lawfully established shall be unimpeachable, that is to say, it shall not be capable of being brought into question in any court and the Surveyor-General or Registrar shall not accept for filing or registration any document which shows any beacon or boundary inconsistent with such position.

(2) A beacon or boundary shall be deemed to have been lawfully established—

- (a) when its position is in agreement with the position thereof adopted in a re-survey and when a diagram based on such re-survey has been approved in terms of section *twenty-three*;
- (b) when its position is in agreement with the position thereof adopted in an original survey and when a diagram based on such original survey has been approved in terms of section *eighteen*;
- (c) when its position is in agreement with the position thereof adopted in a re-survey such as is referred to in—
  - (i) paragraph (a) of section *twenty-eight*; or
  - (ii) paragraph (c) of section *twenty-eight* if the provisions of paragraph (a) of that section have been complied with in regard to such beacon or boundary;and when a diagram based on such re-survey has been approved by the Surveyor-General and registered in the Deeds Registry;
- (d) when its position is in agreement with the position thereof adopted in a re-survey in terms of section *twenty-four* or *thirty* and when a general plan based on such re-survey has been approved;
- (e) when its position is in agreement with an order of the Court.

### **34 Manner and cost of erecting beacons for survey purposes**

(1) All beacons erected for the purpose or in consequence of any survey or re-survey of land under this Act or any enactment in force prior to the 1st May, 1933, shall be substantially and durably constructed under the supervision of, and in the position determined by, a land surveyor.

(2) The materials of which such beacons shall be composed and the manner in which they shall be erected shall be prescribed.

(3) Subject to the proviso to subsection (4) of section *thirty-six*, the cost of erecting such beacons, including the cost of determining their position by survey, when necessary, shall be borne by the owner of the land so surveyed or re-surveyed, who shall be entitled to recover from the owner or owners of contiguous land a proportionate share of the cost of determining the position of and erecting any joint beacon.

### **35 No poles to be placed near beacon**

Except with the consent of the Surveyor-General, it shall not be lawful for any person to place any fence post or fence anchor or any other erection, or to make any excavation, within one metre of any beacon or trigonometrical station, except in the case of stands or plots in a township, or plots of an area not exceeding ten hectares.

### **36 Repair or re-erection of beacons**

(1) Every owner of land shall maintain in proper order and repair, in accordance with regulations, any beacon or mark defining a corner point of such land, whether such beacon or mark was erected for the purpose of or in connection with a survey or re-survey of such land under this Act or any enactment in force prior to the 1st May, 1933, or for the purpose of or in connection with a survey or re-survey of any land contiguous thereto.

(2) If any such beacon or mark has not been maintained in proper order and repair, or has been removed or obliterated, the Surveyor-General may, by delivery or by transmission in a registered letter through the post, serve upon the owner of every piece of land whereof such beacon or mark forms a corner a notice in writing calling upon him to restore such beacon or mark to the prescribed condition, or to re-erect it in the prescribed manner, as the case may be:

Provided that the re-erection of any such removed or obliterated beacon or mark shall be carried out by a land surveyor.

(3) If such beacon or mark is not so restored or re-erected within six weeks of the date upon which any such notice was so delivered or posted, the Surveyor-General may cause such beacon or mark to be so restored or re-erected by a land surveyor. The Surveyor-General may, at the request of the owner, extend the period of six weeks.

(4) The owners of all such pieces of land shall be liable in equal shares for the costs of the repair, restoration or re-erection of any such beacon or mark, and the Surveyor-General may recover from every such owner his share of all costs incurred by the Surveyor-General under subsection (3):

Provided that if any such owner, or the servant or agent of any such owner, has damaged, removed or obliterated any such beacon or mark, the entire cost of the repair, restoration or re-erection of such beacon or mark shall be borne by such owner.

