

Administration Manual for State Agricultural Land



DEPARTMENT: AGRICULTURE
Farmer Settlement

CONTENTS

1. LEASING AND CARETAKING

1.1 Market related leasing of land and business complexes

- 1.1.1 Determination of policy and lease period
- 1.1.2 Liaison with organised agriculture in respect of land
- 1.1.3 Advertising of available units
- 1.1.4 Procurement of applications
- 1.1.5 Processing of applications and finalisation of lease agreements

1.2 Lease of unutilised farm dwellings, buildings and structures

- 1.2.1 Determination of policy
- 1.2.2 Procurement of applications for the lease of dwellings, buildings, and structures (POA land)
- 1.2.3 Finalisation of lease agreements

1.3 Caretaking of agricultural land

- 1.3.1 Determination of policy
- 1.3.2 Appointment of caretakers
- 1.3.3 Supervision on the proper utilisation of state agricultural land
- 1.3.4 Maintenance of infrastructure
- 1.3.5 Combating of soil erosion
- 1.3.6 Prevention of bush fires
- 1.3.7 Prevention of illegal occupation of state agricultural land and institution of corrective measures

1.4 Other administrative matters

- 1.4.1 Collection of rentals
- 1.4.2 Institution of legal proceedings
- 1.4.3 Writing-off of irrecoverable debts and unusable/redundant assets
- 1.4.4 Disposal of unusable/redundant assets
- 1.4.5 Liaison with lessees
- 1.4.6 Approval of rental reductions
- 1.4.7 Administration and updating of register of state agricultural land
- 1.4.8 Control over the rezoning of state agricultural land
- 1.4.9 Support and guidance to provincial governments in respect of the administration of state agricultural land

1.4.10 Recommendations in respect of prospecting rights and mineral leases

2. REGISTRATION OF SERVITUDES

3. PRIVATISATION/DISPOSAL OF STATE AGRICULTURAL LAND (POA)

3.1 Liaison with the Department of Land Affairs to expedite the disposal of state agricultural land

3.2 Coordination of submissions in respect of state agricultural land to the Commission on Restitution of Land Rights and the Land Claims Court and rendering of support in respect of inspections *in loco*

3.3 Appointment of a project leader for Farmer Settlement Committee (FSC)

3.3.1 Norm and Planning Committee

3.3.2 Selection and Settlement Committee

3.3.3 Support Committee

3.4 Provision of administrative support to the Farmer Settlement Committee

3.5 Subdividing and survey of land

3.6 Settlement of farmers

3.7 Disposal of state agricultural land

1. Leasing and Caretaking

In view of the policy to privatise state agricultural land and in order to protect state assets the leasing and caretaking can be administrated in accordance with the Land Administration Act 2 of 1995 in the following manner:

1.1 Market related leasing of land and business complexes

1.1.1 Determination of Policy and Lease Periods

In view of the implementation of the new Land Redistribution for Agricultural Development Programme, leasing periods are granted mainly on a three-year basis with certain exceptions such as sugar_cane farmers, forestry, etc. Lease agreements are renewed after three years.

The national Department of Agriculture in conjunction with the national Department of Land Affairs will be responsible to determine policy in respect of leasing and disposal in conjunction with the provincial governments.

1.1.2 Liaison with organised agriculture in respect of land

In view of the political sensitivity regarding land, liaison with organised agriculture is of the utmost importance. This function is carried out by the provincial Department of Agriculture with regard to Power of Attorney (POA) land with support from the national Department of Agriculture when required. In the case of financial assistance land (FALA land) liaison should take place with the national Department of Agriculture.

1.1.3 Advertising of available units

This function is presently dealt with by the provincial departments of agriculture in collaboration with organised agriculture. When land becomes available for leasing, it is advertised by means of notices at

various strategic points in the region, e.g. magistrates' offices, police stations, newspapers, etc. The national Department of Agriculture is not involved in the advertising process. Funds for the purpose of agricultural power of attorney land will be the responsibility of the provincial department of agriculture, and where it is FALA land the national Department of Agriculture is responsible for payment of the accounts.

