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# SUB-DIVIDING YOUR LAND CAN BE LUCRATIVE

## ***Cautionary notes***

If you're contemplating subdividing as a profit-making venture you should be aware that it's a speculative and risky exercise, with many pitfalls and hurdles. It's virtually impossible on your own, unless you're experienced with the process yourself, to complete a subdivision successfully without the services of a lawyer who's familiar with this area of the law.

## **Sub-division and sale of plots, or developing housing units thereon**

"Subdividing" is where land is divided and separate legal title is established for each of the new sections that are created. A separate title is established by the Lands Registry issuing a certificate of title (in the lands and Deeds Registry at the Ministry of Lands after receiving an application and a subdivision plan. There are various reasons why you might want to subdivide your property. It may be that your residential section is now too big for your needs, or you may own a farm that is capable of being subdivided into lifestyle blocks. Your section may have been re-zoned, so that you are now permitted to subdivide.

Land divisions occur in one of two forms; either a "partition" or a "subdivision." The distinction is important, because it often comes into play in the approval process.

When you partition land, you create three or fewer new units of land, called "parcels." When you subdivide land, you create four more new units of land, called "lots.

At Apion we help clients for any **LAND SUBDIVISION** of unimproved **land** for the purposes of **sale**, lease, or financing or incremental **development** of the **dwelling units**. We provide the following services:

- Proper registration and title for individual parcels of land;
- Accurate identification of land by way of survey;
- Establishment of rights to tenure and occupation;
- Security for financing/cost recovery;
- Identification of boundaries for development;
- A formal procedure of conducting subdivision; and
- Allowance for taxation.

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## **1 WHEN YOU ARE DIVIDING YOUR SMALL LAND INTO PARCELS OF LAND**

### **We Empower Homeowners to Make Money from Their Properties**

If your property is greater than 800 sq. metres, in a residential zone and you have some equity in your property, you may be able to Subdivide and Profit from your plot.

If you have been in your home for a while, you will likely have some equity in your property.

Getting access to that equity through subdividing your block is a good idea, but it takes capital to start. And if you don't have the money upfront to cover the development costs, you won't be able to access the equity.

At Apion we help home owners unlock the value of their properties by turning their excess land into cash.

With our years of property development experience and our dedicated team, we take the risks out of the subdivision process and we make subdivision easy for our clients. In some cases we can fund the subdivision on your behalf.

Partition requirements are, on the whole, less burdensome than subdivision requirements. As a result, receiving approval for land divisions resulting in two or three new parcels is often easier than for larger land divisions. Even approval of smaller subdivisions, for example those that range from four to ten new lots, can be easier than larger subdivisions. As a general rule, the smaller the project, the easier it will be to get approval (and the less it will cost).

## **2 WHEN YOU ARE DIVIDING YOUR BIG LAND OR FARM INTO LOTS OR MULTIPLE PLOTS**

### **We Empower Farmers or Holders of Small Holdings to Make Money from Their Properties**

Residential property subdivision is becoming a major trend among areas zoned for farms in the middle to upper ends of the market. With the cost of living on the increase, the cost of maintaining large properties has also risen for farmers in agricultural land zones.

Add to this the difficulty and expense to secure a large property and it is clear why so many farmers today are opting to downsize and subdivide their properties. Not only does this promise

potential financial benefits, but it also assures an environment that is more secure, as well as an opportunity to save thousands annually on general maintenance costs, rates and taxes, and water bills. However, one needs to think twice before subdividing a very large piece of land.

Before you launch headlong into subdivision, land owners must note that it is a time consuming and often expensive course of action. Today, subdivisions are rife, and many town planners and property consultants are cautioning people to be aware that costs have increased substantially over the last few years.

Added to this, there are many existing conditions that are being applied far more stringently than before, and there are quite a few relatively new laws and bylaws that have been passed that are aimed at protecting the sustainability of the natural surrounds – all of which can stall or even negate the approval of any subdivision application.”

It is very important that anyone considering subdivision makes a point to study their options and the viability of going through with it. The best option for any land owner is to get a property lawyer, town planner or subdivision specialist in right from the word go. Try and choose somebody that has had experience in your area, as they will be well versed on the limitations and potential of subdivision in your particular location. At Apion, we have true professionals should be able to assess the property and offer detailed guidance on the feasibility of subdividing. The first thing that needs to be considered is the zoning rights of the area in question, and all the laws and bylaws that might be applicable to your particular zoning category.

To explain, town plans are divided into various areas, which are then divided into different zones. Each zone allows for a specific type of development, such as residential, commercial, and so on. The zoning rights will verify whether you can or can't subdivide your property, and if you can, what the limitations will be.

Each zone will have its own specific requirements. The time and cost involved in subdivision varies from project to project, starting at approximately five months for a simple subdivision, and moving up from there. It is advised that owners of titled farms get a full breakdown of all the costs involved in the process. At Apion, we help you find a lawyer, surveyor or town planner upfront, so that they can budget for the project accordingly.

Depending on the nature, extent and complexity of the proposal, an application for subdivision will normally go through the following procedural steps:

1. A surveyor or town planner will carry out an initial detailed survey and prepare the layout plan.
  
2. The complete application will then be lodged with the local authority, and it will then be advertised for public participation, where the public can lodge any objections and applicant responses.
  
