

Could sectionalisation be a solution to housing stock shortages?

Housing stock shortages are looming in many areas, according to Arnold Maritz, co-principal of Lew Geffen Sotheby's International Realty in Cape Town's Southern Suburbs. This is despite the country's economic woes and the somewhat lacklustre performance of the market.



Source: Supplied

“Nationwide, we’re seeing growing stock shortages with very few approved new developments to alleviate the problem, and this can largely be attributed to bulk service issues such as sewerage and water infrastructure,” Maritz.

He adds that in Cape Town, the situation is exacerbated by the city’s geographical positioning between mountain and sea with very little available space left for further development.

“It’s for the latter reason that sectionalisation has become an increasingly common tool employed by developers in Cape Town in recent years and is now a very viable solution in many parts of the country where new development is curtailed for whatever reason.

“However, what many people don’t know is that the option to split their properties into double or even triple dwellings is actually available to most homeowners and not only to developers.”

No more reams of red tape

Maritz says that in the past, property owners had to rezone their properties to open a sectional title register or wade through reams of red tape to subdivide the erf.

These days, however, you can develop a maximum of three sectional title units without having to rezone the property. All you need is to obtain building plan approval for which neighbour's consent will only be required if your plans require departures.

"This is because South Africa's approach to densification has changed significantly with the focus no longer being on low-density development that ensures lots of space; it's shifted to higher densification to address the growing lack of adequate accommodation in and around metros.

"You can also sectionalise properties in developments if the constitution of the homeowner's association allows for it – or doesn't specifically prevent it."

Specialist conveyancing attorney Elana Hopkins of Dykes Van Heerden Incorporated explains further: "It's now possible to construct two to three dwellings on your erf and sell the units off without having to apply for either a subdivision or the rezoning of your property.

She says that the first step is to peruse the title deed of the property and, if necessary, to uplift any conditions relating to the prohibition of more than one dwelling unit.

And, if the property forms part of a homeowners' association, to peruse its Constitution and other regulations to confirm that there are no conditions that prohibit either the opening of a Sectional Title Register or that prohibit the construction of more than one dwelling unit on a property that forms part thereof.



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Statutory requirements

"However, although the process is much simpler than it was in the past, it is a little more complex than merely completing a standard Offer to Purchase and then selling off and transferring the units, especially if construction is involved.

"There are certain statutory requirements as well as financing implications that need to be considered and dealt with in these agreements, and for this reason it's always best to appoint a qualified conveyancer to assist with the contract and the process.

"Seeing as the property will be governed by the Sectional Title Schemes Management Act, Conduct and Management Rules will have to be filed with the Community Schemes Ombud Services.

"And, as the scheme must be administered pending the first annual general meeting (AGM) of the body corporate taking place, interim measures and rules will have to be agreed upon in the sale agreement of the first units to enable the developer to manage the scheme until such time as an AGM has taken place.

“Furthermore, the agreement, that will most probably fall under the Consumer Protection Act and / or the Housing Consumer Protection Measures Act, will have to contain certain obligations and clauses required to comply with such legislation.”

Catch for owner developers

There is, however, a catch for owner developers: “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.

“As such, financing is required to enable the developer to complete the scheme before transfer can take place. A normal building bond registered in the name of the third-party end user with progress draws taken against the units as construction progresses cannot be utilised in this instance.

“Unfortunately, a real right of extension against which progress payments can be made if developed, cannot be registered as the number of units is not sufficient. The building bond will therefore have to be over the entire property and in the name of the owner of the property as a result.

Hopkins says that with more and more owners now considering this option, the banks will no doubt soon develop financing products to satisfy this need.



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Significant financial advantages

Maritz says that although it may seem like quite a process, a growing number of property owners are considering this option as there are significant financial advantages to be gained.

These include: a considerable cash injection to ease the financial burden, creating an additional source of income, considerably reduced maintenance costs and rates and taxes as well as the potential to achieve a higher return on investment when selling.

“On a macro scale, it’s also an expedient way to create new housing stock, but as it can’t be done on a plot and plan basis, the owner does need a building bond over the whole property, get the plans approved and complete the development to at least roof height before applying for the sectional title scheme and transferring the property to the new owner.

“At the end of the day, sectionalisation offers numerous benefits and can yield excellent returns, however, it’s not without potentially costly pitfalls, and should never be undertaken without thorough research in consultation with the town planner and relevant property professionals.”

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