

STATE PRESIDENT'S OFFICE

No. 769.
11 March 1992

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:-

NO. 3 OF 1992: DOMICILE ACT, 1992

GENERAL EXPLANATORY NOTE:

Words in italics indicate insertions in existing enactments.

ACT

To amend the law of domicile; and to provide for matters connected therewith.

(Afrikaans text signed by the State President.)
(Assented to 3 March 1992.)

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:-

Domicile of choice

1. (1) Every person who is of or over the age of 18 years, and every person under the age of 18 years who by law has the status of a major, excluding any person who does not have the mental capacity to make a rational choice, shall be competent to acquire a domicile of choice, regardless of such a person's sex or marital status.

(2) A domicile of choice shall be acquired by a person when he is lawfully present at a particular place and has the intention to settle there for an indefinite period.

Domicile of person who cannot acquire domicile of choice

2. (1) A person not capable of acquiring a domicile of choice as contemplated in section 1 shall be domiciled at the place with which he is most closely connected.

(2) If, in the normal course of events, a child has his home with his parents or with one of them, it shall be presumed, unless the contrary is shown, that the parental home concerned is the child's domicile.

(3) In this section "child" means any person under the age of 18 years, excluding such a person who by law has the status of a major;

"parents" includes the adoptive parents of a child and the parents of a child who are not married to each other.

Succession of domicile

3. (1) No person shall lose his domicile until he has acquired another domicile, whether by choice or by operation of law.

2) Notwithstanding any law or the common law, no person's domicile of origin shall revive except within the meaning of section 1 or 2.

Application of choice of law rules in certain cases

4. If a court, in the application of the choice of law rules, finds that a question before the court should be decided in accordance with the law of a foreign state or territory on account of someone's domicile in that state or territory, the court shall decide that question in accordance with that law, even though a court of that state or territory, in the application of the choice of law rules, would have found the South African law or any other law to be applicable with respect to the question concerned.

Standard of proof for acquisition or loss of domicile

5. The acquisition or loss of a person's domicile shall be determined by a court on a balance of probabilities.

Amendment of section 2 of Act 70 of 1979

6. Section 2 of the Divorce Act, 1979, is hereby amended

(a) by the substitution for subsection (1) of the following subsection:

"(1) A court shall have jurisdiction in a divorce action if the parties are or either of the parties is-

(a) domiciled in the area of jurisdiction of the court on the date on which the action is instituted; or

(b) ordinarily resident in the area of jurisdiction of the court on the said date and have or has been ordinarily resident in the Republic for a period of not less than one year immediately prior to that date."

(b) by the substitution in subsection (2) for the expression "subsection (1)(b)" of the expression "subsection (1)"; and

(c) by the substitution for subsection (3) of the following subsection:

"(3) A court which has jurisdiction in terms of this section in a case where the parties are or either of the parties is not domiciled in the Republic shall determine any issue in accordance with the law which would have been applicable had the parties been domiciled in the area of jurisdiction of the court concerned on the date on which the divorce action was instituted."

Substitution of section 13 of Act 70 of 1979

7. The following section is hereby substituted for section 13 of the Divorce Act, 1979:

"Recognition of certain foreign divorce orders

13. *The validity of a divorce order or an order for the annulment of a marriage or for judicial separation granted in a court of a foreign country or territory shall be recognized by a court in the Republic if, on the date on which the order was granted, either party to the marriage-*

(a) was domiciled in the country or territory concerned, whether according to South African law or according to the law of that country or territory;

(b) was ordinarily resident in that country or territory; or

(c) was a national of that country or territory."

Savings

8. (1) This Act shall apply subject to the Aliens Control Act, 1991 Act No. 96 of 1991).

(2) This Act shall not affect-

(a) any right, capacity, obligation or liability acquired, accrued or incurred by virtue of the domicile which a person had at any time prior to the commencement of this Act;

(b) the legality of any act performed before that commencement.

(3) Any proceedings pending in a court of law at the commencement of this Act shall be proceeded with and finalized as if this Act had not been passed.

Short title and commencement

9. This Act shall be called the Domicile Act, 1992, and shall come into operation on a date fixed by the State President by proclamation in the Gazette.