

VOLUME: V

CHAPTER: 32:01 STATE LAND: SUBSIDIARY LEGISLATION

STATE LAND (PROCEDURE FOR ENFORCEMENT OF PAYMENT

1. Citation

These Regulations may be cited as the State Land (Procedure for Enforcement of Levies and Loans) Regulations.

2. Interpretation

In these Regulations, unless the context otherwise requires-

"authorized person", in relation to an occupier, means the person authorized under section 4 of the Act to make and execute on behalf of the President grants or other dispositions of State land or of any interest therein by whom the occupier was issued with his certificate of rights or temporary occupancy permit in respect of the plot of State land in question or by whom the occupier was offered a certificate of rights or temporary occupancy permit in respect of that plot which he has declined to sign;

"clerk of the court" includes an assistant clerk and any person appointed to act as such clerk or assistant clerk;

"loan" means a loan granted under section 7 of the Act;

"notice of demand" means a notice of demand issued under regulation 3;

"occupier" means the holder of a certificate of rights or temporary occupancy permit issued to him by an authorized person whereby a grant or other disposition of a plot of State land or of an interest therein was made and executed on behalf of the President by the authorized person under section 4 or the occupier of a plot of State land in respect of which he was offered such a certificate of rights or temporary occupancy permit but has declined to sign the same;

"registrar" means the Registrar of the High Court;

"rules of court" means rules of court for the time being in force regulating the proceedings in magistrates' courts;

"service levy" means a levy imposed under section 5 of the Act.

3. Issue of notice of demand and calling in of loan

(1) Subject to subregulation (2), where an occupier fails, either wholly or in part, to pay any service levy payment or any instalment towards repayment of a loan after the expiry of the period of two months immediately following the day on which the payment or instalment became due and payable, the authorized person or his officer or employee duly authorized by him in that behalf may issue a written notice of demand addressed to the occupier requiring him to pay the whole amount outstanding of the payment or instalment, which amount shall be specified in the notice, within 30 days immediately following the day on which service of the notice upon the occupier is effected in terms of regulation 7.

(2) Notwithstanding the terms and conditions on which a loan was granted, where an occupier fails, either wholly or in part, to pay any instalment towards repayment of a loan after the expiry of the period of two months immediately following the day on which the instalment became due and payable, the authorized person or his officer or employee duly authorized by him in that behalf may call in the whole outstanding amount of the loan by issuing a written notice of demand addressed to the occupier requiring him to pay the whole amount outstanding of the loan, which amount shall be specified in the notice, within 30 days immediately following the day on which service of the notice upon the occupier is effected in terms of regulation 7.

(3) A single notice of demand may be issued under subregulations (1) and (2) and any such notice or a notice issued under subregulation (1) alone may require the occupier to pay the whole amount outstanding of each of more than one service levy payment and of each of more than one instalment towards repayment of a loan.

(4) Notwithstanding the terms in which a service levy was imposed or the terms and conditions on which a loan was granted, in respect of the aggregate amount of all amounts specified in accordance with subregulation (1) or (2) in a notice of demand, a flat rate interest charge of five per cent of that aggregate amount shall be due from and payable by the occupier and the amount of that interest charge shall also be specified in the notice and any interest that may already have accrued thereon shall fall away:

Provided that, where ordinary court proceedings are subsequently instituted by the authorized person to recover that aggregate amount or any part thereof, this subregulation shall, for the purposes of those proceedings, be disregarded.

(5) Every notice of demand shall inform the occupier-

(a) of his right in terms of regulation 4 to contest the notice within 30 days immediately following the day on which service of the notice upon him is effected;

(b) of the manner in which he may contest the notice;

(c) of the effect of his contesting the notice in accordance with regulation 4(2);

(d) that no court fee or other charge shall be payable by him in respect of his contesting the notice and thereafter prosecuting his defence and that no costs shall be awarded against him by the court of first instance; and

(e) of the consequences in terms of regulation 5 of his failing, within the 30 days' period referred to in paragraph (a), to contest the notice and to pay the aggregate amount of all the amounts specified in the notice.

4. Procedure for contesting notice of demand

(1) Where the occupier wishes to contest the notice of demand, he shall, within 30 days immediately following the day on which service of the notice upon him was effected in terms of regulation 7, file or cause to be filed with the clerk of a court presided over by a chief magistrate or a senior magistrate a written objection to the notice, dated and signed by the occupier or his attorney, specifying the particulars of the grounds on which the objection is made, together with the notice of demand or a true copy thereof, and at or about the same time deliver or cause to be delivered to the authorized person a true copy of the objection.

(2) Where the occupier has taken the steps prescribed by subregulation (1)-

(a) the notice of demand shall be treated as a summons that has duly commenced an action by the authorized person for the recovery from the occupier of all the amounts specified in the notice of demand;

(b) the occupier's written objection shall be treated as a plea in such action duly delivered by or on behalf of the occupier on the day the steps prescribed by subregulation (1) were completed; and

(c) all the rules of court regulating or incidental to the commencement of an action and the delivery of a plea shall be deemed to have been complied with.

