



AMC HUNTER INC

Attorneys, Notaries & Conveyancers

69 Florida Road, Morningside
■ DURBAN ■

SECTIONAL TITLE

A developer has various options available to facilitate a development:

- Sectional Title sales of Completed Units
- Sectional Title sales of Real Rights
- Plot and Plan by means of the establishment of a Township Development or subdivision of land

SECTIONAL TITLE SALES OF COMPLETED UNITS

Advantages:

1. Virtually no risk to the buyer as funds are released to developer upon completion of the Unit.
Before transfer the following must be attended to:
 - Sectional plans prepared by the surveyor on the building and approved by the surveyor general;
 - The issue of a Certificate of Completion of the property;
 - Compliance with any local authority requirements for the approval of the plans.
2. The duties and responsibilities of the various owners to each other and to the Body Corporate are clearly set out in the Act.
3. Better security and the costs of maintaining a property are often reduced.
4. Rates to be levied on individual units, and levies will in future be restricted to expenses relating to the common property, other than rates.
5. Disputes - The owner of a unit has recourse either to Arbitration in terms of the Act, or to a court of law, usually the High Court.
6. Body Corporate Rules only valid if:
 - Taken properly at a meeting of the Body Corporate
 - Rules are filed with the Registrar of Deeds
 - The same applies to any amendments to the Rules
7. Right to Extend a Scheme - The Developer must:
 - Disclose this in the sale agreement of each unit
 - This also applies upon the resale of units
 - If this is not disclosed in the sale agreement, the sale is voidable at the instance of a buyer
8. Transfer Duty / VAT
 - New Development - no transfer duty payable
 - Developer pays VAT on the purchase price on transfer of the Unit

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Disadvantages:

1. Restrictions
 - Sectional Title is a more restricted form of ownership than conventional ownership
 - Conventional ownership of property very few restrictions, if any, other than local authority laws and by-laws
2. It can take a year or two to complete the development. Developer relies entirely on his own funds or a development loan from a bank in order to complete a development. Developer receives payment upon transfer of each and every unit.
3. Disputes - An owner may find it impractical or prohibitively costly to resort to either a Court of Law or Arbitration to resolve disputes. The costs of litigation of even a minor dispute could easily amount to R 30 000 or more.

REAL RIGHTS (THE RIGHT TO EXTEND A SCHEME)

What does it mean?

1. Sectional Title Register can be opened upon the registration of two units only
2. The Developer will reserve the right to extend the scheme by the erection of further units.
3. This right can be disposed of to various buyers - this gives him the rights to develop that piece of the sectional title scheme.
4. In terms of Section 25(4) of the Act, a right to extend is deemed to be a right to immovable property which can be mortgaged and which can be sold and transferred by means of the registration of a Notarial Deed of Cession.
5. The Real Right to Extend is sold in conjunction with an agreement to build on the piece of land over which the Real Right has been registered.
6. The Developer receives payment of the "land value" on registration of the Cession of the Real Right to the buyer.
7. The Developer receives progress payments, or draw-downs, as the construction of the Unit progresses.
8. Upon completion of the Unit, the owner of the Real Right must take out a Certificate of Registered Title and his Unit will be included in the Sectional Title Register together with all the other Units that have been completed and transferred.
9. The process is now complete

Advantages:

1. Developer receives cash injection early on in the development.
2. Buyer carries the cost of the mortgage loan whilst the property is under construction.
3. Developer can sell Units at a lower price as his holding costs on the development are reduced.
4. Or the Developer can increase his profit margin by utilizing the Real Right procedure.

Disadvantages:

1. Developer goes insolvent - buyer could end up owning an incomplete Unit.
2. In the past Developers failed to apply to the Registrar, on behalf of the owners of a Real Right, for the registration of the Plan of Extension and the inclusion of the additional units in the Sectional Titles Register, causing problems on a resale or on a foreclosure if bond payments were not met.

THE ESTABLISHMENT OF A TOWNSHIP OR SUBDIVISION OF LAND

Advantages:

1. Must be done in accordance with Town Planning Scheme applicable to the particular area.
2. Plots can be sold to individuals to be developed by them in accordance with guidelines laid down by the developer, OR they may be contractually bound to utilise the services of the developer or his nominated building contractors to construct their homes.
3. A Township development can also be:
 - a combination of privately owned erven;
 - erven that are sold to be developed into a number of sectional title units.

4. The advantages are:
 - Developer can structure a whole development to suit its needs.
 - Would not be constrained by the provisions of the Sectional Title Act.
5. Local authority has to first approve the new Township and only once the requirements of various departments within the Local Authority have been satisfied e.g. traffic, water, sewerage, environmental affairs, etc.
6. Establishment of the township in KZN could be done in terms of five different pieces of legislation, each with its own requirements, e.g. The Town Planning Ordinance, the Development Facilitation Act etc.
7. If a township is to be established on agricultural land, application to the Minister for the subdivision of such land in terms of the provisions of Agricultural Land Act must be made.
8. The Local Authority may also require certain endowments/payments to be made before the Township Register can be opened.

Disadvantages:

Home Owners Association

Management Rules and Conduct Rules of the Association

1. These Rules apply into perpetuity and will apply to new owners as all future sales will be made subject to the existing Rules.
2. Restrictions put in place which are often more onerous than a Sectional Title Development, and are often designed to protect the financial interests of the Developer. Eg: The owner may not be allowed to sell or let a unit without utilizing the services of an agency appointed by the Home Owners Association, and be obliged to use the conveyancers nominated by the Home Owners Association.
3. Some rules even provide for the imposition of a fine in the event of non-compliance with the Rules.
4. When buying into a township development, a buyer becomes a member of the Home Owners Association. Such owner has bound himself contractually to the regulations that are made from time to time by the Association.
5. It also binds future owners to the rules as it cannot dispose of the property other than in accordance with the Rules laid down by the Home Owners Association.
6. Please note that a Developer may not dispose of erven in a proposed township and any such sale will be void. A developer may however sell proposed units in a Sectional Title Development.