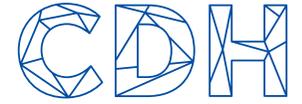


Real Estate Law

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SOUTH AFRICA

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The critical role of the South African Deeds Offices in property transactions and common issues that can arise during registration

The 11 South African Deeds Offices play a pivotal role in the country's immovable property transactions by ensuring the security and legality of immovable property ownership, or rights thereof. These offices, established under the Deeds Registries Act 47 of 1937, are responsible for maintaining public records of all immovable property transactions and registering ownership changes, mortgages and other rights related to immovable property.

A title deed is the most critical document in property ownership. It serves as proof of ownership and contains details about the property, including its size, its location and any restrictions or conditions attached to it. Without an original registered title deed, the legal ownership of a property cannot be transferred, making it impossible to sell, mortgage, or inherit the property lawfully..

Registration process

Preparation of documents

The process begins with the preparation of the necessary documentation by a conveyancer, a specialist attorney who handles the legal aspects of property transactions. This includes the sale agreement, transfer documents and any other required consents or clearances.

Submission to Deeds Office

Once all documents are in order, the conveyancer submits them to the relevant Deeds Office. There are multiple Deeds Offices across South Africa, each responsible for a specific geographic area.

Examination

The Deeds Office examines the submitted documents to ensure compliance with legal requirements. This includes verifying the accuracy of the information, checking for any existing bonds or restrictions on the property, and ensuring that all necessary consents and clearances have been obtained.

Registration

Once the examination is complete and no issues are found, the transaction is registered. The buyer's ownership is recorded in the Deeds Registry, and a new title deed is issued in their name.

Issuance of title deed

After registration, the original title deed is returned to the conveyancer, who then hands it over to the new owner or the financial institution that provided the bond, if applicable.

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Common issues during registration

Incorrect or incomplete documentation

Any errors or omissions in the documentation can delay the registration process. This includes incorrect property descriptions, missing signatures or outdated consents.

Outstanding municipal rates or taxes

Before the transfer can be registered, all municipal rates and taxes must be paid and up to date. Expired certificates can halt the process.

Existing bonds

If the property is bonded, the existing bond must be cancelled and any new bond must be registered simultaneously. Delays may occur if the financial institutions involved do not co-ordinate effectively.

Discrepancies in ownership

Any disputes or discrepancies regarding the current ownership, such as issues with inherited properties or co-owned properties, can complicate and delay registration.

Restrictions or conditions on the title

Some properties have restrictions or conditions attached to the title deed, such as servitudes or rights of way, which must be addressed before registration can proceed.

Conclusion

The South African Deeds Offices are essential to the integrity and transparency of the property market. Their role in ensuring that property transactions are accurately recorded, and legally binding, helps protect both buyers and sellers. Understanding the registration process and potential issues that can arise is crucial for anyone involved in property transactions in South Africa.

Muhammad Gattoo and Kirsty de Sousa



Understanding building plan objections in terms of the City of Cape Town Municipal Planning By-law

Building plan approvals are a critical aspect of urban development, ensuring that structures comply with legal, safety and environmental standards. In Cape Town, the City of Cape Town Municipal Planning By-law, 2015 as amended (MPBL) governs this process, outlining the rights and responsibilities of property owners, developers and the public when it comes to objecting to building plans.

The importance of the MPBL

The MPBL is designed to regulate land use and development within the city. It provides a legal framework for the submission, assessment and approval of building plans. This by-law is crucial for maintaining the orderly development of the city, protecting the environment, and ensuring that new buildings are safe and in harmony with their surroundings.

One of the key provisions of the MPBL is the public's right to object to building plans. This ensures that development does not proceed without considering the interests of affected parties, including neighbouring property owners and the broader community.

Grounds for objections

Objections to building plans can be made on various grounds under the MPBL. Some of the most common reasons include:

- **Non-compliance with zoning regulations:** If a proposed building plan does not comply with the zoning regulations applicable to the property, it can be a basis for objection. Zoning regulations dictate the type of development permitted in specific areas, including building height, density and land use.
- **Impact on privacy and access to light:** Property owners may object if the proposed building will have a significant impact on their privacy, access to sunlight or views. For instance, if a new development is likely to cast a shadow over an existing property, this can be a valid ground for objection.
- **Environmental concerns:** Objections can also be raised on environmental grounds, such as potential harm to natural habitats, watercourses or the overall ecological balance of the area. The City of Cape Town (City) places a strong emphasis on sustainable development, and any proposed plan that threatens the environment may face objections.

Understanding building plan objections in terms of the City of Cape Town Municipal Planning By-law

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- **Traffic and infrastructure impact:** If the proposed development is likely to cause significant traffic congestion or place undue strain on existing infrastructure (such as water, electricity or sewage systems), these can be grounds for objection.
- **Heritage and aesthetic considerations:** In areas with historical significance or unique architectural character, objections may be based on the potential impact of the proposed development on the heritage value or aesthetic harmony of the neighbourhood.

The objection process

The process for lodging an objection to a building plan under the MPBL is structured to ensure that all stakeholders have an opportunity to be heard. Here's how it generally works:

- **Notification of neighbours:** When a building plan is submitted for approval, the City typically requires the applicant to notify neighbouring property owners and other affected parties. This notice should include details of the proposed development and the deadline for submitting objections.
- **Submission of objections:** Affected parties must submit their objections in writing by the specified deadline. The objection should clearly outline the reasons for the opposition, supported by relevant facts and, where possible, legal or technical arguments.
- **Consideration by the City:** Once an objection is submitted, the City's planning department will consider it as part of the building plan approval process. The department may request additional information from the objector or the applicant and may conduct site visits or hold hearings to assess the merits of the objection.

- **Decision:** After considering all objections, the City will make a decision on the building plan. This decision can involve approving the plan with or without conditions, requiring modifications to address the objections, or rejecting the plan altogether.
- **Appeal:** If an objector or the applicant is dissatisfied with the City's decision, they have the right to appeal. The appeal process typically involves a review by a higher authority within the municipal planning framework.

Balancing development and public interest

The building plan objection process under the MPBL reflects the City's commitment to balancing the rights of property owners and developers with the interests of the community. While development is essential for economic growth and addressing housing needs, it must be managed in a way that respects the environment, heritage, and the quality of life of existing residents.

By allowing public participation in the planning process, the MPBL ensures that development decisions are transparent, inclusive and considerate of the broader impact on the City. For property owners and developers, understanding this process is crucial for navigating potential objections and ensuring that their projects comply with the law and community expectations.



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Conclusion

Building plan objections in terms of the MPBL are an integral part of the urban development process. They serve as a check and balance, ensuring that development proceeds in a manner that is legally compliant, environmentally sustainable and sensitive to the needs of the community. For stakeholders in the real estate sector, understanding and engaging with this process is key to successful and responsible development.

Lulama Lobola

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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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