

# Real Estate Law ALERT

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CLIFFE DEKKER HOFMEYR

INCORPORATING  
KIETI LAW LLP, KENYA

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### The process for subdivision of conventional property and agricultural land

The term "*subdivision*" means that an owner of land wants to divide the existing piece of land into two or more portions. This results in the portions created being held by separate deeds of title, commonly known as Certificates of Registered Title (CRTs), and each portion can be separately mortgaged, leased or have other rights registered over them once the certificate is issued.



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## The process for subdivision of conventional property and agricultural land

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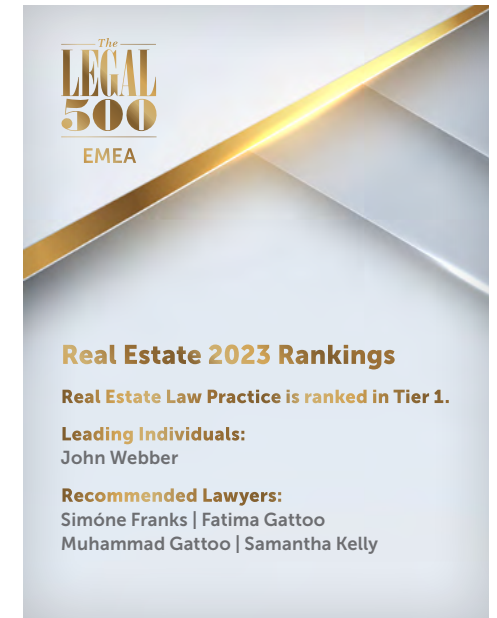
### Conventional property

Generally, an owner of conventional property (not agricultural land) who wishes to subdivide it needs to retain the services of a land surveyor to “*divide*” the land into the requisite portions. The land surveyor then draws up a draft subdivisional diagram on which the portions are reflected. This draft diagram (or diagrams, if the property is divided into multiple portions) is then submitted to the Surveyor-General for approval. Once the draft diagram has been approved by the Surveyor-General, a CRT must be issued for each portion of land, this is done by a conveyancer via an application to the Registrar of Deeds for the issuing of a CRT for each respective portion of the newly divided property; excluding the remainder which often remains held by the parent title deed. Only once these CRTs are issued is the new status of the each newly created and individually identifiable parcel of land considered completed and the right to treat each parcel of land individually allowed.

### Agricultural land

The subdivision of agricultural land is regulated by the Subdivision of Agricultural Land Act 70 of 1970 (Act) which commenced on 2 January 1971, but has been repealed by the Subdivision of Agricultural Land Act Repeal Act 64 of 1998 (Repeal Act), for which a commencement date has not yet been confirmed: therefore the status quo currently remains and the 1970 Act must be relied upon as the current applicable legislation. The purpose of the Act is to prevent a situation where large commercially viable agricultural farms are subdivided into smaller portions of agricultural land which are not economical, and which could cause harm to the agricultural sector in South Africa.

In terms of subdividing agricultural land, consent/approval from the Minister of Agriculture, Land Reform and Rural Development (Minister) must first be obtained before the steps outlined above for conventional property may be set into motion.



## The process for subdivision of conventional property and agricultural land

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This entails submitting an application to the Minister's offices. The Minister will consider the reasons behind the subdivision application, which could either be the owner's intention to sell a portion of the agricultural land, to establish a new farm on a portion or to leave property to his/her children through a last will and testament.

The Minister's approval may further be dependent upon certain conditions which must be met prior to registration of a subdivision taking place. Approval from the Minister is not guaranteed and is at the Minister's discretion.

### **Consent from the local municipality for both conventional property and agricultural land**

It is advisable to obtain the services of a town planner to assist with the subdivision application to the local municipality, as they have the necessary knowledge and expertise to access density reports and requirements set by the municipality,

rezoning applications (if necessary), identifying restrictive conditions that may hinder the process, and ensuring that compliance with the municipality's by-laws are adhered to. Compliance with the Spatial Planning and Land Use Management Act 16 of 2013 (SPLUMA) is also necessary. A SPLUMA certificate will be issued by the municipality, once the application for subdivision is submitted by the town planner, in which the municipality certifies that all by-laws and spatial planning requirements have been complied with. Without such a certificate, a subdivision process cannot proceed.

The submission to the local municipality should commence as soon as possible after the land surveyor has drafted the subdivisional diagram, as the municipality's consent and SPLUMA certificate will be needed prior to the land surveyor being able to submit the subdivisional diagram to the Surveyor-General for approval. Municipalities usually have a turn around time of between three to six months to provide their consent and SPLUMA certificate.

### **Conclusion**

The process of subdividing land, especially agricultural land, consists of various steps to be taken with different stakeholders and can therefore be a time-consuming exercise. The estimated time frame for an agricultural subdivision application is between one and two years (or longer). It will also be a costly endeavour, as the process entails paying town planner fees, land surveying costs, legal advisory and conveyancers registration fees and other ancillary costs.

It is highly recommended that an owner of conventional property and agricultural land who wishes to subdivide land carefully review all applicable laws, by-laws and regulations and that experienced professionals be appointed to ensure a successful outcome.

