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Land Survey Act, 1961

Act 46 of 1961

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Land Survey Act, 1961

Act 46 of 1961

Commenced on 16 June 1961

[This is the version of this document at 1 December 1998.]

An Act to provide for the survey of land and matters incidental thereto.

Part I – Preliminary

1. Short title

This Act shall be cited as the Land Survey Act, 1961.

2. Interpretation

In this Act unless the context otherwise requires—

“**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;

“**Court**” means the High Court;

“**diagram**” means a document, containing geometrical, numerical and verbal representations of a piece of land which has been signed by a person recognised, under any law then in force, as a land surveyor, or which has been approved or certified by the Surveyor-General, or other officer empowered under any law 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 commencement of this Act, been accepted as a diagram in the Deeds Office or Surveyor-General's office;

“**general plan**” means a plan which, representing the relative positions and dimensions of two or more pieces of land, has been signed by a person recognised, under any law 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 law 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 commencement of this Act, been accepted for registration in the Deeds Office or Surveyor-General's office;

“**land surveyor**” means a person recognised as such for the purposes of this Act;

“**lot**” means every piece of land registered as an erf, lot, plot or stand in the Deeds Office, and includes a stand or lot forming a portion of a piece of land laid out as, but not proclaimed, a township or village; or a portion of such erf, stand or lot;

“**Minister**” means the Minister for Works, Power and Communications;

“**owner**” in relation to immovable property, means the person registered in the Deeds Office as the owner of such immovable property, and includes the liquidator of a company or the representative recognised 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 and includes the person in whom the ownership of land is vested by statute:

Provided that such liquidator or representative shall act within the powers conferred on him by law;

“**public place**” includes any street, road, thoroughfare, sanitary passage, square, park or open space shown on a general plan of a township, filed in the Deeds Office or Surveyor-General's office, and all land

(other than lots 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 lots in the township have a common right;

“**reference mark**” means a survey mark of permanent construction placed in a township, village or settlement to form one of a system of such marks for the purpose of basing the survey of the pieces of land in such township, village or settlement thereon or connecting such survey thereto;

“**registrar**” means the officer in charge of the Deeds Office;

“**registration**” in relation to any land, means registration of any real right in or to such land in accordance with the provisions of the law relating to the registration of deeds; and “registered” shall have a corresponding meaning;

“**trigonometrical station**” means a station of the primary, secondary, or tertiary triangulation, according to the classification generally recognised in surveying in the Republic of South Africa;

“**township, village or settlement**” means a group of pieces of land which are used for residential, industrial or similar purposes or are intended or destined or likely to be used for any such purpose.

Part II – Surveyor-General and surveyors

3. Surveyor-General

- (1) There shall be a Surveyor-General for Swaziland who shall be a person appointed by the Minister with the concurrence of the Prime Minister, and who shall, subject to this Act—
 - (a) supervise and control the survey and charting of land for purposes of registration in the Deeds Office;
 - (b) take charge of and preserve all records appertaining to surveys of land;
 - (c) examine all general plans and diagrams of surveys of land before any registration of such land is effected in the Deeds Office, and approve all such plans and diagrams if he is satisfied that such surveys have been carried out in such a manner as to insure 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;
 - (d) define on the diagram of any piece of land the geometrical figure representing any portion of such land—
 - (i) the transfer whereof has been registered in the Deeds Office, and deduct the numerical extent of such portion;
 - (ii) for which a certificate of township title or a certificate of registered title has been issued under any law relating to the registration of deeds, and deduct the numerical extent of such portion;
 - (e) cancel or amend in accordance with any law any general plan or diagram found to be incorrect;
 - (f) at the request of any person and on payment by such person of such fees as may be prescribed, prepare, certify and issue 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 Office.
- [Amended K.O-I-C. 35/1973]*
- (2) Any officer employed in the Surveyor-General's office who is a land surveyor may, if deputed thereto by the Surveyor-General, do any act or thing which may lawfully be done under this Act or any other law by the Surveyor-General.

- (3) The Surveyor-General's office shall from the 1st July, 1973 be situate in Swaziland.