### **37 Offences and compensation in respect thereof**

(1) Any person who, without lawful excuse, the burden of proof whereof shall be upon him—

(a) alters, moves, disturbs or wilfully damages or destroys any beacon, bench mark, trigonometrical station, reference mark or town survey mark intended to be permanent and erected for the purpose of or in connection with any survey operations, whether such beacon, bench mark, trigonometrical station, reference mark or town survey mark is upon his own land or not;

or

(b) erects any beacon except under the supervision of a land surveyor, whether his intention is to alter the boundary line of any piece of land or to cause deception as to that boundary line or not;

shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment; and the removal or disturbance of any such beacon, bench mark, trigonometrical station, reference mark or town survey mark for the purpose of erecting another beacon, bench mark, trigonometrical station, reference mark or town survey mark in its place shall not constitute a lawful excuse under this section, unless a land surveyor personally superintends such removal or disturbance and the erection of such other beacon, bench mark, trigonometrical station, reference mark or town survey mark.

[Subsection as amended by section 4 of Act No. 22 of 2001]

(2) For the purpose of awarding compensation under the law relating to criminal procedure in respect of any damage caused by such offence, any beacon in connection with which any such offence was committed shall be deemed to be the property of any person upon whose land or upon a boundary of whose land such beacon was situate, and any bench mark, trigonometrical station, reference mark or town survey mark in connection with which any such offence was committed shall be deemed to be the property of the Surveyor-General.

### **38 Authority to remove beacons**

Any person who, for the purpose of carrying out any work which he may lawfully perform, desires to remove or disturb any beacon, bench mark, trigonometrical station, reference mark or town survey mark erected in connection with the survey of land, may apply to the Surveyor-General for authority to effect such removal or disturbance, and the Surveyor-General may thereupon, at the expense of such applicant, employ any land surveyor personally to effect or supervise the removal or disturbance and subsequent replacement, in accordance with regulations, of such beacon, bench mark, trigonometrical station, reference mark or town survey mark or the erection or placing of any other mark to indicate the position of such removed or disturbed beacon, bench mark, trigonometrical station, reference mark or town survey mark, in such manner as the Surveyor-General may direct.

PART VIII  
GENERAL PLANS AND DIAGRAMS

**39 Manner of preparing diagram**

Every general plan or diagram submitted for the approval of the Surveyor-General shall be prepared in accordance with regulations, and the numerical and other data recorded thereon shall be within the prescribed limits of consistency:

Provided that the Surveyor-General may approve a diagram prepared before the 1st May, 1933, in accordance with any law or usage in force at the time of such preparation.

**40 No registration of land without approved diagram**

No general plan or diagram of any piece of land shall be accepted in the Deeds Registry in connection with any registration therein of such land, unless such general plan or diagram has been approved by the Surveyor-General:

Provided that, in the event of such approval being contingent upon any act being subsequently performed in the Deeds Registry, the Surveyor-General may approve such general plan or diagram provisionally and, upon the performance of that act in the Deeds Registry, the Surveyor-General shall finally approve such general plan or diagram when submitted to him.

**41 Diagram must be signed by surveyor**

No general plan or diagram shall be approved by the Surveyor-General unless it is prepared under the direction of and signed by a land surveyor:

Provided that the Surveyor-General may sign and approve a diagram framed by his direction from a general plan or from a diagram or diagrams filed in his office or registered in the Deeds Registry, without the signature thereon of the land surveyor or land surveyors who signed the original general plan or diagram or diagrams, if he is or they are not available or unreasonably refuse to sign the diagram so framed.

**42 Consolidation of land**

(1) Where two or more pieces of land are to be consolidated and one or more of such pieces of land is—

- (a) unalienated State land, or land which has been alienated and has been or is to be re-acquired by the State, the Minister responsible for the administration of such land shall notify the Surveyor-General who shall instruct a land surveyor to prepare the necessary consolidated title diagram;
- (b) owned by and falls within the jurisdiction of an authority which is a local planning authority for the purposes of Part V of the Planning Act, the local planning authority shall instruct a land surveyor to prepare the necessary consolidated title diagram and shall forward a copy of such instruction to the Surveyor-General and the Registrar of Deeds.

(2) Where two or more pieces of land are to be consolidated and such pieces of land are not land referred to in paragraph (a) or (b) of subsection (1), the owner shall, after obtaining such consolidation permit as may be required in terms of section 40 of the Planning Act, instruct a land surveyor to prepare the consolidated title diagram.

