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FARM INHERITANCE TO MORE THAN ONE PERSON

Transactions relating to agricultural land is governed by the Subdivision of Agricultural Land Act 70 of 1970. The Act prohibits transfer of agricultural land to more than 1 (one) individual as the subdivision of agricultural land is sometimes not economically feasible.

It is a common practice that farm owners bequeath a farm to their children. This then creates the question as to what is the best outcome where agricultural land is to be inherited by more than one person?

The possible solutions are as follows:

A redistribution agreement can be entered into by the heirs in terms of which a trust is registered:

- The heirs can establish a trust wherein they shall be the beneficiaries and the agricultural land to be transferred to the trust.

A redistribution agreement can be entered into by the heirs in terms of which the property is transferred only into the name of 1 of the heirs:

- An agreement between the heirs that the farm should be transferred to a nominated heir and the other assets would then be redistributed to the other heirs or the heir that receives the property makes a monetary contribution to the other heirs.

Consent from the Minister

- An application to the Minister of Agriculture for a consent to subdivide the agricultural land stating the reasons for granting of the consent to subdivision must be submitted. If it is not economically detrimental the Minister may issue consent that the farm may be transferred to more than one person.

- This is however a cumbersome process and can take up to 12 months or longer for the consent to be issued.

Sale of the farm

- The last option is to sell the farm and the proceeds are then divided equally between the heirs. For a sale all the heirs must consent thereto.

The act will also find application if a sale transaction is concluded with more than 1

purchaser. One must always first ensure if the act is applicable on the specific agricultural land, and if it is, it can only be transferred to more than one purchaser if the Minister of Agriculture's consent is obtained.

There are a number of farms that have already been exempted from the application of the act where the Minister's consent has been filed at the Surveyor General's Offices, and the first point of departure will therefore be to first check if there is a consent filed on the specific agricultural land, and if not, the abovementioned processes will be applicable.