[Amended K.O-I-C. 35/1973]

4. Recognition as land surveyor

- (1) No person shall practise as a land surveyor unless he is registered as such in accordance with this section, and has paid a registration fee of ten emalangeni.
- (2) The Permanent Secretary for Works, Power and Communications shall cause a register of persons admitted to practise as land surveyors to be kept.
- (3) The qualification for registration as a land surveyor shall be prescribed by the Minister by notice in the *Gazette*.
- (4) Any person desiring to be so registered shall make application in writing to the Permanent Secretary for Works, Power and Communications, and provide proof that he possesses the qualification required by subsection (3).

5. Duties of surveyor and non-liability of Government

- (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;
- (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;
- (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 commencement of this Act for the purpose of, or in connection with, any registration of land in the Deeds Office, 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 commencement 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 commencement of this Act 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) The Surveyor-General shall examine all such records as are mentioned in subsection (1)(c) before approving any general plan or diagram to which such records refer.
- (3) Neither the Government 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 Office.

6. Suspension or cancellation of right to practise as surveyor

If a land surveyor—

- (a) signs, except as provided in [section 25\(1\)](#), a general plan or a diagram of any piece of land in respect of which he has not carried out or personally supervised the whole of the survey and field operations, and carefully examined, and satisfied himself of the correctness of the entries in any field book, and of the calculations, working plans and other records in connection therewith which may have been made by any other person;

- (b) signs a defective general plan or diagram knowing it to be defective;
- (c) repeatedly performs, through negligence or incompetence, defective surveys or surveys to which adequate checks have not been applied;
- (d) makes 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;
- (e) supplies erroneous information to the Surveyor-General in connection with any survey, boundaries or beacons of land knowing it to be erroneous; or
- (f) is guilty of such improper conduct as renders him unfit to practise as a land surveyor;

the Permanent Secretary for Works, Power and Communication may apply to the Court by way of motion for the suspension or cancellation of the right of such land surveyor to practise as such in Swaziland, and the Court may thereupon suspend or cancel such right or make such other order as it thinks fit, and the Permanent Secretary for Works, Power and Communications shall cause to be endorsed on the register the fact of such suspension or cancellation, or the terms of any such order.

7. Unauthorised 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 Office or referred to in any manner whatsoever in any other document to be so filed or registered;
 - (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 Office; or
 - (c) hold himself out in any manner whatever as a land surveyor.
- (2) Any person who contravenes this section shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred emalangeni or, in default of payment thereof, to imprisonment for a period not exceeding six months.

Part III – Surveys and resurveys

8. Replacing incorrect diagram by new diagram after resurvey (Schedule)

- (1) If it is alleged that the diagram or diagrams of any land registered or filed in the Deeds Office or Surveyor-General's office (in this section referred to as the existing diagram) 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 and the approval in lieu thereof of a new diagram of such land.
- (2) A land surveyor performing the resurvey of such land for the purpose of preparing such new diagram shall deliver or transmit to the Surveyor-General a report for the purpose of being filed of record in his office, containing such information and illustrated by such explanatory plan as the land surveyor may deem useful or the Surveyor-General may require.
- (3) No new diagram of any such piece of land shall be approved unless—
 - (a) in case such piece of land is surrounded by, or situate within the prescribed distance from, any trigonometrical station, 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 lot;

- (b) an agreement as far as practicable in the form set forth 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 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 has been lodged with the Surveyor-General:

Provided that, in respect of any beacon or boundary which under this Act or any other law is deemed to have been lawfully established or in respect of any beacon or boundary common to such piece of land and to unalienated Government land or to land situate outside Swaziland, no such agreement shall be necessary; and

Provided further that, 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) such land surveyor has lodged with the Surveyor-General a document certifying 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.
- (4) 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 Office based upon such diagram.
- (5) If any such contiguous owner fails to sign the agreement within a period of one week 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 if such contiguous owner is outside Swaziland when so called upon to sign such agreement and when so served with such notice, such periods of one week and one month shall be extended to two months and three months respectively; and
- Provided further that if the address of any such contiguous owner cannot be ascertained by diligent enquiries, the publication of such notice in three consecutive issues of the *Gazette* and once every week during three 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 service of such notice for the purposes of this subsection.
- (6) The service of the notice referred to in subsection (5) shall, subject to the second proviso 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.
- (7) The Surveyor-General shall approve such diagram if—
- (a) a contiguous owner has failed to sign the agreement;
- (b) the Surveyor-General has been satisfied by such proof as he may deem necessary that subsection (5) has been complied with;
- (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 (5); and

