

## Conveyancers' obligations, if any, to police inclusionary housing?

**15 April 2019**

*Polity*

More often than not a conveyancing process is the last step to the conclusion of a new property development. Ideally a conveyancer, who will eventually register the establishment of a new township or the opening of a sectional title scheme, should be kept up to date on the progress of the development.

This should ideally be from a town planning stage up until the local authority approval stage, whereafter such a conveyancer steps in to register the development in the relevant Deeds Registry. A conveyancer being kept up to date on the progress of a new development may not necessary occur in each development. As more and more conditions are imposed on the establishment of new developments, the question is what obligations are imposed on conveyancers to ensure that conditions imposed on new developments are met?

On 21 February 2019 the City of Johannesburg Metropolitan Municipal Council approved a framework policy document outlining the requirements, incentives, regulations and mechanism for implementing inclusionary housing in the City of Johannesburg area. The framework is intended to incentivise private property developers to include a level of affordable housing in their developments within the City of Johannesburg area.

From the reading of the policy it would appear that the council is looking to increase the supply of lower income housing, create more of a mix of income groups across new development in the City of Johannesburg area, and create more affordable housing in areas that are located in close proximity to jobs and amenities. Furthermore, the council is looking to partner with private property developers in order to deliver more affordable housing while, at the same time, leveraging on infrastructure development that benefit the larger population.

Inclusionary housing in the document is defined as a programme that requires private developers to dedicate a certain percentage, not less than 30%, of new housing developments in the City of Johannesburg area to low and middle-income households. A household earning ZAR7 000 or less per month will be considered as low to middle-income household.

It is intended for inclusionary housing to be mandatory for any development with 20 or more dwelling units in the City of Johannesburg area. The policy will come into effect 90 days from

21 February 2019, being 21 May 2019. It is from that date that inclusionary housing will be implemented as a condition for any new development that provides units for rental or ownership, which must be built on the same site as the units the developer intends to rent or sell.

Once in the inclusionary policy is in place from 21 May 2019, four options for implementation of inclusionary housing will be available for developers who intend to develop 20 or more dwellings units. The first option entails a developer having to build 30% of the total dwelling units to be rented at a capped monthly rental of ZAR2 100 in 2018 prices, or owned by low to middle-income households. The second option entails 10% of the total residential floor area being made up of dwelling units that are a minimum of 18 square metres, a maximum of 30 square metres and average 24 square metres. The third option entails 20% of the total residential floor area being made up of units that are 50% of the average size of the units the developer intends to rent or sell, with a maximum of 150 square metres and a minimum of 18 square metres per inclusionary housing unit. The fourth and final option entails a developer requesting a negotiated outcome for inclusionary housing that deviates from options 1 to 3. The request would be in the form of giving reasons for deviating from options 1, 2 or 3 and proposing how inclusionary housing will be accommodated save for the options 1 to 3.

In all instances, the dwelling units dedicated for low to middle income households must include a private bathroom; be seven square metres of habitable space per person and a minimum of 18 square metres per unit; have the same outward appearance as the units the developer intends to rent or sell; and share common spaces with units the developer intends to rent or sell.

The inclusionary housing policy is specific on the conditions that will have to be met once imposed, such as the outward appearance of the units to be build. As a general rule, Registrars of Deeds do not concern themselves with building specifications, unless the specifications relate to registrable conditions or are in connection with any matter sought to be effected in the Deeds Registry. The legal nature of the conditions conveyancers need to be aware of is yet to be finalised. How conveyancers, attending to the registration of the establishment of a new township or the opening of a sectional title scheme, will deal with ensuring that the conditions are met remains to be seen. More so, it remains to be seen what consequences, if any, conveyancers will have to deal with if the inclusionary housing conditions in the development they are dealing with are not met.

*Also published in Business Essentials and Engineering News.*

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