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DIE KWAZULU-NATAL WYSIGINGSWET OP BEGRAAFPLASE EN KREMATORIUMS, 2005
(Wet No. 2 van 2005)
Goedgekeur op 2005-08-31

WET

Om die KwaZulu-Natal Wet op Begraafplase en Krematoriums, 1996, te wysig om voorsiening te maak vir begrawings op ander plekke as gevestigde begraafplase; en om vir aangeleenthede in verband daarmee voorsiening te maak.

DAAR WORD soos volg deur die Wetgewer van die Provinsie KwaZulu-Natal bepaal:

Wysiging van artikel 1 van Wet 12 van 1996

1. Artikel 1 van die KwaZulu-Natal Wet op Begraafplase en Krematoriums, 1996 (Wet No. 12 van 1996), hierna die Hoofwet genoem, word hierby gewysig –

- (a) deur die volgende omskrywing na die omskrywing van “begraafplaasowerheid” in te voeg:
“beskikking”, vir die doeleindes van artikel 2(2)(a), met inbegrip van begrawing, en “begrawe” het ‘n ooreenstemmende betekenis;
- (b) deur die volgende omskrywings na die omskrywing van “bestuurder” in te voeg:
“eienaar” die eienaar van grond ten tyde van ‘n sterfte bedoel in artikel 3(2);
“familie”, in verband met ‘n okkupeerder, en vir die doeleindes van
 (i) die omskrywing van “gevestigde praktyk”;
 (ii) artikel 3(2)(b); en
 (iii) artikel 3(3)(a),
huweliksmaat of huweliksmaats, lewensmaat of lewensmaats, eie of aangenome kind of kinders, kleinkind of kleinkinders, ouer of ouers, grootouer of grootouers, asook afhanklike of afhanklikes,
“gevestigde praktyk” ‘n praktyk ingevolge waarvan die eienaar of persoon in beheer of sy of haar voorganger in titel reëlmatig aan persone woonagtig op die grond toestemming verleen het om afgestorwe lede van hulle familie op daardie grond in ooreenstemming met hulle godsdiens of kulturele oortuiging te begrawe;
- (c) deur die volgende omskrywing na die beskrywing van “graf” in te voeg:
“grond”, vir die doeleindes van –
 (a) die omskrywings van –
 (i) eienaar;
 (ii) gevestigde praktyk;
 (iii) okkupeerder; en
 (iv) persoon in beheer; en
 (b) artikel 3(2) en (3),
grond wat oorwegend vir landboudeleindes gebruik word;
“hierdie Wet” ook die regulasies;
- (d) deur die volgende omskrywings na die omskrywing van “naasbestaande” in te voeg:
“okkupeerder” ‘n persoon wat woon op grond wat aan ‘n ander persoon behoort en wat beskik oor toestemming of ‘n ander regsgeldige reg om so te doen;
“persoon in beheer” ‘n persoon wat ten tyde van ‘n sterfte bedoel in artikel 3(2) regsbevoegdheid gehad het of het om toestemming aan ‘n persoon te verleen om op die betrokke grond te woon;
- (e) deur die volgende omskrywing na die omskrywing van “Raad op Ontwikkeling en Dienste” in te voeg:
“regulasies” regulasies kragtens artikel 26 uitgevaardig;

Wysiging van artikel 3 van Wet 12 van 1996

2. Artikel 3 van die Hoofwet word hierby gewysig –

- (a) deur dit met die volgende artikel te vervang:

“Verbod op begrawing of verassing op ander plekke as by gevestigde begraafplaas en krematoriums

3.(1) Behoudens die bepalings van artikel 2, mag geen menslike stoflike oorskot –

- (a) op ‘n ander plek as ‘n begraafplaas begrawe word nie; of
 (b) op ‘n ander plek as ‘n krematorium veras word nie,

wat ingevolge hierdie Wet en die regulasies daarkragtens uitgevaardig word nie.

(2) Ongeag die bepalings van subartikel 1(a), maar andersins onderworpe aan hierdie Wet, mag ‘n okkupeerder –

- (a) op die grond begrawe word waarop hy of sy het ten tyde van sy of haar dood gewoon het; en
 (b) ‘n afgestorwe familielid van sy of haar familie op die grond begrawe waarop die okkupeerder woon.

(3) ‘n Begrawing bedoel in subartikel (2) kan plaasvind –

- (a) na kennisgewing deur die okkupeerder of sy of haar familieledede aan die eienaar of persoon in beheer; en
 (b) indien daar ‘n gevestigde praktyk bestaan ten opsigte van die grond waarop die okkupeerder woon.