(3) The Surveyor-General shall not approve the survey records or diagrams relating to the consolidation of any land unless—

- (a) the diagram complies with the consolidation permit concerned, if any; and
- (b) the period during which an appeal in connection with the consolidation permit concerned, if any, could have been lodged in terms of section 45 of the Planning Act has expired or, if an appeal has been so lodged, the appeal has been finally determined.

**43 Approval of diagrams for consolidated title**

(1) For the purpose of consolidating two or more pieces of land the Surveyor-General may approve a diagram which has been compiled by a land surveyor from two or more diagrams representing the land concerned:

Provided that, unless the Surveyor-General directs to the contrary, no re-survey shall be necessary in respect of such diagram.

(2) Upon the approval of a consolidated title diagram, the Surveyor-General shall notify the Registrar of Deeds and the local planning authority of his approval.

(3) Upon being notified by the Surveyor-General in terms of subsection (2) the Registrar of Deeds shall delete from the relevant title deed any condition which conflicts with the provisions of the consolidation permit, if any, forwarded to him by the local planning authority.

(4) The several diagrams forming the component parts of a consolidated title diagram shall, upon the issue of the certificate of consolidated title, be transmitted by the Registrar of Deeds to the Surveyor-General for endorsement.

**44 Registrar and owner to be informed of incorrect diagram**

If the Surveyor-General is satisfied that the diagram of any piece of land entirely fails to represent such land, or misrepresents it to such an extent that damage or loss might result to any person who is or may become inter-

ested therein, he may give notice of such fact to the Registrar and to the owner of such piece of land, and thereafter no further registration of such piece of land or of any portion thereof or undivided share therein shall be effected in the Deeds Registry until a new diagram thereof has been approved and the owner has taken such steps as may be necessary, in accordance with the law relating to the registration of deeds, to procure the endorsement or rectification of his title deed:

Provided that if the Surveyor-General is unaware of the address of the owner of such piece of land, a publication of such notice in one issue of a statutory instrument and once every week during two consecutive weeks in a newspaper circulating in the district within which such piece of land is situate shall be deemed to be sufficient notice to such owner for the purpose of this section.

#### **45 Correction of general plan or diagram**

A general plan or diagram may be amended by the Surveyor-General to correct an error in the numerical data, figure or wording thereon:

Provided that where such correction alters the extent of the land represented by any diagram registered in the Deeds Registry, the Surveyor-General shall give notice of such correction to the Registrar and to the owner of such land and thereafter no further registration affecting such piece of land or any portion thereof or undivided share therein shall be effected in the Deeds Registry until the owner has taken such steps as may be necessary in accordance with the law relating to the registration of deeds to procure the endorsement or rectification of his title deed.

#### **46 Cancellation or amendment of approved diagram or general diagram**

(1) An approved diagram may, on the application of the owner of the land represented thereon, be cancelled or amended by the Surveyor-General before it is registered in the Deeds Registry.

(2) Subject to section *forty-seven*, a general plan or portion thereof representing unregistered portions of land may, on the application of the owner of the whole or remaining extent of the land represented thereon, be cancelled or amended by the Surveyor-General:

Provided that—

- (i) where the whole of the area proposed to be cancelled is a public place and proof of closure thereof in accordance with the provisions of any enactment is produced to the Surveyor-General, it shall not be necessary to comply with the provisions of section *forty-seven*;
- (ii) in the case of State land, the application shall, notwithstanding section *four*, be made by the Secretary to the Ministry responsible for the administration of such land.

(3) Where the Surveyor-General has, in accordance with this section, cancelled or amended an approved diagram or a general plan or portion of a general plan, he shall notify the local planning authority in writing of such cancellation or amendment.

