

29

SUBDIVISION OF AGRICULTURAL LAND ACT
NO. 70 OF 1970

[ASSENTED TO 28 SEPTEMBER, 1970]

[DATE OF COMMENCEMENT: 2 JANUARY, 1971]

(English text signed by the State President)

as amended by

Subdivision of Agricultural Land Amendment Act, No. 55 of 1972
Subdivision of Agricultural Land Amendment Act, No. 19 of 1974
Subdivision of Agricultural Land Amendment Act, No. 18 of 1977
Subdivision of Agricultural Land Amendment Act, No. 12 of 1979
Subdivision of Agricultural Land Amendment Act, No. 18 of 1981
Subdivision of Agricultural Land Amendment Act, No. 33 of 1984
Abolition of Racially Based Land Measures Act, No. 108 of 1991
General Law Amendment Act, No. 49 of 1996

[with effect from 4 October 1996—see title GENERAL LAW AMENDMENT ACTS]

ACT

To control the subdivision and, in connection therewith, the use of agricultural land.

[Long title substituted by s. 9 of Act No. 55 of 1972.]

1. Definitions.—In this Act, unless the context otherwise indicates—

“advertise” means to distribute to members of the public or bring to their notice in any other manner any written, illustrated, visual or other descriptive material or oral statement, communication, representation or reference;

[Definition of “advertise” inserted by s. 1 (a) of Act No. 18 of 1972.]

“agricultural land” means any land, except—

- (a) land situated in the area of jurisdiction of a municipal council, city council, town council, village council, village management board, village management council, local board, health board or health committee, and land forming part of, in the province of the Cape of Good Hope, a local area established under section 6 (1) (1) of the Divisional Councils Ordinance, 1952 (Ordinance No. 15 of 1952 of that province), and, in the province of Natal, a development area as defined in section 1 of the Development and Services Board Ordinance, 1941 (Ordinance No. 20 of 1941 of the last-mentioned province), and in the province of the Transvaal, an area in respect of which a local area committee has been established under section 21 (1) of the Transvaal Board for the Development of Peri-Urban Areas Ordinance, 1943 (Ordinance No. 20 of 1943 of the Transvaal), but excluding any such land declared by the Minister after consultation with the executive committee concerned and by notice in the Gazette to be agricultural land for the purposes of this Act;

[Para. (a) amended by s. 1 (a) of Act No. 33 of 1984 and by s. 1 of Act No. 49 of 1996.]

(b) land—

- (i) which forms part of any area subdivided in terms of the Agricultural Holdings (Transvaal) Registration Act, 1919 (Act No. 22 of 1919); or
- (ii) which is a township as defined in section 102 (1) of the Deeds Registries Act, 1937 (Act No. 47 of 1937), but excluding a private township as defined in section 1 of the Town Planning Ordinance, 1949 (Ordinance No. 27 of 1949 of Natal), not situated in an area of jurisdiction or a development area referred to in paragraph (a);

[Para. (b) substituted by s. 1 (b) of Act No. 18 of 1977 and by s. 1 (e) of Act No. 18 of 1981 and amended by s. 1 (b) of Act No. 33 of 1984.]

- (c) land of which the State is the owner or which is held in trust by the State or a Minister for any person;

[Para. (c) amended by s. 1 of Act No. 49 of 1996.]

(d)

[Para. (d) deleted by Proclamation No. R.116 of 1994.]

(e)

[Para. (e) deleted by Proclamation No. R.116 of 1994.]

- (f) land which the Minister after consultation with the executive committee concerned and by notice in the *Gazette* excludes from the provisions of this Act; [Definition of "agricultural land" substituted by s. 1 (e) of Act No. 55 of 1972.]

"building" means any building erected or used for any purpose whatsoever, and includes any other structure, whether of a temporary or permanent nature and irrespective of the materials used in the erection thereof, so erected or used;

[Definition of "building" inserted by s. 1 of Act No. 12 of 1979.]

"executive committee" means the executive committee of a province;

[Definition of "executive committee" inserted by s. 1 (b) of Act No. 55 of 1972 and amended by s. 1 of Act No. 49 of 1996.]

"local authority" means any institution or body referred to in section 84 (1) (f) of the Republic of South Africa Constitution Act, 1961 (Act No. 32 of 1961);

"Minister" means the Minister of Agriculture;

[Definition of "Minister" substituted by s. 1 (e) of Act No. 18 of 1981 and by s. 1 (e) of Act No. 33 of 1984.]

"prescribed" means prescribed by regulation;

[Definition of "prescribed" inserted by s. 1 (c) of Act No. 18 of 1977.]

