

26778 Land Claim Action Group (LCAG)

Land claims in South Africa and the Broederstroom land claim

This document has been prepared in order to assist members of the 26778 Land Claim Action Group (LCAG), and the community, to understand better the implications of owning and managing land in a land claim area. It comprises the following sections:-

General background to land claims in South Africa.

Background to the “Broederstroom” land claim.

Frequently asked questions: Information for estate agents, land owners and other interested parties.

General background to land claims in South Africa

Land claims are legislated according to the Restitution of Land Rights Act 22, 1994 and amendments thereto. In summary the objectives of the Acts are:-

To provide for the restitution of rights in land to persons or communities dispossessed of such rights after 18th June 1913 as a result of past racially discriminatory laws or practices.

The Acts makes provision for compensating claimants either with the actual land itself OR with alternative land OR with money OR by a combination of such alternatives. It is important to note that it is the Government, and NOT the land owner, that has to provide the compensation. Where the Land Claim Court determines that the claimants are entitled to compensation and that the compensation is to be the actual land itself, then the Government has first to acquire the land from the current owners.

Originally a claim cut-off date of 31 December 1998 was set, and some 80,000 claims were lodged. Around 13,000 of these claims have still to be resolved and the “Broederstroom land claim” is just one of them.

Subsequent legislation, introduced in July 2014, re-opened the land claim process and provides a window, until the end of June 2019, during which further land claims can be lodged. An estimated additional 379,000 claims, covering much of rural South Africa, are expected to be registered before the window period closes.

Background to the “Broederstroom” land claim

It is important to understand that a **single** land claim may embrace **many** individual properties. Thus it is that the land claim, known for convenience as the “Broederstroom” land claim, actually embraces some **650** individually owned and registered properties in the areas of Broederstroom, Leeuwenkloof, Hartbeeshoek, Welgegend and in 5 other adjacent areas (refer below to “frequently asked question” number 6) in the North West Province.

This huge single claim, lodged by the Mekgareng Community, is estimated to cover nearly 19 000 hectares and stretches over 33 kilometres from the Pelindaba nuclear site in the east to the Hartbeeshoek satellite tracking station in the west.

Following the gazetting of the Broederstroom land claim (Government notice 26778 of the 17th September 2004) a number of landowners came together to discuss the matter and it was agreed to formulate a combined response in the interests of mutual support, efficiency and cost saving. Subsequently the landowners formed an organisation, the “**26778 Land Claim Action Group**” (**LCAG**). A constitution was developed, a committee was elected, a legal team was appointed, specialists were commissioned and systems (including a web-site for the benefit of members) were put in place. In addition, resources were organised with the objectives of establishing the validity of the claim, of understanding the legal ramifications, of responding appropriately to the claim (“accept” or “reject”) and of defending the matter in court if and when it became necessary.

Membership (on certain conditions) of **LCAG** is available, on application, to owners of portions/subdivisions of the affected farms

The Mekareng Community are **NOT** claiming the land on the basis that it was ever registered in their names and that they “owned” it. They are claiming it on the basis that they had certain benefits in matters such as the grazing of livestock, collection of muti, worship, burial, khaya construction etc. Typically such benefits might have been granted by an owner of land (say a farmer) to tenant labourers.

Since May 2005 the LCAG committee, guided by the legal team, has been of the opinion that:-

The community claim lodged by the Mekareng Community is not valid and that they are **NOT** entitled to any restitution of rights in land. This opinion has been made known to the authorities (The Regional Land Claims Commissioner) and to the claimants.

A “day-in-court”, on behalf of the LCAG membership, is awaited but it is largely up to the claimants to decide exactly when that day will be.

Frequently asked questions: Information for estate agents, land owners and other interested parties

This section of the document has been produced as a result of questions (primarily from landowners, potential purchasers and estate agents working in the area) put to the Committee of the 26778 Land Claims Action Group (LCAG).

The process followed has been to:-

- * Compile a list of questions related to property trading in an area under land claim;
- * Answer the questions; and
- * Confirm the accuracy of the answers by seeking the advice of Mr Peet Grobbelaar (LCAG's attorney specialising in land claim matters).

