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Developer has to pay his dues

An empty stand in a townhouse complex is at the root of this week's reader question.

The stand currently belongs to the developer and our reader would like to know what the developer's obligations are.

Is he liable for his share of the upkeep of the common property and does he have to pay a portion of the repairs to the boundary wall and electric fence?

Grant Howard from Kaplan Blumberg attorneys in Port Elizabeth says sections 34(1) and (2) of the Sectional Titles Act 95 of 1986 stipulate that the developer will be the owner of any section(s) in respect of which the ownership is not held by any other person.

The total of the participation quotas of the section(s) will determine the share of the developer in the common property, he says.

Howard explains the developer may have – in his application for the registration of a sectional plan – reserved the right to extend the scheme on the particular piece of land within a specified time and for his personal account. “In this instance, the vacant plot does not form part of the common property.”

According to him, this right is referred to in section 25 of the act and it includes the right to extend existing buildings horizontally or vertically. The developer can also erect additional buildings on a specified part of the land and divide it into sections, common property and exclusive use areas.

“Developers often reserve the right to extend the scheme, as it enables them to transfer completed units to buyers and then to build the next phase with money raised through the first transfers. This is often referred to as a ‘phased development’.”

Howard says a developer must disclose this right of extension to each buyer of a unit in the initial phase in the sale agreement, otherwise the sale could be voided at the buyer's request.

Warren Jack from the Warren Jack Property Group in PE says in the application to the Registrar of Deeds for the registration of the right of extension, the developer must include particulars of the expenses that will be borne by him from the date of establishment of the body corporate until the sectional plan of extension is registered.

“These expenses include the repair, upkeep, control, management and administration of the common property, the payment of rates and taxes and other local authority charges.”

Jack suggests that the reader examines the sectional title register to determine whether and for what period the developer has reserved the right of extension.

He says the act contains a provision that a developer, who has exercised a right of extension, has 90 days from the date of completion of the new unit/s to register its sectional plan.

If, according to Jack, the right has lapsed due to the developer's failure to build the additional building/s within the stipulated time, then the right to extend will – with the consent of all the owners – vest in the body corporate.

“If the right has not lapsed, the reader must determine what expenses the developer undertook to pay.”

Send your property related questions to coetzee@fullstopcom.com.

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