

CONVERSION OF SECTIONAL PROPERTIES



Chege Njoroge
Managing Partner | njoroge@lesinkonjoroge.com

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The Sectional Properties Act (SPA) of 2020 requires that all long term leases intended to confer ownership of flats, apartments, town houses, villas, maisonettes, go-downs or offices, which had not been geo-referencing as was the case under previous conveyance practices, be converted. The conversion involves geo-referencing the property to accurately reflect its position on the ground, and the generation of a sectional plan that is to be submitted for registration of a particular unit.

There are two dimensions to that effect. First, it is the issue of conversion of already registered long term leases into sectional properties. Second, it is how new units will be registered as sectional properties. Currently, long term leases and sub-leases must comply with these new legal provisions, following a Press Release by the Ministry of Lands and Physical Planning dated 7 May 2021, in which it was stated that the Ministry would no longer register long-term leases supported by architectural drawings as from 10 May 2021.

Whilst the Regulations to implement the SPA, and clarify some of the obligations by the developers and units owners are being formulated, the Ministry of Lands had nonetheless, in the above mentioned Press Release, required conversion processes to be commenced.

It is noteworthy that whether it is a conversion from the previous system, or a new conveyance, registration involves submission of a sectional plan, and the property will still be subjected to the usual pre-requisites such as valuation of the units for payment of stamp duty, if applicable, and the apportionment of land rent and rates. It is noteworthy that for conversions in which stamp duty had been paid during the previous conveyance and registration, there will be no further payment of the same with regard to the subject property. The Registrar is then expected to close the register of the parent title, and open a separate register for each unit described in the plan, and proceed to issue a certificate of lease or title.

PROCURING CONVERSION

The developer, management company (if any) or owners of units are under an obligation to ensure that long term sub-leases over the units are geo-referenced and certificates of lease or title issued in respect of the particular sectional properties. There are penalties for non-compliance.

REGISTRATION

The property units must be clearly identified in the building plans that should be approved by the respective County Government. It is noteworthy that only a licensed surveyor can prepare a geo-referenced sectional plan for a particular property.

The sectional plan that is submitted to the Registrar at the Ministry of Lands should be accompanied by an application to register a corporation for purposes of management of the common areas and services, among others. This means enclosing a list of members of the corporation as well its by-laws, as explained in our earlier commentary which is accessible here:

<https://www.lesinkonjoroge.com/Sectional-Ownership-of-Home-and-Business-Premises.html>

The sectional plan should be presented for registration in quadruplicate. The Registrar shall open a separate register for each unit as described in the plan. All the other registers that previously contained information relating to that parcel of land shall be closed. The new register of the units shall capture information regarding any interest that affects the particular sectional property.

OWNERSHIP CERTIFICATE

The Registrar shall issue a certificate of lease or title for each unit upon the completion of the registration process. The certificate of lease or title shall specify the interest which each unit owner has within the sectional property, including whether its freehold or leasehold. It shall also specify the extent of the interest that each unit owner has in the common areas.

OUR SERVICES

At Lesinko, Njoroge and Gathogo (LNG) Advocates, we are committed to assisting our local and international clients in real estate transactions and conveyancing, including in relation to the registration of sectional property