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SECOND DWELLING CHALLENGE

It has become common practice for the financial institutions to request approved building plans, as well as approved sectional plans for all properties that are to be bonded with them. It is usually at this point in the transaction where it is discovered that the sectional plans of a property has not been updated after additions to the building, and that amended plans have to be obtained before the transaction can proceed. After amended sectional plans are obtained, the extension of the unit must be registered in the deeds office to update the title deed with the new extent of the property. For this extension application, the Deeds Office requires a section 28(9) certificate in terms of the Spluma legislation, and more specific the City of Tshwane's Land Use Management By-Laws.

The challenge:

Since the promulgation of the City of Tshwane Land Use Management By-Laws, 2016 and the requirement to provide a Section 28(9) ("SPLUMA") certificate for the extension of sectional title units, we have experienced major challenges with duet properties.

Before 29 April 1992 every property owner was allowed to develop a "living unit" of 100 m² attached to the main house as primary right, **without consent from the city council**. This also allowed for the registration of sectional titles over the main house and living unit as a duet development.

On 29 April 1992 the living unit as a primary right was replaced with a second dwelling application subject to a consent use procedure. In the instant that the existing living unit exceed the 100 m² (due to additions thereto) the right **to erect a living unit lapsed and a land development application needs to be submitted**, evaluated and adopted for the erection of an additional dwelling-house before a "SPLUMA" certificate can be issued.

This means that an application for the consent for a second dwelling needs to be submitted to the city council, which entails that the local authority will request bulk contributions for the services to the property. This can have dire financial consequences as such an application's costs and contributions can be as high as R80 000.00. The application itself takes approximately 8-12 months so it can delay a property transaction substantially.

The consent application as well as the Spluma certificate is obtained for the whole erf, so the costs must be split between the 2 owners of the duet development. Unfortunately, in practice, the second owner who is not involved in the property transaction rarely consents to split the costs, and the owner wanting to sell his property is stuck with the costs, otherwise the property transaction can't proceed.

It is therefore imperative to ask owners of sectional title properties (duet developments) if they extended the property, and to ensure that they had the necessary consent in place BEFORE any construction/building work commenced which resulted in an increase of floor area of the unit. If not, the above process must first be completed before the property can be sold.