

Real Estate Law ALERT

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INCORPORATING
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Extending your sectional title unit? What you need to know before laying the first brick

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Extending your sectional title unit? What you need to know before laying the first brick

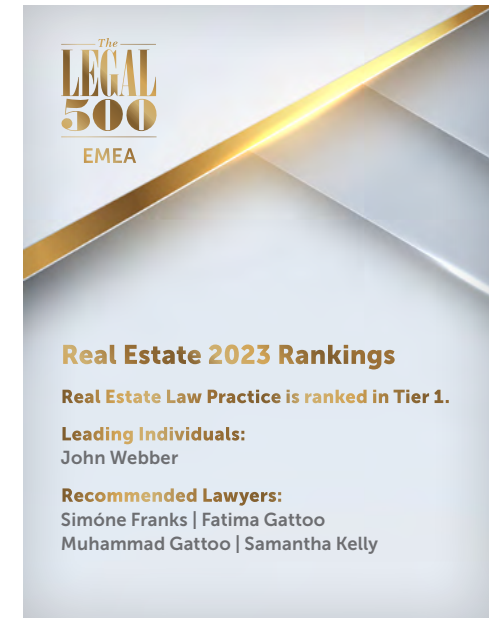
Have you made any additions to your home and had your building plans approved by the relevant municipality, but after attempting to sell your property found that the purchaser's bank requires you to provide a registered sectional plan of the extension of your section before the transaction can proceed?

This scenario is quite common and will always be applicable if your property is a sectional title unit registered in a sectional title scheme. These "types" of properties would usually include, but are not limited to, clusters, townhouses, duets and apartment buildings and any addition thereto is referred to as an extension of a section. The extension of a section is regulated in terms of section 24 of the Sectional Titles Act 95 of 1986 (Act). The extension of a section can be horizontal or vertical, for example the addition of a room or double storey which would in effect extend the boundaries or floor area of the section. The extension of a section will affect the participation quota of other unit owners and therefore the approval of the body corporate will be required. A participation quota can be described as the share in the common property allocated to each section. The original sectional plan also indicates a participation quota schedule that allocates a particular

share to each section, which in effect means the ownership or interest each owner has in the scheme.

Approval of the body corporate and mortgagee's required

If the owner of a section wishes to extend their unit, they must first obtain the approval of the body corporate, authorised by a special resolution passed by at least 75% calculated both in value and in number of the votes of the members of the body corporate who are represented at a general meeting, or agreed to in writing by members of the body corporate holding at least 75% calculated both in value and in number of all the votes. The owner must then proceed to appoint a land surveyor or architect to draft the sectional plan of extension of the section, which must be submitted to the Surveyor-General for approval. After that, the owner must make an application to the Registrar of Deeds for the registration of the sectional plan of extension. The Deeds Office



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will then place an endorsement on the existing title deed to record that the floor area of the section has been increased by an extension.

When deviation in the participation quota of the section to be extended is not more than 10%, the Registrar of Deeds only requires a certificate issued by the land surveyor or architect to confirm this to be the case. However, if the deviation of the participation quota of the section is more than 10%, a conveyancer's certificate must be lodged to confirm that the mortgagee of each section in the scheme encumbered by a mortgage bond has consented to the registration of the sectional plan of extension of that section. To obtain the consent of each mortgagee in the scheme is a tedious task which can take months, and the conveyancer would only be able to issue the required certificate if the procedure as set out in section 24 (6A) of the Act is followed.

The procedure prescribed by section 24 (6A) of the Act would be applicable if the deviation in the participation quota of the section to be extended is more than 10% and if there are mortgage bonds registered over the other sections in the scheme. The owner of the section to be extended must then send a notice by registered post to each mortgagee or, where the mortgagee is a financial institution, to its headquarters, giving specific details of the mortgage bond, mortgagor and loan reference number, confirmation of the proposed extension in relation to the size and location of the section and the impact of the extension of the section on the security of such mortgagee, and provide confirmation of the deviation of the participation quota allocated to that unit. If the mortgagee does not respond to the notice within 30 days of the date of posting the notice by registered post, it shall be deemed that the mortgagee

does not have any objection to the proposed extension and that the mortgagee consents to it. If only the section to be extended is subject to a mortgage bond, section 24(6A) of the Act will be deemed to have been complied with by merely lodging the relevant mortgage bond over the extended section in the deeds office to be endorsed.

Application in terms of section 24(6) of the Act

To successfully register an application for the extension of a section in terms of section 24(6) of the Act the following documents must be lodged in the deeds office for the Registrar of Deeds to examine: the application for registration of the sectional plan of extension of a section which is prepared in the form prescribed by the regulations to the Act; two registration copies of the sectional plan of extension, as approved by the Surveyor-General, the sectional



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plan should also contain a schedule indicating the new participation quota of each of the sections in the scheme as well as a block plan – unless the block plan has not changed, in which event a note to that effect should be attached by the land surveyor or the architect on the floor plan; original title deed and mortgage bond/s registered over the section to be extended and if any other section in the scheme is subject to a mortgage bond; and either the certificate by a land surveyor or architect if the deviation of the participation quota is less than 10% or if the deviation of the extension of the section is more than 10%, the certificate by the conveyancer to state that the mortgagee's of each section in the scheme have consented to the registration of the sectional plan of extension. A transfer duty receipt to

indicate the new extent of the section must also be lodged, however it is not necessary to lodge a rates clearance certificate with the new extent of a section.

It is clear from the above that the process to register a sectional plan of extension of a section can be extremely time consuming and costly. Owners of sectional title units are therefore urged to attend to the registration of the sectional plan of extension if the boundaries of their section have been or will be extended, as soon as possible. To avoid any delays and unplanned costs, when considering purchasing a sectional title unit, potential purchasers must ensure that all building plans have been approved and sectional plans of extensions are registered by current owners for any additions made to date.

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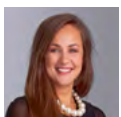
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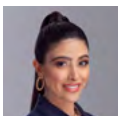
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Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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