#### **47 Cancellation or amendment of general plan of township**

(1) A person (hereinafter called the applicant) who intends to make an application referred to in section *forty-six* for the cancellation or amendment of the general plan or portion thereof of a township shall—

- (a) cause a notice in a form approved by the Surveyor-General containing particulars of the proposed cancellation or amendment to be published once in each of two consecutive weeks in a newspaper circulating in the district in which the township is situated and in an issue of a statutory instrument, calling for objections to the proposed cancellation or amendment to be lodged with the Surveyor-General within twenty-one days of the final publication of the notice; and
- (b) cause a copy of the notice referred to in paragraph (a) to be served on the owners and registered lessees of all land abutting on the area to be cancelled or amended; and
- (c) where any public place is concerned, obtain the consent of the local authority, if any, within whose area the public place is situated to the proposed cancellation or amendment; and
- (d) obtain the consent of the Minister in terms of subsection (3), subject to subsection (4) or (5), to the proposed cancellation or amendment.

(2) An objection referred to in paragraph (a) of subsection (1) shall—

- (a) be in writing;
- (b) state the grounds of objection;
- (c) state the name and address of the objector.

(3) Where an application in accordance with this section is made to the Minister for his consent to the cancellation or amendment of the general plan or portion thereof of a township, the Minister, after consultation with the Minister responsible for local government and consideration of all objections lodged in terms of paragraph (a) of subsection (1), shall—

- (a) decline to give his consent; or
- (b) give his consent; or
- (c) give his consent subject to such conditions as he may deem fit to impose;

and give notice of his decision—

- (i) in a statutory instrument; and
- (ii) in writing to the applicant and to each person who has lodged an objection in terms of paragraph (a) of subsection (1).

(4) If the applicant or any person who has lodged an objection in terms of paragraph (a) of subsection (1) is aggrieved by a decision of the Minister in terms of subsection (3), he may, within twenty-eight days of the notification of the decision in a statutory instrument, appeal against such decision to the Administrative Court constituted in terms of section 59 of the Planning Act which may make such order in the matter as it sees fit.

(5) Where an appeal has been lodged in terms of subsection (4), section 61 of the Planning Act shall apply, *mutatis mutandis*, to any order made by the Administrative Court in terms of subsection (4).

(6) Where a general plan or portion thereof of a township is cancelled or amended in accordance with this section the Surveyor-General shall—

- (a) make such cancellation or amendment in terms of this section; and
- (b) inform the Registrar who shall make such alterations, amendments or endorsements on the relevant title deeds as may be necessary.

#### **48 Surveyor-General may require submission of diagram**

(1) The Surveyor-General may require a person who is in possession of an approved diagram to submit that diagram to him for the purposes of cancellation, alteration, amendment or endorsement thereof or thereto in terms of the powers conferred upon the Surveyor-General by any enactment.

(2) Where an approved diagram has been lost, mutilated or destroyed the Surveyor-General may—

- (a) where the diagram is required for alteration, amendment or endorsement, require the owner of the land represented by the diagram to cause a copy thereof to be prepared and submitted to the Surveyor-General for certification as a true copy;
- (b) where the diagram is required for cancellation, accept an affidavit deposing to the loss, mutilation or destruction thereof.

(3) Where a copy of a diagram has been certified as a true copy by the Surveyor-General in terms of paragraph (a) of subsection (2) it shall be deemed to be the original.

(4) Any person who fails to comply with any requirement made of him by the Surveyor-General in terms of this section shall be guilty of an offence and liable to a fine not exceeding level three.

[Subsection as amended by section 4 of Act No. 22 of 2001]

#### **49 Surveyor-General may dispense with diagrams**

(1) Where the Surveyor-General approves a general plan, he may dispense with diagrams of some or all of the pieces of land represented on that general plan.

(2) Where the Surveyor-General dispenses with a diagram in terms of subsection (1), he shall issue a certificate to the Registrar of Deeds setting out, in respect of the land to which the certificate relates—

- (a) its area; and
- (b) its description; and
- (c) the details of any servitude represented on the general plan, which is to be registered;
- (d) details of any such land which has been set aside for road or public purposes in terms of section 41 of the Planning Act; and
- (e) a reference to the general plan.

(3) Where, in terms of subsection (1) a diagram has been dispensed with in respect of a certain piece of land, reference to “diagram” in this Act shall be construed as reference to the general plan which represents such piece of land.

