

Statutory Instrument No. 137 of 1982

STATE LAND ACT
(Cap. 32:01)

STATE LAND (PROCEDURE FOR ENFORCEMENT OF PAYMENT
OF LEVIES AND LOANS) REGULATIONS, 1982

(Published on 10th December, 1982)

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IN EXERCISE of the powers conferred on the Minister of Local Government and Lands by section 40 of the State Land Act, the following Regulations are hereby made —

1. These Regulations may be cited as the State Land (Procedure for Enforcement of Payment of Levies and Loans) Regulations, 1982. Citation
2. In these Regulations, unless the context otherwise requires, — Interpretation
“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 in respect of the plot of State land in question;
“loan” means a loan granted under section 4C of the Act;
“occupier” means the holder of a Certificate of Rights 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 of the Act;
“service levy” means a levy imposed under section 4A of the Act.
3. Notwithstanding the terms in which a service levy was imposed or the terms and conditions on which a loan was granted, where the levy or any instalment towards repayment of the loan remains wholly or partially unpaid at the expiry of the period of 2 months immediately following the day on which the levy or instalment became due and Consequences of default in payment of service levy or loan repayment instalment

Issue of
notice of
demand and
calling in
of loan

payable, interest shall accrue on the amount of the levy or instalment for the time being outstanding at the rate of 5 per cent a month from the day of expiry of that 2 months' period until such time as the whole amount of the levy or instalment is paid.

4. (1) Subject to subregulation (2), where an occupier fails, either wholly or in part, to pay a service levy or any instalment towards repayment of a loan after the expiry of the period of 2 months immediately following the day on which the levy or instalment became due and payable, the authorized person shall issue a written notice of demand addressed to the occupier requiring him to pay the whole amount outstanding of the levy or instalment, which amount shall be specified in the notice, together with the interest accruing thereon, within 14 days immediately following the day on which service of the notice is effected in accordance with regulation 5.

(2) Notwithstanding the terms and conditions on which a loan was granted, —

- (a) where an occupier fails, either wholly or in part, to pay any instalment towards repayment of the loan after the expiry of the period of 2 months immediately following the day on which the instalment became due and payable, the authorized person may call in the whole amount outstanding of the loan and shall, for this purpose, issue 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, together with the interest accruing thereon, within 14 days immediately following the day on which service of the notice is effected; and
- (b) where the whole amount outstanding of the loan is called in under this subregulation, interest shall thereupon cease to accrue on the amount of the loan for the time being outstanding;

Provided that interest shall continue to accrue on so much of the amount of the loan outstanding as represents the amount outstanding of the instalment or part thereof, in consequence of the failure to pay which the notice of demand is issued, at the rate of 5 per cent a month in accordance with regulation 3.

Service of
notice of
demand

5. (1) Service of notice issued in terms of regulation 4 shall be effected by —

- (a) personal service of the notice upon the occupier;
- (b) posting the notice to the occupier's postal address or last known postal address;
- (c) leaving the notice for the occupier with his duly authorized agent;
- (d) leaving the notice for the occupier with any person apparently having for the time being immediate control and management of the plot of State land in question; or
- (e) leaving the notice for the occupier at his usual or last known place of abode or business with a person apparently over the age of 16 years and apparently residing or employed at that place.

(2) Notwithstanding subregulation (1), where service by none of the means thereby prescribed is reasonably practicable, service of a notice issued in terms of regulation 4 may be effected by exhibiting the notice on the public notice board of the local authority within whose area the plot of State land in question is situated; and service by this means shall be

deemed to be effected on the day the notice is first so exhibited if it is thereafter so exhibited for at least 14 consecutive days.

6. Where an occupier fails to pay the full amount specified in a notice addressed to him, issued in terms of regulation 4 and duly served in terms of regulation 5, together with the interest accruing thereon, after the expiry of the period of 14 days immediately following the day on which service of the notice was effected, the authorized person shall cause to be published in the Gazette, and in a newspaper circulating in the area in which the plot of State land in question is situated, the name of the occupier and the amount of the service levy, loan or loan repayment instalment owned by and due from him.

Name of defaulting occupier and amount owed to be published in Gazette

7. (1) The authorized person shall, as soon as is reasonably practicable after publication of the name of the occupier in accordance with regulation 6, apply in writing to the court of a Magistrate Grade I or over for an order to sell any movable property of the occupier in satisfaction of his default in payment or repayment of the service levy, loan or loan repayment instalment and of the interest accruing in respect thereof.

Enforcement of payment of service levy, loan or loan repayment instalment by sale of defaulting occupier's movable property

(2) The magistrate's court to which an application is made in accordance with subregulation (1) may, after the expiry of the period of 14 days immediately following the day on which the application was received by it and on being satisfied that regulations 4, 5 and 6 have been duly complied with, make the order for which application is made whereupon a warrant shall be issued out of the court to give effect to the order.

(3) Notwithstanding subregulation (2), where, before the expiry of the 14 days' period thereby prescribed, payment is made into the magistrate's court by or on behalf of the occupier of part of the amount owed by and due from him, the court may direct that 14 day's period shall, from the day on which the payment is effected, cease for the time being to run:

Provided that the court shall not so direct unless the payment into court amounts to not less than 25 per cent of the amount then owed by and due from the occupier and of the amount of any court fees incurred up to the date of the payment by the authorized person in using the procedure prescribed by this regulation.

(4) Where the magistrate's court gives a direction under subregulation (3), it shall make a payment order requiring the occupier to pay into court the whole amount outstanding of the service levy, loan or loan repayment instalment, as is appropriate, together with the interest already accrued thereon and to accrue thereon during the period in which the order is to be discharged and the amount of any court fees incurred or to be incurred by the authorized person in using the procedure prescribed by this regulation.

