



## Double and Triple Dwellings in terms of the Spatial Planning and Land Use Management Act (SPLUMA) and By-Laws

It is now possible, in the City of Cape Town and in many other municipalities in South Africa, to construct two to three dwellings on your erf and sell the units off without either applying for a subdivision or the rezoning of your property provided that the building plans for the building or proposed building are approved by the Local Authority. This is because of the wording contained in SPLUMA and subsequent By Laws that have been enacted in different Local Governments in line with the Government's Higher Densification Policies. What does this mean for the Property Industry? It means the creation of more homes with less red tape. Estate agents are now being approached more and more by property owners to market these units. The process is however more complicated than completing a standard Offer to Purchase and to sell the units off. The reasons are certain statutory as well as financing implications that needs to be considered and dealt with in these agreements. It is strongly recommended that a qualified conveyancer assist you with the contract and the process.

It must be remembered that these units will be sold and transferred on a Sectional Title Basis and in accordance with the stipulations contained in the Sectional Titles Act and the Sectional Title Schemes Management Act ("STSMA"). To register these units, Sectional Plans are required to be drawn and registered in the Deeds Office together with the opening of a Sectional Title Register.

The first step will be to peruse the title deed of the property and to remove any conditions relating to the prohibition of more than one dwelling unit on the property, and simultaneously with that and in the event that the property forms part of a Home Owner's Association, to peruse the Constitution and Rules in terms thereof to confirm that there are no conditions that prohibit either the opening of a Sectional Title Register or that prohibits the construction of more than one dwelling unit on a property that forms part thereof.

Rules will have to be filed with the Community Schemes Ombud Services. As a result, Conduct Rules will have to be agreed upon in the first agreement failing which the standard Management Rules and Conduct Rules prescribed in terms of section 10(2)(a) of the STSMA will apply. Once transferred, a body corporate is automatically formed and the units shall have to be managed in accordance with the STSMA.

A further catch for these owner developers is that Sectional Plans cannot be drawn before a building is roof height and these plans are required to open a Sectional Title Register which is required to transfer these units to third party end users. This has large financing implications as the units need to be completed before they can be transferred. If building progress payments against the security of a mortgage bond is required to construct these units, the facility required shall therefore have to be for the cost of all the units combined and not one at a time. This is especially so as no real right of extension can be registered if there are not at least two units constructed which makes the bonding of a real right of extension for these purposes problematic. No doubt the banks will develop financing products to satisfy this need but in the interim one shall more than likely have to construct the entire scheme before transfer will take place. Similarly one will not be able to transfer a vacant plot in this basis.

Finally it must be remembered that all of the above issues need to be dealt with in a specialised deed of sale of a sectional title unit from the Developer to the first third party end-user which contains the terms and conditions referred to in this document. It is therefore not advisable to use a standard offer to purchase used by estate agencies but rather to use a contract drafted specifically for these purposes.

This newsflash has been prepared for information purposes only and does not constitute legal advice, or a legal opinion, the practical application of the provisions of this newsflash will vary depending on the facts of each case.

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