- (d) the other requirements of this Act in regard to the survey of such piece of land and the diagram thereof have been complied with.
- (8) If any contiguous owner has failed to sign the agreement and has, within the period mentioned in any such notice referred to in subsection (5), 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 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 to determine such matters and costs, and his award thereon shall thereupon be final and conclusive.
- (9) If any person who has lodged any such objection fails so to undertake or if he has undertaken but any other person affected by such objection has failed so to undertake, the objector may, if he was in Swaziland upon the date upon which he was called upon to accept the award of such arbitrator, within one month, and if he was not in Swaziland on such date, within three months after such date, institute an action in the Court to determine any such matter, or if the Government is one of the persons affected by such objection, proceed to arbitration in respect of any such matter, under any other law relating to the settlement of disputes 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.
- (10) Upon approving such new diagram, the Surveyor-General shall endorse the existing diagram or diagrams as having been superseded by the new diagram, and inform the registrar thereof, and thereafter no act or endorsement affecting the registration of such land shall be effected in the Deeds Office until a certificate of amended title to such land has been issued, or an endorsement has been made on the existing title deed or title deeds in accordance with the law relating to the registration of deeds, giving effect to such supersession.
- (11) If it appears from such resurvey that an existing diagram is correct, the Surveyor-General if he is satisfied that the provisions of this section in regard to such beacons and boundaries, and all matters connected therewith, have been complied with, shall endorse thereon a certificate that the land represented thereby has been resurveyed 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 this section.

9. Rectification of title deeds after determination of boundary dispute

- (1) If 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 an arbitrator, 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, either to procure a certificate of amended title to such land, or to cause an endorsement to be made on the existing title deed thereof, as the Surveyor-General may direct:
- Provided that such certificate or endorsement 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 certificate or endorsement, 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 amended title or an endorsement on 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 Office until an amended title thereto has been issued or such endorsement has been made.

10. Endorsement of diagrams when correct position of beacon or boundary has been determined and agreed upon

- (1) If doubt or dispute has arisen in regard to any beacon or boundary of a piece of land the diagram of which is registered in the Deeds Office and the position of the beacon or boundary in question has been determined by survey and such position accepted by agreement between the owners concerned, the Surveyor-General shall cause an endorsement to be made on the relative diagrams to the effect that the position of the beacon or boundary has been consented to by all contiguous owners:

Provided that [section 8](#) is *mutatis mutandis* complied with in all respects in regard to the survey and to all matters in connection therewith as if the beacon or boundary were a beacon or boundary of a piece of land referred to in [section 8](#).

- (2) Subsection (1) shall also apply in the case of—
- (a) a beacon which is erected by a land surveyor to replace a beacon which has been destroyed or disturbed; and
 - (b) a curvilinear boundary where two or more opinions exist as to the correct position on the ground of such boundary.
- (3) If a boundary between two pieces of land is ill-defined or unsatisfactory and, in the opinion of the Surveyor-General, it is in the interest of all parties concerned that a correct boundary be substituted for it, the Surveyor-General shall require such last-named boundary to be adopted in a survey for registration purposes in lieu of such first-named boundary:

Provided that he is satisfied that it is so close thereto that no material alteration in the area of either piece of land will take place by reason of the substitution; and

Provided further that the owners of all properties contiguous to that boundary have signed an agreement as nearly as practicable in accordance with the form contained in the Schedule.

11. Rules for arbitrators

In deciding what are the true and correct beacons or boundaries common to contiguous pieces of land an arbitrator appointed under this Act shall take into consideration the particular circumstances of each 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 recognised 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 shall 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.

12. Division diagrams

- (1) Whenever the owner of a surveyed piece of land desires to divide it and to effect separate registration of one or more portions of such land in the Deeds Office, each of the portions to be so registered shall be surveyed and a diagram thereof shall be submitted for examination to the Surveyor-General who shall approve every such diagram prepared in accordance with this Act and the regulations:

Provided that if it is desired to effect a separate registration of the remaining extent of such piece of land, it shall not be compulsory to submit a diagram of such remaining extent.

- (2) Upon separate registration of any portion being effected, the Surveyor-General shall define the geometrical figure representing such portion on the copy of the diagram of the land so divided, belonging to the owner of such remaining extent, and on the copy of such diagram registered in the Deeds Office or on that filed in the office of the Surveyor-General and shall 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.

