

TAG ARCHIVES: THE NATIONAL VELD AND FOREST FIRE ACT NO. 101 OF 1998

# Don't let the smoke leave you broke: Farmers' duties regarding fires

Posted on **February 23, 2017**

The National Veld and Forest Fire Act No. 101 of 1998 ("**the Act**") is a legislative tool to help farm owners prevent potential financial and infrastructure losses as a result of fire. The definition of an "owner" in the Act includes a lessee or other person who controls the land in question. This article seeks to summarise a farm owner's responsibilities in terms of the Act.

## 1. FIRE PROTECTION ASSOCIATIONS ("FPA")

The Act provides for the formation of a FPA by landowners. The duties of a FPA include predicting, preventing, managing and extinguishing veldfires. They do not however fulfil the role of the fire brigade services. In order to register a FPA, the applicant must be capable of performing the duties imposed on a FPA and the applicant must be representative of owners in the area. The word "area" is not defined in the Act, but the act states that a FPA may be formed by owners who wish to co-operate in respect of an area which has regular veldfires, a relatively uniform risk of veldfires, a relatively uniform climatic conditions, or relatively uniform types of forest or vegetation. Only one FPA may be registered in respect of an area. The municipality and the owners of state land which fall within the area are obliged to become members of a FPA. The Chief Executive Officer of a FPA is the Fire Protection Officer and has the right to enter onto the land of a member of a FPA on reasonable notice, to carry out his duties.

The advantages of being a member of a FPA are that Institutions like RSA Agri, Agri Western Cape and insurance companies support, and in some cases require active participation in an FPA. IPW, GLOBALGAP and HACCP accreditations require membership.

The Winelands FPA was registered with the Department of Agriculture, Forestry and Fisheries in November 2014 amalgamating the former

Stellenbosch, Tulbach/Wolseley, Witzenburg, Ceres/Kouebokkeveld and Warmbokkeveld FPAs. To become a member of the Winelands FPA you can download its application form at <http://winlandsfpa.co.za/become-a-member/>. A once off joining fee of R200.00 and an annual fee of R650.00 is payable for private land owners.

## **2. FIREBREAKS AND INVASIVE ALIEN PLANT CLEARING**

The Act places a duty on landowners to prepare and maintain firebreaks on their side of the boundary to adjoining land. If an owner intends to prepare and maintain a firebreak by burning, the owner must determine a mutually agreeable date with the owners of the adjoining land for doing so, and inform the FPA of the area, if any. If an agreement cannot be reached, such owner must provide the owners of the adjoining land and the FPA for the area (if any), at least 14 days written notice of the period during which the owner intends burning firebreaks. An owner must ensure that a firebreak is wide enough and long enough to have a reasonable chance of preventing a veldfire from spreading to or from neighbouring land, does not cause soil erosion and it is reasonably free of inflammable material capable of carrying a veldfire across it.

The rules of the Winelands FPA state that members must systematically remove invasive alien plants accordingly using the methods prescribed in their rules, as they increase the fuel load of the fire. You can apply through the Winelands FPA for a burn permit for controlled or prescribed burning for the Stellenbosch, Drakenstein, Witzenberg, Breede Valley and Langeberg Municipal areas. Controlled burning is authorised only on Weekdays between the hours of 06:00 and 16:00 for the period from 1 May until 31 October annually.

## **3. FIRE FIGHTING**

The Act places a duty on all owners to acquire equipment, protective clothing and train personnel for extinguishing fires that is reasonably required in the circumstances. Duties of a FPA include organising and training its members in fire fighting, management and prevention; and informing its members of equipment and technology available for preventing and fighting veldfires. A list of the Wineland FPA's minimum prescribed equipment and protective gear can be found in its rules [here](#). The Winelands FPA requires members or occupiers of land or their staff performing fire fighting to be trained in a basic veldfire fighting course by an accredited training institution and the prescribed modules for the course can also be found at the aforementioned link. The Cape Winelands District Municipality assisted by the Winelands FPA will conduct initial fire training for members and their staff at no cost.

An owner who has reason to believe that a fire on his or her land or the land of an adjoining owner may endanger life, property or the environment, must immediately take all reasonable steps to notify the FPA and the owners of adjoining land and do everything in his or her power to stop the spreading of the fire.

#### **4. OFFENCES**

Any person who fails to meet the requirements regarding firebreaks, fire fighting or who prevents a fire officer from doing their work is guilty of an offence under the Act and the abovementioned negligence amounts to fault. The person may be sentenced on a first conviction for that offence to a fine or imprisonment for a period of up to two years, or to both a fine and such imprisonment.

#### **5. DELICTUAL LIABILITY**

One of the advantages of being a member of a FPA is that you are presumed not negligent in civil proceedings for veldfires that started on, or spread from your property, in terms of section 34 of the Act. This presumption does however not mean that a third party cannot succeed with a delictual claim against you for the damages suffered by that party. In order to be liable for a delict, the claimant must prove the elements of a delict which are conduct (including omission), wrongfulness, negligence, causation and damage.