(3) No court fee or other charge shall be payable by the occupier in respect of his contesting a notice of demand in accordance with subregulation (1) and thereafter prosecuting his defence nor shall the court of first instance in any event award costs against the occupier.

(4) Every court presided over by a chief magistrate or a senior magistrate shall have jurisdiction to try an action arising out of the contesting of a notice of demand in accordance with subregulation (1), regardless of the amounts involved.

(5) The clerk of the court shall take every reasonable step open to him to assist in the proper filing with him of the written objection to the notice of demand and thereafter to enable the occupier's defence to be effectively prosecuted.

5. Consequences where occupier does not contest notice of demand

(1) Where the occupier fails, within the 30 days period prescribed by regulation 4(1)-

(a) to contest the notice of demand in accordance with that provision; and

(b) to pay the aggregate amount of all the amounts specified in the notice of demand, the authorized person shall immediately after the expiry of the 30 days period, apply to a magistrate for an order for the recovery from the occupier, or from any property belonging to him of the whole of that aggregate amount, or for so much thereof as then remains unpaid by the occupier.

(2) For the purposes of subregulation (1) the authorized person or his officer or employee duly authorized by him in that behalf, shall lodge with the clerk of the court-

(a) a copy of the notice of demand served on the occupier in terms of regulation 3; and

(b) any documents or information to verify the aggregate amount of all the amounts specified in the notice of demand.

(3) Where the authorized person has taken the steps prescribed under subregulation (2)-

(a) the notice of demand shall be treated as summons that has duly commenced an action by the authorized person for the recovery from the occupier of all the amounts specified in the notice of demand; and

(b) all the rules of court regulating or incidental to the commencement of an action shall be deemed to have been complied with.

(4) The magistrate shall, immediately upon receipt of an application in terms of the provisions of this regulation, make an order in accordance with the notice of demand.

(5) An order made in accordance with the provisions of this regulation shall contain every authority and be executed in all respects as if it were a writ of execution against property issued out of the magistrate's court, and conform to such rules and make such charges as are for the time being applicable to a writ of execution of such court.

6. Procedure for recovery of possession

(1) Where pursuant to an order issued under regulation 5 the authorized person wishes to enter and recover possession of the plot of State land in question, he shall issue a written notice addressed to the occupier informing him-

- (a) of the nature and effect of the order so issued;
- (b) of his right to institute an appeal under subregulation (2) against the order within 30 days following the day on which the notice was served on him;
- (c) of the manner in which he may institute such an appeal in terms of subregulation (3);
- (d) that no court fee or other charge shall be payable by him in respect of his instituting and thereafter prosecuting an appeal and that no costs shall be awarded against him by the court hearing the appeal;
- (e) that in the event of his failing within the 30 days' period referred to in paragraph (b) to institute an appeal, the order may be executed as soon as that period expires.

(2) An appeal in pursuance of the provisions of subregulation (1)(b) shall be made to the High Court.

(3) In order to institute an appeal under subregulation (2) the occupier shall, within 30 days immediately following the day of service upon him of the notice issued in accordance with subregulation (1), file or cause to be filed with the clerk of the court a written notice of appeal, dated and signed by the occupier or his attorney, setting out the grounds thereof and at or about the same time deliver or cause to be delivered to the authorized person a true copy of the notice of appeal.

(4) No court fee or other charge shall be payable by the occupier in respect of his instituting and thereafter prosecuting an appeal under subregulation (2) or any further appeal arising out of the appeal nor shall the court hearing the first appeal in any event award costs against the occupier.

(5) The registrar shall take every reasonable step open to him to assist in the proper filing with him of the written notice of appeal and thereafter to enable the occupier's appeal to be effectively prosecuted.

(6) No order issued under regulation 5 shall be executed before the expiry of the 30 days' period prescribed by subregulation (1)(b):

Provided that, where an appeal under subregulation (2) has been instituted, no such order shall be executed until such time as the occupier has exhausted the appellate machinery or is time barred from bringing any further appeal arising out of the appeal or any such further appeal has lapsed or been abandoned, as the case may be.

7. Service of notices

(1) Service upon the occupier of a notice of demand or a notice issued in accordance with regulation 6(1) shall be effected by personal service.

(2) Notwithstanding subregulation (1), where the occupier cannot be found after a diligent search within Botswana or it is otherwise not reasonably practicable to effect personal service of the notice upon him, service of the notice upon him may be effected in any one of the following three ways-

- (a) leaving the notice for the occupier with his duly authorized agent;
- (b) leaving the notice for the occupier with any person apparently over the age of 16 years and apparently having immediate control and management of the plot of State land in question;
- (c) leaving the notice for the occupier at his usual or last known place of abode or business with a person apparently residing or employed at that place:

Provided that service by one of these three methods shall be deemed not to have been effected unless-

- (i) where the authorized person is aware of the occupant's postal address or last known postal address, a copy of the notice is, at or about the same time, sent by registered post to that address; and
- (ii) a copy of the notice is exhibited for at least 14 consecutive days on the public notice board of the local authority within whose area the plot of State land in question is situated.

