

Real Estate Law

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SOUTH AFRICA

- Residential Development Loans



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Residential Development Loans



The developer will request an architect and land surveyor to draw up building plans and a site development plan for the said new scheme.

1

A developer wants to develop a new sectional title scheme on land it owns.

Submit these draft plans to the Surveyor-General for approval.

2

Sectional title units are then offered to the public for sale through the services of an estate agent who markets the units in the said scheme.

3

Prospective purchasers buy such units directly from the building plans (pre-sales) and after a certain number of units are sold, the developer may approach a financial institution for financing the construction of the scheme.

4

The chosen financial institution would determine internally, through its credit and risk assessments, how many units would have to be sold first and what the financial strength of the developer is, as part of its decision to lend money to the developer to construct the scheme.

5

Once the loan has been approved by the financial institution, bond attorneys will be appointed by the financial institution to proceed in registering the loan as a first mortgage bond over the land to be developed. This is described as the "mother bond".

6

The developer then develops the scheme entirely with his own capital, which he has borrowed from the financial institution and for which he must stand surety in his/her personal capacity.

7

The deeds of sale of the minimum number of units stipulated by the financial institution also serve as security for the loan granted to the developer for the construction of the scheme.

8

Once the building/s have reached a stage of completion that allows actual measurements to be taken by the Surveyor-General, the developer may apply for the approval of the sectional title plan.

9

Once approved plans, occupation certificates and NHBRC certificates are in place, the developer is ready to lodge its application, at the relevant Deeds Registry, to open and register the sectional title scheme and transfer the various units which have been sold to date.

10

Prior to the scheme registration documents and transfer documents being lodged, the financial institution holding the "mother bond" must consent to the opening and registering of the sectional title scheme as well as to the "release of the units" from the "mother bond".



11

The process of "releasing the units from the mother bond" entails the bond attorneys:



Vetting all the "pre-sale" transfer documents which includes inter alia ensuring that the sale agreements are in order and that there are no onerous conditions contained therein.

Confirming that the sale agreements have not lapsed, requesting proof of purchase price being secured from the transferring attorneys and ensuring FICA is in place etc.

12

To assist the bond attorneys a "pre-sale" schedule is usually provided to the bond attorneys by the financial institution this "pre-sale" schedule is completed by the transferring attorneys and sets out details of the transfer such as the unit number being sold, purchasers details, purchase price, VAT payable, deposit paid, bond approval, guarantee amount issued, agents commission etc. This "pre-sale" schedule forms part of the vetting process of the bond attorneys as it provides the financial institution with a nett proceed amount (after deducting the agents commission and VAT from the purchase price), which amount will be paid to the financial institution on registration of transfer, in order for the unit to be released from the "mother bond" and which covers the debt owing to the financial institution.



14

Once the financial institution approves the bond attorneys report, the bond attorneys will be instructed to proceed with drafting the Consents to Release and Consent to Opening of the Scheme, to be signed by the financial institution which will be lodged on transfer of each unit of the scheme.

13

The bond attorneys will provide a report to the financial institution with its findings based on the "pre-sale" schedule which will also indicate the nett amount the financial institution will receive on transfer of all the said units to date.

15

On registration of transfer, the nett proceed amount will be paid over to the financial institution from the transferring attorneys.

16

The process of consenting to release the units from the "mother bond" will be followed until the loan amount of the developer has been settled in full.

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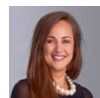
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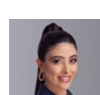
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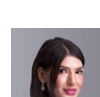
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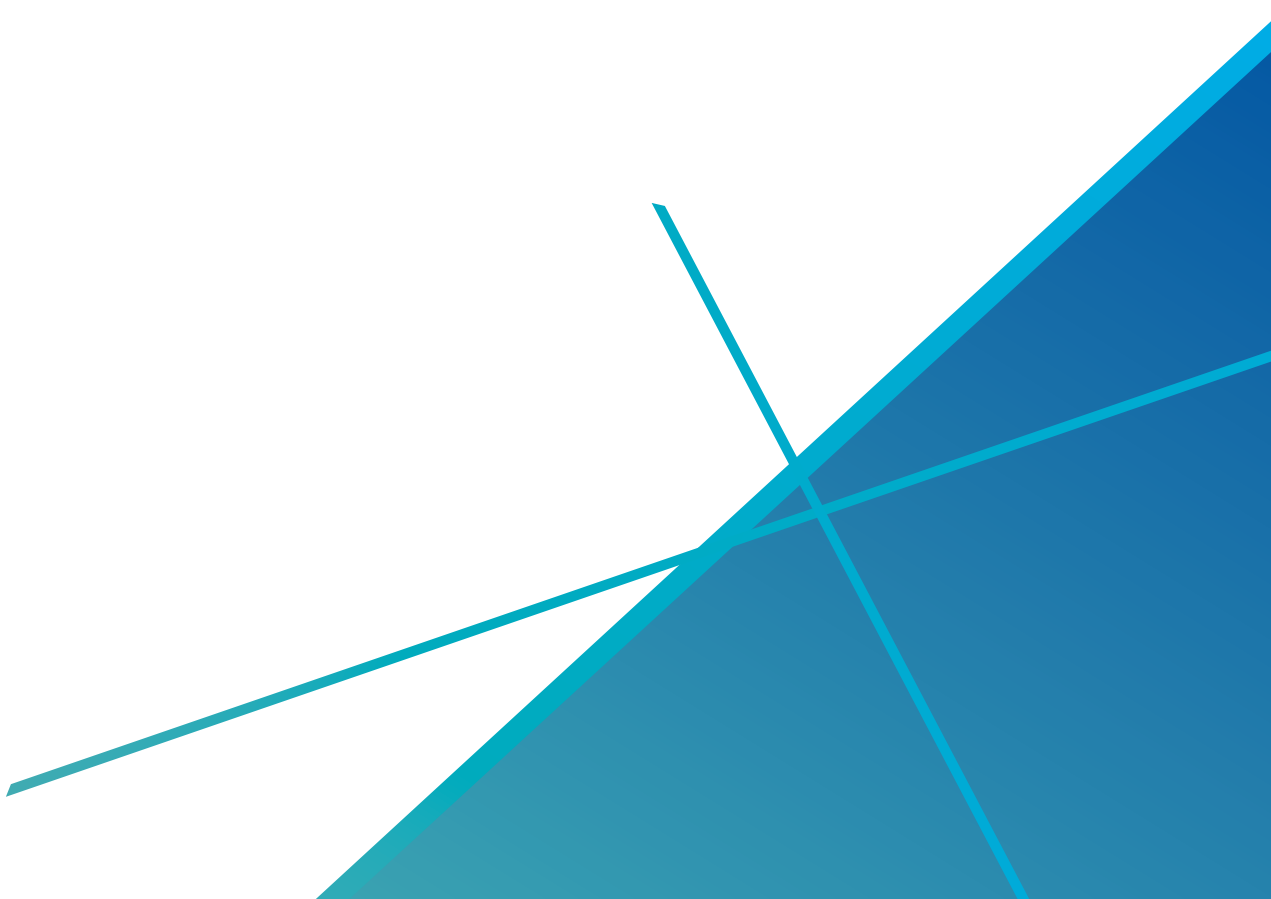
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BBBEE STATUS: LEVEL ONE CONTRIBUTOR

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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