

What you need to know about subdividing your property

Property subdivision is becoming increasingly commonplace, and even actively encouraged in cities like Cape Town where development to meet the soaring demand for homes is severely curtailed by the natural limitation of its topography.

It also offers property owners a host of benefits, not least of all numerous financial advantages such as an additional source of income, a cash injection to ease financial burden, considerably reduced maintenance costs and rates and taxes as well as the potential to achieve a higher return on investment when selling.

However, Arnold Maritz, Cape Town's Southern Suburbs Co-Principal for Lew Geffen Sotheby's International Realty cautions that subdivision is far from the simple procedure one might expect as it not only entails an application for the subdivision of the property with the local authority as well as the re-surveying thereof at no small cost; it is also a lengthy process and can even take years to finalise, especially if the application is delayed by objections and restrictive title conditions.

"Land subdivision and zoning is stringently regulated by a multitude of existing laws and bylaws as well as numerous new and amended legislations, so before making a final decision it is vital to thoroughly research the process, preferably in consultation with an experienced professional town planner before making a decision.

"Whether or not a site is sub-divisible is dependent on the size of the erf and what council regulations apply your suburb and your local Town Planner or a land surveyor can advise you of the possibility of subdividing, the minimum site size requirements allowed and other factors such as building lines and maximum allowable floor areas.

"Many larger properties in older established suburbs lend themselves to subdivision but bear in mind that set minimum sub-division sizes vary from suburb to suburb. In Bishopscourt in Cape Town, for instance, most plots cannot be subdivided to less than an acre (4 046m²) whilst you can probably split a stand half the size in Claremont into multiple plots."

Maritz adds that there are also several other factors to take into account which significantly impact your options.

"The position of the existing house is pivotal. A building situated in the centre of the plot will limit your options for further development as will the inability to create two separate access points."

In a nutshell, the process entails the following steps:

- Consult a town planner together with your architect and together they will draw up plans and a detailed report which will be submitted to the city council;
- You will need approval from your neighbours and registered letters need to be sent, informing them of the planned rezoning. Adverts also need to be placed in the press allowing for objections.
- Once approval from neighbours is obtained the plans can be submitted to council for approval.

Lew Geffen, Chairman of Sotheby's International Realty says that it is important to bear in mind that bonded properties cannot be subdivided without the bond holder's consent so the subdivision will need consent from the lending institution as well as approval from the local

authority, registration with the Registrar of Deeds, and registration of the new diagrams with the Surveyor General.

"The land surveyor will draw the new site diagrams and lodge these with the Surveyor at your cost after which a conveyancer needs to register the subdivision with the Registrar of Deeds usually simultaneously with the transfer of the newly created plot."

According to Geffen most applications take approximately 18 months to be completed after attending to all the conditions of approval.

"Property owners also need to determine whether it would be more beneficial to sell off the new plot or to first develop the land and should therefore carefully calculate building costs in relation to property values in the area. Overcapitalisation can be a very costly error which can easily negate expected returns.

"An experienced agent will be able to assist by advising on current and projected property values in your area as well as current popular trends."

If you decide to develop the subdivided land, there are two options: to build a second, freehold dwelling or to build multiple units and sectionalize a property, which entails moving the property from the ground register to the sectional title register.

Specialist Conveyancing Attorney Elana Hopkins of Dykes Van Heerden Inc says: "To do so one needs to lodge an application to open a Sectional Title Register in the deeds office.

"The application must include: a set of sectional plans approved by the Surveyor General, the Rules of the Body Corporate, and a Section 11(3)(b) schedule which contains the title conditions, the title deed, any application for the registration of conditions in favour of the Developer and a certificate of registered sectional title for each Unit.

"Upon the first transfer of a Unit, one needs to lodge a rates clearance and a Form W which confirms the Body Corporate has come into existence. The property will be governed by the Sectional Titles Act and the Body Corporate will have to adhere to its strict requirements."

Each unit has a separate sectional title deed and can therefore be bonded separately. They will also have separate Municipal Ratings.

Hopkins cautions that many properties unfortunately have conditions in their title deeds stating that no more than one dwelling is permitted, in which event and despite its zoning of single residential allowing for two dwellings, the condition would have to be uplifted.

"This process is now also dealt with at municipal level so it is predicted that this will be a much faster process than in the past when this was mostly dealt with by the Department of Environmental Affairs."

She adds that It is important to note that building plans still need to be approved for the construction of the units and in order to speed up this process it is essential to appoint an architect for advice on how to position and design the units so that it does not trigger any departure from approvals that might require neighbours' and other consents which could delay plan approval.

"This is good news for property owners who in the past had to apply for the subdivision of their properties to allow for the construction of a second dwelling.

"Subdivision is a much more onerous and lengthy process with a lot of red tape involving a number of Municipal Departments which all needed to give their approval before a section 137 clearance can be issued to register the subdivision of the property in the Deeds Office"

Maritz concludes: "Subdivision and sectionalisation can yield excellent returns and offers investors many benefits, however, it is also peppered with potentially costly minefields and should never be undertaken lightly or without thorough research in consultation with the Town Planner and relevant professionals.

Lew Geffen Sotheby's International Realty Press Release