

# Real Estate Law ALERT

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CLIFFE DEKKER HOFMEYR

INCORPORATING  
KIETI LAW LLP, KENYA

## IN THIS ISSUE

### Consolidation of immovable property and the associated processes

The Oxford English dictionary defines consolidation as *"the action or process of combining a number of things into a single more effective or coherent whole"*. The Merriam Webster dictionary defines it as *"the process of uniting"* or the *"unification and/or joining together of two or more parts"*.



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## Consolidation of immovable property and the associated processes

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Therefore, consolidation of property can be defined as being the consolidation of two or more properties to form one larger property.

Section 40 of the Deeds Registries Act 47 of 1937 (Act), with specific reference to section 40(1)(a) to (f) deals with the requirements for the consolidation of properties. In brief, this section states that in order for properties to be consolidated, the following requirements need to be met:

- The properties need to be owned and registered in the name of the same person and/or entity or, by two or more persons and/or entities in the same undivided shares in each of the properties.
- The properties need to share a common border (be contiguous to each other).
- The properties must be in the same registration division of the same township. This means that a property in one proclaimed township may not be consolidated with a property in a different proclaimed township even though they share a common border, for example a property in Blue Hills Extension 82 cannot be consolidated with a property in Blue Hills Extension 109 even though they share a common border.
- The properties must be in the same registration division, for example, properties that fall within the I.R. registration will not be able to be consolidated with properties that fall within the J.R. registration division.
- The properties need to be in the same province.



## Consolidation of immovable property and the associated processes

CONTINUED

The Registrars' Conference Resolution 26 of 2011 states that properties which comply with the requirements of section 40 of the Act may be consolidated even if they fall under different local authorities (municipalities).

### Reasons to consolidate property

A few examples of reasons where a property owner would consider consolidating their properties:

- Where a property owner of two adjacent properties intends to build a larger house on the property, which will be positioned over both properties.
- For the creation of a large conservancy by the consolidation of several farms.
- The development of a residential estate and/or office park on two or more properties.

The process to be followed by a property owner when deciding to proceed with the consolidation of properties is as follows:

1. The appointment of a town planner. The town planner will prepare the application for consolidation for submission and approval with the relevant local town planning authorities under which the properties fall. The town planner will need to conduct a cadastral survey (exact survey of the property boundaries) of the properties, and this survey will need to be attached to the application upon submission.
2. Once the application has been submitted, the town planning authorities will look at the application to see whether it is in line with

the development and urban planning policies for the area in which the properties fall. It will also look at whether the proposed consolidation will negatively affect the surrounding community and property owners.

3. Once the application has been approved, a land surveyor will need to survey the proposed consolidated property and draw a diagram of the new property.
4. The land surveyor will then submit the draft diagram to the office of the Surveyor-General, for approval.
5. The Surveyor-General's office will peruse the consolidation diagram to confirm that it meets all the legal requirements.



## Consolidation of immovable property and the associated processes

CONTINUED

6. Once the consolidation diagram has been approved by the office of the Surveyor-General, the landowner will need to appoint a conveyancer to attend to the registration of the consolidation application in the relevant Deeds Office, together with the issuing of a certificate of consolidated title (title deed) for the newly formed property. The conveyancer, once appointed by the landowner, will attend the drafting of the consolidation application in terms of section 40(3) of the Act together with the certificate of consolidated title in accordance with the terms of the approval of the respective local authority and approved consolidation diagram.

### Required documentation

The documents that must be lodged together with the section 40(3) application (Deeds Office application for the consolidation of properties) in the relevant Deeds Office are:

- Two registration copies of the approved consolidation diagram, issued by the office of the Surveyor-General.
- The original registered current holding title deeds for the respective properties.
- Bond holder's consent, if applicable in instances where a mortgage bond is registered over one of the properties. However, should there be individual mortgage bonds registered over the properties, these bonds will need to be cancelled in a separate application and a new mortgage bond registered over the newly formed property (if required by the property owner).
- Authorisation in terms of the Spatial Planning and Land Use Management Act 16 of 2013 (SPLUMA consent). For consolidations that fall within the City of Tshwane local authority, the following additional documents need to be lodged together with the relevant SPLUMA consent:
  - approval in terms of section 16(12)(d) of the by-law; and
  - a certificate of compliance in terms of section 16(10) of the by-law.

Once the consolidation of the properties has been registered in the relevant Deeds Office and the Deeds Office's data system updated, the registered owner of the newly consolidated property will need to take the confirmation of the registration to the relevant local municipality to have the municipal accounts over the properties closed and in turn, a municipal account over the newly created property opened.

**Ceciley Oates**

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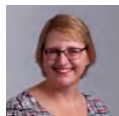
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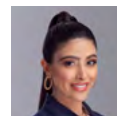
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Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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