

## REVIEW OF THE SECTIONAL PROPERTIES ACT, 2020

### INTRODUCTION

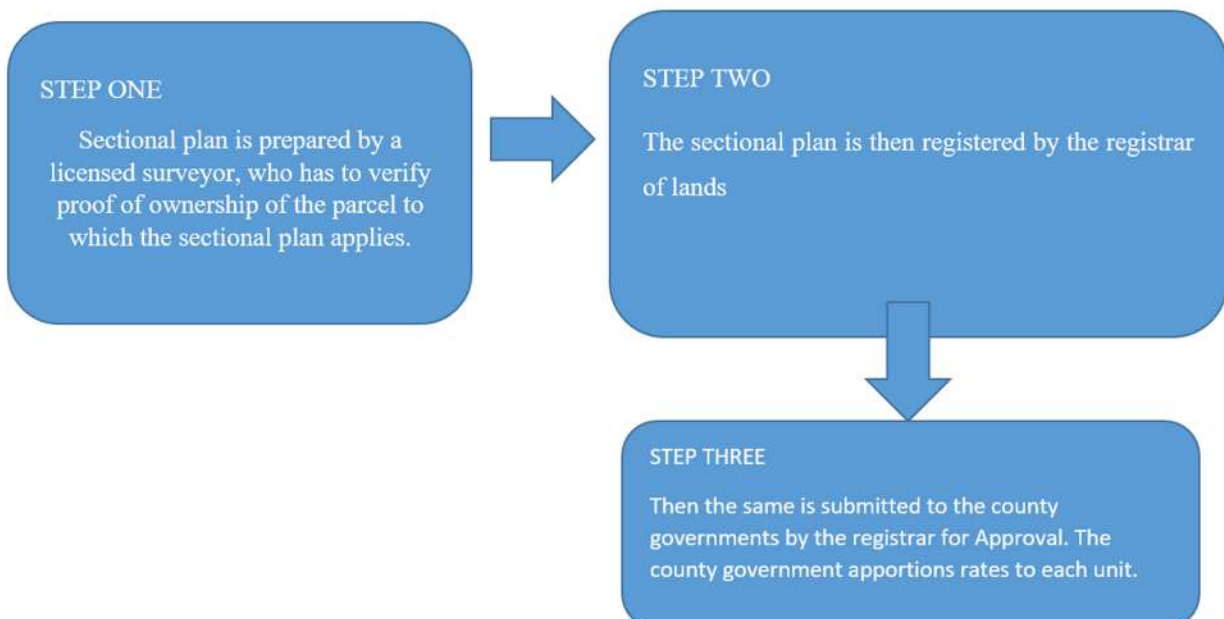
The Sectional Properties Act came into effect in December, 2020 in alignment with the provisions of the Constitution of Kenya 2010, the Land Act No. 6 of 2012, the Land Registration Act No. 3 of 2012 and the National Land Commission Act No. 5 of 2012. This Act repealed the Sectional Properties Act of 1987.

The Act creates individual title for apartments, maisonettes, flats, and seeks to divide buildings into units to be owned by individual unit owners.

The Act also seeks to simplify the process of registration of sectional properties and create an enabling environment for investors and property owners. Therefore, it seeks to guarantee the rights of property owners by conferring absolute rights to individual unit owners over their units.

The Act does not recognize the concept of reversionary interest therefore it motivates lenders and financiers to offer credit facilities to the individual unit owners as they may now charge the individual units directly without requiring the consent of the developer and or the manager.

### PREPARATION AND REGISTRATION OF A SECTIONAL



## **CONTENT OF SECTIONAL PLAN**

Section 9 of the Act provides for the content of a sectional plan and requires that all sectional plans must describe at least 2 units and must be:

1. Geo-referenced;
2. indicate the parcel number;
3. indicate unit numbers;
4. indicate approximate floor area of each unit;
5. be signed by the proprietor;
6. be signed and sealed by the Director of Survey; and
7. clearly indicate the user of the unit.

Once a sectional plan is registered, the registrar is required to close the register of the parcel described in it and open a separate register for each unit.

**The register for each unit will contain;**

- i) description of the unit
- ii) share apportioned to the unit owner in the corporation
- iii) any encumbrances attached

Each unit should be issued with a certificate of title (freehold property) or certificate of lease (leasehold property), and the title shall include each unit's proportionate share in the common property.

## **SALIENT FEATURES OF SECTIONAL PROPERTIES ACT, 2020**

### **1. THE CORPORATION**

The Sectional Properties Act provides that upon registration of a sectional plan, a corporation is formed automatically and the registrar of Lands shall issue a Certificate of Registration in respect of the Corporation.

**Under Section 17(2)**, a corporation shall consist of all persons who are owners of units in the parcel to which the sectional plans relates.

**According to Section 17(6)** of the Act, the provisions of the Companies Act do not apply to Corporations. The Corporation carries out the duties imposed upon it by the by laws. Dispute in relation to contraventions of the by-laws are referred to the committee which is an internal dispute resolution mechanism of the corporation and without any prescribed limits as to the penalties to be levied.

If a party is aggrieved with the decision of the committee, the party can do an appeal to the Environment and Land Court (ELC) against the decision of the committee.

**The Corporation has wide-ranging duties & powers including:**

- i. Keeping the common property in a state of good repair.
- ii. Controlling, managing and administering the common property.
- iii. Establishing and maintaining a fund for administrative expenses.
- iv. Effecting insurance and payment of premiums.
- v. Constitute an internal dispute resolution committee on a need basis.

## **2. OWNERSHIP**

The Sectional properties Act applies to land held in both lease hold tenure and free hold tenure where the intention is to confer ownership.

The new law has reduced the unexpired leasehold period to 21 years from the 45 years required under the repealed law. This enlarges the purview of the sectional properties laws to extend to proprietors of all long term leaseholds which are defined in law as leases for a period of twenty-one years and above.

## **3. CONVERSION OF SUBLEASES**

The process of conversion may be commenced by the developers, the management company or the individual unit owner. If the developer is unwilling to surrender the mother title for purposes of the conversion, the registrar may register a restriction against the title to prevent any further dealings on it.

The process of conversion of subleases to sectional unit titles entails submission of:

1. Sectional plan;
2. Original title;
3. Long term lease previously registered; and
4. Rent apportionment for the unit where applicable.

**Section 13** of the Act provides that all long term sub-leases that are intended to confer ownership of apartments, flats, maisonettes, town houses or offices that were registered before the commencement of this Act shall be reviewed to conform with **section 54 (5) of the Land Registration Act**. This shall be done within a period of two (2) years of the commencement to the Act. Which means on or before 28th December, 2022.

This will not entail starting a transaction from scratch and an owner who has already paid stamp duty in respect of the said sub-leases shall not be required to pay stamp duty during the revision.

## **CONCLUSION**

From the above discussion, it is evident that the Act has greatly impacted the state of real estate ownership by introducing the aspect of ownership of sectional units in buildings by individual unit owners. This has greatly addressed the challenging and outdated provisions on land set out in the Repealed Act. It is a positive and progressive step towards the development of land law regime in Kenya.