

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

CHIPS

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Rights relating to graves on farms

Supplied by VDT Attorneys

The practice of burying someone on a farm, can be a source of underlying tension and uncertainty between farm owners and farm workers. Farm owners are often worried about graves on the farm, as their existence may not only threaten the safety and security of the farm owner and his or her family, but also the security of the land, labour relations and the day-to-day continuation of farming activities.

Requests to visit graves

In terms of Section 6(4) of the *Extension of Security of Tenure Act, 1997 (Act 62 of 1997)* or the *ESTA*, a farm owner cannot deny a request to visit a grave on the farm, as any person has the right to visit and maintain the grave of a family member on land which belongs to someone else. However, such visits are subject to any reasonable conditions imposed by the farm owner in order to protect his or her life and property, or to prevent undue disruption of farming activities on the land.

Reasonable conditions

- Graves may only be visited on Saturdays, Sundays or public holidays.
- Visits may only take place between 9:00 and 15:00.
- Visitors may only visit the graves and should not wander around on the farm.
- All visits should be conducted in a quiet and orderly manner; the farm owner may report any rowdy behaviour or misconduct to the South African Police Service (SAPS).

An access agreement is used to regulate visits to graves and to administer reasonable conditions. Farm owners may require a person to identify him- or herself, and to provide further information regarding their identity, details of the deceased, the person's relationship with the deceased, the deceased's date of death, the location of the grave on the farm, and whether the person can tender any evidence that there are graves on the farm.

The discovery of graves

In terms of Section 36(6) of the *National Heritage Resources Act, 1999 (Act 25 of 1999)*, a farm owner who discovers graves on a farm is required to cease all activity in the immediate vicinity of the graves. It is the farmer's responsibility to contact the South African Heritage Resources Agency (SAHRA) and the SAPS. These organisations must investigate the graves to determine whether they should be protected and whether arrangements for the relocation of the graves should be made.

A farm owner who wilfully ploughs over graves and deliberately ignores their presence is guilty of an infringement in terms of the National Heritage Resources Act.

If the farm owner is aware of the fact that the graves are those of victims of conflict or if it is

determined that the graves are older than 60 years and if they fall outside the area of administration of the local authority, the graves may only be disturbed, exhumed or moved with the authorisation and permission of the SAHRA.

The SAHRA will only issue a permit for the relocation of any graves older than 60 years if the applicant has made a deliberate effort to contact the local community who may have an interest in the graves, in order to consult with them about the future of the graves.

A farm owner who wilfully ploughs over graves and deliberately ignores their presence is guilty of an infringement in terms of the *National Heritage Resources Act*. Such an infringement is punishable with a fine, imprisonment of up to three years, or both.

Established practice of burials

Section 6(2)(dA) of the *ESTA* determines that farm workers who reside on a farm, may bury a member of their family, who also resides there, on the farm if it is an established practice. Section 24 determines that any consent given by the previous farm owner, will be binding on a subsequent farm owner. A new owner may not unilaterally put a stop to the practice. ©

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