"right", in relation to agricultural land, does not include any right to minerals or a prospecting or mining right;

[Definition of "right" inserted by s. 1 (e) of Act No. 18 of 1977.]

"sale" includes a sale subject to a suspensive condition; and "sold" shall have a corresponding meaning;

[Definition of "sale" inserted by s. 1 (c) of Act No. 18 of 1981.]

"scheme" means a town-planning scheme prepared in terms of a provincial ordinance by an authority referred to in paragraph (e) of the definition of "agricultural land", envisaging the co-ordinated and harmonious development of the area to which such scheme relates;

[Definition of "scheme" inserted by s. 1 (e) of Act No. 18 of 1977 and amended by s. 1 of Act No. 49 of 1996.]

"Secretary"

[Definition of "Secretary" deleted by s. 1 (d) of Act No. 18 of 1981.]

"statutory body" means—

- (a) any board or body which has been established by or under any law and whose funds consist wholly or partly of moneys appropriated by Parliament in aid of such board or body;
- (b) any local authority;
- (c) any other board or body, or any board or body belonging to a class of boards or bodies, which the Minister may by notice in the *Gazette* declare to be a statutory board or body or statutory boards or bodies for the purposes of this Act.

2. Actions which are excluded from application of Act.—The provisions of this Act shall not apply in respect of—

- (a) (i) any subdivision of land for the purpose of transferring a portion thereof to the State or a statutory body;
- (ii) the transfer of an undivided share in land to the State or a statutory body;
- (iii) the sale or grant of any right to any portion of agricultural land to the State or a statutory body;

[Para. (a) substituted by s. 2 (a) of Act No. 55 of 1972 and by s. 2 of Act No. 18 of 1977 and amended by s. 1 of Act No. 49 of 1996.]

- (b) any subdivision of, or the passing of an undivided share in, any land in accordance with a testamentary disposition or intestate succession, if the testator died before the commencement of this Act;
- (c) the passing of an undivided share in any land in accordance with a contract entered into prior to the commencement of this Act;
- (d) any subdivision of any land in connection with which a surveyor has completed the relevant survey and has submitted the relevant subdivisional diagram and survey records for examination and approval to the surveyor-general concerned prior to the commencement of this Act.

- (e) the registration of a lease referred to in section 3 (d) in respect of a portion of agricultural land, concluded in writing prior to the commencement of the Subdivision of Agricultural Land Amendment Act, 1974.

[Para. (e) added by s. 2 (b) of Act No. 55 of 1972 and substituted by s. 1 of Act No. 19 of 1974.]

3. Prohibition of certain actions regarding agricultural land.—Subject to the provisions of section 2—

- (a) agricultural land shall not be subdivided;
- (b) no undivided share in agricultural land not already held by any person, shall vest in any person;
- (c) no part of any undivided share in agricultural land shall vest in any person, if such part is not already held by any person;
- (d) no lease in respect of a portion of agricultural land of which the period is 10 years or longer, or is the natural life of the lessee or any other person mentioned in the lease, or which is renewable from time to time at the will of the lessee, either by the continuation of the original lease or by entering into a new lease, indefinitely or for periods which together with the first period of the lease amount in all to not less than 10 years, shall be entered into;
- (e) (i) 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, except

for the purposes of a mine as defined in section 1 of the Mines and Works Act, 1956 (Act No. 27 of 1956); and

- (ii) no right to such portion shall be sold or granted for a period of more than 10 years or for the natural life of any person or to the same person for periods aggregating more than 10 years, or advertised for sale or with a view to any such granting, except for the purposes of a mine as defined in section 1 of the Mines and Works Act, 1956;

[Para. (e) substituted by s. 2 of Act No. 12 of 1979 and by s. 2 (1) (a) of Act No. 33 of 1984.]

- (f) no area of jurisdiction, local area, development area, peri-urban area or other area referred to in paragraph (a) or (b) of the definition of "agricultural land" in section 1, shall be established on, or enlarged so as to include, any land which is agricultural land;

[Para. (f) amended by s. 2 (1) (b) of Act No. 33 of 1984.]

- (g) no public notice to the effect that a scheme relating to agricultural land or any portion thereof has been prepared or submitted under the ordinance in question, shall be given,

unless the Minister has consented in writing.

[S. 3 substituted by s. 3 of Act No. 55 of 1972, by s. 2 of Act No. 19 of 1974 and by s. 3 of Act No. 18 of 1977.]