3. A detailed technical assessment will then be undertaken. Here, an engineer will perform a geotechnical report to communicate the site conditions and design and construction recommendations, as well as a report on waste water and sewerage disposal, as well as access to water and electricity. This will include possible revisions by the applicant if so required.
  
4. The council will then make a decision, where they approve or decline the application, and this will be communicated to applicant and/or objectors. The decision can then be appealed by the applicant and/or objectors.

It is important to bear in mind that if the property is bonded, for any subdivision to go through, the bond holder's consent is required. The process will need to be approved by the local authority, the Registrar of Deeds, and the Surveyor General. A land surveyor will draw up the new site diagrams and lodge these with the Surveyor General and the municipality, after which he/she will lodge them with the Registrar of Deeds.

Subdivision is certainly a very tempting prospect, and there are various subdivision options open to those considering going through with it. You can opt to subdivide the land, and sell off the plots, or build houses or flat-lets on the plot to let out to generate rental income. Each option will offer different potential, and will need to be considered on an individual basis.

Assuming that subdivision is permissible in terms of the municipal regulations and the title deed, the feasibility all depends on the size of the land, the position, whether there is an existing structure on the plot and the position of that structure.

Another factor that should be carefully looked at is the impact that the subdivision will have on one or all of the subdivided portions. It may happen that by subdividing a plot into two or more

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portions, the impact is detrimental to all or any of the portions and may well devalue them. For instance, subdividing the garden off a substantial house may devalue the house to a degree that will reduce the profit by a major amount.”

Subdivision of your property may well yield a handsome profit when all the legal formalities are followed and scored

Dividing land in Zambia is not easy, though. Hiring a team of professionals to help complete the process is a good idea. This team might include:

- An attorney to help analyze legal pitfalls before and during the application process
- A professional surveyor to help with the preliminary plan and final plat
- An engineer to help with infrastructure planning and site plan layout, and
- An experienced real estate broker to provide you necessary information about the local real estate market.

#### How to subdivide your property

The subdivision of land is controlled and restricted by a number of Acts, the most important of which is the Land Act of 1995. This Act brought planning and subdivision controls under one system. The effect of the Act is to prohibit all subdivisions unless they're specifically allowed by a rule in a District Plan by the Ministry of Lands.

#### What is the procedure for subdividing?

If you're considering subdividing your property, you'll need to consult a lawyer who is experienced in this field to examine, first, whether subdivision is permitted and, second, whether it's feasible. This will involve searching the legal title to your property and examining the District Plan that applies to your property. The subdivision process is lengthy and involved. However, the following is an overview of the likely steps:

- Obtaining consent from your local council
- Preparing a survey plan
- The approval of your plan by your local council
- Lodging the subdivision plan with the Lands and Deed Registry at the Ministry of Lands
- The approval of the plan by the Commissioner of Lands at the Ministry of Lands
- Lodging the new titles with Lands and Deed Registry at the Ministry of Lands Complying with the District Plan

An important part of determining whether subdivision is permitted in your case is examining the relevant District Plan. This will reveal:

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- The zoning that applies to your land
  - Whether subdividing is a "prohibited activity" under the plan, and if not, then what type of activity it is (for the different categories of activity, see How to obtain a resource consent)
  - What conditions apply
  - What discretion the council can exercise
  - Specific restrictions on subdividing
  - It's also likely that the District Plan will specify the minimum areas for the new subdivided lots. Often it will be necessary for you to consult a surveyor or planner on this question.

Is subdividing worth the time and cost?

If you're considering subdividing, you should give particular attention to the time and cost involved. It's almost certain that the standard process will be lengthened by delays caused by, for example:

- Any hearing that is necessary
- The need to complete specific work so that you comply with conditions that are imposed
- The need to obtain consents from the council
- The preparation of legal documents

Subdividing is also a costly exercise. The costs you will be likely to incur include fees charged by consultants, surveyors, the local council, engineers and your lawyer.

If you're relying on the proceeds of selling the subdivided land to finance the venture, you should be aware that it may be some time before you receive this money. Numerous costs will have to be met at various stages, and it's unlikely that you'll be able to delay paying them. Further, it's unlikely that a lender will be prepared to treat potential profits as adequate security for any borrowing that may be required.

In deciding whether or not sub-division is worth-while on your parcel of land, Apion will make an overall assessment of your case, taking into account the time, effort and cost involved, measured both in absolute terms and relative to the nature and value of the land.

Other things we will consider include:

- ✓ earthworks, contouring, levelling, drainage, roads, curbing or channelling, or
- ✓ any other work, service or amenity that's customarily provided in major projects involving the development of land for industrial, commercial or residential purposes
- ✓ how many lots you're creating
- ✓ the amount of development work involved
- ✓ the amount of your financial investment
- ✓ how much time and effort is involved

If you sell a “new” lot that was not created through the provincial planning authority land division process, you may find yourself in legal hot water. As an example, after taking title to the property, the buyer may discover that building a house on the lot is not possible because the “new” lot is not a “legal lot of record.” A legal lot of record cannot be created by an unlawful subdivision. If you sell a lot that was not lawfully created, the buyer can sue you, and if successful, recover attorney fees from you.

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