How To Sell A Portion Of Your Farm

If you are an owner of a portion of agricultural land, more commonly referred to as farmland, you might be familiar with the provisions of the Subdivision of Agricultural Land Act, 70 of 1970 (the Act). The Act aims to ensure that farms are not divided to such an extent that they will be uneconomical to farm on.

The Act, therefore, prohibits the sale of a portion of farmland unless consent to the subdivision was obtained from the Department of Agriculture, Forestry and Fisheries before the sale. The consent process is time-consuming, and getting consent is difficult.

A person is not allowed to sell something that does not (yet) exist. According to the said Act, "sale" even includes sale agreements subject to suspensive conditions.

In the past, it was generally accepted that granting an option to purchase a portion of agricultural land is valid as the option can later be exercised post-acceptance by the Department of Agriculture, Forestry and Fisheries. There was case law to support this.

However, in 2015 the Supreme Court of Appeal commented in *Four Arrows Investments 68 (Pty) Ltd v Abigail Construction CC and Another* that an option would not be a valid agreement as it contravenes the Act as a precursor to a sale agreement. The court referred to the fact that the Act is clear in prohibiting even acts like for-sale advertisements, as it is an action that precedes a sale.

It should be mentioned that the judge's comments in the *Four Arrows*-case are just that, comments – lawyers call it *obiter dictum*, i.e. not essential to the decision and, therefore, not legally binding as a precedent. However, it does indicate that another court will probably find likewise.

Thus, until the courts give us a final answer to the question, the safest way to proceed to sell a portion of your farm with a valid agreement is to first obtain ministerial consent for the subdivision before you sign.

Elné Gerber, Van Velden-Duffey Inc