

# REAL ESTATE ALERT

22 FEBRUARY 2022



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INCORPORATING  
KIETI LAW LLP, KENYA

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### Life rights or right of occupation in retirement schemes

The Housing Development Schemes for Retired Persons Act 65 of 1988 (Act) regulates the alienation of certain interests in housing development schemes (schemes) for retired persons. This article focuses on the sale of a right of occupation (often referred to as life rights) to a retired person in the context of the Act.



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## Life rights or right of occupation in retirement schemes

The Housing Development Schemes for Retired Persons Act 65 of 1988 (Act) regulates the alienation of certain interests in housing development schemes (schemes) for retired persons. This article focuses on the sale of a right of occupation (often referred to as life rights) to a retired person in the context of the Act.

In terms of the Act no person other than a retired person or his or her spouse may occupy a residential unit in the scheme. The Act defines a retired person as a person who is 50 years or older, however a developer may impose a higher age requirement in the contract to be signed or in the rules applicable to the scheme.

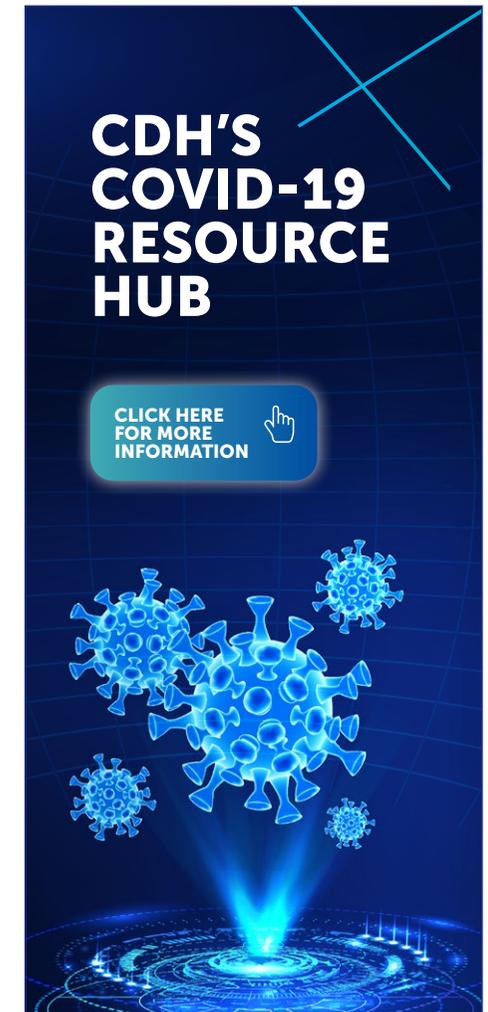
### CONTRACTUAL TERMS

The developer and the retired person (life right holder) must enter into a contract in terms of which the retired person acquires the right to occupy (life right) a specific residential unit in the scheme against payment of consideration to the developer. The consideration could be structured as an interest free loan or a purchase price and is normally payable on occupation of the residential unit. On termination of the contract a percentage of the consideration will be refunded to the life right holder or to his or her estate. The refund of the consideration or the agreed portion thereof will be suspended

until such time as the developer sells the life right in respect of the relevant residential unit to a new purchaser and receives the consideration.

In addition to the consideration, the life right holder will be responsible for paying a monthly levy in respect of the residential unit, similar to the levy payable to a body corporate of a sectional title scheme. The levy is a contribution to the cost of the control, management and administration of the scheme. The developer is obliged to provide an estimate of the levy for the next three years and provide details of the basis on which the levy is determined.

Different schemes offer different facilities and services. The contract must disclose the nature, the location and the extent of the services. It is important for purchasers of a life right to carefully read the contract and to familiarise themselves with the facilities and services offered and the fee structure pertaining to the use of such services. Depending on the nature of the services required,



## Life rights or right of occupation in retirement schemes

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the life right holder will be required to enter into a separate care services agreement regulating the provision of the services and the fees payable.

The contract will also normally impose an obligation on the life right holder to undergo medical assessments from time to time, to determine whether the life right holder requires any assistance to carry out daily activities necessary for his or her general health and well-being. The contract may provide that if the life right holder's mental, emotional and medical state of health is such that, in the opinion of a medical practitioner, the life right holder is too ill to remain in the unit, the life right will terminate.

Notwithstanding the fact that the sale of a life right remains a contractual affair, the Act imposes strict requirements that the developer must comply with. The Act expressly prohibits a developer

from alienating a life right until such time as the title deed is endorsed in terms of section 4C of the Act. The Act further states that the life right holder acquires the same rights as the lessee of a lease registered against the title deed of the property. The Act further seeks to protect the life right holder by providing that the developer is not entitled to receive any consideration under a contract until such time as an architect or a quantity surveyor has issued a certificate that the scheme concerned has been erected substantially in accordance with approved building plans and town-planning scheme and is sufficiently completed for the purposes of utilisation of the life rights and an attorney has certified that the title deed has been endorsed in terms of section 4C of the Act.

Although the acquisition of a life right is a more affordable and convenient option for a retired person, the life right holder derives its rights and obligations from the contract and should therefore ensure that they understand the facilities offered and the costs associated with them.

LUCIA ERASMUS

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