

Make your land

UNAPPEALING

A guide to protecting your right of ownership through diversification





THIS MANUAL PROVIDES OPTIONS FOR THE CONSIDERATION OF DIVERSIFYING
YOUR REAL RIGHTS IN RESPECT OF AGRICULTURAL LAND, **THUS PROTECTING**
YOUR PROPERTY AGAINST POSSIBLE CONFISCATION BY THE STATE.

AfriBusiness encourages all agricultural landowners to gather personal advice regarding these proposals as each case must be evaluated on its own merits. This means that you must speak to your financial adviser and/or lawyer.

The diversification of real rights must make good business sense and you must always be able to provide good reasons for implementing steps to diversify. However, it is always possible that government amend existing legislation and/or the Constitution. If this happens, all the following rights will be compromised and may not provide any protection.



FEASIBLE OPTIONS TO CONSIDER :



- 01** Register an inter vivos trust. A trust creates a legal entity and limits personal liability. The bank will be more likely to provide a loan to a strong trust with assets and capital that is financially sustainable and takes tax implications into account. Make sure you appoint beneficiaries, who in turn can create usufruct on the land and furnish one of your businesses with the returns (as set out below).
- 02** Establish a company with multiple directors and/or investors. This can create the possibility of escaping ceilings. Get potential investors for specific crops or farming methods if you have different yields on various parts of your land, such as wheat, maize and potatoes. In this way you will have a company for each part, for example Maize (Pty) Ltd, Wheat (Pty) Ltd and Potatoes (Pty) Ltd. Make sure to establish the title deeds in the relevant businesses. Businesses can also function within a trust. Also, remember that the Subdivision of Agricultural Land Act will always apply.
- 03** Investigate the possibility of registering personal and/or public servitudes on your property. (Personal: usufruct, usus and habitatio / Public: water use, roads, Eskom, etc.)
- 04** Make sure you have a legal testament and investigate the possibility of registering a fidei commissum. This will at least help to make a strong lawsuit for compensation. That is, if a land claim in the ordinary sense of the word is not filed but a ceiling expropriation under the new Agricultural Land Holdings Bill.
- 05** Register financially sustainable mortgages against the property and use the money to enter the capital market, locally and/or internationally, which is more beneficial. Approach banks, such as the Land Bank, conventional banks and/or cooperatives, to register mortgages and/or loans over your land. This way, your risk is shared with the bank. If the property is expropriated, the banks also have an interest, and it helps that you at least do not fight alone. Remember that the interest charged by banks can cost you a lot of money and therefore you need to obtain good financial advice on this.
- 06** Enter into an agreement with a business of which you are not a director, member and/or shareholder to rent parts of the land and actively use it to pay compensation to your business. Here, the principle of 'huur gaat voor koop' applies. However, make sure that the contract contains an arbitration clause for resolving disputes. You may enter into such agreement with local and/or international businesses, but make sure that it is valid for more than 10 years.
- 07** If a usufruct is registered and the usufructuary makes use of it, let the returns go to the businesses; and if the usufructuary lives in the farmhouse, let him/her also enter into a lease agreement with a third and/or alternative party to rent there. The usufructuary can also enter into a loan on the property.
- 08** Ensure that your property is zoned correctly and indicated as such on the municipal valuation roll.

TERMS AND CONDITIONS

Any natural and/or legal person (hereinafter referred to as 'the person') using this manual and/or suggestions do so at their own risk. AfriBusiness, its staff and any other related institution provide this manual as a contribution to the debate. Individuals who want to act on any idea mentioned herein must still obtain independent financial, legal and investment advice.

The costs incurred by gathering advice and/or by taking any action will be for the person's account. AfriBusiness and/or its staff will not be held liable for any costs incurred.

Legal and general advice is provided herein with the sole purpose of introducing different options for diversifying real rights. Any execution and/or implementation of any method, model and/or means of diversifying the person's real rights must be in accordance with the relevant regulating law and must be registered properly in the relevant deeds office, if necessary. The diversification of real rights must make good business sense and you should always be able to provide good reasons for implementing steps to diversify.

CONTACT DETAILS

Tell: 012 644 4397

E-mail: diens@afrisake.co.za

Web: www.afrisake.co.za

P.O. Box: Posbus 17216, LYTTTELTON, 0140

Address: Cnr DF Malan Drive and Union Road, Kloofsig, Centurion