



The Kenya Alliance of Resident Associations

**MEMORANDUM TO THE SENATE STANDING COMMITTEE ON
LAND, ENVIRONMENT AND NATURAL RESOURCES**

**Submission on the Sectional Properties Bill (National Assembly Bills
No.23 of 2019)**

Presentation by The Kenya Alliance of Resident Associations (KARA)

26th February 2020

Background

1. The Kenya Alliance of Resident Associations (KARA) supports the development of the Sectional Properties Bill and its subsequent enactment into an Act of Parliament to streamline sectional property use and management in Kenya.
2. We take note of the Senate's effort to reach out to various stakeholders including KARA to give their views regarding the Bill and live up to the letter and spirit of the Constitution.
3. The Bill addresses some of the concerns that have been previously raised by property owners and also creates an enabling environment for investors and property owners to manage their affairs as regards sectional property.
4. The Bill also responds to some of the emerging market trends such as the high demand for affordable housing and the need for investors or property owners to exploit vertical space given the diminishing availability of land.
5. The Bill also provides for dispute resolution mechanism through establishment of Dispute Resolution Committee to handle issues that may arise between various Parties referred to in the Bill.

However, there is need to clarify a few issues regarding the Bill:

- a) We are aware that there is a Sectional Properties Act No.21 of 1987 which is currently in force. The Sectional Properties Bill, 2019 makes no reference to it and one is left to figure out the relationship between the Act and the Bill. There should be express mention of the intention of the Bill in regards to the Act to avoid any ambiguity.

- b) We have noted that the Bill had been subjected to a public participation process around May/June 2019 and the views of those who made submissions were considered and some adjustments made on the Bill.

Key Proposals for Consideration

No	Section	Current Clause in the Bill	Proposed Amendment	Rationale
1.	Section 3(sub-title "Interpretation)	“building” means one or more structures on the same parcel	“building” means a structure or erection and any part of structure or erection whether permanent or temporary and whether completed or uncompleted, approved by County Government	This removes any ambiguity on types of building that can be subdivided into units for the purposes intended in this Bill. It also takes into consideration construction of multi-dwelling building in single dwelling designated areas
2	Section 4 (2)	A surveyor shall not prepare a sectional plan unless he is presented with proof of ownership of the parcel or unit to which the sectional plan shall apply.	A surveyor shall not prepare a sectional plan unless: a) presented with proof of ownership of the parcel or unit to which the sectional plan shall apply b) the parcel or unit to which the sectional plan shall apply has a valid address as issued and registered by the respective county government and is in the national addressing database.	This will aid in efforts to put national addressing system at the centre of all service provision and assist in the development of addressing maps that will aid in the delivery of services to citizens by county and national governments. It is also an important step in improving security by proper identification. It shall also be assumed that the corporation to be formed shall carry the address of the said parcel of land.
3	Section 4 (4)	The Registrar shall not register a sectional plan unless the sectional plan— (a) describes two or more units in it; and (b) is presented for	The Registrar shall not register a sectional plan unless the sectional plan – (a) describes two or more units in it; (b) has a valid address as issued and registered by the respective county government and is in the national	This further entrenches physical addressing in land dealings for reasons already alluded to in the rationale above. However, these may require some amendments under a miscellaneous amendment bill, of Sections 22(1) and 95 (1)

		registration in quadruplicate.	addressing database; and (c) is presented for registration in quadruplicate.	and 95 (3) (a) of the Land Registration Act to require the provision of a physical address as prescribed by a county government and entered into the national addressing database.
4	N/A	N/A	<i>New: Insert a new Section 11 and renumber the Section</i> 11 (3) A person applying for division of a single dwelling building into multi dwelling units shall notify the public of the proposed change by displaying the details conspicuously on a board at the site 11 (4) The notification referred to under subsection (3) shall invite members of the public to submit within 30 working days any objections on the proposed change to the County Executive Committee Member in charge planning & urban development for consideration	To avoid unscrupulous people using this Sectional Properties Bill in a manner that could undermine the zoning and change of user by-laws/regulations, there is need for any person applying for division of a building into units to notify the public of the proposed subdivision.
5	Section 11 (3)	Where the plan presented for registration as a sectional plan is in respect of a building containing units, it shall, in addition to the certificate required under subsection (1), be endorsed by a <i>surveyor or such</i>	Replace <i>surveyor</i> with Licensed surveyor and delete <i>or such other person as shall be approved by the Director of Survey</i>	Reduce chances of quacks masquerading as surveyors and also limit the powers of Director of Survey who may approve individuals to perpetuate self interest

		<i>other person as shall be approved by the Director of Survey stating that the units shown on the plan correlate with the existing structure.</i>		
6	20 (6)	The corporation may constitute an Internal Dispute Resolution Committee on a need basis to hear and determine disputes.	Prescribe the composition of the committee and number allowable	The corporation should have standard guidelines for constituting the committee to avoid biasness and inspire confidence among the parties involved in dispute
7	40	A Corporation, by a unanimous resolution, may, if its by-laws permit, grant a lease to an owner of a unit permitting that owner to exercise exclusive use in respect of an area or areas of the common property.	Delete	Common properties should not be subjected to exclusive use by individuals as they belong to community and are maintained/serviced by resources obtained from all owners/tenants
8	44 (3) (a)	A management agreement may not be terminated under subsection (2) without cause until two years have elapsed from the day that the agreement was entered into, except when the agreement permits termination at an earlier date;	Delete	Parties to the agreement should be able to agree and stipulate in the agreement the contract period and the circumstances under which it can be terminated
9	45 (3)	The owner of a unit shall give the Corporation written notice of the	Reduce the number from twenty days notice to 5 days notice	Communication of new tenant should be communicated immediately for security

		name of the tenant residing in the unit within twenty days from the commencement of the tenancy.		reasons
10	45 (4)	Within twenty days of ceasing to rent his unit, the owner shall give the Corporation written notice that his unit is no longer rented	Reduce the number from twenty days notice to 5 days notice	Communication of vacant house should be communicated immediately for security reasons

Other General Comments:

1. There should be a connection between the provisions of the Bill and the National Addressing System. Property/unit owners should take responsibility of ensuring that their property is adequately referenced as per the standard provided for in the National Addressing System instruments
2. The Act makes several references to the Land Registration Act, 2012. The meaning of several terms given in the Land Registration Act, 2012 apply to land and may not be the same as for parts of a structure or building. These references should be checked and properly contextualized in the Bill
3. There should be clarity if sectional properties will also apply to structures at different levels - Flats for residential buildings or multi level buildings.
4. The Bill refers to lease time in regard to land. How about lease period for building or structures?
5. The text has detailed adequately the administration of the Bill but not sufficient description of the properties and sections to which the Bill will apply.
6. How will this Bill impact on development of buildings with or for multiple use and subdivisions?
7. As this Sectional Properties Bill could affect the zoning and change of user laws/regulations, there is need for more comprehensive and wider public involvement so that more issues are brought up. The Committee should consider providing more time for public participation.

Contacts:

The Chief Executive Officer
The Kenya Alliance of Resident Associations (KARA)
P.O Box 1411 – 00100
NAIROBI.
Tel: 0725983445; 0203874331/3873828
Email: info@kara.or.ke