

## **NOTE ON THE SECTIONAL PROPERTIES REGULATIONS, 2021**

Pursuant to our advisory on the registration of long term leases under the Sectional Properties Act, No. 21 of 2020 (the “**Act**”) which can be accessed [here](#) we have prepared a follow-up newsletter that highlights the salient features of the Sectional Properties Regulations, 2021 (the “**Regulations**”) which were gazetted on 10<sup>th</sup> December 2021.

The Regulations are issued pursuant to the Act and they mainly provide for the process of registering sectional plans and conversion of registered long-term leases in respect of sectional units.



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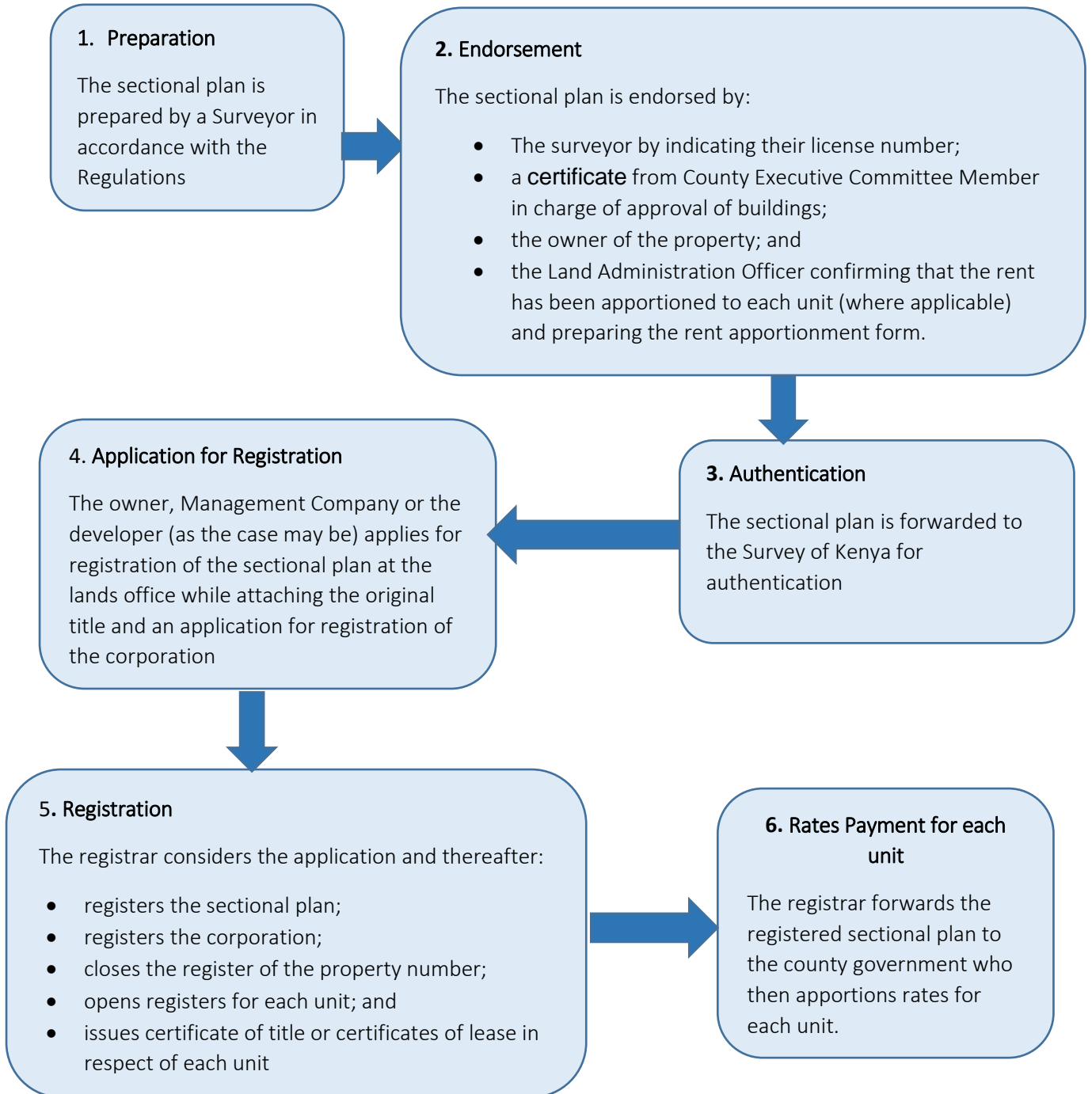
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## A. The process:



