

Notes

To sectionalise or subdivide? Key benefits and disadvantages

Property owners are increasingly exploring opportunities to maximise the value of their land. Commonly, this takes the form of either subdividing the land and developing or selling off the resulting portions, or establishing a sectional title scheme on the property.

Both options offer financial and practical advantages. However, they operate within distinct legal frameworks. A clear understanding of the legal basis of each option is essential to informed decision-making.

Subdivision

What is subdivision?

Subdivision involves the division of a single registered parcel of land into two or more portions, each of which is capable of separate registration in the Deeds Registry. Each subdivided portion constitutes a new erf with its own property description and a formal diagram approved by the Surveyor-General, showing its boundaries and coordinates.

Once the subdivision has been approved and registered, each new erf may be separately sold, transferred, or bonded in the same manner as any other freehold property.

The subdivision process

1. Appointment of a land surveyor
A registered land surveyor must be instructed to prepare a subdivision diagram depicting the proposed portion(s). The diagram reflects precise boundaries, coordinates, and the relationship of the subdivided portions to surrounding land.
2. Engineering input (if required)
Depending on the nature and scale of the subdivision, an engineering firm may be required to inspect the site and report on the availability and provision of municipal services such as water, sewerage, electricity, and access roads.
3. Surveyor-General approval
The land surveyor submits the diagram to the Office of the Surveyor-General for examination and approval. Once approved, the diagram is allocated a unique Surveyor-General number.
4. Municipal planning approval
Subdivision approval must be obtained from the relevant municipality in terms of:
 - The Spatial Planning and Land Use Management Act ('SPLUMA'); and

Notes

- The applicable municipal planning by-law.

Municipal approval is subject to compliance with zoning schemes and land use policies. Conditions may be imposed relating to services, access, or contributions.

Important note: Amendments to municipal by-laws (for example, those permitting additional dwelling units on Single Residential properties) do not automatically confer subdivision rights and must not be confused with subdivision approval.

Where the proposed development is inconsistent with the existing zoning, a rezoning or departure application may be required. Such applications are generally handled by a town planner or land use consultant.

5. Agricultural land considerations

If the land constitutes agricultural land as defined in the Subdivision of Agricultural Land Act, subdivision is generally prohibited unless the consent of the Minister of Agriculture has been obtained. This prohibition applies regardless of municipal zoning.

6. Registration of the subdivision

Once municipal approval has been granted and the Surveyor-General diagram approved, a conveyancer lodges the necessary application in the Deeds Office to register the subdivision. The Deeds Registry records are updated to reflect the creation of the new erven.

If the property is subject to a mortgage bond, the bondholder's written consent to the subdivision is required and must be lodged simultaneously.

7. Transfer of subdivided portions

If the subdivided portions have been sold, transfer to the new owners may occur simultaneously with the registration of the subdivision. Each new erf may thereafter be bonded independently.

Benefits:

- Once the subdivision has been approved, the owner can sell the subdivided portions prior to building structures on the land. This makes it a good development opportunity, allowing access to quick cash flow without incurring building expenses.
- Reduced erf size could mean lower rates, utilities, and maintenance costs, creating an easier and more sustainable lifestyle.
- The owner can sell a subdivided portion prior to acquiring and registering a separate title deed for that portion. It will merely reflect as an endorsement on the original title deed.

Notes

- Upon subdivision, the subdivider remains the owner of the portions prior to the sale of the subdivided portions. There is no transfer duty payable, provided the owner takes out a separate title.
- Subdivision gives purchasers an opportunity to customise what they want built on the land.
- It may increase the resale value of the property as people often better understand the concept of subdivision as opposed to sectionalising.