4. Application for consent of Minister, and imposition, enforcement or withdrawal of conditions by him.—(1) (a) Any application for the consent of the Minister for the purposes of section 3 shall—

- (i) in the case where any act referred to in paragraphs (a) to (e) of that section is contemplated, be made by the owner of the land concerned;
- (ii) be lodged in such place and be in such form and be accompanied by such plans, documents and information as may be determined by the Minister.

(b) For the purposes of paragraph (a) "owner" shall have the meaning assigned to it in section 102 of the Deeds Registries Act, 1937 (Act No. 47 of 1937).

[Sub-s. (1) substituted by s. 2 of Act No. 18 of 1981.]

(2) The Minister may in his discretion refuse or—

- (a) on such conditions, including conditions as to the purpose for or manner in which the land in question may be used, as he deems fit, grant any such application;
- (b) if he is satisfied that the land in question is not to be used for agricultural purposes and after consultation with the Administrator of the province in which such land is situated, on such conditions as such Administrator may determine in regard to the purpose for or manner in which such land may be used, grant any such application.

[Sub-s. (2) substituted by s. 4 of Act No. 55 of 1972 and by s. 4 (a) of Act No. 18 of 1977. Para.

(b) amended by s. 1 of Act No. 49 of 1996.]

(3) The Minister or, in the case of a condition referred to in subsection (2) (b), the Administrator concerned may enforce any such condition.

[Sub-s. (3) substituted by s. 4 (b) of Act No. 18 of 1977.]

(4) The Minister or, in the case of a condition referred to in subsection (2) (b), the Administrator concerned after consultation with the Minister may vary or withdraw any such condition and, if it has been registered against the title deed of the land, the Minister may direct that it be varied or cancelled.

[Sub-s. (4) substituted by s. 4 (c) of Act No. 18 of 1977.]

5. **Succession.**—(1) If the Minister does not in terms of section 4 consent to the subdivision of any particular agricultural land in accordance with any testamentary disposition or intestate succession or to the vesting of any undivided share in such land in accordance therewith, and no agreement is reached as to a subdivision or vesting in respect of which the Minister grants his consent in terms of the said section 4, the executor of the estate concerned shall realize the land or undivided share concerned, as the case may be, and dispose of the net proceeds thereof in accordance with the said testamentary disposition or intestate succession, as the case may be.

(2) The provisions of section 12 of the Expropriation Act, 1965 (Act No. 55 of 1965), shall *mutatis mutandis* apply in respect of any such proceeds of land or an undivided share in any land, and in such application of the said section a reference therein to a Minister shall be deemed to be a reference to an executor referred to in subsection (1) of this section.

6. **Duties of Surveyor-General and Registrar of Deeds in application of Act.**—(1) Subject to the provisions of section 2 a Surveyor-General shall only approve a general plan or diagram relating to a subdivision of agricultural land, and a Registrar of Deeds shall only register the vesting of an undivided share in agricultural land referred to in section 3 (b), or a part of any such share referred to in section 3 (c), or a lease referred to in section 3 (d) or, if applicable, a right referred to in section 3 (e) in respect of a portion of agricultural land, if the written consent of the Minister in terms of this Act has been submitted to him.

[Sub-s. (1) substituted by s. 5 of Act No. 55 of 1972, by s. 3 of Act No. 19 of 1974 and by s. 5 of Act No. 18 of 1977.]

(2) If such consent has been granted subject to a registrable condition, such condition shall, on such approval or registration, be endorsed on the title deed of the land concerned.

6A. **Registration of servitudes.**—(1) Subject to the provisions of the Water Act, 1956 (Act No. 54 of 1956), a servitude in respect of agricultural land, except—

(a) a right of way, aqueduct, pipe line or conducting of electricity with a width not exceeding 15 metres;

(aA) a servitude which is supplementary to a servitude referred to in paragraph (a), and which has a servitude area not exceeding 225 square metres which adjoins the area of the last-mentioned servitude;

[Para. (aA) inserted by s. 3 of Act No. 18 of 1981.]

(b) a usufruct over the whole of agricultural land in favour of one person or in favour of such person and his spouse or the survivor of them if they are married in community of property,

shall not be registered by a Registrar of Deeds without the written consent of the Minister.

[Sub-s. (1) substituted by s. 6 of Act No. 18 of 1977.]

(2) The provisions of sections 4 and 6 (2) shall *mutatis mutandis* apply in respect of the granting of consent for the purposes of subsection (1) of this section, and in respect of such consent.

[S. 6A inserted by s. 6 of Act No. 55 of 1972.]

7. **Entry upon and investigation on land.**—The Minister may either generally or in any particular case authorize any person to enter upon any land at all reasonable times and to carry out thereon such investigations or to perform thereon such other acts as are necessary or expedient for achieving the objects of this Act.