Before the presumption can apply, the claimant must prove that damages were caused by a veldfire. "Veldfire" is defined in the Act as a veld, forest or mountain fire. In *Van der Eecken v Salvation Army Property Co*, 2008 (4) SA 28 (T) the word "veldfire" included starting a fire on the "veld" portion of partly-cultivated land. In *Boerdery BK v Transnet Ltd*, 2005 (5) SA 490 (SCA) a fire broke out on a railway and from there spread to neighbouring property where it caused damages. The claimant could not rely on the presumption of negligence as the court ruled that the word "veldfire" is defined as the burning of veld and includes unoccupied and uncultivated portions of land which is distinct from the portion which is cultivated, occupied and built upon.

##### **5.1 CAN MEMBERSHIP OF A FPA PER SE CREATE LIABILITY**

A question which arises is whether a party who suffered loss due to a veldfire within the area of a FPA, can take legal action against a member of the FPA to recover his/her losses, where a FPA did not prevent a fire from spreading. That is whether membership of a FPA per se can create a liability. The duty to prevent fire spreading appears to be restricted to

landowners and occupiers. In *Van Wyk v Hermanus Municipality* 1963 (4) SA 285 (C) a fire broke out on the land of a third party and the municipality was held to be under no obligation to extinguish the fire. Therefore it can be argued that there can be no negligence if there was no duty of care for the FPA. Furthermore as a FPA is created by statute it appears to have juristic personality and limited liability. Accordingly it would be unlikely that the members of the FPA would be held liable in their personal capacities for the damages. However no case has been reported in which a FPA has been sued, nor its members in their capacity as members of an FPA.

## **5.2 DUTY OF CARE TO NEIGHBOUR**

In the case *King v Dykes*, 1970 (4) SA 369 (RS) a fire was observed on a farm adjacent to the defendant's farm. During the night the fire crossed the river onto the defendant's farm and, after burning out a small patch of veld covered sparsely by grass, died down at its own accord. Early the following morning the defendant visited the scene to inspect the fire, and found that apart from smouldering debris it was no longer burning. He believed there was no further danger from it and returned to the headquarters on the farm. While loading tobacco for conveyance, a thin spiral of smoke was observed in the general direction of the fire. It was important for the defendant to complete the loading of his tobacco, and as a result it was only some 20 to 30 minutes after the smoke had been first observed that the defendant, with his employees, returned to the scene to extinguish the rekindled fire. Due to a strong wind, his efforts to do so were unavailing, and it spread to the plaintiff's property. The appeal court laid down that there was a legal duty on a farmer who had not started the fire but onto whose land the fire had spread from an adjoining property, to take reasonable steps to fight the fire and to try to prevent it from spreading. Here an undoubted moral duty was translated into a legal duty. The case explained that the idea that prevailed in the past that ownership of land conferred the right on the owner to use his land as he pleased was giving way to a more responsible approach that an owner may not use his land in a way prejudicial to his neighbours or the community and that he holds the land in trust for future generations.

## **5.3 VICARIOUS (STRICT) LIABILITY FOR ACTION OR OMISSION OF EMPLOYEES**

Where an employee, acting within the scope of his employment, commits a delict, the employer is fully liable for the damages. It is a form of strict liability as fault by the employee is not required. There must be an employer-employee relationship at the time when the delict is committed. In *Viljoen v Smith*, 1997 (1) SA 309 (A), a farm worker went onto the

neighbouring farm to relieve himself and started a fire when lighting a cigarette. The question was whether he deviated from acting in the scope of his employment and acted in advancement of his personal interest. This is a decision based on the facts of each case and it is a question of degree. Even when an employee makes a deviation solely for his own purposes, the employer may remain liable for any negligence committed by the employee. The employer was held vicariously liable for the damages that the fire caused to the neighbouring property.

## **6. INSURANCE**

It is important to annually update your insurance policy. Farm owners need insurance against fire damage to crops, assets as well as natural rangeland and pastures. Your asset cover should include buildings, machinery and equipment, damage to stock (including livestock), loss of income, vehicles and funeral expenses. Owners must make sure that they specifically request cover for fire spreading to plantations or sugar cane if they are on neighbouring properties. Should a fire start on your farm and then spread to neighbouring farms, the owner should be covered for damages for which the owner may become legally liable for. Insurance cover can include all reasonable fire extinguishing costs and expenses to prevent the spreading of such fire beyond the borders of the insured's own premises.

*This article is a general information sheet and should not be used or relied on as legal or other professional advice. No liability can be accepted for any errors or omissions nor for any loss or damage arising from reliance upon any information herein. Always contact your legal adviser for specific and detailed advice. Errors and omissions excepted (E&OE)*

Posted in **Property law** | Tagged **Farm, The National Veld and Forest Fire Act No. 101 of 1998, Veldfires**