

# Specific Highlights of The Sectional Properties Act, 2020

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# A few differences between the Sectional Properties Act, 2020 & The Sectional Properties Act 1987

- ▶ The Sectional Properties Act, 2020 is aligned to the Constitution of Kenya, the Land Act and Land Registration Act, 2012. It is an improvement from the 1987 Act.

An example of such alignment is the omission of references to local authorities as being the approving entities and references to the repealed Registered Land Act on which the Sectional Properties Act, 1987 pegged registration. Under the Sectional Properties Act, 2020 approvals are will be done by county governments and registration will be effected under the Land Registration Act, 2012.



# A few differences between The Sectional Properties Act, 2020 & The Sectional Properties Act 1987

- ▶ The 2020 Act applies to leasehold properties with unexpired residue terms of not less than 21 years while the threshold under the Repealed Act was 45 years.
- ▶ Under the 2020 Act, sectional units shall now be issued with a certificate of title (freehold property) or certificate of lease (leasehold property), and the title shall include each unit's proportionate share in the common property. The Repealed Act provided for issuance of title deeds for sectional units.



# Motivation of The Sectional Properties Act, 2020

- ▶ No standard plans were being registered under the Registration of Documents Act (RDA). Now there will be some uniformity with sectional plans being prepared by licensed surveyors based on the requirements outlined
- ▶ Issues surrounding the management company including where the owners exceeded 50, a public company as opposed to a private company had to be incorporated. Under the Act, a Corporation will be established under the Act, the Companies Act does not apply to it.
- ▶ Persistent failure by developers to transfer shares in the management company to the owners or even the failure to transfer the reversionary interest

## Motivation of The Sectional Properties Act, 2020 (...Cont.)

- ▶ Issue of the mother title being charged, the developer fails to partially discharge a unit, defaults on the loan-as the bank is exercising its statutory powers, unit owners are caught up. Under the Act the register for the mother title will be closed/cancelled once plan is registered
- ▶ Apportionment of rates and rents (currently cash has to be pooled from all owners then channeled through the management company-some people do not pay their portions )
- ▶ Reversionary interest to be vested with the owner of the unit-affords the owner first right to renew the lease once it expires



# What does the Act apply to & deal with?

- ▶ The Act applies in respect to land held on a freehold title or on a leasehold title where the unexpired term is not less than 21 years and there is an intention to confer ownership.
- ▶ It deals with division of buildings into units to be owned by individual proprietors and common property (what is not comprised in a unit shown on a plan) to be owned by the proprietors of the units as tenants in common and also the management of the units. Shared amenities should come to mind



