

Comply before you alter

As the owner of a unit in a sectional title scheme you are subject to more restrictions than you would be if you were the owner of a freehold property.

When you want to make alterations to your section you may well need body corporate approval as well as that local authority consent before you can start. A freehold property owner is not subject to the additional level of governance exercised by sectional title bodies corporate. Sectional owners therefore need to be aware of the correct procedures, so as to ensure that they comply with the applicable legislative requirements before effecting alterations to their sections.

In this article we look at the requirements set out in section 24 of the Sectional Titles Act 95 of 1986 ("the Act") which deals with extensions of sections.

What is an 'extension' of a section?

Any alteration to your section which increases its:

- boundaries, or
- floor area

is considered an extension of the section.

Where are your sections boundaries?

In terms of section 5(4) of the Sectional Titles Act 95 of 1986 ("the Act") a section is owned to the median line or midpoint of its dividing floors, walls and ceilings. The scheme's sectional plan filed at the Deeds Registry indicates the boundaries of each section, shown as solid lines.

So if your section is on the ground floor and you decide to push out your bedroom into the garden area, you are almost certainly going to be extending

the boundaries and floor area of your section and will be hit by the provisions of section 24 of the Act.

Extending the floor area of your section

It is possible to extend your section without actually extending the boundaries of your section. For example, if your section has a double volume ceiling and you decide to build a mezzanine loft area within your section, you will be extending the floor area of your section and section 24 of the Act will apply. Even if you just use the loft area for storage space, you will have effectively extended the floor area of your section.

What authorisation do you need to get before you can legally extend your section?

Section 24(3) of the Act stipulates that an owner must first obtain a special resolution of the body corporate authorizing his proposed extension before he is allowed to effect the alterations. This would involve putting a proposal to owners, normally via the trustees, and perhaps asking them for a general meeting where your proposal can be considered and voted upon. Alternatively you could send or take your proposed resolution to each owner individually and get written consents.

How is a special resolution passed?

A special resolution can be passed in one of two ways:

1. at a general meeting of the body corporate; or
2. by the necessary majority of owners agreeing in writing in what is known as a 'round robin' procedure.

A special resolution at a meeting requires the following:

- notice of the meeting, specifying the proposed resolution, must be sent to

all persons entitled to attend general meetings and at least 30 days notice must be given unless the trustees have decided that shorter notice is appropriate;

- At the meeting a quorum of persons entitled to vote must be present or represented; and
- Of those present or represented and entitled to vote, 75% in number (by show of hands) and in value (75% of the participation quotas present or represented at the meeting) must vote in favour of the resolution.

A special resolution by round robin procedure requires the following:

- Seventy-five percent in number and value of all owners must agree to the resolution in writing.

Once the special resolution has been passed, what else needs to be done from a sectional title perspective?

The special resolution might only be approved if it contains conditions that apply to your building operations, such as an obligation to pay a deposit to cover the body corporate against any damages it may suffer in the process. It may also approve the extension on the condition that you pay the body corporate a capital amount as compensation to other owners for the loss of the use of the common property that your extension will cover. The trustees should not sign any building plans for submission to the local authority until the required special resolution is obtained.

Your next step is to get the buildings completed to the point they can be measured. During this process you will need to liaise with the local authority and ensure that all their requirements are met. You will need to instruct a land surveyor or architect to draw up a draft sectional plan of extension and submit this plan to the Surveyor-General for approval. Once the Surveyor-General has approved this plan application must be made to the Registrar of Deeds to register the plan.

If according to the plan your extension causes a deviation of more than 10% in the participation quota of any section in the scheme, then you will also need to get the consent of the mortgagee of every unit in the scheme. You may be able to simplify this process by requesting general consents from the major banks which hold mortgage bonds over the units in the scheme.

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