

SUBDIVIDING YOUR PROPERTY WHAT YOU NEED TO KNOW



Subdivision entails a property owner dividing his existing freehold property into two or more smaller pieces of land.

The new pieces of land are called subdivided portions. The property owner can then sell one or more of these subdivided portions to a purchaser, or retain and develop them separately.

Subdivisions have become popular in the municipal jurisdiction of the City of Cape Town as it has adopted a policy encouraging densification. There is a trend now to subdivide larger properties into smaller, more manageable ones.

It is not only property developers that subdivide property – ordinary residential owners are often motivated to subdivide their properties to either sell for financial benefit, or to contain costs by living on a smaller property with lower rates and potentially added security.

THE ROLE OF THE TOWN PLANNER IN THE SUBDIVISION PROCESS

If you decide to subdivide your property, the first professional you need to consult is a Town Planner. They will advise you on the process and help you apply to your local authority or municipality to get the permission needed to do so.

The municipality will consider various factors in deciding whether to grant permission to subdivide, which normally include:

- the size of your property
- the minimum erf sizes permissible
- the availability of electricity and other municipal services
- the impact of the subdivision on traffic in the area.

The Town Planner's role is inter alia to motivate your application, taking the above factors into account.

WHAT TO CONSIDER BEFORE LAUNCHING A SUBDIVISION APPLICATION

Whilst subdividing property can be very lucrative, it is important to be aware that it is a long and involved process. The most important considerations will invariably be the time and costs involved.

The Town Planner should advise you of a realistic time period to complete the subdivision process and should also guide you on the estimated costs that will apply. These will include not only the town planning fees but also the costs of a Land Surveyor to prepare diagram/s for the new portions, contributions to council and the costs of having to install sewer lines or new electrical boxes.

Each subdivision will have to be looked at individually to see what potential time and cost factors are applicable, to avoid any nasty surprises down the line. The above costs must be looked at in light of the different phases to a subdivision as set out below.

THE THREE PHASES OF A SUBDIVISION – FROM APPLICATION TO REGISTRATION

● PHASE ONE

To bring the subdivision application and obtain the permission of the municipality to subdivide the property. This application is brought by the property owner, usually in consultation with a Town Planner. Once it is approved by the municipality, many property owners mistakenly consider this to be the end of the process, but in fact this is merely the conclusion of phase one.

● PHASE TWO

When the municipality grants permission to subdivide, it includes various conditions that must be complied with before the new portions can be separately registered or transferred in the Deeds Office. These are called the “Conditions of Subdivision” and are set out in Annexure A to the subdivision approval in the City of Cape Town.

What property owners often don't realize, is that the Town Planner's job doesn't extend to helping them to fulfil these requirements unless this is specifically arranged. To avoid unnecessary delays and expenses, the property owner is advised to discuss this phase with the Town Planner or a Conveyancing Attorney in order to establish what is required and how to go about complying with the conditions, which usually relate to municipal services and access servitudes.

● PHASE THREE

The final phase of the process is the transfer or separate registration of the newly subdivided portions to the new owners in the Deeds Office, once the municipality confirms the conclusion of phase two by issuing the so-called “Transfer Clearance Certificate”. This is done by the Conveyancing Attorney who will prepare and arrange for signature of the documents or servitudes that may be required to be registered.

These could include servitudes of right of way, sewer servitudes and a variety of council servitudes. If the portion or remainder of the property has been sold, the owner and purchaser will sign transfer documents with the conveyancer and the relevant portion will be transferred to the purchaser to give effect to the subdivision.

From this overview, you will note that the subdivision process involves various role-players and that a complex series of interactions is required for the process to reach the point that separate registration can be effected.

In the event that there are conditions imposed by the municipality that are difficult to comply with or if any of the inter-related processes run awry, the subdivision process will inevitably be slowed down. In the City of Cape Town, a subdivision can take anything from 8 months to 2 years from application submission to separate registration.

At FHA, our attorneys have significant experience with the subdivision process. We will gladly assist you with advice and guidance in this regard and look forward to being of assistance to you.