# The Sectional Unit

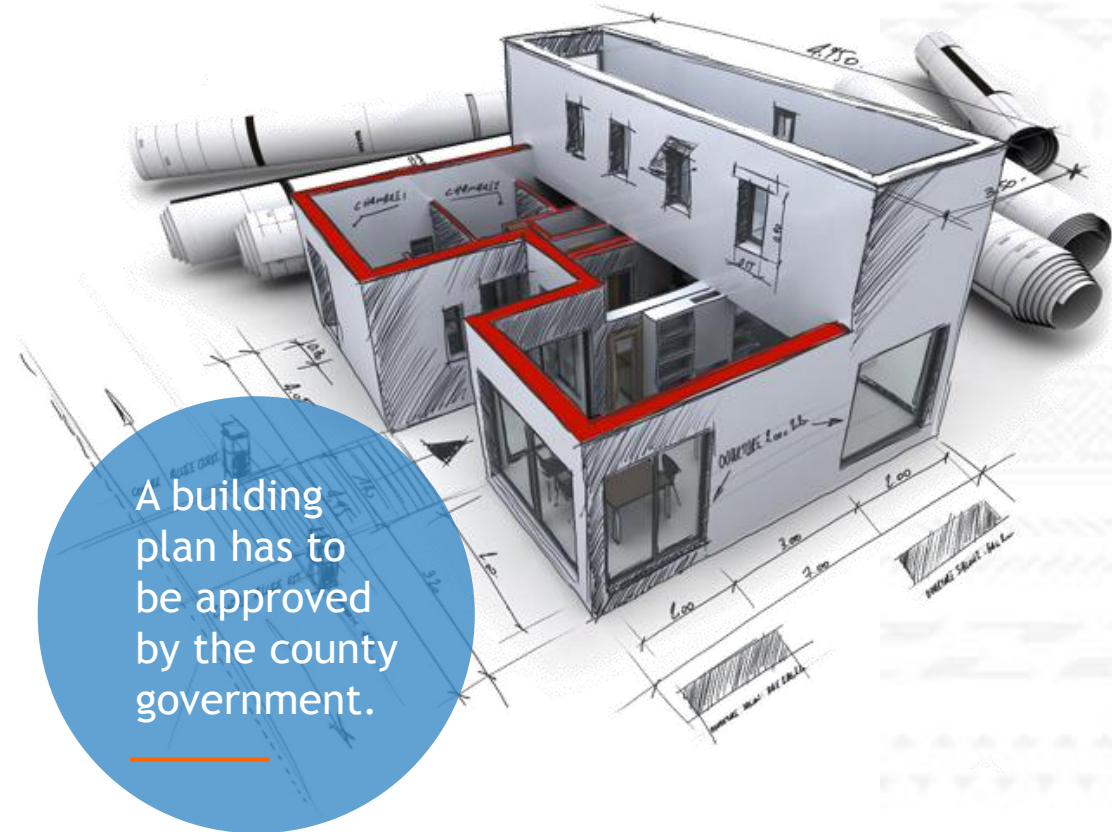
- ▶ It is space situated within a building described in a sectional plan and includes its proportionate share in the common property.
- ▶ A sectional unit is described in a sectional plan by making reference to the floors, walls & ceilings within a building
- ▶ Sectional units include apartments, flats, maisonettes, town houses, villas or even offices.
- ▶ A sectional unit is described in a sectional plan by making reference to the floor, wall & ceilings within a building.





# Preparation & Registration of The Sectional Plan

- ▶ Sectional plan means a geo-referenced plan of units or a part of land as the case may be prepared by a licensed surveyor and approved by the Director of Survey
- ▶ Before the surveyor can prepare the sectional plan, a building plan has to have been approved by the county government.
- ▶ Additionally, the surveyor has to see proof of ownership (*either Original Title Deed, Certificate of Title or Certificate of Lease*) of the parcel to which the sectional plan applies.



A building plan has to be approved by the county government.





# Requirements of a Sectional Plan

- ▶ It should be described in the heading as a “sectional plan” (*important to distinguish it from say a building plan or a floor plan*)
- ▶ Be geo-referenced. *Geo-reference (Section 2 LRA) means reference of an object using a specific location either on or above or below the earth’s surface. There are geospatial technologies which are modern mapping tools to relate what is on the plan and what is physically on the ground*
- ▶ Contain particulars necessary to identity the title to the parcel
- ▶ Drawing illustrating the units and distinguishing the units by numbers (1,2,3...) or other symbols (A, B, C...)



# Requirements of a Sectional Plan Contd.

- ▶ Show approximate floor area
- ▶ Have a schedule specifying in whole numbers the unit factor for each unit on the parcel
- ▶ Signed by the proprietor of the parcel
- ▶ Be signed by the Director of Survey
- ▶ Endorsed with an address where documents can be served on the Corporation
- ▶ Indicate the user of the unit (*residential, commercial, mix use*)



# Documents to accompany the Sectional Plan when being presented for registration

- ▶ Application for registration Form LRA 9 -Land Registration (General) Regulations
- ▶ Original certificate of title or lease
- ▶ An application for registration of the Corporation (SP 7); *[Section 4 (3)]*
- ▶ List of the persons who are owners; *[Section 4 (3)]*

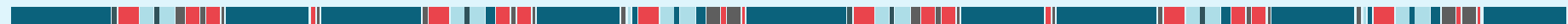
# Documents to accompany the Sectional Plan when being presented for registration