[Lutfiyya Kara](#)



## OUR TEAM

For more information about our Real Estate Law practice and services in South Africa and Kenya, please contact:



**Muhammad Gattoo**  
Practice Head & Director:  
Real Estate Law  
T +27 (0)11 562 1174  
E muhammad.gattoo@cdhlegal.com



**Sammy Ndolo**  
Managing Partner | Kenya  
T +254 731 086 649  
+254 204 409 918  
+254 710 560 114  
E sammy.ndolo@cdhlegal.com



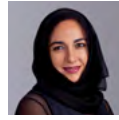
**Bronwyn Brown**  
Director:  
Real Estate Law  
T +27 (0)11 562 1235  
E bronwyn.brown@cdhlegal.com



**Mike Collins**  
Director:  
Real Estate Law  
T +27 (0)21 481 6401  
E mike.collins@cdhlegal.com



**Simone Franks**  
Director:  
Real Estate Law  
T +27 (0)21 670 7462  
E simone.franks@cdhlegal.com



**Fatima Gattoo**  
Director:  
Real Estate Law  
T +27 (0)11 562 1236  
E fatima.gattoo@cdhlegal.com



**Simone Immelman**  
Director:  
Real Estate Law  
T +27 (0)21 405 6078  
E simone.immelman@cdhlegal.com



**Lydia Owuor**  
Partner | Kenya  
Real Estate Law  
T +254 731 086 649  
+254 710 560 114  
E lydia.owuor@cdhlegal.com



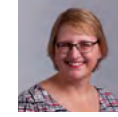
**Muriel Serfontein**  
Director:  
Real Estate Law  
T +27 (0)11 562 1237  
E muriel.serfontein@cdhlegal.com



**John Webber**  
Director:  
Real Estate Law  
T +27 (0)11 562 1444  
E john.webber@cdhlegal.com



**Alex de Wet**  
Director:  
Real Estate Law  
T +27 (0)11 562 1771  
E alex.dewet@cdhlegal.com



**Natasha Fletcher**  
Counsel:  
Real Estate Law  
T +27 (0)11 562 1263  
E natasha.fletcher@cdhlegal.com



**Samantha Kelly**  
Counsel:  
Real Estate Law  
T +27 (0)11 562 1160  
E samantha.kelly@cdhlegal.com



**Kirsty de Sousa**  
Professional Support Lawyer  
Real Estate Law  
T +27 (0)11 562 1747  
E kirsty.desousa@cdhlegal.com



## OUR TEAM

For more information about our Real Estate Law practice and services in South Africa and Kenya, please contact:



**Robert Kaniu Gitonga**

Senior Associate | Kenya  
T +254 731 086 649  
+254 204 409 918  
+254 710 560 114  
E robert.gitonga@cdhlegal.com



**Bridget Witts-Hewinson**

Senior Associate:  
Real Estate Law  
T +27 (0)21 481 6447  
E bridget.witts-hewinson@cdhlegal.com



**Lutfiyya Kara**

Senior Associate:  
Real Estate Law  
T +27 (0)11 562 1859  
E lutfiyya.kara@cdhlegal.com



**Sune Kruger**

Senior Associate:  
Real Estate Law  
T +27 (0)11 562 1540  
E sune.kruger@cdhlegal.com



**Lulama Lobola**

Senior Associate:  
Real Estate Law  
T +27 (0)21 481 6443  
E lulama.lobola@cdhlegal.com



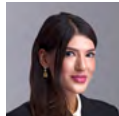
**Ceciley Oates**

Senior Associate:  
Real Estate Law  
T +27 (0)11 562 1239  
E ceciley.oates@cdhlegal.com



**Fatima Essa**

Associate:  
Real Estate Law  
T +27 (0)11 562 1754  
E fatima.essa@cdhlegal.com



**Zahra Karolia**

Associate:  
Real Estate Law  
T +27 (0)11 562 1701  
E zahra.karolia@cdhlegal.com



**Ebum Taigbenu**

Associate:  
Real Estate Law  
T +27 (0)11 562 1049  
E ebum.taigbenu@cdhlegal.com



**Muneerah Hercules**

Associate Designate:  
Real Estate Law  
T +27 (0)11 562 1579  
E muneerah.hercules@cdhlegal.com

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**JOHANNESBURG**

1 Protea Place, Sandton, Johannesburg, 2196. Private Bag X40, Benmore, 2010, South Africa.

Dx 154 Randburg and Dx 42 Johannesburg.

T +27 (0)11 562 1000 F +27 (0)11 562 1111 E [jhb@cdhlegal.com](mailto:jhb@cdhlegal.com)

**CAPE TOWN**

11 Buitengracht Street, Cape Town, 8001. PO Box 695, Cape Town, 8000, South Africa. Dx 5 Cape Town.

T +27 (0)21 481 6300 F +27 (0)21 481 6388 E [ctn@cdhlegal.com](mailto:ctn@cdhlegal.com)

**NAIROBI**

Merchant Square, 3<sup>rd</sup> floor, Block D, Riverside Drive, Nairobi, Kenya. P.O. Box 22602-00505, Nairobi, Kenya.

T +254 731 086 649 | +254 204 409 918 | +254 710 560 114

E [cdhkenya@cdhlegal.com](mailto:cdhkenya@cdhlegal.com)

**STELLENBOSCH**

14 Louw Street, Stellenbosch Central, Stellenbosch, 7600.

T +27 (0)21 481 6400 E [cdh Stellenbosch@cdhlegal.com](mailto:cdh Stellenbosch@cdhlegal.com)

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