

DO YOU KNOW WHAT IS A RIGHT TO EXTEND IN A SECTIONAL SCHEME IN TERMS OF SECTION 25 AND THE IMPORTANCE THEREOF?

In terms of Section 25 of the Sectional Title Act 1986, developers sometimes reserve a “right of extension” when they open a sectional title scheme. Such rights of extension are then registered for a certain number of years. This right then allows the developer to add on more units to the scheme – either horizontally or laterally - within the time allowed. Naturally this could result in massive inconvenience for existing owners at that time. For this reason, when a unit in that scheme is then sold, this right has to be disclosed to any potential buyer, if the right still exists. If this is not done, the buyer may unilaterally and without prior notice, summarily cancel the sale at any time, should he or she learn of such a right, and the seller will be left without any claims for damages. And the agent, may not claim commission either.

How is this information obtained? Sadly, there is no record of this readily available on the internet as it were. The only way to find out is to physically attend on the Deeds Office, draw the file of the sectional title complex, and look to see if such a right was registered. In an ideal world, this would be done before a buyer signs the transfer documents to ensure that if such a right exists, it is reflected in the OTP. It is important to note that before transfer of ownership in a sectional title unit can be passed, a Conveyancer must state in a Conveyancers Certificate in terms of Section 15B (3) of the Sectional Titles Act 1986, as amended, whether:

1. a right to extend was not registered; or
2. the right to extend is registered and was disclosed to the buyer; or
3. the right to extend is not disclosed but the buyer’s consent has been obtained; or
4. the right to extend has lapsed.

The Conveyancers Certificate must then be lodged in the Deeds Registry to be examined together with the Power of Attorney to pass transfer of ownership signed by the seller.

If the right to extend does exist and the seller has not disclosed the right to extend in the Agreement of Sale a Conveyancer must prepare a separate Affidavit to be signed at the office of the Conveyancer. The Affidavit must state that the buyer declares that they are aware that a real right of extension of a scheme, as contemplated in Section 25 of the sectional Titles Act 1986, as amended, is registered in favour of either the Developer or the Body Corporate and that the buyer waives his right to annul the Agreement of Sale. But in doing so, it opens the door for the buyer to cancel. Hence why one should obtain this confirmation before taking a property to market. If this is not reasonably possible rather declare that such a right does exist, just to be safe!