- ▶ Endorsement/certificate from the surveyor stating the structure shown on the plan is within the external surface boundaries of the parcel and if anything is projecting beyond the boundaries then an appropriate easement has been granted; *[Section 11 (1) (a)]*
- ▶ Endorsement/certificate from the County Government stating that the proposed division of the structure as illustrated on the plan has been approved by the County Government. *[Section 11 (1) (b)]*



# Effects of Registration of a Sectional Plan

- ▶ Closure of the register of the parcel (land) described in the plan;
- ▶ Opening a separate register for each unit described in the plan;
- ▶ Issuance, in respect of each unit, of a certificate of title (if property is freehold) or a certificate of lease (if property is leasehold).
- ▶ Establishment of the Corporation.



# What about the Common Property

- ▶ The common property is to be held by owners as tenants in common in shares proportional to their respective units.
- ▶ On opening a register for a unit, the registrar shall include in that register the share in the common property apportioned to the owner of that unit.
- ▶ The share in the common property shall also be included in the title deed for the unit
- ▶ Common property/areas are not owned by the Corporation

# Management of Sectional Properties

- ▶ On registration of a sectional plan, a Corporation will be constituted under the name “The Owners, Sectional Plan No.....). The Registrar will issue a Certificate of Registration
- ▶ Corporation should consist of all those who are owners of units
- ▶ It shall have perpetual succession and a common seal
- ▶ It is to be regulated by the Act and the by-laws specified in the Regulations

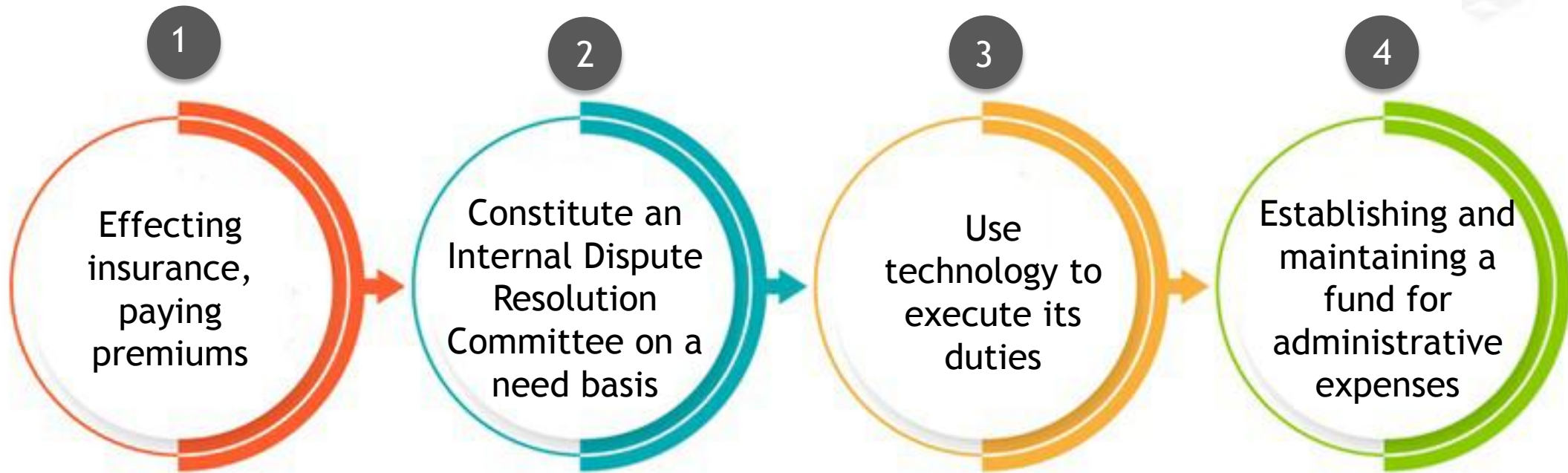




# Management of Sectional Properties

- ▶ The Corporation is not subject to the provisions of the Companies Act 2015. This could explain why some certificates issued by the Corporation under the Act have to be issued under the common seal [*Section 22 (2), Section 49 (3). Companies are no longer required to seal instruments.* This provision is coming off as cumbersome and complicates business
- ▶ The Corporation has wide-ranging duties & powers including keeping the common property in a state of good repair, controlling, managing and administering the common property, establishing and maintaining a fund for administrative expenses [*Section 20*]

