

Understanding restrictive conditions in title deeds

Restrictive conditions can cause major headaches if buyers have not familiarised themselves with the conditions listed in the title deed, before purchasing their new home.



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What can and cannot be done to a property is determined by a number of factors: common or statutory law, town plans which designate sites for residential property, commercial and the like and town planning schemes – all of which are general in nature - and then restrictive conditions, which are property specific.

It is important for buyers to know what the restrictions are on their own properties and on that of their neighbours, as well.

Study restrictive conditions

Restrictive conditions aim to create and preserve a neighbourhood with specific characteristics. Examples of these conditions include:

- Buildings may not be higher than two storeys
- Properties may not be sub-divided
- Only 50% of the erf may be covered
- Property cannot be used for business purposes

“It’s important for buyers to carefully go through the restrictive conditions attached to the title deed of the property they want to purchase. In doing so they’ll know whether the planned renovations they want to undertake will be possible, which might influence their decision to purchase,” advises Bruce Swain, CEO of Leapfrog Property Group.

“Buyers are also allowed to inspect the conditions of surrounding properties. It might not seem like an issue when dealing with the property purchase but if a neighbour has rights to run a business from the property or to make significant alterations to the home, it can become a problem months or even years down the line.

What about subdividing

If, for example, a homeowner would like to subdivide the property, there are several hoops to jump through. STBB (Smith

Tabata Buchanan Boyes) explains that the subdivision has to be permitted in terms of zoning provisions, local authority by-laws and provincial legislation and that the approval of the local authority (municipality) must be obtained – ie the plans must be submitted to the local council for approval.

Homeowners may also be required to obtain the consent of their neighbours or, in the case of complex subdivisions, an engineer's report. The status of the property will also need to be changed at the deeds registry, which entails a surveyor drawing up plans for the subdivision, which need to be approved by the Surveyor General, subject to which a conveyancer can apply for the amendment to the title deed.

Alterations to sectional title properties

“When it comes to sectional title properties, the first step is to inform the body corporate. The rest of the process is basically the same as for a subdivision.

“The bottom line is that a homeowner can complain to the local municipality about a neighbour's proposed subdivision, renovations and extensions but these will only be taken into account if the neighbour is in contravention of the restrictions laid out in the title deed.

“For example, the homeowner can complain that the neighbour is adding a third storey, if his restrictions only allow for two storeys. If however, the title deed lists no such restriction, the neighbour is fully entitled to add another floor, regardless of the effect this has on the neighbours,” concludes Swain.

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