

REAL ESTATE ALERT

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The Sectional Properties Regulations, 2021 (2021 Regulations) came into force on 10 December 2021 and they aid the implementation of the Sectional Properties Act of 2020 (Act). This alert seeks to compare and contrast the changes introduced by the 2021 Regulations in relation to the 1991 repealed regulations.

The 2021 Regulations have introduced new requirements and concepts in relation to ownership and management of developments which we have set out below.

SUBSTANTIVE LAW

The 1991 regulations recognised registration under different statutes while the 2021 Regulations have anchored the registration of sectional titles under the Act. This change is expected to resolve the uncertainty and duplicity that existed under the old laws and which translated to a complex land administration system.

DECENTRALISATION OF ROLES

Unlike the previous regulations that centralised the ownership of sectional units, the 2021 Regulations focus on decentralising how sectional units are owned. An illustration of this is the introduction of the rent apportionment forms for use by a rating authority to apportion the rent, rates, or taxes payable by each unit which will accompany the registration of sectional plans.

These changes allow unit owners to exercise more control over their respective units and reduces the risk of being frustrated or hindered by the vendor or management company in dealing with their unit.

CONFORMING TO THE LAND ACT AND LAND REGISTRATION ACT

While the terms of the 1991 regulations conformed to the repealed Registered Land Act, the 2021 Regulations have updated these terms to refer to the Land Act and the Land Registration Act. Terms such as cadastral maps instead of the registry index map, geo-referenced plans requiring co-ordinates as opposed to fixed boundaries have also been updated.

In addition, the reference to tenure has also been updated to freehold instead of absolute proprietorship and title documents are now either certificates of lease or certificates of title rather than title deeds.

INTERNAL DISPUTE RESOLUTION COMMITTEE

Before the 2021 Regulations, disputes between unit owners were resolved by the Business Premises Rent Tribunal (Tribunal). The Tribunal was ineffective in hearing the disputes as its sittings were at intervals and it took a lot of time to hear and determine disputes, this greatly aggrieved unit owners and the 2021 Regulations sought to remedy this issue.

Under the 2021 Regulations, a corporation is now allowed to constitute an Internal dispute resolution committee, on a need basis, to hear and determine disputes. This change grants unit owners a flexible, fast and affordable dispute resolution mechanism and allows unit owners more control over the dispute process and the results.

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CONVERSION INTO SECTIONAL UNITS

In the 1991 regulations, developers, management companies and individual owners were not allowed to convert long-term leases to sectional units. The 2021 Regulations now allow developers, management companies and individual owners to convert long-term leases to sectional units. The conversion can occur either after:

- all units have been transferred to the respective individual owners and the reversionary interest has been transferred to the management company to hold in trust for the individual owners;
- all units have been transferred to the respective individual owners with the transfer of the reversionary interest still pending; or
- parts of the units have been transferred to the respective individual owners and the reversionary interest is by written agreement intended to be transferred to the management company to hold in trust for the individual owners.

TENANCY OF INDIVIDUAL UNITS

The 2021 Regulations empower unit owners to indirectly enforce compliance with the corporation's by-laws by non-unit owner tenants. This was likely necessitated by the difficulties existing under long-term leases which hampered management companies from enforcing terms such as restrictions on nuisance and collection of service charges from tenants due to lack of privity of contract between other unit owners and tenants.

The Regulations also provide specific forms of notification by the corporation to the unit owner where the tenant is in breach of the by-laws, the corporation's right to refer the matter to the dispute resolution committee, and the form of notice issued to the tenant to vacate the premises where the committee concludes that the tenant should vacate.

EXEMPTION

The implementation of the Act raised concerns as the long-term lease regime was flexible and extended beyond the ordinary ownership of units by the lessee and the transfer of reversionary interests to management companies. The Ministry of Lands seems to have introduced an exemption provision in the 2021 Regulations to satisfy stakeholder requests.

The 2021 Regulations allow the exemption of long-term leases from conversion to sectional titles:

- where it is expressly provided by an agreement that the reversionary interest belongs to the developer, lessor, or management company as the legal owner and not as a trustee;
- in the case of large mixed-use developments or phased developments, where it is agreed that the reversion shall be retained by the developer; and

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- in the case of projects of strategic national importance, substantial transactions and special economic zones which by their nature render it impractical to relinquish reversionary interest.

Although the exemption provision is a welcome relief to developers, the 2021 Regulations are not clear on the procedure for application of the exemption.

ELECTRONIC FORM

The 1991 regulations required that unit owners physically register their titles at the land registry, however this has now changed since the 2021 Regulations embrace technology and allow all application forms and plans to be submitted in electronic form. This change allows developers and landowners to file their sectional title documents through the recently launched "Ardhisasa" online platform.

The "Ardhisasa" platform circumvents bureaucratic bottlenecks associated with visiting the land registry to follow

up on land dealings by allowing users to access digital land information, facilitate land administration and register dealings in land through the online platform.

PROTECTION OF UNIT OWNERS' RIGHTS

The 2021 Regulations maintain the key principles of co-ownership of property by entrenching unit owners' incidental rights. These incidental rights include the right to quiet possession and the duty not to use any adjoining or neighbouring premises in a manner that would render the premises unfit for any purpose. Despite this, the 2021 Regulations require that the consent of an affected unit owner be obtained where a sub-division of a unit or consolidation of units is likely to affect their incidental rights.

This legal alert is part of our Sectional Property series, please look out for our next alert dealing with the process of registering sectional titles.

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BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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