



Creating Lifestyles

KPDA CEO MORNING LEARNING SESSION, TUESDAY 7TH JULY 2015

THEME: 'Review of the Proposed Amendments to the Sectional Properties Act 1987 and Proposed Shared Communities Act 2014'

SUMMARY ON THE EFFECTS OF THE PROPOSED LEGISLATIONS

Authored by Suraya Property Group Ltd

1.0 INTRODUCTION

Registration of New Developments is currently undertaken utilizing the RTA (New Lands Act, 2012) using the sublease system. The Sectional Title Act of 1987 is hardly used by the public to register any new title.

The Two Acts as currently set up, are cumbersome, difficult and extremely slow and are effective for registration of below 20 units.

With the current legislation even with the computation that is ongoing it would still be impossible to register 1,000 units in less than 1 year.

One of the biggest handicaps is that in the current legislation the Mother Title for the development remains as one pending file. Therefore any official search, valuations, registration etc., is very difficult when you have over 1,000 purchasers. Advocates, Banks and Valuers all trying to secure the one file for registration of their transaction.

The New Legislation is designed to simplify the registration process and enable the Developers to create all individual titles of the units during the early stages of development. This will then enable efficient registration of the individual units as each will now have its own mother title.

The "AMENDMENTS TO THE SECTIONAL ACT, 2014" are amendments designed to address these handicaps.

The other main handicap is that there is no law at the moment that caters for large scale Multi Use Controlled projects.

The current system involves subdivision of land, however, when land is subdivided currently by the developer, the other land owners, have no say in what the individual land owner wish to do with this land.

And most individual land owners then go and get Council approval and develop whatever they wish, thereby devaluing the area.

The effect is that you have uncontrolled developments and the neighborhood value goes down with time.

Today buyers want to buy into a controlled development where they are assured that the overall environment will stay the same over the years and the neighbors are all actually involved in any changes to their environment.

The new "**SECTIONAL TITLES GATED COMMUNITIES ACT 2014**" is designed to address this problem.

2.0 THE SECTIONAL PROPERTIES AMMENDMENTS ACT 2014

Introduction.

The Sectional Properties Act 1987, was enacted to deal with the registration of units in high-rise buildings and/or flats which were existing or developed and which were few in number i.e. 20 units in a block. The amendments which are proposed are intended to introduce legislation to cater for the registration of units whereby the units are being constructed by a developer on a large scale i.e. over 10,000 units in a development.

2:1 OBJECTIVES

The Act aims to achieve the following:-

1. Hasten the registration process.
2. Create individual sectional title for each unit at the onset.
3. Provide legislation to aid financed purchases of units.
4. Standardization of conveyance instruments.
5. Creation of an electronic registry and use of electronic documents.
6. Issuance of New Sectional Titles

2:2 OVERVIEW OF THE ACT

The Act introduces legislation to deal with the purchase and transfer of sectional units being developed by the developer over the period of the payment period. It lays a basis of how the process will be handled up to the completion of the unit and the management of the units under a corporation as envisaged when the Act was passed.

The amendments are sectioning to negate the current situation where all the transactions are registered on one mother title. The amendments will enable developers to secure equivalent number of sectional titles to the total number of units being developed at the onset of the project.

Therefore sales, registration of transfers & charges will now happen on the new individual sectional titles files.

This is the most fundamental change that will completely ease the process of registration of apartments, flats and office suites

The Act is seeking to have all the conveyance documents standardized and in particular instruments of security used by financial institutions. By standardizing the instruments, the issue of lending institutions holding on to funds will be dealt with, not to mention the issue of legal fees and charges which make land transactions expensive. Further, the Act has the prescribed forms which are basic and cover the essential information excluding the legal jargon associated with advocates.

The new introduction under the amendment is the financing aspect where the lending institutions, developer and an intending purchaser enter into a tripartite agreement for the purchase of a unit. The aim of the agreement is to have the funds released directly to the developer from the lending institution thereby having the unit in the name of both the lending institution and the intended purchaser.

The creation of an electronic Registry to register titles and leases under the Act specifically for the sectional units is key, as this would hasten and make the registration, transfer and or dealings with

the units easy as the registry would be dedicated to Sectional units and not the initial Title over the parcel of the land.

2;3 CONCLUSION

The amendment act is necessitated by the fact that the registration of sectional units has been a long and tedious process which is bound to cripple the real estate sector as the main problem of land transactions emanates from the failure of having a robust and dynamic registration process.

3.0 THE SHARED COMMUNITIES ACT

Introduction

The Act seeks to address the new concept of Shared (Gated) communities' projects which are undertaken by a developer over a large parcel of land under a single title. It is based on a model concept whereby the developer undertakes to develop the land based on a Development master plan which contains different users ranging from commercial, residential and public encompassing the fact that it is upon the developer to ensure that the Development master plan and usage is adhered to in the event he opts to transfer a sectional parcel unit within the Gated community parcel.

3;1 OBJECTIVES OF THE ACT

The objectives of the Act are:-

1. Land planning, usage and management.
2. Create individual Sectional Title Units for undeveloped land and enable transfer of villas on individual parcels of land from the onset.

3;2 OVERVIEW OF THE ACT

The Act proposes to have parcels of land being hired out of the parcel of land which is held under a single title for the various multipurpose usages as per the Development master plan. The Act is to be used together with the existing Sectional Properties Act and the proposed amendments. The Act's main development is the registration of a Development master plan encompassing the various parcels of land created from the division of the main Title thereby creating new titles which are based on the main title which the developer has divided.

The crux of the ownership is the different users of land created within the Gated Community main Title. The mode of ownership, transfer and registration of the parcels of land is provided for under the different usages. The developer is empowered to issue titles and leases within the Gated Community for the different users and set the conditions but the actual sectional titles are prepared and issued by the Ministry of Lands, Housing and Urban Development.

The Act provides that a developer may transfer a parcel of land with no development on it to a purchaser attaching the conditions for the user on the Lease over the parcel. The developer shall ensure that the unit purchasers adhere to the user of the various parcels of land within the Gated Community.

The Act gives the developer power to manage the land within the Gated community and to issue titles and leases as the case may be. The developer being the main title holder shall be in charge of the common areas in trust of the unit owners.

3;3 CONCLUSION

The Act is to be applied in the new field of real estate of Shared Communities which is the new phenomenon in the country and which is lacking legislation to govern and manage the field. With this draft Bill, the field will be governed as it grows.