Kort titel

3. Hierdie Wet heet die KwaZulu-Natal Wysigingswet op Begraafplase en Krematoriums, 2005.

THE KWAZULU-NATAL CEMETERIES AND CREMATORIA AMENDMENT ACT, 2005

(Act No. 2 of 2005)

Assented to on 2005-08-31

ACT

To amend the KwaZulu-Natal Cemeteries and Crematoria Act, 1996, to make provision for burials other than at established cemeteries; and to provide for matters connected therewith.

BE IT ENACTED by the Legislature of the Province of KwaZulu-Natal, as follows:

Amendment of section 1 of Act 12 of 1996

1. Section 1 of the KwaZulu-Natal Cemeteries and Crematoria Act, 1996 (Act No. 12 of 1996), hereinafter referred to as the principal Act, is hereby amended –

- (a) by the insertion after the definition of Development and Services Board” of the following definitions:
“disposal”, for the purposes of section 2(2)(a), includes burial, and “bury” will have a corresponding meaning;
“established practice” means a practice in terms of which the owner or person in charge or his or her predecessor in title routinely gave permission to people residing on land to bury deceased members of their family on that land in accordance with their religion or cultural belief;
“family”, in relation to an occupier, and for the purposes of
 (i) the definition of “established practice”;
 (ii) section 3(2)(b); and
 (iii) section 3(3)(a).
means spouse or spouses, partner or partners, direct or adopted child or children, grandchild or grandchildren, parent or parents, grandparent or grandparents, as well as dependent or dependents.
- (b) by the insertion after the definition of “KwaZulu-Natal” of the following definition:
“land”, for the purposes of –
 (a) the definitions of –
 (i) established practice;
 (ii) occupier;
 (iii) owner; and
 (iv) person in charge; and
 (b) section 3(2) and (3),
means land predominantly used for agricultural purposes;
- (c) by the insertion after the definition of “next of kin” of the following definition:
“occupier” means a person residing on land which belongs to another person and who has consent or another right in law to do so;
- (d) by the insertion after the definition of “operator” of the following definitions:
“owner” means the owner of land at the time of a death contemplated in section 3(2);
“person in charge” means a person who at the time of a death contemplated in section 3(2) had or has legal authority to give consent to a person to reside on the land in question;
- (e) by the insertion after the definition of “Regional Council” of the following definitions:
“regulations” means regulations made under section 26;
“this Act” includes the regulations.

Amendment of section 3 of Act 12 of 1996

2. Section 3 of the principle act is hereby amended –

- (a) by the substitution thereof for the following section:

“Prohibition against burial or cremation elsewhere than at established cemeteries and crematoria

3.(1) Subject to the provisions of section 2, no human remains shall be –

- (a) buried except in a cemetery; or
 (b) cremated except at a crematorium,

established and operated in terms of this Act and the regulations made thereunder.

(2) Despite the provisions of subsection 1(a), but otherwise subject to this Act, an occupier may –

- (a) be buried on the land on which he or she resided at the time of his or her death; and
 (b) bury a member of his or her family on the land on which the occupier resides.

(3) A burial contemplated in subsection (2) may take place –

- (a) after notification to the owner or person in charge by the occupier or his or her family members; and
 (b) if an established practice exists in respect of the land on which the occupier resides.

Short title

3. This Act is called the KwaZulu-Natal Cemeteries and Crematoria Amendment Act, 2005.

UMTHETHOSICHIBIYELO WAMANGCWABA KANYE NOKULOTHISA WAKWAZULU-NATALI, KA-2005
(NO. 02 KA 2005)
Uvunywe ngomhlaka 2005-08-31

UMTHETHO

Wokuchibiyela uMthetho weziNdawo zokuNgcwaba nezokuLothisa waKwaZulu-Natali, ka 1996, ukuhlinzekela ukungcwaba nakwezinye izindawo okungezona ezihlinzekelwe ukungcwaba; kanye nokuhlinzekela izindaba eziphatelene nalokhu.

