



LEGAL ALERT

CONVERSION OF LONG-TERM LEASES TO
SECTIONAL UNITS

LONG-TERM LEASES TO SECTIONAL UNITS

On 7th May 2021, the Cabinet Secretary for the Ministry of Lands and Physical Planning (the “Ministry”) issued a [notice](#) (the “Notice”) informing the general public of the conversion of long-term leases that do not conform with section 54 (5) of the Land Registration Act, 2012 (the “LRA”) and section 13 of the Sectional Properties Act, 2020 the “SPA”).

Section 54 (5) of the LRA stipulates that the Registrar shall register long-term leases and issue certificates of lease to confer ownership in apartments, flats, maisonettes, town houses or offices (collectively “units”). The registration and issuance of title will only be done where the units comprised are properly geo-referenced and approved by the statutory body responsible for the survey of land.

Section 13 (2) of the SPA stipulates that all long-term sub-leases that were intended to confer ownership of an apartment, flat, maisonette, town house or an office and were registered before the commencement of the SPA, shall be reviewed so as to bring them into conformity with section 54 (5) of the LRA highlighted above.

In a bid to harmonise the foregoing provisions of the LRA and SPA, the Ministry is set to embark on the conversion of long-term leases previously registered on the basis of architectural drawings, to conform with the current land regime. Further, the Ministry has stipulated that from 10th May 2021, it will no longer register long-term leases supported by architectural drawings intending to confer ownership. We however note that

as of the date of this alert, the Lands Office, for the time being, continues to accept long-term leases supported by architectural drawings.

The effect of the Notice is that all sectional units shall now be required to have properly registered sectional plans. All sectional plans submitted for registration should be geo-referenced, indicate the parcel plans, the number identifying the unit, the approximate floor area of each unit and the user of the units. The sectional plans must also be signed by the proprietor; and signed and sealed by the Director of Survey.

For purposes of conversion of already registered long-term sub-leases, the owners of the property will be required to make an application in the prescribed form and attach the following documents at the land’s registry:

- a sectional plan;
- the original title document;
- the long-term lease previously registering the unit; and
- the rent apportionment for the unit.

The Registrar may however dispense with the production of the original title if the developer is not willing or is unavailable to surrender the title, for the purposes of conversion.

Upon submission of the above, the sectional plan will be registered, and the previous register closed. A new

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register will be opened with respect to each unit in a registered sectional plan and a Certificate of Lease issued. It is indicated that owners will not incur fresh or additional stamp duty charges upon conversion if the requisite stamp duty was paid when registering the long-term lease.

The above developments come in the wake of numerous land-related changes in Kenya, ranging from digitization to conversion of titles issued under old land title regimes to new titles. In spite of the progressive steps taken, there are still some concerns around the conversion process. These include the absence of clearly articulated procedures for conversion; regulatory gaps as the draft Sectional Property Regulations are still at the stakeholder engagement stage; and opacities in relation to ongoing transactions.

We note that the Law Society of Kenya and the Ministry are currently engaged in discussions to resolve some of the issues arising from these legislative gaps. We are therefore, keenly following these developments and ongoing discussions and shall keep you updated.

Disclaimer

This alert is for informational purposes only and should not be taken as or construed to be legal advice. If you have any queries or need clarifications, please do not hesitate to contact Pamella Ager, Partner (pamella@oraro.co.ke), Tesrah Wamache (tesrah@oraro.co.ke), Anna Kandu (anna@oraro.co.ke) or your usual contact at our firm.



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