13. Rectification of errors ascertained by resurvey or division survey

If on the resurvey of any land or the survey of land for the purpose of division (in this section also referred to as the resurvey), the numerical data derived from the resurvey 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 if —

- (a) the difference is beyond the prescribed limit of error, approve a diagram prepared in accordance with the resurvey as if the piece of land represented on the said diagram were a piece of land referred to in [section 8](#):

Provided that [section 8](#) is *mutatis mutandis* complied with in regard thereto and to all matters in connection therewith; and

Provided further that every piece of land possessing a beacon or boundary which 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 purpose of [section 8\(3\)\(b\)](#);

- (b) the difference is not beyond the prescribed limit of error and he is satisfied that the resurvey 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 resurvey;
- (c) 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 resurvey, 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 in his discretion approve the diagram without compliance with [section 8\(3\)\(b\)](#) in respect of any beacon or boundary in regard to which he is satisfied 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, he shall endorse the existing diagram as having been superseded by the new diagram and inform the registrar thereof and thereafter no act or endorsement affecting the registration of such land shall be effected in a deeds registry until a certificate of amended title to such land has been issued or an endorsement has been made giving effect

to such supersession on the existing title deed in accordance with the law relating to the registration of deeds.

14. Diagram of exact share of land

If 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 share of the total area of such surveyed piece of land until he is satisfied that such total area has been ascertained by a resurvey of the whole of such piece of land.

15. Alteration of general plans

(1) Any general plan of a township, village or settlement filed in a Surveyor-General's office or registered in the Deeds Office may be altered or amended by the Surveyor-General for the purpose of rectifying errors in survey.

(2) Any such general plan may with the consent of the Minister and subject to such conditions as he may impose, be altered or amended by the Surveyor-General for any other reason:

Provided that, where any such alteration or amendment affects any public place within the area of jurisdiction of a local authority which is authorized by law to close or partially close any public place, the Surveyor-General shall, prior to making such alteration or amendment, be furnished with a certificate signed by the Minister to the effect that the provisions of the law relating to the permanent closing of any public place or portion thereof have been complied with; and

Provided further that, where such alteration or amendment has the effect of creating a new public place, the Surveyor-General shall not make such alteration or amendment without the consent of such local authority.

- (3) In the event of any public place being affected by any such alteration or amendment within a township, village or settlement for which no local authority has been established or within a township, village or settlement whose local authority is not authorized by law to close any public place or portion thereof, the Surveyor-General shall, prior to effecting such alteration or amendment, publish a notice, containing particulars of such proposed alteration or amendment, in four consecutive issues of the *Gazette* and once every week during four consecutive weeks in a newspaper circulating in the district within which such township, village or settlement is situate, and if any objection to such proposed alteration or amendment is lodged with the Surveyor-General by an owner of land situate within such township, village or settlement, within a period of fourteen days after the date of the last publication of such notice, the matter at issue shall be determined by the Minister whose decision shall be final.
- (4) Whenever a general plan of a township, village or settlement is altered under this section the Surveyor-General shall inform the registrar who shall make such alterations, amendments or endorsements on the relevant title deeds as may be necessary.

Part IV – Beacons

16. Beacons and boundaries lawfully established

- (1) Notwithstanding any law, the position of any beacon or boundary deemed in terms of this section to have been lawfully established 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 resurvey and when a diagram based on such resurvey has been approved in terms of [section 8](#) and is annexed to

a certificate of amended title or is referred to in an endorsement made in terms of the law relating to the registration of deeds;

- (b) when its position is in agreement with the position thereof adopted in a resurvey referred to in—
 - (i) [section 13\(a\)](#); or
 - (ii) [section 13\(c\)](#) if paragraph (a) of that section has been complied with in regard to such beacon or boundary;

and when a diagram based on such resurvey has been approved by the Surveyor-General and registered in the Deeds Office;

- (c) when its position is in agreement with an order of the Court;
 - (d) when its position is in agreement with the position of a beacon or boundary established and entitled to recognition at the commencement of this Act pursuant to any law or usage concerning the establishment or recognition of beacons and boundaries in force prior to such commencement, notwithstanding that such law may be repealed by this Act; or
 - (e) when its position is in agreement with the position of a beacon or boundary certified on a diagram approved prior to this Act as being in accordance with the decisions of the Concessions Commission established by the Concessions Act, [No. 3 of 1904](#).
- (3) Nothing in this section shall be deemed to prevent the acquisition by prescription of any right to or interest in land.