## B. Who applies for conversion of long-term lease to a sectional title

- ✓ The management company or the developer is required to make the application for conversion.
- ✓ Where the management company or the developer fails to do so, any of the unit owners can apply.
- ✓ Where a property is charged or otherwise encumbered, the application for conversion shall be made by the respective applicant and be delivered to the encumbrancer or appointed representative who shall submit the application for issuance of a new certificate of lease or certificate of title, as the case may be, noted with the encumbrances, to the encumbrancer.

## C. What next after issuance of a sectional title to an owner

- ✓ The obligation to pay rent and rates lies with each unit owner.
- ✓ An owner may sub-divide or consolidate their unit by registering a sectional plan of sub-division, or consolidation respectively.
- ✓ Unit factors will be allocated to each registered unit. Each factor/entitlement is used to determine the ownership of common property held by unit owners as tenants in common and the number of votes each registered owner may cast. The interest in common property based on

the unit factor is noted on the sectional title.

- ✓ Applications for extension or renewal of lease terms are to be made by individual owners of units in a sectional plan, as provided under the Land (Extension and Renewal of Leases) Rules, 2017.
- ✓ An owner desiring to rent out his/her unit is required to notify the corporation of the address for effecting service, name of the tenant and lapse of tenancy.

## D. Other important features of the Regulations

### i) Long term leases that are to be converted to sectional titles

The Act provides for the conversion of long term leases to sectional units if the said leases were registered before the coming into force of the Act. Regulation 18 in line with section 13(2) of the Act requires the following long-term leases to be converted to sectional units:

- a) units that have been transferred to the respective owners and the reversionary interest has been transferred or is to be transferred to the management company to **hold in trust for the owners**; or
- b) units that have been transferred to the respective owners and the reversionary interest is by written agreement intended to be transferred to the

management company to hold in trust for the owners; or

- c) part of the units have been transferred to the respective owners and the reversionary interest is intended to be transferred to the management company to hold in trust for the owners.

## ii) Exemptions to the Conversion Process

Regulation 22 provides for the following exemptions:

- a) where it is expressly provided for by agreement that the reversionary interest belongs to the developer or lessor or management company as legal owner and not as trustee;
- b) large mixed-use developments and phased developments where it is by agreement provided that the reversion shall be retained by the developer or to be otherwise held by a management company; or
- c) projects of strategic national importance, substantial transactions, and special economic zones, which by their nature, renders it impractical to relinquish reversionary interest.

## iii) The Corporation

A corporation is a body corporate incorporated in accordance with section 17 of the Act. It is meant to manage the common property and is bound by the

provisions of the Act and not by those of the Companies Act, 2015. Notably:

- ✓ The Regulations have provided model by-laws that may be used to administer the corporation.
- ✓ The by-laws of the corporation may be amended by including duly modified terms and conditions of long-term leases that are subject to conversion.
- ✓ Changes in the corporation e.g. amendment to its by-laws, transfer of common property by the corporation etc are required to be notified to the Registrar.
- ✓ Under Regulation 32, the corporation is required to give notice to the registrar upon change of membership of the corporation by way of entry or exit of a unit owner which notification shall accompany the transfer of the certificate of lease or certificate of title, as the case may be.

## iv) Winding up of management companies

Regulation 21 provides that a management company in respect of long-term leases that are the subject of conversion shall transfer all its assets and liabilities to the corporation registered under the Act, within one year from the date of registration of the corporation.

## **E. Conclusion.**

The Regulations have not only provided a blue print to the implementation of the Act but have also inspired confidence from the end users. The operations of the corporation have been streamlined and the different responsibilities each party has with regard to the Act have been distinguished.

However, the Act requires that long-term leases requiring conversion be converted within two years after its commencement date which is from the 28<sup>th</sup> December 2020. Seeing as the Regulations were passed almost a year after the Act, it may be considered impractical to expect effective conversion of long-term leases due to operational delays at the Lands Registry. It may therefore be prudent for the Act to be amended to allow for an extension of the time allocated for conversion and registration of long-term leases.

If you require any further information or clarification on the contents of this note, please contact:

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