Disadvantages:

- Upon the sale of the subdivided property, the owner won't have control over what their neighbour does with the land. The neighbour may use and enjoy the property as they wish, provided they comply with any title deed conditions and zoning regulations.
- A property may only be subdivided if certain requirements are met, such as minimum erf size and zoning regulations.
- The process to achieve subdivision can be unpredictable and lengthy as municipal approval, which involves deliberations, is required.
- Subdivision requires public participation, including the consent of neighbours.
- The process can be costly, with the owner incurring development costs, costs involved with municipal approval, and the use of a land surveyor.
- The position of existing buildings may limit subdivision potential: A building in the centre of the plot will limit options for further development as will the inability to create two separate access points.

Sectionalisation

What does it mean to sectionalise?

To sectionalise a property means to establish a sectional title scheme in terms of the Sectional Titles Act, allowing ownership of individual sections (such as houses or apartments), each coupled with an undivided share in the common property. The management of the scheme is governed by the Sectional Titles Schemes Management Act ('STSMA').

Establishing a sectional title scheme

Imagine a developer who owns a single freehold stand and wishes to build and sell multiple residential units. If zoning restrictions or minimum erf sizes prevent subdivision into separate freehold erven, a sectional title scheme may provide a viable alternative.

Notes

Planning and preparation

The developer, usually with the assistance of an architect and town planner, prepares a site development plan showing:

- Buildings or units;
- Roads and access;
- Gardens and open spaces; and
- Areas intended for common use.

The layout is influenced by town planning controls, cost considerations, market demand, and the physical characteristics of the land.

Drafting the sectional plan

Once building plans have been approved and construction has commenced, a land surveyor is instructed to prepare a sectional plan. A sectional plan shows the precise horizontal and vertical boundaries of each section and distinguishes between sections and common property.

A sectional plan must not be confused with a building plan. Sectional plans are survey documents prepared in accordance with statutory requirements and are based on actual, physical measurements.

Approval by the Surveyor-General

The land surveyor submits the sectional plan to the Surveyor-General for approval. The Surveyor-General examines the plan to ensure compliance with the Sectional Titles Act and its regulations. Once satisfied, the plan is approved.

Lodgement and registration in the Deeds Office

After approval of the sectional plan, the conveyancer lodges the necessary documentation in the Deeds Office to:

- Open a sectional title register over the land; and
- Register the sectional plan.

The land itself remains a single erf, but sectional ownership is now possible. Once the register is opened, individual sections may be transferred to purchasers.

Notes

Scheme rules and CSOS

As part of the establishment of the scheme, conduct and management rules must be registered. The developer may:

- Adopt the prescribed statutory rules; or
- submit customised rules for approval by the Community Schemes Ombud Service ('CSOS').

Custom rules must be approved before they may be implemented.

Selling and transferring sectional title units

Developers often sell units off-plan, meaning before construction is complete or sectional plans are approved. Purchasers typically rely on site plans, building plans, and marketing material.

Deposits paid by purchasers are generally held in trust unless alternative security (such as a bank guarantee) is provided or the sale agreement permits staged release of funds in accordance with the law.

Importantly, a sectional title register can only be opened once the sections have been physically constructed and measured, meaning that transfer of units can only occur once construction is substantially complete.

Benefits:

- Simpler and quicker process than subdivision.
- Owner retains control over the property through establishment of a body corporate (all sectional title schemes require a body corporate by law), which can implement and enforce specific guidelines via conduct rules.
- The creation of a body corporate means that maintenance costs are shared between owners.
- To sectionalise, the property does not need to meet the minimum erf size as it does with subdivision.
- Must comply with zoning regulations. However, no municipal approval is required.
- Instead of creating a body corporate, one can establish a Home Owners' Association, which is governed by a constitution and rules. This helps the original owner to retain some control.

Notes

Disadvantages:

- Sectional title living limits the use and enjoyment of the property.
- If the title deed only allows one dwelling to be built on the property, the owner will have to apply to Council to remove the condition.
- Establishing a body corporate is often expensive and admin-heavy.
- At least two sections are required to open a sectional title scheme. This requires approved building plans and physical dwellings to be built on the land prior to registration. Construction and obtaining approved building plans are often both lengthy processes, which necessitate additional costs.
- Owners must pay monthly levies and sometimes, special levies.