17. Manner and cost of erecting beacons for survey purposes

- (1) All beacons erected for the purpose or in consequence of any survey or resurvey of land under this Act or any prior law 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 such as may be prescribed.
- (3) Subject to the proviso to [section 19\(4\)](#), the cost of erecting such beacons, including the costs of determining their positions by survey, when necessary, shall be borne by the owner of the land so surveyed or resurveyed, 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.

18. No posts to be erected or excavations made near beacons

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 four feet of any beacon or trigonometrical station, except in the case of lots in a township, village or settlement; or plots of an area not exceeding five morgen.

19. Repair or re-erection of beacons

- (1) Every owner of land shall maintain in proper order and repair in accordance with such requirements as may be prescribed every 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 resurvey of such land under this Act or any prior law, or for the purpose of or in connection with the survey or resurvey 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 comply with such condition or to re-erect it in such manner as may be prescribed:

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

Provided further that the provisions of this subsection shall not apply to beacons which were moved before the commencement of this Act.

- (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, but 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 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.

20. 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, reference mark, signal or trigonometrical station intended to be permanent and erected for the purpose of or in connection with any survey operations, whether such beacon, bench mark, reference mark, signal or trigonometrical station 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 on conviction to a fine not exceeding two hundred emalangeneni or, in default of payment thereof, to imprisonment for a period not exceeding six months, or to such imprisonment without the option of a fine, or to both such fine and imprisonment, and the removal or disturbance of any such beacon, mark or signal for the purpose of erecting another beacon, mark or signal 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, mark or signal.

- (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, reference mark or trigonometrical station in connection with which any such offence was committed shall be deemed to be the property of the Surveyor-General.

21. 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 or mark erected in connection with the survey of land, shall 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 such requirements as may be prescribed, of such beacon or mark or the erection or placing of any other mark to indicate the position of such removed or disturbed beacon or mark, in such manner as the Surveyor-General may direct.

Part V – General plans and diagrams

22. Manner of preparing diagram

Every general plan or diagram submitted for the approval of a Surveyor-General shall be prepared in accordance with such requirements as may be prescribed 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 commencement of this Act in accordance with any law or usage in force at the time of such preparation.

23. No registration of land without approved diagram

No general plan or diagram of any piece of land shall be accepted in the Deeds Office 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 Office, the Surveyor-General may approve such general plan or diagram provisionally and, upon the performance of that act in the Deeds Office, the Surveyor-General shall finally approve such general plan or diagram when submitted to him.

24. Diagram must be signed by surveyor

No general plan or diagram shall be approved by the Surveyor-General unless it be 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 filed in his office or registered in the Deeds Office, without the signature thereon of the land surveyor or land surveyors who signed the original general plan or diagram if he is or they are not available or unreasonably refuse to sign the diagram so framed.

25. Diagram for consolidated title

- (1) The Surveyor-General may approve a diagram which has been compiled, without any resurvey, from two or more diagrams representing several pieces of land and which has been prepared for the purpose of obtaining a consolidated title thereto.
- (2) The several diagrams forming the component parts of a new diagram which has been framed for the consolidation of title shall, upon the issue of the certificate of such consolidated title, be transmitted by the registrar to the Surveyor-General for cancellation.

26. 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 interested 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 or land or of any portion thereof or undivided share therein shall be effected in the Deeds Office until a new diagram thereof has been approved and a certificate of amended title thereto has been issued or the title deed thereof has been endorsed, in accordance with such new diagram, under the law relating to the registration of deeds:

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 three consecutive issues of the *Gazette* and once every week during three 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.

27. Correction of registered diagram

The Surveyor-General may correct any error in the numerical data, figure or wording of a diagram registered in the Deeds Office:

Provided that, if such correction affects the extent or designation of the land represented by such diagram, the Surveyor-General shall notify the registrar of such correction, and the registrar shall thereupon amend the relative title deed and register in the Deeds Office in accordance with such corrected diagram and before effecting any further registration of such land or any portion thereof or undivided share therein shall likewise amend the relative duplicate title deed belonging to the owner of such land.