1.1.4 Procurement of applications

The line functionary at provincial level receives applications for both POA and FALA land. The present procedure is that recommendations as to the granting/approval of a lease for POA land is approved by the provincial departments of agriculture, and the FALA properties approval is given by the Senior Manager: Farmer Settlement (national Department of Agriculture).

The provincial department of agriculture is responsible to appoint a State Land Allocation and Disposal Committee for the consideration of applications for this purpose.

1.1.5 Processing of applications and finalisation of lease agreements

Authority to approve leases with regard to FALA land is vested in the Senior Manager: Farmer Settlement. Authority for POA land will be given on provincial level.

The national Department of Agriculture will remain the functionary on an agent basis until the provincial departments of agriculture are in the position to execute the functions with regard to POA land.

1.2 Lease of unutilised farm dwellings, buildings and structures

1.2.1 Determination of policy

- The determination of policy in this regard is mainly aimed at the protection of structures on state agricultural land.
- Policy is determined by the national Department of Agriculture in collaboration with the provincial department of agriculture.
- The aim in the leasing of dwellings, buildings and structures is the protection of state assets against vandalism.
- Rental is determined by an offer received from the applicant and is considered against the condition and locality of the structure.
- All lease periods are on a monthly basis and administered by the provincial department of agriculture with regard to POA land. Applications for buildings/structures on FALA land should be referred to the national Department of Agriculture for approval with a recommendation from the provincial departments of agriculture.

1.2.2 Procurement of applications for the lease of dwellings, buildings and structures (POA land)

- Applications based on supply and demand are received from interested persons.
- This function is carried out by the provincial departments of agriculture, according to the powers given to the MECs on 18 April 2000 by means of a POA.

1.2.3 Finalisation of lease agreements

- Lease agreements for FALA land are currently finalised by the national Department of Agriculture.
- Lease agreements for POA land are finalised by the provincial department of agriculture.

1.3 Caretaking of state agricultural land

1.3.1 Determination of policy

- Central government through the Department of Agriculture and Land Affairs will be responsible for determining the final policy after close liaison with their provincial departments.
- The provincial department of agriculture will be responsible for the execution of the policy applicable on POA land in that specific province.
- An aspect that needs to be clarified is the appointment of caretakers or the leasing of state agricultural land. The provincial department of agriculture will be responsible for the maintenance of state agricultural land, where a caretaker or lessee is not appointed. It should be borne in mind that the Auditor-General is in favour of leasing so as to generate income.

1.3.2 Appointment of caretakers

The provincial department of agriculture will nominate capable persons to be appointed as caretakers. The agricultural extension officer/farm foreman should play a leading role in providing information of the candidates to the provincial department of agriculture. The local farmers' union must also play a vital role in selecting a caretaker.

1.3.3 Supervision on the proper utilisation of state agricultural land

- Agricultural land must be utilised in a sustainable manner in order to obtain the greatest long-term benefit from the agricultural potential of the land.
- Guidelines stipulated by the local extension officer must be followed. This implies the provision of support such as extension and production programmes.

1.3.4 Maintenance of infrastructure

- It should always be the prime goal to keep all infrastructures in a good condition and where such infrastructure is in a very bad condition consideration should be given to dismantling/demolishing of such infrastructure. In such cases a State Land and Disposal Committee should approve the demolishing of the buildings/structures on recommendation of the extension officer. Material of dismantled infrastructure must be dealt in accordance with the relevant financial regulations (Provision Administration System) by receiving of tenders.
All the functions mentioned are the responsibility of the provincial department of agriculture through its relevant directorate for this line function. The provincial government should therefore budget for the necessary funds, tools, material and personnel. The national Department of Agriculture is responsible for such actions on FALA land with assistance from the provincial department of agriculture.
- Maintenance of infrastructure on state agricultural land is achieved by:
 - The leasing of land where the lessee becomes responsible for the maintenance of the infrastructure.
 - The appointment of a caretaker where the caretaker becomes responsible for the maintenance of the infrastructure.