# Duties/ Powers of the Corporation



# Conversion

- ▶ A conversion which means all long-term sub-leases that are intended to confer ownership of an apartment, flat, maisonette, town house or an office that were registered before the commencement of the 2020 Act shall be reviewed to conform to Section 54 (5) of the Land Registration Act, 2012.
- ▶ Applies to units which have been transferred to respective owners by way of long-term leases and the reversionary interest has been transferred to the Management Company or the reversionary interest is intended to be transferred to the Management Company once all leases are registered in the names of the purchasers and also long-term leases where reversionary interest isn't provided for

NB: Conversion can be initiated by the developer, a management company or owner of a unit

# Conversion Process (In Brief)

- ▶ Prepare a Sectional Plan -(licensed surveyor, signed by Director of Survey, should be endorsed by the County Government)
- ▶ Submit the Sectional Plan to the Ministry of Lands for registration
- ▶ Upon registration of the plan-new title for each unit will be issued, old register closed (for the parcel) and corporation will be established
- ▶ Attending to issues relating to the Management Company -transfer of assets to the Corporation and winding up of the Management

If you paid stamp duty, you will not be required to pay stamp duty again



# Conversion

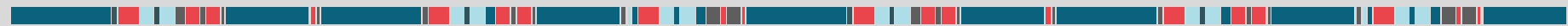
Application for conversion to be accompanied by:

- ▶ Sectional plan
- ▶ The sub-lease or long-term lease for the unit;
- ▶ The parcel title or copy of it.
- ▶ Where the original title is unavailable, an indemnity is to be provided. Registrar shall issue a gazette notice calling for the title, if it is not availed within 60 days of issuance of the notice, the Registrar will register the sectional plan



# Effects of Registration of a Sectional Plan

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- ▶ Establishment of the Corporation.



# What follows after Conversion?



Winding up of the Management Company -to be done within one (1) years of the date of registration of the Corporation be wound up



Assets and liabilities of the Management Company to be succeeded by the Corporation



# Sale of Sectional Units

Mandatory Documents to be availed to a purchaser:

- ▶ Purchase agreement
- ▶ By-laws or proposed by laws
- ▶ The management agreement or the proposed one (if any)
- ▶ The recreational agreement or the proposed one (if any)
- ▶ The lease or title of the parcel on which the unit is to be located or the Certificate of title/lease for the unit
- ▶ Any charge that affects or proposed charge that will affect the title
- ▶ Sectional plan or proposed sectional plan



# Financed Developers

Where there is a charge or a proposed charge, a financed developer has to issue the purchaser with a written notice stating:

- ▶ Principal amount of charge
- ▶ Maximum monthly instalments that may be payable
- ▶ Term
- ▶ Rate of interest
- ▶ Prepayment privileges
- ▶ Amortization period



# Renting of Sectional Titles

- ▶ As the owner of the unit, you have to issue the Corporation with notice when you want to rent out the unit including details of the proposed tenant
- ▶ Undertake to be liable for damage to the unit
- ▶ Give notice to the Corporation when the tenant vacates
- ▶ If the tenant contravenes the by-laws, the corporation can give notice to the tenant to vacate (with or without the consent of the owner of the unit)



# Why the Regulations under the Act are important

Though the Act is in force, there are certain provisions that require forms (that are provided in the Regulations)-these provisions are not fully operational.

Regulations will offer guidance and clarity on certain processes under the Act including:

- ▶ Form for the application for registration of the Corporation (*Section 4 (3) of the Act*)
- ▶ Application by surveyor for endorsement by the county government under Section 11 (1) (b)
- ▶ By laws for regulation of the Corporation [*Section 17 (5)*]

# Q & A



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