

Sectional title sales and transactions are complex



By [Adjunct Professor Graham Paddock](#)

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When it comes to sales and other dealings with conventional freehold property, most people have a very good idea of the processes involved. We may not know how a conveyancer gets a property transferred, but we know that with the assistance of an estate agent we will be able to buy and sell property.

If we need to rearrange freehold property, again things are relatively simple from the end-user's perspective. Properties can be subdivided to form more separate land units and combined or consolidated. While we may not know how a land surveyor goes about drawing subdivisional or consolidation diagrams, this does not stop us entering into agreements that provide for these processes.

When it comes to sectional property things become more complex because any dealing requires some degree of permission or co-operation from the community of sectional owners.

What level of agreement or permission is required?

Most people know that if you own a sectional property you cannot complete the sale contract until you obtain a levy clearance certificate from the body corporate, in addition to the rates clearance certificate that is required from the local municipality. But when it comes to any more complex transaction you need to dig deeper to find out what level of agreement or permission is required. So, for example, you cannot subdivide or consolidate sections in the scheme without the permission of the trustees. You cannot extend the section without the authority of a special resolution taken by the body corporate, and if the extension increases the floor area by more than 10% then you need to contact the bondholders in respect of every unit in the scheme to see if they have any objection. But this is just the tip of the iceberg - apart from the body corporate resolutions or permissions you will often need local municipality approval of building plans as well as the approval of amending sectional plans by the Surveyor-General and registration of these plans at the Deeds Registry.

If the body corporate is to deal with parts of the common property in the scheme, again there are special requirements that are not "common knowledge". Special resolutions are required for servitudes and for the addition or removal of non-luxurious improvements, whereas unanimous resolutions are required for luxurious improvements as well as for creating registered exclusive use areas or alienating a portion of the common property. The written consent of all owners in the scheme is required for some decisions, such as the purchase of land to extend the common property, the use of a section or exclusive use area for a purpose different to that specified or implied on the registered sectional plan and to allow the body corporate to extend the scheme by the addition of further sections and exclusive use areas.

The examples given above are merely indicative of the various levels of agreement that are required for different types of

transactions in the sectional title context. The message is: when you're dealing with property in a sectional complex things are more complex, so you need to find out exactly what requirements apply to the type of sectional transaction or dealing that you have in mind.

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