1.3.5 Combating of soil erosion

- Guidelines on how to combat soil erosion under local conditions will be provided by the extension officer and must be adhered to.
- Maintenance of existing erosion works such as contours, watercourses, weirs, etc, must be carried out.

1.3.6 Prevention of bush fires

State agricultural land should at all times be protected against bush fires that can cause damage to infrastructure or grazing. Firebreaks should be made in accordance with the Forestry Act.

It is the responsibility of the provincial department of agriculture to ensure that lessees and caretakers comply with the stipulations of the Forestry Act, with regard to firebreaks.

1.3.7 Prevention of the illegal occupation of state agricultural land and institution of corrective measures

- The provincial department of agriculture will, through guarding, leasing and supervision, determine when illegal occupation of land placed under the authority of the provincial department of agriculture, occurs with regard to POA land. In the case of FALA land the matter should be brought under the attention of the national Department of Agriculture which will take further steps.
- The provincial department of agriculture will inform the provincial Director of Land Affairs of the illegal occupation and it will be the responsibility of the Regional Director of the Department of Land Affairs to implement the necessary remedial steps.
- Should it be decided that a property with regard to POA land be utilised for community settlement or any purpose other than individual farmer settlement or economically viable co-operative farming, the Regional Director of the Department of Land Affairs will take the necessary action to remove the land from the authority of the Department of Agriculture and have it vested in the appropriate authority. If FALA land is needed for this purpose, the national Department of Agriculture should give approval.
- The provincial department of agriculture will report illegal occupation of land to the provincial department of land affairs who will inform the national Department of Land Affairs to effect the necessary remedial actions and the possible rezoning as explained in the previous paragraph.

1.4 Other administrative matters

Other administrative matters regarding the interim administration of state agricultural land are:

1.4.1 Collection of rentals

This function is carried out at provincial level. Support by the national Department of Agriculture can be rendered where necessary. Rentals with regard to FALA land should be paid in at the national Department of Agriculture.

1.4.2 Institution of legal proceedings

This action is presently executed at national government level in collaboration with the Legal Section of the Department of Agriculture.

However, in KwaZulu-Natal the provincial department of agriculture has been authorised to liaise directly with the State Attorney: Natal. In this instance, national government renders the necessary support.

The provincial department of agriculture will be responsible to liaise directly with the State Attorney in the relevant province from 18 April 2000 when the POA was issued.

1.4.3 Writing-off of irrecoverable debts and unusable/redundant assets

The following functions should be delegated to provincial level:

- Bad debt

An irrecoverable debt occurs when all efforts to collect an amount in arrears, at provincial as well as national government level have failed. Matters of this nature must always be referred to the relevant State Attorney.

Should the latter not be able to collect the outstanding amount, a recommendation that the amount be written off is submitted to national Department of Agriculture with regard to FALA land and to the provincial department of agriculture where POA land is concerned.

The criteria for the writing off of departmental debt in terms of Treasury Regulation 11.4.1 are as follows:

- If the debtor has neither assets nor income.
- All reasonable efforts to trace the debtor have failed.
- There is no possibility now or in the foreseeable future of collection.
- The debtor or his dependants would be deprived of the minimum essential means of livelihood.
- The assets of the debtor or of the estate of the debtor are indispensable to the debtor's dependants or are of relatively little value.
- The State Attorney/Senior Legal Officer has made a recommendation to that effect and the Department is in agreement therewith.

Any other requests for writing off of departmental debt must be submitted to the Chief Financial Officer.

- Unusable/redundant assets

It is procedure that the State Land Allocation and Disposal Committee be established by the regional office to investigate and make recommendations on the assets to be written off with regard to POA land. FALA land matters should be dealt with at national Department of Agriculture level on recommendation of the PDA.

