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BUILDING DEADLINES IN ESTATES

When purchasing a vacant stand in an estate, it is very important to establish what the building deadlines are, and what penalties will be applicable if such deadlines are not adhered to. It should also be noted further that a building deadline period does not start over from date of change of ownership, as is quite often the understanding by purchasers, unless it is clearly specified as such in the HOA rules.

A recent Court decision illustrates the risk and the financial cost of not complying. The court confirmed in Walker and Another v Cilantro Residential Estate Homeowners Association that property purchasers should take the building deadlines very seriously as the failure to comply with these deadlines could expose you to heavy fines, penalties and even the risk of losing the property.

In this case, a Homeowners Association (HOA) imposed "double levy" penalties totalling to an amount of R 105 000 on the owners of a stand who failed to complete the building works within the time specified, which conditions was contained in the title deed of the property, as well as in the rules of the HOA. The owners challenged the validity of the penalties on technical grounds, but they failed and the court held that they must pay the total penalty levies, late payment penalties, as well as the attorney-client legal costs for both the magistrates court and the unsuccessful appeal to the High Court.

This case confirmed that the HOA has the power to raise "recurring penalties" because of the wording of their articles of association which specifically gives the HOA the power to impose a system of fines or penalties.

However, the penalties must be proportionate to the prejudice suffered by the HOA. In this case, the title deed also gave the HOA the right to claim back the plot for breach of the building clause, which can also be enforced by the HOA if the deadline is not met.

It is therefore pertinent to establish if there are any building penalties applicable in an estate, in order for you to be able to advise any potential purchaser thereof.