

COMMENCEMENT OF THE TRIBAL LAND ACT

The re-enacted Tribal Land Act of 2018 ("the Act") commenced on 20 April 2022 ("the Commencement Date"). The Act repeals the Tribal Land Act of 1968 ("the Repealed Act") and introduces major changes to the holding of tribal land in Botswana. These changes are important to note as they carry implications for holders of tribal land as well as people who have registered interests in tribal land. In this newsflash we discuss these changes and their implications.

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THE ACT BRINGS WITH IT THE FOLLOWING CHANGES:

Previously, rights in tribal land were held under a certificate of customary land grant or under common law leases issued by the Land Board. The new Act introduces a deed of customary land grant, issued by the Registrar of Deeds as a lawful basis of holding tribal land. It is worth noting that the Act does not invalidate any certificate issued under the Repealed Act. The Act provides for the registration of such certificates

with the Registrar of Deeds in order to obtain a deed of customary land grant in respect of the tribal land held under the respective certificate. In terms of the Act, you cannot lawfully hold tribal land unless a deed of customary land grant in relation to that land is issued to you by the Registrar of Deeds.



WHO IS REQUIRED TO APPLY FOR REGISTRATION?

In terms of the Act, the following people are required to apply to the land board, within six months of the commencement of the Act, for the registration of their customary land grants:

1

People who were allocated land by a Kgosi (tribal chief) before establishment of land boards and do not hold land board issued certificates of customary land grant, and;

2

People who occupy tribal land and hold certificates of customary land grant or leases issued by the land board under the Repealed Act.



HOW DO I APPLY?

Holders of certificates of grant or leases are required to submit their applications for the registration of such customary land grants or leases to the land board within 6 (six) months from the Commencement Date, in the prescribed format. The application shall be accompanied by the certificate of grant or lease to be registered and other supporting documents which the land board may require. If all requirements are met, the land board shall thereafter submit the documents to the registrar of deeds for registration and issuance of the Deed of customary land grant.

People who were allocated land by a kgosi and do not hold certificates or leases are also required to submit their applications to the land board within 6 (six) months for the registration of their rights, notwithstanding that they do not have a land board issued certificate.

It is significant to note that whilst the Act requires that applications for registration of customary land grants or rights be submitted within 6 (six) months, there appear to be no penalties for non-compliance particularly where one does not submit the application within the prescribed period or at all.

In terms of the Act, if you fail or refuse to comply with the registration requirements within the stipulated period or if the land board, after a diligent search cannot find a holder of a tribal land, the land board will complete and sign the documents in the name of the holder and submit such documents, together with an affidavit stating all facts to the registrar of deeds who shall register same.



CANCELLATION OF CUSTOMARY LAND GRANTS

In addition to the grounds for cancellation of customary land grants provided in the Repealed Act, namely, if the holder:

- ✔ Is no longer eligible to hold land under the Act,
- ✔ Fails to observe imposed restrictions, or
- ✔ Has failed to develop the land without reasonable excuse,

the Act introduced the following new grounds for cancellation of customary land rights:

- ✔ If the grant was obtained by fraud or misrepresentation made by the holder; and
- ✔ Where the holder has failed to demarcate the land within 3 months of the execution of the grant.

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