MAKUMISWE UMTHETHO yiPhalamende lesiFundazwe saKwaZulu-Natali, kanjena:

Ukuchitshiyelwa kwesigaba 1 soMthetho 12 ka 1996

1. Isigaba 1 soMthetho wokuNgcwaba kanye nokuLothisa waKwaZulu-Natali ka 1996 (uMthetho No. 12 ka 1996), obizwa lapha njengoMthetho omkhulu, siyachitshiyelwa –

(a) ngokufaka ngemuva kwencazelo “iBhodi yeNtuthuko neMisebenzi”;

“**ukuchithwa**”, ngezinhloso zesigaba 2(2)(a), kumbandakanya umngcwabo kanye nokungcwaba, kuyoba nomqondo ofanayo; **“umkhuba ojwayelekile”** usho umkhuba lapho khona umnikazi noma umuntu oyiphethe noma obeyiphethe ngaphambilini ebevame ukunikeza abantu abahlala kuleyo ndawo imvume yokungcwaba amalungu emindeneni yabo abashonile ngokuhambisana nenkolo noma nesiko labo;

“**umndeni**”, mayelana nomhlali, futhi nangenhloso –

(i) yokuchazwa “komkhuba ojwayelekile”;

(ii) isigaba 3(2)(b); kanye

(iii) nesigaba 3(3)(a).

uchaza umshadikazi noma abashadikazi, othandana naye noma izithandani, umntwana wakho ngqo noma abantwana obakhulisayo ngokusemthethweni ungabazali, umzukulu noma abazukulu, umzali noma abazali, ukhokho noma okhokho nalowo noma nalabo obondlayo.

(b) ngokufaka lencazelo elandelayo emva kwencazelo “KwaZulu-Natali”

“**umhlaba**”, ngenhloso –

(a) yezincazelo –

(i) zomkhuba ojwayelekile;

(ii) umhlali;

(iii) umnikazi; kanye

(iv) nomuntu ophethe; kanye

(b) nesigaba 3(2) kanye no (3).

uchaza umhlaba osetshenziselwa ikakhulukazi ezolimo;

(c) ngokufaka emuva kwencazelo “isihlobo segazi” kule ncazelo ethi:

“**umhlali**” usho umuntu ohlala emhlabeni womunye umuntu

onemvume noma elinye ilungelo lomthetho lokwenzenjalo;

(d) ngokufaka kwalezi zincazelo ezilandelayo emva kwencazelo “umsebenzisi wendawo”:

“**umnikazi**” usho umnikazi wendawo ngesikhathi sokufa okuchazwe kwisigaba 3(2);

“**umuntu ophethe**” kusho umuntu okuthe ngesikhathi sokufa okuchazwe kwisigaba 3(2) wayenelungelo noma unelungelo elisemthethweni ukuba avumele umuntu ahlale emhlabeni okukhulunywa ngawo;

(e) ngokufaka izincazelo ezilandelayo emva kwencazelo “uMkhandlu wesiFunda”:

“**imithethonqubo**” isho imithethonqubo eyakhiwe ngaphansi kwesigaba 26;

“**loMthetho**” umbandakanya imithethonqubo.

Ukuchitshiyelwa kwesigaba 3 soMthetho 12 ka 1996

2. Isigaba 3 somthetho omkhulu siyachitshiyelwa lapha –

(a) ngokugqulelwa kulesigaba esilandelayo:

“Ukwenqatshelwa kokungcwaba noma kokulothisa noma kuphi ngaphandle kwasezindaweni zokungcwaba noma ezindaweni zokulothisa ezisetshenziselwa lokho.”

3. (1) Ngokwezihlinzeko zesigaba 2, akukho zinsalela zomuntu –

(a) eziyongcwatshwa ngaphandle kwasendaweni yokungcwaba; noma

(b) zilothiswe ngaphandle kwasendaweni yokulothisa,

esungulwe futhi esetshenziswa ngokuhambisana nalo Mthetho kanye nemithethonqubo engaphansi kwawo.

(2) Nakuba zikhona izihlinzeko zesigatshana 1(a), kodwa kuye ngokuhambisana nalo Mthetho, umhlali –

(a) angangcwatshwa emhlabeni ngesikhathi eshona abehlala kuwona; futhi

(b) angcwabe ilungu lomndeni wakhe emhlabeni umhlali ahlala kuwo.

(3) Ukungcwaba okuchazwe kwisigatshana (2) ungaghubeka –

(a) emva kokwaziswa komnikazi noma komuntu ophethe wumhlali noma ngamalungu omndeni wakhe, futhi

(b) uma kunomkhuba olandelwayo mayelana nomhlaba lapho umhlali ehlala khona.

Isihloko esifingqiwe

3. Lo Mthetho uyobizwa ngoMthethosichibiyelo wamaNgcwaba kanye nokuLothisa waKwaZulu-Natali, 2005.