The subdivision of agricultural land: What to consider

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The subdivision of agricultural land is not as simple as one might think. If you want to sell a portion of your farm, lease a portion of it over a long period or even bequeath your farm to your children, the provisions of the *Subdivision of Agricultural Land Act, 1970 (Act 70 of 1970)* (the Act) might apply.

It is therefore imperative that all owners of agricultural land take note of the Act's provisions, as well as the consequences of non-adherence.

Importance of the Act

The primary purpose of the Act is to prevent the subdivision of agricultural land into small uneconomic pieces that will hinder agriculture in future.

An article published in *Landbouweekblad* in 2019 stated that according to Statistics South Africa, more than 500 000 agricultural households were lost in the old homelands from 2011 to 2016 due to these households being relocated to agricultural land of around 0,5ha. These households previously used their land for agricultural purposes. However, due to the size of the new properties, farming had become unproductive, unfeasible, and consequently impossible.

This demonstrates the importance of the Act, as agricultural land with a high value and yield should be protected and not subdivided into uneconomic portions. Therefore, before any subdivision of agricultural land can take place in any of the ways mentioned, the minister of agriculture (the minister) must give written consent. (Instances where the minister's consent is not required are outlined in Section 2 of the Act.)

The process of subdivision

Subdivision can be long and cumbersome, and the process will differ based on the landowner's intention. The starting point in any case will be to approach a surveyor to draft a subdivision diagram. This diagram must be submitted to the minister, together with the application, whereafter the minister will consider various aspects before coming to a decision.

As this is a bureaucratic and lengthy process, consulting an expert to ensure your application is processed in a timely manner is advisable.

Selling a portion of your farm

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

This means that you may not take any preliminary steps, such as advertising the portion to be subdivided, or signing an agreement relating to the sale of the portion, before obtaining the necessary consent. You also cannot enter into a sale agreement with a suspensive condition that states that you must first obtain the consent of the minister before the agreement comes into force. If any such preliminary steps are taken, the agreement will be regarded as null and void.

Leasing a portion of your farm

Should a farmer wish to alienate the right to use a portion of his farm by leasing such portion to another person, the minister's consent will also be required, should this be regarded as a long-term lease. The Act states that no right to such a portion of the land shall be sold or granted for a period of more than ten years, for the natural life of any person, or to the same person for periods aggregating more than ten years.

This provision clearly prevents a lease that is concluded for ten years or more, including 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, without the minister's written consent.

Bequeathing your farm

It is important to note that no person may own an undivided share in agricultural land. Therefore, should you bequeath your farm to, for example, two of your children in your will, each will be entitled to an undivided share. This is prohibited unless you have the necessary consent from the minister. Consequently, upon your death, there will be unnecessary delays and consequences in administering your estate.

Alternative options would be to rather 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. In this manner your children could still obtain the benefits of the farm, but through alternative measures.

Should none of the options mentioned be followed, the only alternative would be to sell the farm and divide the profit between your children.

Conclusion

In light of the aforementioned, owners of agricultural land should be aware of the provisions that apply to the subdivision of such land, as non-adherence may result in unnecessary and undesirable consequences.

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