SUBDIVISION PROCESS FLOW

The following is intended as a broad outline of the processes and parties involved in the subdivision of a piece of land.

Note that from the outset the appointed town planners drive the process, which includes obtaining approved subdivision diagrams and the Council's consent to the subdivision. The town planners then hand over to the Conveyancing attorney who attends to the registration of the subdivision and the transfers flowing therefrom.

1. Preliminary process where the Town Planners co-ordinate events:

Application is launched to council for the subdivision of the existing property.

From application to approval takes approximately six to eighteen months.

This process entails liaising with architects, land surveyors, the surveyor general as well as driving the approval of the subdivision process through the council to the point where:

a) Contributions for services have been paid by the developer; and

b) The various departments in the council (such as City Power, Water, Technical Services, Road Agency, Engineering Services) provide their written approvals and consent to the subdivision, usually subject to certain requirements and/or conditions.

Once approval has been obtained, the transfer process can be commenced with by the conveyancing attorney

2. Process after approval of subdivision plans and written approval from the council of the subdivision.

Once the conveyancing attorney has been supplied with the documents as listed above he will conduct a thorough investigation of the diagrams and specifically the servitudes delineated thereon and of the conditions of subdivision as will appear on the council’s written approval of the subdivision.

The conveyancing attorney will then commence with drafting the application for subdivision of the land, the transfer of portions thereof together with the notarial servitudes that may be required.

Some examples of matters that customarily require action or consideration are:
2.1 Application for rates clearance figures on the whole stand

2.2 Consideration and drafting notarial deed/s of the servitudes (referred to by the local authority in their approval or on the subdivision diagrams)

2.3 Registration of a home owners association through the Companies and Intellectual Property Office (CIPO). This condition is usually imposed in larger subdivisions in order deal with and regulate rights and obligations of co-owners with regards to shared services and communal areas

3. The conveyancing attorney requires the following from the town planner/architect/land surveyor or owner before the process of transfer can be taken forward:

3.1 Duplicate original subdivision diagrams in respect of all the subdivided portions (The land surveyor will usually transmit these diagrams to the owner once he receives the approved subdivision diagrams from the surveyor general)

3.2 As at date hereof approximately R800 in respect of each subdivided portion is to be paid to the council upon submission to them of the powers of attorneys to pass transfer for endorsement in terms of regulation 38. The council will only endorse the powers of attorney to pass transfer once they have been provided with proof, by way of receipts, that all the contributions for services to the various departments at the council has been settled in full.

The regulation 38 endorsement signifies to the deeds office that the council has approved the subdivision of land and that all their conditions of subdivision have been met.

3.3 The original consent to subdivision letter from the council together with proof of compliance with all specified conditions of the consent to subdivision as therein contained. If necessary in terms of the consent from the council, any servitudes that the council requires to be registered will also need to created simultaneously with the application for the subdivision.

3.4 In the event that servitudes need to be registered with reference to separate diagrams, the land surveyor will also arrange for those approved diagrams, which the conveyancing attorney will need to attach to the notarial deed/s of servitude that he will draw for signature by the relevant parties.

3.5 Financial Intelligence Centre Act compliance documents of the owner and if applicable a copy of owner’s VAT registration certificate from SARS.

3.6 Particulars of all subdivided portions sold, being the agreements of sale and respective bond approvals.

3.7 Written instruction regarding the distribution of the proceeds derived from the transfer of subdivided portions

3.8 Particulars of where the deed pertaining to the land to be subdivided is held, together with details of any mortgage bonds registered over the land and applicable mortgage account numbers.

3.9 Set in motion at CIPO the name reservation for the home owners association in the event that it is imposed as a condition of subdivision. In necessary the following will be required:

3.9.1 Approximately six names in order of preference for the home owners association

3.9.2 A registered address of the home owners association as well as a postal address
3.9.3 The full names of seven members and two directors of the home owners association.

3.9.4 The full details of the auditor of the home owners association.

[NOTE: where a home owners association, residents association or similar body is created upon subdivision and negative personal servitudes are registered in favour of the home owners association, residents association or similar body, in terms of Chief Registrar’s Circular 43/2012 a transfer duty receipt or exemption needs to be lodged upon the creation of these conditions. Failure to do so will result in rejection of the subdivision set].

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