

27 JUNE 2023

Real Estate Law ALERT

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Transferring sectional title property from a developer: The potential pitfalls

Purchasing sectional title property directly from a developer can be tax efficient and, combined with a developer who is experiencing financial difficulty, can make the deal a difficult one to refuse. However, in such circumstances, proper due diligence is important to safeguard both parties to the transaction.

Navigating the compliance and regulatory requirements of going solar: Have you got it all covered?

As the frustration of loadshedding grows, so does the interest in alternate means of keeping the lights on. From convenience and lower long-term costs to tax incentives, there are a multitude of factors encouraging South Africans to consider alternative means of keeping the lights on.



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Transferring sectional title property from a developer: The potential pitfalls

Purchasing sectional title property directly from a developer can be tax efficient and, combined with a developer who is experiencing financial difficulty, can make the deal a difficult one to refuse. However, in such circumstances, proper due diligence is important to safeguard both parties to the transaction.

An important aspect to consider in the context of sectional title property is whether the parties have correctly recorded if there are any exclusive use rights to parts of the common property to be transferred to the purchaser. Failure to do so, in the instance where the transaction will result in the developer ceasing to be a member of the body corporate by ceasing to have a share in the common property, can result in the body corporate instead of the intended purchaser, acquiring the exclusive use rights in terms of section 27(1)(c) of the Sectional Titles Act 95 of 1986 (STA).

The Western Cape High Court (Court) case of *Diaz Hotel and Resort (Proprietary) Limited v Body Corporate of the Visa Bonita Sectional Tiles Scheme* [2021] 4 All SA 786 (WCC), is a good illustration of how this dilemma can potentially arise.

Diaz Hotel

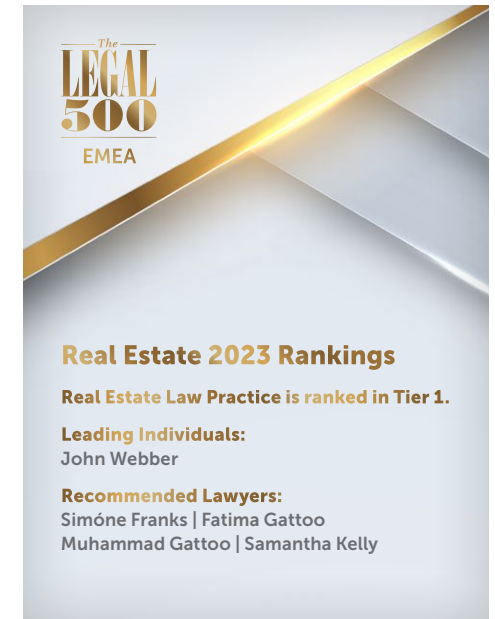
The dispute in *Diaz Hotel* arose from the developer entering into a sale agreement with Diaz Hotel and Resort (Proprietary) Limited (Applicant) for the sale of all the rights and assets of

a business owned by the developer, who was in liquidation. As part of the sale, section 73 and three exclusive use areas, namely parking bays P73, P74 and P64 were sold in the sectional title scheme where the *Body Corporate of the Visa Bonita Sectional Tiles Scheme* (Respondent) was the body corporate.

The transaction was initially rejected at the Deeds Office as the three exclusive use areas were not expressly cited in the sale agreement. The parties subsequently concluded an addendum, and a special power of attorney was granted to the attorneys to sign and execute the notarial deed of cession for the exclusive use areas.

The transaction was then re-lodged at the Deeds Office and section 73 was successfully registered in the Applicant's name. The three exclusive use areas were, however, not transferred from the developer to the Applicant by the Deeds Office.

The Applicant subsequently filed an application requesting the Court to direct the Deeds Office to rectify the error and register the transfer



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Rectification: Personal and ownership rights

As to the question of whether section 33(1) of the DRA could be used to rectify this error, the Court was clear that it had already determined that the Applicant was only entitled to the transfer of the exclusive use rights to the parking bays, which are registrable personal rights, but not ownership of the parking bays themselves. Consequently, as section 33(1) of the DRA specifically deals with the transfer of ownership rights, the section could not be relied upon to rectify this error.

The potential pitfalls

The case of *Diaz Hotel* is therefore a valuable reminder of the important distinction drawn in our law between personal rights and ownership rights, a distinction which can often be overlooked when one is dealing with personal rights which relate to immovable property and that are registrable at the Deeds Office.

The case is also a good illustration of the potential pitfalls that may arise in transferring sectional title property directly from a developer where proper due diligence and maintaining accurate documentation has not been adhered to. This is a failure which can have severe financial implications for both parties to the transaction, as the body corporate instead of the intended purchaser can potentially end up acquiring the property if the omission is not timeously rectified. The property would in such an instance also be transferred to the body corporate free from any registered mortgage bond, which the developer would still be obligated to settle with their respective credit provider.

[Lulama Lobola](#)



Navigating the compliance and regulatory requirements of going solar: Have you got it all covered?

CONTINUED

- Make sure to familiarise yourself with the relevant warranty and maintenance requirements of your solar PV system. This is important not only in respect of your ongoing responsibility to maintain the safety of all electrical installations but will also hold relevance for your homeowner's insurance cover, which should be updated to include these valuable installations.

The benefits of going solar are certainly glowing but should be carefully considered taking into consideration the pre-installation, installation, and post-installation (maintenance) safety and regulatory requirements, each of which are not without their own cost.

If you are planning to finance your new solar PV system with a bond, it is wise to note that banks, for purposes of the bond finance approval process, will only accept an electrical CoC that is not older than two years (sometimes one year), as part of their requirements for the approval and registration of a bond over immovable

property. Should you have updated your electrical system to include a solar PV system within those periods, a supplementary CoC which covers the changes made to the system, will also be required. Should you not have an existing valid electrical CoC for your property, the issue of a new certificate may be necessary, for the entirety of your electrical system.

Post installation considerations

In the event of your property being sold, it's important to bear in mind when entering into the sale agreement, that a purchaser might insist that new CoC's be issued, despite them having been issued within the previous two years, or, their own bank, for their bond finance, may require the re-issuing of these certificates.

While not currently dealt with separately, as a system apart from the rest of a property's electrical system, solar installations will undoubtedly start to feature more prominently on the mandatory immovable property condition report required in terms of section 67 of the Property

Practitioners Act 22 of 2019, in respect of both the sale and lease of immovable property, in the near future.

Noting the presence of a solar system, the size of the kilowatt (kW) inverter, and how many panels are installed on your property in your sale agreement is sure to add to the appeal and value of your property. Property owners should therefore be sure to remind the suitably qualified electrician completing the supplementary electrical CoC (or new CoC for your whole electrical system, as the case may be) on completion of their solar installation, to include the relevant details of your solar installation.

Whether you are a first-time installer, preparing your property to be sold, or looking to purchase a property which has pre-existing solar installations, familiarising yourself with the legal requirements of installing and maintaining a solar PV system will ensure that you are well equipped to navigate and manage your system, legally and safely.

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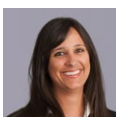
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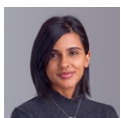
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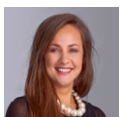
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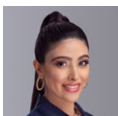
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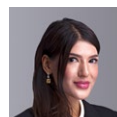
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BBBEE STATUS: LEVEL ONE CONTRIBUTOR

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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