

DOMICILE ACT 3 OF 1992

[ASSENTED TO 3 MARCH 1992]

[DATE OF COMMENCEMENT: 1 AUGUST 1992]

(Afrikaans text signed by the State President)

ACT

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

1 Domicile of choice

(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.

2 Domicile of person who cannot acquire domicile of choice

(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.

3 Succession of domicile

(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.

4 Application of choice of law rules in certain cases

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.

5 Standard of proof for acquisition or loss of domicile

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

6 Amends section 2 of the Divorce Act 70 of 1979, as follows: paragraph (a) substitutes subsection (1); paragraph (b) substitutes in subsection (2) the expression 'subsection (1)' for the expression 'subsection (1) (b)'; and paragraph (c) substitutes subsection (3).

7 Substitutes section 13 of the Divorce Act 70 of 1979.

8 Savings

(1) This Act shall apply subject to the Aliens Control Act, 1991 (Act 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.

9 Short title and commencement

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*.

[S. 9 substituted by s. 2 of Act 42 of 1998]