

Mondstuk van die Suid-Afrikaanse aartappelbedryf • Mouthpiece of the South African potato industry

CHIPS

VOL 35 NO 04 • JULY / AUGUST 2021

**COVER CROPS AND NEMATODE
MANAGEMENT: TOLERANCE TO
MELOIDOGYNE ENTEROLOBII**

Pesticide maximum residue
limits and market access

**WES-VRYSTAATSE KULTIVARPROEF
ONDER BESPROEING
OP BULTFONTEIN**

Tendense op
varsproduktemarkte

PSA small grower development
programme in Limpopo

Personal servitudes and how they apply to agricultural land

Supplied by VDT Attorneys

A personal servitude is one in which a specific person acquires certain rights to and powers of use over a specific item or property of another person. The rights of the servitude attach to a person in their personal capacity.

Usufruct

This personal servitude is unique as it consists of a right of use and a right of residence, giving a person broad rights and powers of use over someone else's property.

The servitude holder acquires the right to use the property or item and collect the benefits that come along with it, without any restrictions. This means, for example, that the servitude holder may rent out property over which they have the servitude and can enjoy the rental income without restrictions.

In the case of farmland, the servitude holder is entitled to the breeding of livestock, the yield from crops, and fruit from orchards. The servitude holder receives all the excess benefits arising from the item or property.

Even with these benefits in mind, the servitude holder is still obligated to use and maintain the item or property so that it will benefit the owner of the property when the personal servitude expires.

Usus

A servitude of use, or *usus*, gives the servitude holder and their family the right to use someone else's property for the purpose

of satisfying basic needs. One example is when a producer allows the use of his/her farm or implements to meet the living needs of another person and his/her family. Note that the servitude holder may use the property or item for no other reason than to meet personal daily needs.

The servitude holder must not use the property to the extent that it is destroyed. Thus they must ensure the house remains in good condition, the farmlands are well maintained, and the livestock are healthy and safe.

The servitude holder may not sell or trade any benefits they receive from the item or property by virtue of the servitude, meaning he/she may not rent out the property or sell the crops and livestock.

Habitatio

The habitation servitude gives the holder the right to occupy another person's property for a specified or unspecified period. This personal servitude is most common in residential properties, where, for example, a person owns a property and provides for his/her parents and siblings to receive a lifelong right of residence, which still exists after the owner passes away or the property is sold.

This personal servitude is also available on plots, smallholdings and agricultural lands already subdivided into smaller portions. One key difference between a right of use and a right of residence is that the servitude holder of the right of residence can rent out the

property and enjoy the income from it.

The servitude holder must still maintain the property to the benefit of its owner.

Pre-emptive rights

Pre-emptive rights apply when, for example, a producer wants to expand his/her farm in the future and needs a neighbour's land to do so. Hence a pre-emptive right can be registered against the title deed of the property, ensuring that the producer has the first right to buy his/her neighbour's property, should the neighbour decide to sell or when he/she passes away.

The two producers, as parties to the agreement, will agree on a price per hectare which will be valid for the period of the pre-emptive right. The two producers can also agree that once the pre-emptive right is exercised, a price will be agreed upon based on the current market value in the area.

A pre-emptive right can be applied wisely if you cannot yet afford a crucial piece of land, but wish to have the option to purchase it at a later stage. 📍

This article is intended for information purposes only and is a brief exposition of the above-mentioned legal position. It should under no circumstances be construed as formal legal advice.

Contact VDT Attorneys at info@vdt.co.za or 012 452 1300 or visit www.vdt.co.za.