The subdivision of agricultural land

By VDT Attorneys

The subdivision of agricultural land is not as simple as you might think; there are various aspects one should consider. As a producer, you might want to either sell a portion of your farm, lease a portion of it over a long period, or bequeath it to your children. The *Subdivision of Agricultural Land Act, 1970 (Act 70 of 1970)* might be applicable, and it is imperative that all owners of agricultural land take note of the provisions of the *Act*.

Importance of the *Act*

Should you wish to subdivide your farm in any of the ways mentioned, you have to obtain written consent from the minister of agriculture.

The primary purpose of the *Act* is to prevent the subdivision of agricultural land into small uneconomic sections that will hinder agriculture. In a report, Statistics South Africa confirmed that from 2011 to 2016, more than 500 000 agricultural households were lost in the old homelands due to them being relocated to agricultural land of approximately 0,5ha. These households previously used their land for agricultural purposes; however, due to the size of the new property, farming had become unproductive and unfeasible.

This demonstrates the importance of the *Act*, as agricultural land with a high value and yield should be protected. Therefore, before any agricultural land is subdivided, the minister's consent is required. There are, however, instances where the minister's consent is not required, as explained in Section 2 of the *Act*.

Subdividing a farm

The process relating to the subdivision of a farm will differ, depending on what the owner/farmer intends to do. The starting point will be to approach a surveyor to draft a subdivision diagram, which must be submitted to the minister together with the application. The minister will then consider various aspects before making a decision.

It is advisable to consult a professional to ensure that your application is processed in a timely manner. Here are some important aspects to consider:

Selling a portion of your farm

In the case of a sale of a portion of your farm, it is imperative that you obtain the consent of the minister before you enter the contract. Section 3(e) specifically states that no portion of agricultural land, whether surveyed or not, and whether there is any building on it or not, shall be sold or advertised for sale without the written consent of the minister.

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This means you may not take any preliminary steps before having obtained the necessary consent. Furthermore, you cannot enter into a sale agreement with a suspensive condition stating that you must first obtain the consent of the minister before the agreement comes into force and effect. If you do take any preliminary steps, the agreement will be deemed illegitimate.

Leasing a portion of your farm

Should a producer wish to alienate the right to use a portion of his or her farm by leasing it to a person over the long term, the minister's consent will also be required. The *Act* states in Section 3(e) that no right to such a portion of land shall be sold or granted for a period of more than ten years or for the natural life of any person, or to the same person for periods aggregating more than ten years.

This clearly prevents a lease that is concluded for ten years or more, which includes a lease that is concluded for five years and thereafter renewed for another five years, or a lease for the natural lifetime of a person, unless you have the minister's consent.

Bequeathing your farm

It is important to note that no person may own an undivided share in agricultural land, as set out in Section 3(b) of the *Act*. Therefore, should you bequeath your farm to, for example, two of your children, each will be entitled to an undivided share, which is prohibited unless you have the necessary consent from the minister. Consequently, upon your death, there will be unnecessary delays in administering your estate.

Alternative options would be to bequeath your farm to a company of which your children are directors and shareholders, or to a testamentary trust of which your children will be the beneficiaries. Should any of the aforementioned options not be followed, the only alternative would be to sell the farm and divide the profit between your children.

It is clear that the *Subdivision of Agricultural Land Act* applies in various cases and that the farmer/owner should be aware of its application. If the provisions outlined in the *Act* are not followed, unnecessary consequences might ensue.

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