(5) A payment order made in accordance with subregulation (4) shall require the occupier to make payment into the court of such amount in such number of equal instalments not exceeding 12 as the court shall determine; the first such instalment shall be paid before the expiry of the period of one month immediately following the initial payment into court in terms of subregulation (3) and each subsequent instalment shall be paid before the expiry of each succeeding period of one month.

Repossession
of plot of
State of
land where
occupier
in default
in payment
of service
levy, loan
or loan
repayment
instalment

(6) Where any instalment required to be paid in compliance with a payment order made in accordance with subregulation (4) remains wholly or partially unpaid at the expiry of the period within which the instalment is required to be paid, the 14 days' period prescribed by subregulation (2) shall thereupon resume running and that provision shall apply accordingly.

(7) A warrant issued in accordance with subregulation (2) shall contain every authority and be executed in all respects as if it were a warrant of execution against property issued out of a magistrate's court and any rules of court for the time being applicable to such a warrant of execution shall apply, with all necessary modifications, to a warrant issued in accordance with subregulation (2).

8. (1) Where no or insufficient movable property of the occupier is found to satisfy a warrant issued in accordance with regulation 7 (2), the authorized person may apply to the court out of which the warrant issued for an order to re-enter and repossess the plot of State land in question in satisfaction of the occupier's default in payment or repayment of the service levy, loan or loan repayment instalment and of the interest accruing in respect thereof.

(2) Where the magistrate's court grants an application under subregulation (1) and makes the order for which application is made, a warrant shall thereupon be issued out of the court to give effect to the order.

(3) A warrant issued in accordance with subregulation (2) shall authorize and require the officer of the court to whom it is addressed to put the authorized person into possession of the plot of State land in question by removing therefrom and out of all occupation and possession whatsoever thereof the occupier and all persons claiming through him and removing therefrom his and their goods and possessions; and any rules of court for the time being applicable to a warrant of ejectment issued out of a magistrate's court shall apply, with all necessary modifications, to a warrant issued in accordance with subregulation (2).

(4) Where the magistrate's court makes an order in terms of this regulation, the authorized person shall issue a written notice addressed to the occupier informing him of the contents of the order and the date on which it was made and requiring him and all those who may claim through him to remove himself and themselves from the plot of State land in question and out of all occupation and possession whatsoever thereof and to remove therefrom his and their goods and possessions within 10 days immediately following the day on which service of the notice is effected.

(5) Service of the notice issued in accordance with subregulation (4) shall be effected by personal service upon the occupier:

Provided that, where the occupier cannot be found at the plot of State land in question, service of the notice may be effected by publication of the notice in the Gazette; and service by this means shall be deemed to be effected on the day of such publication.

(6) Where, at the plot of State land in question, a person other than the occupier is found apparently having for the time being immediate control and management of the plot, a copy of the notice issued in accordance with subregulation (4) shall be personally served upon that person.

(7) After the expiry of the period of 10 days immediately following the day on which service of the original notice issued in accordance with subregulation (4) was effected, but no earlier, the warrant issued in accordance with subregulation (2) may be executed.

9. (1) Where, by virtue of an order made by a magistrate's court in terms of regulation 8, 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 issued to the late occupier in respect of the plot;
- (b) cause the improvements, if any, effected to the plot by the former occupier to be valued by a suitably qualified and independent member of the Botswana Institute of Development Professions; and
- (c) make and execute afresh, by the issue of a new certificate of Rights, such grant or other disposition of the plot or of any interest therein as he is authorized to make and execute on behalf of the President under section 4 of the Act;

Procedure
after plot
of State
Land
repossessed
following
court order

Provided that the terms thereof shall provide for the new occupier fully to compensate the authorized person for any loss incurred or to be incurred, by virtue of subregulation (2), in compensating the former occupier for improvements effected to the plot.

(2) Where the amount representing the value of the improvements, if any, effected to the plot by the former occupier, as ascertained in accordance with subregulation (1) (b), is —

- (a) less than the total amount owed by the former occupier, the former amount shall be deducted from the total amount owed; or
- (b) more than the total amount owed by the former occupier, the balance of the former amount, after deducting from that amount the total amount owed, whether, in the case of a loan, the whole amount thereof outstanding has or has not been called in, shall, if it is reasonably practicable to do so, be paid by the authorized person to the former occupier within the period of 30 days immediately following the day on which the authorized person re-entered and repossessed the plot of State land in question.

(3) 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, call in the whole amount outstanding of the loan, together with the interest accruing thereon.

(4) The Minister may give to any authorized person instructions regarding —

- (a) the making and executing of grants or other dispositions of plots of State land or of any interests therein in accordance with subregulation (1) (c); or
- (b) the making of deductions and payments in accordance with subregulation (2),

and, where any authorized person has received such instructions, he shall comply therewith:

Provided that the powers hereby conferred in relation to the matters referred to in paragraph (a) shall not be exercised so as to prejudice any material conditions or restrictions for the time being specified by the President under section 4 of the Act.

Evidence
of service
levy, loan
or loan
repayment
instalment
owing

10. In any proceedings to recover the amount outstanding of any service levy, loan or loan repayment instalment or of any interest accruing thereon, the records of the authorized person relating thereto and all entries made therein and every document purporting to be certified under the hand of the authorized person or of his servant or officer to be a true extract from or copy of such records or entries shall be admissible in evidence upon production without further proof thereof and the court shall presume that the facts stated therein are true unless the contrary is proved.

Revocation
of S.I. 112
of 1980

11. The State Land (Procedure for Enforcement of Payment of Levies and Loans) Regulations, 1980, are hereby revoked.

MADE this 1st day of December, 1982.

L.M. SERETSE,
Minister of Local Government and Lands.

L2/7/127 II