### **PART IX**

#### **MISCELLANEOUS**

#### **50 Powers of entry upon land**

(1) The Surveyor-General, any person generally or specially deputed by the Surveyor-General, any land surveyor and any assistant may, for the purpose of performing any duties imposed by or in pursuance of this Act or any other enactment—

- (a) enter upon any land with such assistants, helpers or servants, animals, vehicles, appliances and instruments as are necessary for or incidental to the performance of those duties; and
- (b) place or erect any permanent beacon, bench mark, reference mark, town survey mark or trigonometrical station, or any temporary flag, signal or other mark upon such land; and
- (c) make use of any natural material upon which no work has been expended, and, except within a township, of any water, whether conserved or not, found upon or in such land; and
- (d) cut any vegetation growing wild in the vicinity of any such beacon, mark, trigonometrical station, flag or signal for the purpose of enabling observations to be made thereto or therefrom; and
- (e) enter at all reasonable hours any building or enclosed place:

Provided that—

- (i) reasonable notice of the intention to exercise any of the powers conferred by this section shall be given to the owner or occupier of such land, except when such powers are exercised in carrying out any provision of section *thirty*;
- (ii) as little damage and inconvenience as possible shall be caused by the exercise of any of the powers conferred by this subsection, and such owner or occupier shall be entitled to compensation for any damage caused to or in any building or enclosed place and for any unreasonable damage caused to any other property belonging to such owner or occupier.

(2) Any person who in any way whatsoever prevents, obstructs or impedes the exercise of any of the powers conferred by subsection (1), or who moves, obscures or destroys any flag, peg, signal or other mark of a temporary nature lawfully placed on such land in connection with any surveying operations, before the completion of such operations, shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act No. 22 of 2001]

**51 Acquisition of servitudes**

(1) The Minister may—

- (a) subject to subsection (2), require that a servitude in favour of the State protecting any permanent beacon, bench mark, reference mark, town survey mark or trigonometrical station, or ensuring an unobstructed view from such beacon, mark or station to some other such beacon, mark or station be granted to the State by the owner of the land upon or near which such beacon, mark or station is situated;
- (b) cause a servitude referred to in paragraph (a) to be registered against the title deed of any land referred to in that paragraph.

(2) Parts III, V and VIII of the Land Acquisition Act [*Chapter 20:10*] shall apply, *mutatis mutandis*, to the acquisition by the Minister of a servitude in terms of paragraph (a) of subsection (1).

**SCHEDULE (Section 18)**

FORM

*Agreement as to Beacons and Boundaries*

We, the undersigned (a)

- 1 owner of (b)
- 2 „ „ „
- 3 „ „ „
- 4 „ „ „
- 5 „ „ „

and \_\_\_\_\_ owner of the piece of land under survey called \_\_\_\_\_, certify that we have inspected the beacons and boundaries common to our said properties as adopted in the survey of the last-named piece of land by Mr. Surveyor.

And we declare that we agree and consent to the positions of the beacons and boundaries as represented and described on the figure appearing on the opposite page, and consent to a diagram being framed in accordance therewith.

	Beacons and boundaries indicated on	
Signature (c)	figure on opposite page and	Witnesses to signa-
and (d)	hereby agreed to (e)	tures (f)

1 .  
21 .  
11 .  
21 .  
11 .  
21 .  
11 .  
21 .

NOTES.—

- (a) Names in full (these should be clearly written in capital letters).
- (b) Names of contiguous properties.
- (c) Only one signature to be written within each compartment.

- (d) Signatures on behalf of estates, companies, municipalities or similar bodies must be duly authenticated by attachment of letters of administration, certified copies of resolutions of boards or councils or other similar documents. Signatures or powers of attorney must be accompanied by the actual powers or certified copies. Original documents will be returned after being noted hereon by the Surveyor-General.
- (e) Where a river forms the boundary the left bank, right bank or middle of the river, as the case may be, must be indicated and signed for.
- (f) Two witnesses are required to each signature.

The page containing the figure referred to in the agreement to be headed: Description of Beacons and Figure Representing Land under Survey and Common Beacons and Boundaries of Contiguous Properties; and at the foot the following note to be made—

NOTE.—This page must be signed by the surveyor performing the survey, and the beacons and boundaries must be designated on the figure so as to correspond with the beacons and boundaries agreed to on the opposite page.