1. What are the obligations of a land owner whose property is under claim as per the Government Gazette and in which manner should the obligation be fulfilled?

Section 11(7)(aA) of the Restitution of Land Rights Act, Act 22 of 1994 (“the Restitution Act”) provides that, once a notice of the claim has been published in a Government Gazette, no person may sell, exchange, donate, lease, sub-divide, re-zone or develop the land in question **without having given the Regional Land Claims Commissioner one month’s written notice of his or her intention to do so.**

Annex 1 is a *pro forma* notice in terms of Section 11(7)(aA) in electronic format, which can be used to effect notice in terms of this section. It is advisable that the notice be sent by pre-paid registered post to the address as it appears from the notice. Members should therefore retain the registered post slip as well as a copy of the notice itself in the event that the notification is disputed at a later stage.

Members should also take note that the reason behind this notification is to avoid land speculation and therefore members need only to give notice of any **capital developments** and not normal day-to-day developments related to the core business of the particular land.

Members should further take notice that they are advised to disclose the fact that the land is subject to a restitution claim to any prospective purchaser as well as the estate agent, in the event of an intended sale of the property, so as to not fall foul of any possible future claim against them.

2. Does this mean that the Land Claims Commissioner has first right of refusal on a property in a land claim?

The Land Claims Commissioner does not have a first right of refusal in respect of the property. The section of the Act discussed above merely places an obligation on a land owner to notify the Commissioner of his or her intentions.

Sections 11(7)(aA)(i) of the Restitution Act provides that, in the event that such a notice was not given, any sale, exchange, donation, lease, sub-division or re-zoning of the land, **where the court is satisfied that such sale, exchange, donation, lease, subdivision or rezoning was not done in good faith, the court may set aside such sale.** Since the inception of the Restitution Act, no example has been encountered of a successful setting aside as contemplated by this section. The alternative remedy available to the Regional Land Claims Commissioner is contained in Section 6(3), which provides that where the Regional Land Claims Commissioner has reason to believe that the sale etc. **will defeat the achievement of the object of the Act,** may apply to the **court** for an **interdict prohibiting** the sale.

No instance of such an interdict being granted has been encountered since the inception of the Restitution Act. It is reiterated that the reasoning behind this section is simply to prohibit speculation with land such as the purchasing of land under claim so as to obtain a higher purchase amount in the event that the land is sold in restitution.

3. Is it a requirement for the Regional Land Claims Commissioner to respond to the 11(7)(aA) notice?

The Regional Land Claims Commissioner need not respond to the notice. The only obligation placed on the land owner is to give notice.

4. In the event that the Regional Land Claims Commissioner does not respond, does this mean that it “loses claim to the property?”

No. The restitution claim belongs to the claimant and not to the Regional Land Claims Commissioner. It will remain in force until such time that the Land Claims Court has pronounced on the validity of the claim or until such time that a land owner has decided to sell his or her land or until such time that the claimant withdraws its claim. The restitution claim will also be applicable to a new owner. The Regional Land Claims Commissioner has an administrative function over the process of restitution claims but does not “own” any claim.

5. If affected land is purchased, will the purchaser have some form of guarantee that it will get the purchase price back if the claim is successful?

No. No guarantee can be given in this regard, although, in terms of normal market related factors, purchasers who purchase property at market related values will normally receive market related compensation when the property is sold. Market related values for property are determined by way of comparable sales by a valuer in private practice. The market value of land will depend entirely on the factors which are taken into account when determining market values. The fact that a property is acquired by the State to satisfy a restitution claim is normally not a factor taken into account when determining the market value of land.

6. Which specific areas in Broederstroom and surrounds are under land claim and fall within the scope of the 26778 Land Claims Action Group?

The following farms are currently subject to the restitution claim by the so-called Mekgareng Community:

- Hartebeeshoek 498 JQ
- Leeuwenkloof 480 JQ
- Welgegund 491 JQ
- Broederstroom 481 JQ
- Petit Mont Rouge 479 JQ
- Kafferskraal 501 JQ
- Praetors Ride 562 JQ
- Weldaba 567 JQ
- Opelugmuseum 564 JQ
- Hartebeeshoek 502 JQ.

