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Real Estate Newsletter

At a conference recently held in Miami much was said about "air rights" in the USA and UK.

Manhattan is one of the areas where undeveloped space above buildings rose by 47% in 2013 from the previous year. Unfortunately no details regarding 2014/2015 figures were available when the Miami conference was held.

Generally in South Africa "air rights" are described as development rights that are approved as a walkway, bridge or structure spanning over a street, a common boundary or public place, and often by connecting two buildings and confirmed by the registration of a servitude of some nature.

As the demand for development in built-up areas increases, the space above buildings, from the slab of the top storey into the sky, also known as "brown field" compared to "green field", will increase.

It is common cause that owners own the space above their properties, which they can reasonably use provided the necessary consent is obtained from the neighbours and the local authority within whose area of jurisdiction such a property lies.

Erecting any kind of structure on land will occupy "air space" otherwise the land will be useless. The upper limits of an owner's "air right" is, for all practical purposes, limited to the extent that it does not interfere with registered airspace for air travel, but otherwise is probably unlimited.

In South Africa the right to extend above a structure, provided all rights are in place, would be possible via the provisions contained in the Sectional Titles Act 95 of 1986 where a developer retains the real right to extend in terms of section 25 of the Act.

This right is capable of being sold and as such developer A can open a register of a sectional building 100 metres in height, retain a real right to extend into the air above the building and develop or sell off the other 200 metres of "air rights" it has reserved as a real right to extend, to developer B.

This real right to extend can further be developed and sold off to sectional title owners.

In conclusion: we may not use the terms "air right", airspace or "brown field" too often in South Africa, but we most certainly do have a vehicle to create such right no matter what it is called.

If you require any further details or assistance in this regard contact Johan Jacobs or Penny Chenery.

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