



## The Lands Act of 1995 (simplified version)<sup>1</sup>

The Lands Act of 1995 is divided into three main parts: land administration in Zambia, land development fund and the Lands Tribunal.

The Act was put into place by Parliament on September 13, 1995.

### I. Preliminary

This section contains definitions of land terms.

For example, *land* is known as any interest in land apart from mining rights as defined by the Mines and Minerals Act.

### II. Land Administration

(3.1) All land in Zambia is held by the President forever on behalf of all Zambians.

Therefore:

(3.2) The President can give land to any Zambian,

(3.3) The President can only give land to any non-Zambian if:

- The non-Zambian is a permanent resident of Zambia
- The non-Zambian is an investor
- The President writes a letter to the non-Zambian granting them land
- The non-Zambian represents a not-for-profit, charitable or religious organization
- The non-Zambian inherits land in a will
- The non-Zambian is given a concession by the National Parks and Wildlife Act

(3.4) However the President cannot give *customary land* away to either a Zambian or a Non Zambian unless he/she:

- Takes the customary law in that area into account,
- Consults the Local Chief, local authority and if the land is in a game Management Area, the Director of the National Parks and Wildlife Service, (unless the person applying for this land has already done so)
- Consults those currently occupying/using the land in question

(3.5) The land given out by the President must be used for the benefit of all Zambians.

(3.6) The maximum leasehold the President can give is for 99 years unless:

- It is in the best interest of the country

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<sup>1</sup> This document has been produced by the Zambia Land Alliance. In case there is any misinterpretation of any part of the Lands Act of 1995 it is not intentional. As such, the reader should refer to the exact text within the Lands Act of 1995 for any clarification.

OR

- It is approved by two-thirds majority of the National Assembly

(3.7) To give out land, the President must also:

- Control over-development of the nation's land and preserve the nation's resources
- Set aside land for game management areas, forests and national parks

(4.1) The President cannot give land without receiving money and/or ground rent except where the land is going to be used for a "public purpose."

(4.2) "Public purpose" is defined as:

- For Government use only or benefit of the Zambian people
- Sanitary improvements of any kind
- Construction of a new settlement or township
- Airport and airfields
- Railway stations and tracks
- Hydro-electric or other power/electricity generating plants
- Preservation areas for forest produce, water and other natural resources

(5.1) Without the President's approval, a person cannot:

- Sell;
- Transfer or
- Assign land.

Therefore a person wishing to do either of the above must first apply to the President for his approval. If the President doesn't reply to an application asking for approval within 45 days of the letter being submitted then the approval is deemed to be *automatically granted*. Also the President has to give reasons for refusing to transfer or sell land. If the person does not agree with the President's decision, he/she can appeal to the Lands Tribunal but must do so within 30 days of the President's refusal.

### **Councils**

(6.1) Land previously held by the Council will now be held by the President. Therefore anyone who holds a lease from the Council shall be deemed to hold that lease from the President on the same terms and conditions – and hence should pay ground rent to the President, rather than the Council. For a fee, the Lands Registrar may alter the Lands Register to this effect.

(6.3) However this doesn't apply to the land that District Councils use for their offices or for any land declared an *Improvement Area* or a *Statutory Housing Area*.

### **Customary Land**

(7.1) Every piece of land in a *customary area* is recognized by the Government and will continue to be customary land and no other law can limit a citizen's right to hold land under the customary setup.

*Customary area* is defined as the areas described in the Schedules to the Zambia (State Lands and Reserves) Orders, 1928 to 1964 and the Zambia (Trust Land) Orders, 1947 to 1964;

(8.1) Any person who holds land under customary tenure may transfer it to leasehold (not longer than a 99-year lease) by:

- A grant of lease by the President
- Any other title that the President may grant
- Any other law

(8.2) Transfer of land from customary to statutory land can only take place after the approval of the chief, the Local Council, and (if the land is in a Game Management Area) the Director of the National Parks and Wildlife Service. An exact plan of the land to be converted needs to be created. A person switching customary land to leasehold title is not required to make a payment to the President.

(8.3) No title, other than a right to use and occupy land under customary tenure shall be valid unless it is approved by the chief and the local authorities and a lease is given by the President.

### **Leasehold Land**

(9.1) A person cannot by law occupy vacant land without approval; if they do they are defenseless to eviction.

(10.1) The President can renew a lease when it ends but he/she cannot make the new lease for more than 99-years. If the President doesn't renew an ending lease, the person who owned the lease is owed money for the development and improvements to the land made while he/she owned it.