A form/questionnaire (see Annexure A) has been designed by the national Department of Agriculture in terms of the requirements by the Treasury (Department of State Expenditure).

The final approval of the recommendations by the SLADC at provincial government level and the matter is forwarded to the Department of State Expenditure for authorisation.

- Stolen assets

Thefts are reported to the South African Police Service (SAPS) at provincial level and a case number is obtained. Where stolen assets are not recovered, these are written off at provincial level or at national level.

1.4.4 Disposal of unusable/redundant assets

This action is carried out at provincial level in terms of the recommendations by the PSLADC, e.g. sale by tender or that retrievable material be taken on record in order to comply with the stipulations of the Provisioning Administration System.

1.4.5 Liaison with lessees

This function is totally carried out at provincial level with support from national Department of Agriculture when necessary. It entails supervision over lessees in terms of the stipulations in the lease agreement.

1.4.6 Approval of rental reductions

At present, all requests for reduction in rental are subject to approval by the Department of State Expenditure. Powers was given to the PDA's to sell, exchange, donate or to let properties mentioned in the POA.

The PDA's can therefore deal with requests for rental deductions according to approval by State Expenditure.

A motivated request to this effect is submitted to the national Department of Agriculture which in turn compiles a report and recommendation to the Department of State Expenditure with regard to Financial Assistant Land

It is recommended that this function be delegated to provincial level subject to the policy as determined by national Department Agriculture in collaboration with provincial departments of agriculture.

1.4.7 Administration and updating of a register of state agricultural land

The administration of a register for state agricultural land is a function that is carried out at national and provincial level. This register culminatd from the need to obtain a summation of 673 158,6009 hectares of (ex SADT) state land, transferred from the former Department of Regional and Land Affairs to the Department of Agriculture. All relevant information regarding the district, farm description, extent, lessee, race, gender, lease period, rental, current/potential land use, is included in this register.

The day-to-day administration of a similar register at provincial level needs to be done in close liaison with national Department of Agriculture. All state_ owned land is regarded as a national asset, and is not a schedule 6 function in terms of the Constitution Act, 1993 (Act No. 200 of 1993). Therefore ownership of state agricultural land vests in the national government. The national government is therefore directly accountable for all actions that are taking place at provincial level.

In the event of any adjustment or modification to the land register, national government should retain the initiative to effect such changes.

The register must be functional and contain only the relevant information applicable to a province.

If any enquiries should arise in regard to private land, other relevant state land or land utilised for state domestic purposes, the national Department of Agriculture will serve as a liaison mechanism to all relevant provincial government departments of agriculture in respect of the state agricultural land register.

1.4.8 Control over the rezoning of state agricultural land

Agricultural land is a scarce, nonrenewable natural resource and is a national asset. The rezoning of state agricultural land for purposes other than agriculture can therefore only be effected through consultation with the national Departments of Agriculture and of Land Affairs.

Before any state land is considered for rezoning, the optimal use of the relevant land should be determined. Consideration should be given to the physical suitability, location, the availability of infrastructure and services, present and future land utilisation, community and individual needs as well as economic and financial constraints.

1.4.9 Support and guidance to provincial governments in respect of the administration of state agricultural land

Until provincial departments of agriculture are equipped to handle land administration effectively, support in respect of the following will be rendered on an agency basis by the national Department of Agriculture, e.g.

- Conclusion of contracts;
- Discussion in respect of problematic lessees;
- Support where administrative personnel at provincial level are not available;
- Implementation of resolutions (beginner farmer settlement) by the former Commission on Land Allocation or the Land Claims court.

1.4.10 Recommendations in respect of prospecting rights and mineral leases

Upon receipt of an application to this effect, the matter is considered according to inputs by the agricultural technician at provincial level. The recommendation by the Department is then channelled to the Department of Mineral and Energy Affairs for a decision and finalisation. This function should remain with the national Department of Agriculture which acts in close liaison with the provincial department of agriculture.