8. Procedure where plot of State land repossessed in execution of order of court

(1) Where by virtue of an order issued by the court in terms of regulation 5(4), the authorized person re-enters and repossesses the plot of State land in question, the authorized person shall forthwith proceed to-

- (a) cancel the certificate of rights or temporary occupancy permit issued to the former occupier in respect of the plot, if

any;

(b) advertise, by such means as he considers appropriate, that he proposes to make and execute afresh, by the issue of a new certificate of rights or temporary occupancy permit, such grant or other disposition of the plot or of any interest therein as shall be specified and that sealed offers therefor may be submitted to the authorized person, by a date to be specified, by all such persons as are duly qualified to do so in terms of subregulation (2).

(2) A person shall be duly qualified to submit an offer to the authorized person in terms of subregulation (1)(b) if he possesses those qualifications for the time being required of transfers of plots of State land in respect of which certificates of rights or temporary occupancy permits have been issued in accordance with the authorized person's duly approved policy governing such transfers.

(3) The authorized person shall, as soon as is reasonably practicable after the date advertised in accordance with subregulation (1)(b), open and consider all the sealed offers submitted as a result of the advertisement made in accordance with that provision and shall thereafter make and execute afresh, by the issue of a new certificate of rights or temporary occupancy permit, such grant or other disposition of the plot of State land in question or of any interest therein as was specified in the advertisement in favour of the person duly qualified to submit an offer who has submitted the highest acceptable offer.

(4) Where no acceptable offers are submitted as a result of the advertisement made in accordance with subregulation (1)(b), the authorized person shall forthwith proceed to advertise again in similar terms for as often as is necessary to produce an acceptable offer and, where the authorized person does again so advertise, the provisions of subregulation (3) shall apply with all necessary modifications.

(5) Where the amount paid for the new certificate of rights or temporary occupancy permit issued in accordance with subregulation (3) is the same or less than the total amount owed by the former occupier, the authorized person shall deduct the amount so paid from the total amount owed:

Provided that priority shall be given to deducting the amount so paid from so much of the total amount owed as is owed in respect of service levy payments (including so much of the amount of the flat rate interest charge payable in terms of regulation 3(4) as relates to such payments).

(6) Where the amount paid for the new certificate of rights or temporary occupancy permit issued in accordance with subregulation (3) is more than the total amount owed by the former occupier, the authorized person shall pay the balance of the amount so paid, after deducting from that amount the total owed (whether, in the case of a loan, the whole amount thereof outstanding has or has not been called in), to the former occupier as soon as is reasonably practicable.

(7) Notwithstanding the terms and conditions on which a loan was granted, where the plot of State land is re-entered and repossessed by the authorized person in consequence, either wholly or in part, of a failure to pay any instalment or part thereof towards repayment of the loan and the whole amount outstanding of the loan has not been called in by the authorized person under regulation 4(2), the authorized person may, at any time after re-entering and repossessing the plot, by written notice served on the former occupier, call in the whole amount of the loan outstanding, together with the interest accruing thereon.

9. Evidential presumptions

In any proceedings to recover or in connection with the amount outstanding of any service levy payment, loan or loan repayment instalment or of any interest accruing thereon or of any flat rate interest charge payable in terms of regulation 3(4) (including an action arising out of the contesting of a notice of demand in accordance with regulation 4(1) or proceedings or appeal under regulation 6(2)-

(a) a certificate purporting to be signed by the authorized person or by his officer or employee duly authorized by him in that behalf to the effect that any amount therein specified is due from and payable and unpaid by an occupier or former occupier sufficiently identified in the certificate or otherwise owed by such an occupier or former occupier and setting forth the particulars thereof;

(b) all records purporting to be records of the authorized person relating thereto and all entries made therein; and

(c) every document purporting to be certified under the hand of the authorized person or of his officer or employee duly authorized by him in that behalf to be a true extract from or copy of any record of the authorized person relating thereto or of any entry in such a record,

shall be admissible in evidence upon production by or on behalf of the authorized person without further proof thereof and the court shall presume that the facts stated therein or indicated thereby are true unless the contrary is proved.

10. Declaration for removing doubts

For the removal of doubt, it is hereby declared that nothing contained in these Regulations shall operate so as to preclude the authorized person and an occupier from negotiating, at any stage of proceedings in terms of these Regulations, a settlement or other arrangement in respect of any amount outstanding of any service levy payment, loan

or loan repayment instalment or of any interest accruing thereon or of any flat rate interest charge payable by virtue of regulation 3(4).