(11.1) Any benefits, responsibilities or rights of re-entry specified under the lease are attached to the *land* itself. Therefore whoever owns this land will have to follow these responsibilities and will have the benefit of any rights – whether the land is inherited, sold, given or sub-divided. Therefore if the land is sub-divided, the benefits and obligations attached to that particular section of the land will pass to its new owner. But the person will have to pay ground rent for the land covered by the lease as a whole.

Therefore once a person gets a piece of land on lease he/she is held responsible to pay ground rent and do whatever the lease says. The individual must also register their ownership of the lease on the Lands Register at the Ministry of Lands.

(12.1) Where a person breaks the conditions of a lease, the Ministry of Lands (acting on behalf of the President) may contact that person and tell them of their intention to take away the land. The person will then have three months to explain to the Ministry why they have not done what the lease says. If they fail to give a good reason, then the Ministry of Lands may enter a Certificate of Re-entry on their title, meaning that their lease is cancelled and the land is taken away by the President.

If the former owner is unhappy with the decision by the President to take away the land, they have 30 days to appeal to the Lands Tribunal.

If the ground rent is not paid after the deadline, the renter is liable to pay a penalty of 25% of the rent due.

### **PART III. Land Development Fund**

(16.1) The fund's money consists of:

- A. Money Parliament contributes to the fund
- B. 50% of ground rent collected from all land held under leasehold
- C. 75% of the fee paid when land is allocated by the President

(18.2) The fund's monies are to be put towards the opening up of new areas for development of land. (18.1) Also, local District Councils may apply to receive money from this fund for development of land in their areas. (17) The fund will be run by the Ministry of Finance and National Planning and Ministry of Lands who are responsible to report to Parliament every year on how the money was used.

### **PART IV. Lands Tribunal**

(20.2) The Lands Act establishes the Lands Tribunal, to consist of (as appointed by the Minister):

- Chairperson (qualified to be a judge of the High Court, who runs the sessions of the Tribunal)
- Deputy Chairman (a qualified advocate from the Attorney General's office/High Court judge)
- Town planner
- Land surveyor
- Land valuation surveyor
- Not more than three persons from the public/private sectors

(20.3) The first two members of the Tribunal are appointed after a meeting with the Judicial Service Commission. (21) The Tribunal can also appoint (in addition to the above list) any person with a background in land, agriculture, commerce or other relevant expertise that could assist the Tribunal.

(22) The Tribunal can also hear complaints on:

- Any dispute relating to land
- Any dispute relating to compensation to be paid under the Lands Act,
- Land rights

As well as:

- An appeal against the President's decision to refuse consent to sell, transfer or assign leasehold land
- An appeal against the President's decision to issue a Certificate of Re-entry on the title of leasehold land
- An appeal against any other decision or direction of the President, the Minister of Lands or the Lands Registrar

The Tribunal can inquire into and issue judgment on these matters and make orders for compensation as appropriate. (Note: The Tribunal does not have any say over planning permission or the rating of properties, this is dealt with by the Town and Country Planning Tribunal).

(25) Any person can take a case to the Tribunal and represent themselves. The normal rules of evidence do not apply to the Lands Tribunal. Also, a petitioner can hire a lawyer to represent them at the Lands Tribunal; however he/she will have to pay for the lawyer.

(23) When hearing a case, the Tribunal must have five members present, which must always include the Chairperson or Deputy Chairperson. In addition, any case that is ruled on by the Tribunal must be a majority ruling. Any member of the Tribunal who has a direct/ indirect personal interest in the case being heard is not allowed to sit on the ruling board of that case.

(24) The Chief Justice may make additional rules about how the Tribunal works.

(29) If a person does not agree with the Tribunal's decision, he/she has 30 days to appeal to the Supreme Court.

(27) The expenses of the Tribunal are paid by Parliament. (26) However a petitioner who brings a minor complaint to the Lands Tribunal risks being required to pay the cost of the Tribunal and his opponent's costs.

### **General Provisions**

The Act goes on to give power to the Minister to make further laws providing for the details of:

- 1.) The terms and conditions of state leases
- 2.) The payment of ground rent
- 3.) The conversion of customary land to leasehold,
- 4.) The rules and administration of the Lands Tribunal,
- 5.) The administration of the Lands Development Fund.
- 6.) Any other matter dealt with under the Act as required.

The Act also repeals:

- 1.) The Land (Conversion of Titles) Act.
- 2.) The Zambia (State Lands and Reserves) Orders, 1928 to 1964.
- 3.) The Zambia (Trust Land) Orders, 1947 to 1964.
- 4.) The Zambia (Gwembe District) Orders, 1959 to 1964.
- 5.) The Western Province (Land and Miscellaneous Provisions) Act, 1970.