

BECHUANALAND PROTECTORATE.

No. 14 of 1943.

(Promulgated 18th June, 1943.)

PROCLAMATION

BY HIS EXCELLENCY THE HIGH COMMISSIONER
Entitled the Bechuanaland Protectorate Property
Sales Restriction Proclamation, 1943.

Whereas it is expedient to make provision for the control of sales of immovable property in the Bechuanaland Protectorate:

Now therefore under and by virtue of the powers in me vested, I do hereby declare, proclaim and make known as follows:—

1. The provisions of this Proclamation shall apply only to sales of immovable property which has been purchased by the intending seller after the first day of September, 1939, or which is held under a hire-purchase agreement entered into prior to that date. Applica-
tion of
Proclama-
tion.

2. (1) In this Proclamation, unless the context otherwise requires:— Inter-
pretation.

“ Board ” means the Property Sales Control Board established by the Resident Commissioner under section *three*;

“ Immovable property ” means immovable property in the Lobatsi Block as defined in the Schedule to Proclamation No. 4 of 1905, the Gaberones Block as defined in the Schedule to Proclamation No. 12 of 1905, the Tuli Block as defined in the Schedule to Proclamation No. 13 of 1905, the Tati District as defined in section *one* of Proclamation No. 2 of 1911, and the Chanzi District as defined in section *ten* of High Commissioner's Notice No. 119 of 1923, but does not include immovable property which is owned by the Crown;

“ Hire-purchase agreement ” includes an agreement which provides for the letting and hiring of immovable property and confers a right on the lessee to purchase or obtain transfer of such property when certain payments (exceeding two in number) described in the agreement have been made;

“ Sale ” includes—

- (a) sale by auction;
- (b) hire-purchase agreement;

- (c) exchange; and
- (d) any other type of agreement which provides for the alienation, disposal or transfer of the immovable property for valuable consideration;

but does not include—

- (i) sale in execution of the process of any court;
- (ii) a sale by a trustee in insolvency;
- (iii) a sale by the liquidator of a company in the process of the winding up of the company under an order of court; or
- (iv) an expropriation under any law or title deed.

The expressions "purchaser" and "seller" shall be construed accordingly.

(2) The purchase price of immovable property sold or leased under hire-purchase agreement shall include any amount stated to be payable for the letting and hiring of the property.

Property
Sales
Control
Board.

3. (1) For the purposes of this Proclamation the Resident Commissioner shall be empowered to appoint a Property Sales Control Board.

(2) The Board shall consist of six members appointed by the Resident Commissioner from time to time, of whom one shall be designated chairman. In the absence of the chairman the members of the Board shall choose one of its members to act as chairman.

(3) The quorum of the Board shall be four.

(4) Questions before the Board shall be decided by a majority of votes of those present and voting, and, in the case of equality of votes, the chairman shall have a second or casting vote.

(5) No member of the Board shall take any part in the consideration or discussion of any agreement in which he is directly or indirectly interested.

Members
of Board.

4. (1) Each member of the Board shall hold office at the pleasure of the Resident Commissioner.

(2) If a member of the Board is prevented by illness, absence or other cause from exercising his functions on the Board the Resident Commissioner may appoint any person to act as deputy for such member during his absence.

(3) Members of the Board, other than Government officials, shall be paid from the

public revenue of the Territory such remuneration and allowances as the Resident Commissioner may from time to time determine.

5. In the exercise of its functions, the Board shall, through its chairman, have the powers of a Subordinate Court to summon witnesses, to cause the oath to be administered to them, to examine them and to call for the production of any book, document or record.

6. A subpoena for the attendance of a witness or for the production of any book, document or record before the Board shall be signed and issued by the chairman of the Board, and shall be served in the same manner as a subpoena for the attendance of a witness at a criminal trial in a Subordinate Court.

7. Any person subpoenaed to give evidence or to produce any book, document or record or giving evidence before the Board shall be entitled to the same privileges and immunities as if he were subpoenaed to attend or were giving evidence at a trial in a Subordinate Court.

8. Any person who fails, without reasonable excuse, to attend in obedience to such summons, or, subject to the provisions of section seven of this Proclamation, fails to answer fully to the best of his knowledge any question relevant to the Board's enquiry, or, when required, fails to produce any book, document or record as aforesaid, shall be guilty of an offence.

9. Any person who, after having been duly sworn, wilfully gives false evidence before the Board on any matter relevant to the enquiry, knowing such evidence to be false or not knowing or believing it to be true, shall be guilty of an offence.

10. If any person who has been subpoenaed to give evidence or to produce any book, document or record before the Board refuses, without sufficient cause (the onus of proof whereof shall rest upon him), to be sworn as a witness, or, having been sworn, to answer fully and satisfactorily a question lawfully put to him or to produce any such book, document or record, he shall be guilty of an offence.

