

Advisory On Registration Of Long Term Leases Under SPA

Conversion of long term leases under the Sectional Properties Act, 2020 (SPA) pursuant to a Notice issued by the Ministry of Lands and Physical Planning on 9th May 2021 ([here](#)).

Introduction

The enactment of the SPA aims (*in addition to other things*) to govern and simplify the process of registering sectional properties and provides for the division of buildings into units and it also provides for the re-registration/ regularization/conversion of long term leases that are already registered at the Lands Registry. The SPA also applies to leasehold title where the unexpired residue term is not less than 21 years (long term leases) where there is an intention to confer ownership thereby giving effect to section 45(5) of the Land Registration Act 2012 ('LRA') which provides for the registration of long term leases and issuance of certificate of lease "*over apartments, flats, maisonettes, town houses or offices having effect of conferring ownership, if the property comprised is properly geo-referenced, and approved by the statutory body responsible for the survey of land.*"

Requirements for Registration

Regulations have not yet been published under the SPA to provide for the actual process of registration, but the Ministry of Lands and Physical Planning (**Ministry**) issued a public notice ([here](#)) providing for the documentation to be submitted for this



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purpose. The Notice also stated that, effective from 10th May 2021, the Ministry would no longer register long term leases that did not comply with the provisions of the SPA.

What Next?

The Law Society of Kenya (**LSK**) and the Ministry held meetings on this issue and the below represents the resolutions agreed upon to guide the registration process under the SPA.

1. Existing long term lease titles will be dealt with as follows:

- a. Dealings relating to RLA titles- Since the repealed Registered Land Act (RLA) titles within Nairobi Registry have already been uploaded on the National Lands Information Management System (NLIMS), any dealings relating to these titles shall be undertaken through NLIMS and upon presenting any instrument for registration the, Ministry shall;
 - i. Geo-reference the particular property at the Ministry's cost on priority basis;
 - ii. Register a sectional plan;
 - iii. Open a register for the units;
 - iv. Upload the property register for the unit on NLIMS; and

v. Proceed with registration.

b. Dealings in relation to titles under the repealed Registered Titles Act (RTA) and the repealed Government Land Act (GLA), within the Central and County Registries, will continue to be dealt with in the usual manner. However, owners with registered long term leases will be required to commence the regularization process under the provisions of the SPA and the government will cater for the cost of the geo-referencing.

2. That, ongoing transactions where, (a) documents are in the registry pending registration; (b) where stamp duty has been paid and pending presentation for registration, and (c) long term leases have been submitted for assessment of stamp duty, are to be finalized under the current practice.
3. Partially registered developments, where plans have already been registered under the Registration of Documents Act and where a few of the leases have been registered, shall be finalized as indicated in (1) above.
4. New developments, where no lease has been registered will have to comply with the provisions of the SPA and LRA. There is an intention to hold further discussions between the

Ministry and LSK, in order to provide guidance in relation to registration of new development.

However, it is important to note that the Ministry has not issued an official statement to acknowledge the above proposed resolutions as the way forward to dealing with ongoing transactions.

Challenges

Some of the inevitable challenges with the conversion of long term leases are:

1. Reversionary interest is not mentioned under the SPA, therefore, there is no clarity on the consequences of registration of long term leases where the head lessor has no intention of conferring ownership of the reversionary interest.
2. The SPA only addresses registration/conversion of long term leases for sectional units within a building. The definition of a unit does not include leases granted over a non-stratified property.
3. The regulations necessary for the full implementation of the SPA are not yet in place, therefore, it may be a challenge to comply with the provision of the SPA without proper guidance.

Provisions to be aware of

1. It is the duty of developers, owners or management companies to initiate the conversion process and submit the documents to the Ministry.
2. The SPA further provides that all long term leases that intend to confer

ownership, be reviewed within a two years from the date of commencement of the SPA.

3. If the conversion is not carried out within the prescribed timeframe, the Registrar shall register a restriction against the title to the property to prevent further dealings on it.
4. Failure to comply with the conversion process amounts to an offence and the person shall be liable on conviction to a fine not exceeding KES 20,000,000 or one-year imprisonment.

We shall continue to keep you updated on any further developments. In case of any queries, please contact:

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