2. Registration of Servitudes

Regarding the granting of servitude rights on state agricultural land, the compensation payable by the party who requests the servitude, should be based on a percentage of the market value and the extent of the land required for the servitude.

These actions should be carried out at provincial level. The final control vests in the national Department of Agriculture or Department of Land Affairs as owners of the land.

3. Privatisation/Disposal of States Agricultural Land (Power of Attorney Land)

3.1 Liaison with the Department of Land Affairs to expedite the disposal of state agricultural land

Taking into account the fact that "land" is not a schedule 6 function in terms of the Constitution Act, 1993 (Act No. 200 of 1993), the ownership of state agricultural land therefore vests in national government.

Liaison with the Department of Land Affairs to expedite the disposal of state agricultural land, should take place at provincial government level in close liaison with the national Department of Agriculture.

The purpose of liaising is to determine the manner of disposal of state agricultural land to the agricultural sector.

3.2 Coordination of submissions in respect of state agricultural land to the Commission on Restitution of Land Rights and the Land Claims Court and rendering of support in respect of inspections *in loco*

The administration of state agricultural land vests in the Department of Agriculture and the MEC for Agriculture for the relevant province.

Provincial departments of agriculture should make all submissions in respect of state agricultural land to the Commission on Restitution of Land Rights with assistance from national Department of Agriculture in respect of background information.

In this event, close liaison between provincial and national Departments of Agriculture should take place as far as the rendering of support to the Commission on Restitution of Land Rights in respect of local inspections on state agricultural land is concerned.

Submissions to either the Commission on Restitution of Land Rights and the Land Claims Court must be prepared within the framework of the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994).

3.3 Appointment of a project leader for Farmer Settlement Committee (FSC)

The Land Forum comprising officials of the Department of Land Affairs, chairman, other role-players and stakeholders, appoints a project leader for a FSC. The project leader should have a sound agricultural technical knowledge.

The following committees in support of the FSC can also be established:

3.3.1 Norm and Planning Committee

Its function is to determine norms for farm sizes, planning of infrastructure, subdivision of the area into individual units, viability studies and cost estimates for basic infrastructure.

3.3.2 Selection and Settlement Committee

This committee can comprise members of the Department of Agriculture, organised agriculture, NGOs as well as other interested parties at provincial level. The main function of this committee will be the selection of suitable candidates and the settlement of these prospective farmers.

3.3.3 Support Committee

This committee comprises officials of the Department of Agriculture at provincial level and must coordinate the necessary support services such as extension, financial assistance, training, cooperative services, etc, in order to ensure the sustainable utilisation of state agricultural land. When required outside expertise should be involved.

3.4 Provision of administrative support to the Farmer Settlement Committee

Administrative support is provided by the agricultural land administration component at provincial level with support from the Directorate Farmer Settlement at national government level.

3.5 Subdivision and survey of land

3.5.1 Subdivision of private agricultural land is regulated by the Subdivision of Agricultural Land Act, 1970 (Act No. 70 of 1970). However, this act is not applicable to state agricultural land.

3.5.2 Final administrative approval to subdivide state agricultural land for privatisation will vest in the Department of Agriculture at national government level.

3.6 Settlement of farmers

The settlement of farmers will be carried out in collaboration with the provincial Departments of Agriculture and provincial Department of Land Affairs.

Farms can be leased to successful applicants on a probational period with the aim of eventual ownership or ownership can be granted on certain conditions.

3.7 Disposal of state agricultural land

State agricultural land can be disposed of in terms of one of the following statutes:

- Section 10(1)(b) of the Agricultural Credit Act, 1966 (Act No. 28 of 1966); or
- Section 2 of the State Land Disposal Act, 1961 (Act No. 48 of 1961).

Recommendation for the approval to sell state agricultural land vests in the PDA (MEC) with regard to POA land and where it is FALA land, approval is vested in the national Department of Agriculture.

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