11. No agreement for the sale of immovable property shall be of any force or effect unless—

(a) such agreement has been reduced to writing and signed by the parties

Powers
of Board.

Attendance
of
witnesses.

Privileges
of
witnesses.

Offences
by
witnesses.

False
evidence.

Refusal
to give
evidence.

Agreements
for sale
to be in
writing and
approved
by Board.

thereto or by their agents duly authorised in writing; and

- (b) the terms and conditions of such agreement have been approved by the Board.

Board to determine value of property.

12. (1) Any person who wishes to sell immovable property may apply to the Board to determine the value of such property under this Proclamation.

(2) On receipt of such application and on payment of a fee of—

- (a) £3, if the value of the property as determined by the Board is £2,500 or less;
- (b) £5, if the value of the property as determined by the Board is more than £2,500,

the Board shall issue to such person a certificate stating the value of the property as determined by it under the provisions of this Proclamation.

(3) Every application for the approval of an agreement shall be made to the Government Secretary on the form prescribed by the Resident Commissioner and shall be accompanied by the agreement of sale and a copy thereof. The applicant may annex a valuation of the property made by a valuator.

Decision of Board to be final.

13. The Board shall have an absolute discretion in the approval of agreements under this Proclamation and there shall be no appeal from its decision:

Provided that any applicant who is dissatisfied with the valuation placed on immovable property by the Board may, on payment to the Board of an amount sufficient to cover the valuator's fees, require the Board to appoint a valuator, who shall inspect the property and make a report thereon in terms of the provisions of this Proclamation to the Board, which shall then reconsider its valuation.

Conditions on which approval to be given.

14. The Board shall not approve of any agreement unless—

- (a) it is satisfied that the consideration for the alienation, disposal or transfer of the immovable property is not more than the value of the property as determined by it under this Proclamation; and
- (b) it approves of the purchaser; and
- (c) in the case of property the whole of which is held under lease by one lessee and which is being sold to a person

other than the lessee, it is satisfied that the lessee is not willing and able to purchase the property on the terms and conditions approved by the Board.

15. (1) The Board shall, on receipt of an application for the approval of an agreement, determine the value of the land and of any buildings or improvements thereon. Method of determining value.

(2) The Board shall fix the value of buildings and other improvements as follows:—

(a) if a building was built or other improvements made before the first day of September, 1939, it shall determine the value of the building and improvements on that date;

(b) if a building was built or other improvements made after the first day of September, 1939, it shall determine the value of the building or improvements on the date on which such building was built or such improvements were made, as the case may be;

(c) from the value so determined the Board shall deduct such amount as it considers fairly to represent depreciation, if any, between the first day of September, 1939, and the date of application.

(3) The Board shall fix the value of land at the figure which in its opinion fairly represents the value of such land on the first day of September, 1939.

(4) To arrive at the total value of a property, the Board may add to the value of the land, buildings, and improvements as determined by it under this section a sum not exceeding ten per centum of such last-mentioned value.

16. The Board shall, on approving an agreement, immediately notify the purchaser, the seller and the Registrar of Deeds. Registrar of Deeds to be notified.

17. No agreement for the cession or assignment of any rights under an agreement approved by the Board shall be of any force or effect unless such agreement of cession or assignment has been approved by the Board. Assignments to be approved by Board.

18. No agreement which defeats or has been entered into for the purpose of defeating the objects of this Proclamation shall be of any force or effect. Void agreements.

Transfers
not to be
registered
unless
approved
by Board.

19. No registration of transfer of any immovable property in pursuance of a sale shall be effected by the Registrar of Deeds unless he is satisfied that the agreement in pursuance of which such transfer is being made has been approved in terms of the provisions of this Proclamation.

Power of
entry.

20. (1) The Board or any person authorised by it in writing may, for the purpose of determining the value of property, enter upon any land or buildings at any reasonable time.

(2) Any person who prevents or obstructs such entry shall be guilty of an offence.

Penalties.

21. Any person who is guilty of an offence under this Proclamation shall be liable to a fine not exceeding fifty pounds and in default of payment to imprisonment for a period not exceeding six months.

Short title.

22. This Proclamation may be cited as the Bechuanaland Protectorate Property Sales Restriction Proclamation, 1943.

GOD SAVE THE KING.

Given under my Hand and Seal at Pretoria this Eleventh day of June One thousand Nine hundred and Forty-three.

WALTER C. HUGGARD,

High Commissioner.

By Command of His Excellency
the High Commissioner.

H. E. PRIESTMAN,

Administrative Secretary.