[S. 7 amended by s. 4 of Act No. 18 of 1981.]

8. Delegation of powers.—(1) The Minister may delegate to any officer in the Public Service any power conferred upon him by this Act, excluding a power referred to in section 10, but shall not be divested of any power delegated by him, and may vary or withdraw any decision of any such officer upon application by any person affected and feeling aggrieved by such decision.

[Sub-s. (1) substituted by s. 5 (e) of Act No. 18 of 1981.]

(2) The Minister may under subsection (1) delegate the same power to more than one officer or different powers to different officers or in respect of different areas the same or different powers to different officers.

[Sub-s. (2) added by s. 7 of Act No. 55 of 1972 and substituted by s. 7 of Act No. 18 of 1977.]

(3) (a) An application referred to in subsection (1) shall be made within the period and in the manner prescribed, and shall be accompanied by the prescribed fee.

(b) If the Minister withdraws any decision of the officer concerned, the prescribed fee paid by the applicant shall be refunded to him, or if the Minister varies any such decision, he may in his discretion direct that the whole or any part of such fee be refunded to the applicant.

[Sub-s. (3) added by s. 7 of Act No. 18 of 1977 and amended by s. 5 (b) of Act No. 18 of 1981.]

9. Payment of duties or fees.—No duties or fees of office shall be payable in respect of any document drawn up for the purposes of this Act and lodged in a registration office for registration or filing.

10. Regulations.—(1) Subject to the provisions of subsection (2) the Minister may make regulations with reference to any matter which may be prescribed under this Act, or in respect of which, in his opinion, it is necessary or expedient to make regulations for achieving the objects of this Act.

(2) Any such regulations which relates to State revenue or expenditure shall be made after consultation with the Minister of Finance.

(3) Regulations made under subsection (1) may provide that any person who contravenes or fails to comply with any provision thereof shall be guilty of an offence and on conviction liable to such fine, not exceeding two hundred rand, or to imprisonment for such period, not exceeding six months, as may be prescribed therein.

11. Offences and penalties.—Any person who—

(a) in any application for the purposes of this Act makes any statement which is false in any material respect, knowing it to be false, or fails to disclose any information with intent to deceive;

(b) hinders or obstructs in the performance of his functions any person acting under an authority in terms of section 7;

[Para. (b) substituted by s. 6 of Act No. 18 of 1981.]

(c) contravenes or fails to comply with a condition imposed in terms of section 4 (2);

(cA) contravenes the provisions of section 3 (d) with regard to the entering into of a lease contemplated therein;

[Para. (cA) inserted by s. 4 of Act No. 19 of 1974.]

(d) contravenes the provisions of section 3 (e), shall be guilty of an offence and on conviction liable to a fine not exceeding R1 000 or to imprisonment for a period not exceeding 2 years, and in addition, in the case of an offence

contemplated in paragraph (c) or (d), to a fine not exceeding R50 in respect of each day on which the offence continues.

[S. 11 substituted by s. 8 of Act No. 55 of 1972 and amended by s. 8 of Act No. 18 of 1977.]

12. *Inserts section 34 in the Provincial Powers Extension Act, No. 10 of 1944.*

13. **Validity of permits.**—(1) A permit issued under section 8 (1) (a) (ii) or (iii) of the Environment Planning Act, 1967 (Act No. 88 of 1967), or a similar document issued under a provincial ordinance, prior to the commencement of this Act and still of force and effect at such commencement, shall be deemed to be a written consent granted by the Minister in terms of section 3 of this Act, and the conditions (if any) subject to which such permit or document was issued in terms of the first-mentioned Act or the ordinance in question, shall be deemed to be conditions imposed by the Minister in terms of section 4 (2) of this Act in connection with such consent.

[Sub-s. (1) amended by s. 1 of Act No. 49 of 1996.]

(2) A restrictive condition, in favour of the State, a Minister of State, an Administrator, an officer, the general public or any person, in connection with the use of agricultural land or the manner in which such land may be dealt with, which has by virtue of a permit or similar document referred to in subsection (1) been noted on the title deed of the land, shall for the purposes of the variation or cancellation of that condition be deemed to have been so noted in favour of the Minister.

[S. 13 substituted by s. 9 of Act No. 18 of 1977, Sub-s. (2) added by s. 7 of Act No. 18 of 1981 and amended by s. 1 of Act No. 49 of 1996.]

14.

[S. 14 repeated by s. 1 of Act No. 49 of 1996.]

15. **Short title and commencement.**—This Act shall be called the Subdivision of Agricultural Land Act, 1970, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.