

## **Most Cape Town properties have right to second dwelling**

Recent changes to Cape Town municipal bylaws give individual land owners the right to unlock the value in their land. Lara Colananni, Specialist Conveyancing Attorney at Guthrie Colananni Attorneys, says: "The City of Cape Town's Municipal bylaw was recently amended to create an automatic right to build a second dwelling on almost all properties in Cape Town, even if the zoning is single residential, rural or agricultural.

"The beauty of the amendment is that it creates opportunities to unlock value in almost every property in the Cape without going through the tedious process, costs and stress of obtaining a departure from Council to erect a second dwelling on your property.

"The value is unlocked by selling the second dwelling or the rights to construct a second dwelling on the property and this can be done by subdivision or by opening a sectional title scheme on your property."

Claude McKirby, Southern Suburbs Co-Principal for Lew Geffen Sotheby's International Realty, believes that subdivision and sectionalisation can yield excellent returns and offers investors many benefits, from lower rates and taxes to reduced maintenance. "The law amendment is especially good news for home owners who are in need of a cash injection or who want to pay off their bonds more quickly as well as for retirees and empty-nesters who don't want to move away from the area in which they have lived for many years."

However, he cautions that while many larger properties in older established suburbs lend themselves to being divided, it is essential to bear in mind that set minimum sub-division sizes vary from suburb to suburb and this will determine whether to opt for subdivision or sectional title.

"In Bishopscourt, for instance, most plots cannot be divided to less than one acre (4 046m<sup>2</sup>), so subdivision is not possible but the land can still be split by creating a sectional title register, which is also a simpler process." He adds that the position of the existing house is pivotal as a building situated in the centre of a plot will limit options for further development as will the possibility of creating two separate access points.

But although property owners now have the right to split their property, there are still numerous regulations to which they must adhere and Colananni says that the best way to seamlessly navigate the process and avoid delays and pitfalls is to appoint a team of professionals from the get-go.

"In addition to zoning laws there are other bylaws of importance that relate to building regulations and approval of building plans on your particular property and for this reason, expert advice is essential.

"The first step is to appoint a conveyancer and a town planner to establish what you can and cannot do in your area and assess your possibilities. Thereafter, an experienced estate agent will advise with regards to which type of second dwelling will offer the best value in the long term and, together with an architect, you will then be well placed to put a game plan together to achieve the best results."

Colananni says that it's also important to remember that not all the conditions relevant to your property are contained in your title deed.

"In the Cape, the practice has not been to carry restrictive conditions forward in the title deeds every time a property is transferred to a new owner, so your property may be subject to

restrictive conditions that can only be found if a Conveyancer conducts a search at the Deeds Registry and investigate the history of your property.

"Once we know what, if any, restrictions apply to your property, we can plan the best strategy for unlocking maximum value in the most cost effective and time efficient way. If restrictions against subdivision are at play, you would go the sectional title route and vice versa. If there are no such restrictions at play, you have the luxury of choosing how you will sell the second dwelling or rights to contrast one on the property.

"Typical conditions that would prohibit you from opening a sectional scheme are restrictions that you may only build one additional dwelling or that you may only build on a certain part of the property and these conditions will override the zoning right to build a second dwelling."

However, if the results of the conveyancing search reveal that there are any restrictive conditions, all is not lost as most restrictions can be removed by application to the Municipality with the assistance of your conveyancer.

"The only hiccup is that public participation is usually a requirement and you may need to deal with objections but don't be disheartened if there are objections to your application, as this is by no means a foregone conclusion that your application will be rejected. The decision makers will weigh up your rights and prejudices, as a property owner, against the rights and prejudices of the community as a whole."

The next step is to consider what rights you will sell by determining the structure of ownership. In South Africa, there are two main categories of land ownership, namely freehold and sectional title. Freehold ownership relates to owning the whole section of ground and all structures on it. Sectional title ownership relates to both exclusive and shared ownership.

Says Colananni: "I believe that in most circumstances the magic solution is to open a sectional title scheme on the property and transfer the second dwelling, with common property, to an investor or purchaser. Sectional title ownership creates a forum for the parties to regulate their rights and obligations within a legal framework and in this way, each owner is clear about what he owns or has exclusive use of.

A further benefit of sectional title ownership is that you can sell a right to develop a particular part of the common property. This is known as a right of extension and can relate to vertical or horizontal extensions of the scheme. As you can imagine, this opens the door for negotiations with developers and investors who may wish to acquire the right to build on the property at a later stage."

Lew Geffen, Chairman of Lew Geffen Sotheby's International Realty, says: "The fact that sectional title ownership is communal ownership might be considered unappealing to some people, but in most situations, the benefits far outweigh the disadvantages.

"The main advantages are that you can now sell the separate granny flat or cottage on your property without obtaining a subdivision and, most notably, you don't have to sell your whole property if you want to liquidate some capital.

You also don't have to worry about the costs and cash flow not the time-consuming inconvenience of building a second dwelling, because you can sell the right to extend the scheme and municipal services and amenities don't have to be duplicated."

*Lew Geffen Sothebys Press Release*