Owners of portions and subdivisions within these farms may apply to join LCAG. Membership is not automatic and is optional, on certain terms and conditions.

7. How does the Expropriation Act influence the land claim?

Section 42E of the Restitution Act provides that the Minister may purchase or expropriate land in respect of which a claim has been lodged for the purposes of restoring or awarding such land to a claimant who is entitled to restitution of a right in land and that such expropriation shall be effected in accordance with the provisions of the Expropriation Act. Where the Minister expropriates land, the amount of compensation shall be determined either by agreement or by the Land Claims Court in accordance with Section 25(3) of the Constitution.

Section 42E of the Restitution Act was included in the Act during 2003. Since then, very few expropriations have been effected in terms of this specific section. Therefore, although the expropriation of property in terms of the Restitution Act has been a possibility since 2003, very few expropriations have been effected. It remains, however, a possibility.

8. Property Tax: residential or agricultural?

Property tax is levied not in terms of the Restitution Act but in terms of the Local Government Municipal Property Rates Act. This Act is applied by the relevant municipality in whose jurisdiction the affected land falls and is calculated in accordance with the factors set out in the Property Rates Act. Once a valuation for purposes of property tax (normally referred to as the “municipal valuation”) has been determined, a so-called valuation roll is issued by the local municipality. A property owner is entitled to object to the valuation determined by the local municipality for purposes of property tax. Property tax will be determined in accordance with the title deed of the property and taking into account the improvements thereon. “Agricultural land” is determined by the title deed and will be taxed accordingly.

9. What are the chances of obtaining a loan from a commercial bank?

Although LCAG and its advisors are not qualified to give legal advice relating to the procurement of loans from banks, the experience is that banks generally do not refuse loans on the basis that a restitution claim has been lodged in respect of any property.

There were instances, some years ago, where banks maintained that, as a result of a restitution claim, the property is not sufficiently secure, but it would appear as if all major banks have in the meanwhile come to understand the nature of a restitution claim and the eventual outcome in relation to the acquisition of land.

Experience indicates that banks evaluate an application for a loan on the value of the property and the ability of the applicant to repay the loan. This would include the financial history and credit record of the applicant. In the event that a property is acquired by the State whilst a mortgage bond is still registered in respect of such a property, such a mortgage bond constitutes a preferential right in respect of the purchase price. The conveyancing attorney will follow the normal procedure with regard to the issuing of guarantees to satisfy the registered bond.

10. How will the extension of the land claim period to 30 June 2019 affect the current claim and how will it affect the purchase of land in the area?

The cut-off date for the lodging of restitution claims was extended up to 30 June 2019. This extension has an effect on the current claim which is before court in the sense that, should proactive steps be taken to finalise the current restitution claim before the new cut-off date, it might be that new claims are lodged which will necessitate the adjudication of such new claims. This will obviously cause further delays in the finalisation of the claim.

11. Can the LCAG Committee provide documentation to be included with an application for a loan to purchase property under claim?

It is not believed that the existence of the claim will be taken into account by a bank considering a loan application. (Refer to question 9 above.)

12. How important is it that the property to be purchased belongs to a paid-up member of LCAG?

The new owner must elect whether he or she wants to join the Action Group and, if he or she does join, the new owner will be liable for the subscriptions as determined by the constitution.

LCAG: The subscriptions are accounted against the property, not against the owner. Therefore, if the subscriptions of the property are paid up, the property will be included in the LCAG defence against the land claim. The converse is also true. Property owners choosing not to join LCAG are personally responsible for the defence of the claim on their land.

Annex 1

Annex 1 is a *pro forma* notice in terms of Section 11(7)(aA) in electronic format, which can be used to effect notice in terms of this section. (Refer to question 1 above.)

REFERENCES

Restitution of Land Rights Act 22 of 1994 and amendments thereto.
