

CONVERSION OF LONG-TERM LEASES TO SECTIONAL TITLES IN KENYA.

The Cabinet Secretary Ministry of Lands and Physical Planning issued a notice informing the public of the conversion of long-term leases that do not conform with section 54(5) of the Land Registration Act, 2012 (the “LRA”) and Section 13 of the Sectional Properties Act, 2020. The announcement indicated the government’s intention to discontinue registration of long-term leases calling for the implementation of the Sectional Properties Act. Section 13(2) of the Sectional Properties Act No. 21 of 2020, stipulates that all long-term sub-leases that are intended to confer ownership of an apartment, flat maisonette, town house or an office that were registered before the commencement of the Sectional Properties Act shall be reviewed to conform to section 54 (5) of the Land Registration Act, 2012 within a period of two years of the commencement of the Act.

What this essentially means is that transactions on units registered under a regime that do not conform with Section 54(5) of the LRA and Section 13 (2) of the Sectional Properties Act would not be possible once the two years have lapsed unless they are included in a sectional plan and registered in the Lands Registry.

Instances where Long-term Leases may be converted Sectional Titles;

Regulation 18 of the Sectional Properties Regulations of 2021 states that long- term leases shall be converted to sectional units where:

- i) All Units have been transferred to the respective owners and the reversionary interest has been converted to the management company to hold in trust for the owners as noted in the title.
- ii) all the units have been transferred to the respective owners and the reversionary interest is by written agreement intended to be transferred to the management company to hold in trust for the owners; or
- iii) part of the units have been transferred to the respective owners and the reversionary interest is by written agreement intended to be transferred to the management company to hold in trust for the owners.

Who may initiate the Conversion Process?

Subject to Regulation 18 (2) of the Sectional Properties Regulations, conversion may be initiated by the management company, the developer or the owners of the respective units. Where shares in the management company have been transferred to the owners, the conversion can be initiated by the management company. If the shares in the management company have not been issued to the owners as per agreement or the management company has failed to apply for conversion, any owner or owners may apply for conversion.

Pursuant to the Act and the regulations, the Registrar may dispense with the production of the original title if the developer is not willing or is unavailable to surrender the title, for the purposes of conversion. If the parties indicated above who are responsible for making the applications for conversion do not do so, any owner of any unit in the development can apply for conversion.

The Conversion Process

The sectional titles regime is based on the principle that a unit in a building is deemed separate and independent from the other units in the same building. The Sectional Properties Act seeks to allow owners to acquire the unit and obtain an independent title deed with respect to that specific unit, unlike for a lease where the interest of the owner is registered against the main title over the land on which the unit is built.

For purposes of conversion of already registered long term sub-leases, the owners of the property will be required to make an application in the prescribed form which shall be accompanied by:

- a. the sectional Plan.
- b. the sublease or long-term lease.
- c. certificate of lease; or
- d. the parcel title or a copy of the parcel title

Pursuant to the Sectional Properties Act, a surveyor is required to prepare a sectional plan from a building plan prepared by an architect and approved by the respective county government. This means that all sectional units shall now be required to have properly registered sectional plans.

The sectional plans are then submitted for registration having being geo-referenced, described in the heading of the plan as a sectional plan, indicate the parcel plans, bear the number identifying the unit, indicate the approximate floor area of each unit and clearly state the user of the units. The sectional plans must also be signed by the proprietor; and signed and sealed by the Director of Survey.

Upon submission of the above, the sectional plan will be registered, and the previous register closed. On registration of the Sectional plan at the relevant land registry, the owners of the units in the parcel of land must establish a Corporation. This Corporation is established under Section 17 of the Sectional Properties Act and not the Companies Act as was the case in previous regime. It is tasked with the management of the entire property by doing things such as maintaining the property in good condition, enforcing the bylaws, paying the premiums for any insurance policies and all other tasks that ensure that the property is properly managed.

The Registrar shall, within twenty-one days from the day a sectional plan is registered, submit to the county government of the area in which the parcel is located, a copy of the registered sectional plan.

Where the management company or owners have initiated the preparation of a sectional plan during conversion and where they fail to avail the approved architectural plans, or the available approved architectural plan is at variance with the development.

- a. the management company or the owners shall avail an affidavit detailing the loss or inability to avail of the said documents.
- b. the sectional plan may be prepared by the surveyor without necessarily relying on the approved architectural plan.
- c. the county government may endorse its certificate on the sectional plan without the production of the approved architectural plans based on the affidavits.

The conversion process seeks to create a favourable environment to investors and property owners by giving them more power over the properties they own.

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