Part VI – Miscellaneous

28. Power of entry, etc. upon land

- (1) The Surveyor-General, any person generally or specially deputed in writing by the Surveyor-General and a land surveyor may, for the purpose of performing any duties imposed by or in pursuance of this Act or the regulations or any other law—
 - (a) enter upon any land with such assistants or servants, animals, vehicles, appliances and instruments as are necessary for or incidental to the performance of those duties;
 - (b) place or erect any permanent beacon, bench mark, reference mark or trigonometrical station, or any temporary flag, signal or other mark upon such land;
 - (c) make use of any natural material upon which no work has been expended and, except within a township, village or settlement, of any water, whether conserved or not, found upon or in such land;
 - (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; and
 - (ii) as little damage and inconvenience as possible shall be caused by the exercise of any of the powers conferred by this section, 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 on conviction to a fine not exceeding fifty emalangeni, or, in default of payment thereof, to imprisonment for a period not exceeding one month.
- (3) The Minister may require that a servitude in favour of the Government, protecting any permanent beacon, bench mark, reference mark or trigonometrical station, and ensuring an unobstructed view to and from any other such beacon, mark or station shall be granted by the owner of any land upon or near which any such beacon, mark or station is situate, and cause such servitude to be registered against the title deed of such land:

Provided that the costs of the registration of such servitude and reasonable compensation for any depreciation (if any) in the value of the servient tenement by reason of the establishment of such servitude shall be paid out of the Consolidated Fund.

29. Act binding on Government

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

30. Savings as to railway or irrigation surveys and plans relating to mining titles

(1) This Act shall not apply to surveys—

- (a) which may, in accordance with any law, be performed by mine surveyors; or
- (b) for purposes of irrigation schemes or of road or railway construction, or purposes incidental thereto;

so long as any such survey is not used for the purpose of effecting the registration of any land in the Deeds Office or the definition of any boundary of any land.

(2) Nothing in this Act shall be construed as rendering necessary the submission, lodging, or use of a diagram where, under the law relating to mining titles, the use of a sketch plan or other plan is permitted or prescribed.

31. Notice to Surveyor-General of application to Court

Before any application is made to the Court for an order affecting the performance of any act in the Surveyor-General's office, the applicant shall give notice in writing to the Surveyor-General at least seven days before the hearing of such application and the Surveyor-General may submit to the Court such report thereon as he may deem desirable.

32. Regulations

(1) The Minister may make regulations not inconsistent with this Act prescribing the—

- (a) fees to be paid by an owner of land for any survey of such land including any records relating to such surveys, 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) 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) degree of accuracy to be obtained and the limit of error to be allowed in surveys and resurveys of land;
- (d) diagrams and general plans required in connection with the registration of any land in the Deeds Office, 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) 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) procedure to be followed in arbitration proceedings under this Act and the powers and duties of arbitrators appointed under this Act;
- (g) manner in which cadastral and other surveys of land shall be based upon trigonometrical stations and upon reference marks where such exist;

- (h) manner of resurveying lots in any township, village or settlement or any part thereof or sections or blocks of land other than such lots for the purpose of readjusting the boundaries and establishing the beacons thereof and the manner of recovering the costs of such resurveys;
 - (i) 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 Office and in the event of such surveys being inaccurate to cause correct diagrams to be framed and the relative title deeds to be amended;
 - (j) testing of surveying instruments and of measuring tapes to be used in the survey of land; and
 - (k) unit of measure to be used on general plans and diagrams.
- (2) Regulations under this section may provide for the punishment by means of a fine not exceeding fifty emalangeni or in default of payment thereof by imprisonment for a period not exceeding three months of any person guilty of an offence against the regulations and such regulations shall specify what punishment may be imposed for each offence thereby created.
- (3) Notwithstanding anything in any other law the Minister may, by notice in the *Gazette*, 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.

Schedule (Sections 8 and 10)

Agreement as to beacons and boundaries

We, the undersigned, (a)

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

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 on the figure appearing on the opposite page and consent to a diagram being framed in accordance therewith.

Date	Signature (c) and (d)	Beacons and boundaries indicated on figure on opposite page and hereby agreed to (e)	Witnesses to signatures (f)
			1 2
			1 2
			1 2
			1 2
			1 2

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 on 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—

“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.