

# REAL ESTATE LAW ALERT

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INCORPORATING  
**KIETI LAW LLP, KENYA**

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### How to check the title conditions applicable to your sectional title property

In terms of section 11 of the Sectional Titles Act 95 of 1986 (Sectional Titles Act), an application lodged in the relevant Deeds Office for the opening of a sectional title register and for the registration of a sectional plan must be accompanied by a schedule certified by a conveyancer setting out the servitudes and conditions of title burdening or benefiting the land and the other registrable conditions imposed by the developer.



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## How to check the title conditions applicable to your sectional title property

In terms of section 11 of the Sectional Titles Act 95 of 1986 (Sectional Titles Act), an application lodged in the relevant Deeds Office for the opening of a sectional title register and for the registration of a sectional plan must be accompanied by a schedule certified by a conveyancer setting out the servitudes and conditions of title burdening or benefiting the land and the other registrable conditions imposed by the developer.

The title deed for a sectional title unit will therefore normally provide that the relevant unit is subject to or shall benefit from the servitudes, other real rights and conditions, if any, as contained in the schedule of conditions referred to in section 11(3)(b) of the Sectional Titles Act (hereafter referred to as the Schedule of Conditions).

The title deed for a sectional title unit does not therefore reflect the full extent of the title conditions applicable to the property and one would need to inspect the Schedule of Conditions for the relevant sectional title scheme in order to determine all title conditions that are applicable to the property as well as whether there are any additional servitudes and/or real rights applicable to the property.

The Sectional Titles Act came into effect on 1 June 1988 and any sectional title scheme registered prior to that date would have been registered in terms of the previous act, the Sectional Titles Act 66 of 1971 (1971 Sectional Titles Act). The title deed in respect of units forming part of a sectional title scheme registered prior to 1 June 1988 would therefore make reference to the conditions endorsed on the sectional plan, and the servitudes referred to in section 19 of the 1971 Sectional Titles Act.

Older sectional title schemes would therefore usually also have a similar schedule of conditions filed in the Deeds Office together with the sectional title plans.



## How to check the title conditions applicable to your sectional title property

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### SOURCING THE LATEST VERSION

It is important to note that the Schedule of Conditions filed in the relevant Deeds Office can be amplified and amended by way of further endorsements thereto from time to time, for example, when there is an extension to the existing scheme or further servitudes are registered.

In order to obtain a copy of the latest version of the Schedule of Conditions bearing all current endorsements, one would need to apply to the relevant Deeds Office for a copy of the prevailing Schedule of Conditions for the scheme.

One could also approach the body corporate and/or managing agents for the sectional title scheme to determine whether they are in possession of a copy of the Schedule of Conditions, but this might not be the latest version of the document.

A few examples of conditions which could be contained in the section 11(3)(b) Schedule of Conditions include:

- restrictions on the use of the property (for example that the property may only be used for residential/commercial/office/industrial purposes);
- servitudes;
- tie conditions (in terms of which a section could be tied to another section or exclusive use area); and
- the reservation of a real right to extend by the developer.

Aside from a prospective purchaser conducting a due diligence in respect of the title conditions applicable to a property, the Schedule of Conditions may also become relevant when applying for mortgage finance in respect of the property.

When mortgaging a property, the relevant financial institution may require the bond attorney to issue a conveyancer's certificate confirming that there are no onerous conditions of title or servitudes registered against the title deed of the property which could prejudice the bank's security or detrimentally affect the value of the property.

In order for a conveyancer to be able to sign off the conveyancer's certificate for a sectional title unit, a copy of the Schedule of Conditions for the relevant scheme would need to be obtained and inspected by the Conveyancer.



## How to check the title conditions applicable to your sectional title property

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### REPLACING A LOST SCHEDULE OF CONDITIONS

Copies of the Schedule of Conditions are not currently available electronically and it can therefore become problematic if a schedule that should have been filed at the Deeds Office upon the opening of the scheme has since been lost or misplaced.

Regulation 13A of the Sectional Titles Regulations includes the following steps in order to apply for the filing of a replacement schedule where a Schedule of Conditions has been lost or destroyed:

1. The developer or body corporate would need to instruct attorneys to prepare an application and a replacement schedule.
2. A notice of intention for the filing of the replacement schedule will need to be advertised in two consecutive ordinary issues of the Government Gazette and in two consecutive issues of a local newspaper.
3. The draft replacement schedule will then need to be open for inspection in the Deeds Office for a period of six weeks after the date of the first publication of the notice in the Government Gazette, during which period any interested person may object to the filing of such replacement schedule.
4. Any person who has lodged an objection to the filing of the replacement schedule may, in default of any arrangement between them and the applicant, apply to the court within one month after the last day upon which an objection may be lodged, for an order prohibiting the registrar from filing the replacement schedule in the relevant sectional title file, and the court may make such order on the application as it may deem fit.

It would therefore be advisable for a prospective purchaser of a sectional title unit to obtain and inspect a copy of the Schedule of Conditions for the relevant sectional title scheme as part of such purchaser's due diligence process and a conveyancing attorney would be able to assist with applying to the relevant Deeds Office for the issuing of a copy of the prevailing Schedule of Conditions.

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