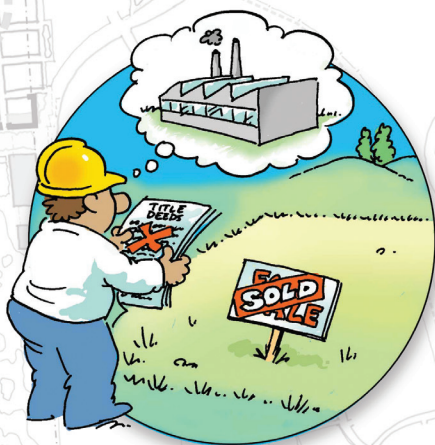


4



REMOVAL OF RESTRICTIVE TITLE DEED CONDITIONS

What are restrictive title deed conditions, why is it necessary and how does it influence the use and development of my property? This booklet provides an explanation.



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INTRODUCTION

Immovable property in the form of land is normally held legally by means of a title deed. This legal document is registered at the Deeds office and describes the particulars of a specific property, such as its extent, ownership and the rights and restrictions pertaining to it. In addition, a survey diagram provides a scaled illustration of the property and its extent and usually forms part of the title deed. When property is sold and transferred to a new owner, a deed of transfer is drawn up to describe such transfer of the property to its subsequent owner.

What is a title deed restriction or condition and why is it necessary?

Many title deeds also contain detailed conditions that set out and regulate the way and extent to which a property may be used or developed by its owner, and restrictions in this regard. In addition to describing the rights, privileges and obligations in respect of owning a property, the purpose of such title deed conditions and restrictions is to protect the local amenity and character of the area for the benefit of surrounding property owners and the general public.

Such title deed restrictions and conditions may regulate various matters and are usually imposed when the property is created through subdivision or a township establishment process.

Amongst others, they may include:

- the purpose for which a property may be used
- the extent, height or bulk of buildings that may be erected on it
- the applicable building (setback) lines
- the appearance (eg building material, colours etc) of structures that may be erected
- the provision of public service infrastructure to and across the premises (eg pipelines)
- restrictions with respect to individual rights on the premises (eg a right of way servitude)
- conditions regarding the disposal or sale of the property (e.g. a notarial tie)

Quite often, especially when a new use or development is proposed on a site, such title deed conditions may restrict or even prevent a development from being implemented. In this instance, the owner can apply to have the restrictions amended, suspended or even removed entirely from the title deed.

The following sections provide more information on how to deal with restrictive title deed conditions and make such an application.

TITLE DEED RESTRICTIONS AND DEVELOPMENT CONTROL

How do title deed restrictions relate to other forms of development control?

Constituting a form of statutory development control, title deed conditions often complement (or sometimes duplicate) other existing land use and development control mechanisms, such as zoning scheme regulations or the National Building Regulations administered by local authorities.

As such, a property may therefore be subject to the development rules and regulations in terms of a local zoning scheme, as well as restrictive conditions occurring in its title deed. Both therefore need to be complied with by a property owner.

It is also important to note that, if title deed conditions are more restrictive or onerous, they override and take precedence over development parameters and rules or restrictions prescribed in terms of a zoning scheme.

While restrictive title deed conditions may sometimes be outdated and no longer relevant to modern land use needs, it is important to note that they remain in effect, even if a proposed development or activity may be permitted on a property in terms of a local zoning scheme.



CHECKING OR SCRUTINISING A TITLE DEED

How do I know whether a title deed contains restrictive conditions which may restrict or prohibit my development proposal?

Planning law stipulates that Council may not approve a development proposal if it is in conflict with a condition in a property's title deed. Therefore, with any new use or development proposal, it is important to ascertain whether a particular property might be subject to any title deed conditions that may restrict or prohibit a proposed development.

This is done by scrutinising the actual title deed of the relevant property, a copy of which is obtainable from the Deeds office (see contact details in the back of this booklet).

As the conditions and restrictions in some title deeds and their relevance are often unclear, of a technical nature and sometimes complicated to interpret, it is often necessary to obtain a conveyancer's certificate to clearly identify and describe any such applicable restrictions and their implications. The cost of obtaining such a certificate is borne by the property owner or developer.

Such a certificate is usually issued by a conveyancing attorney once he/she has done a detailed deeds search of the property, which includes checking not only the last deed of transfer but tracing it back to the original pivot deed.

Where applicable, the certificate will clearly identify and

quote any relevant restrictive conditions found in the title deed and conclude with a statement as to whether they may prohibit the proposed development or not. Such a certificate forms part of the submission requirements when applying to Council for planning permission and your local district planning office can provide you with the standard proforma with such certificates should adhere to.

Whilst the particular wording of certain title deed conditions or their preamble may empower the relevant provincial minister or local authority to relax or depart from a particular restriction without formal application to the competent authority, other cases may require the consent of a third party (e.g. a township owner or developer such as Garden Cities Inc.) in whose favour the condition was originally imposed.

However, quite often the only way to have the restriction changed or removed is by making a formal application to the competent authority. It is therefore essential to accurately check the conditions contained in the title deed to determine what approach to follow.



CHANGING OR REMOVING TITLE DEED RESTRICTIONS

How do I get a restrictive title deed condition relaxed, changed or removed to enable my development proposal to proceed?

Should your property be subject to a restrictive title deed condition preventing or inhibiting development, you may apply to have the relevant restriction either amended, relaxed, suspended or even permanently removed from the title deed.

Such application would normally be made in terms of Section 3(1) of the Removal of Restrictions Act (No. 84 of 1967) and would often accompany a simultaneous application for planning permission (for instance a rezoning, temporary land use departure or subdivision) in terms of the Land Use Planning Ordinance, No. 15 of 1985 or related law or building plan application in terms of the National Building Regulations and Building Standards Act, No. 103 of 1977.

In terms of the above Act, the provincial government is the competent authority for deciding on applications for amendment or removal of title deed restrictions, while the local authority is responsible for processing such applications on its behalf. This includes the advertising thereof, mostly in combination with a related application for planning or building plan permission.

In addition, Council is also a commenting party and is required to make a recommendation regarding the application to the competent authority for final decision on the matter.

Alternatively and although more expensive, instead of making an application to the competent authority in terms of the Removal of Restrictions Act (No. 84 of 1967), an owner or developer may also approach the High court directly to issue a 'rule nisi' order for the expungement of restrictive title deed conditions. Should you wish to follow this approach, you would have to consult an attorney to bring the application on your behalf.

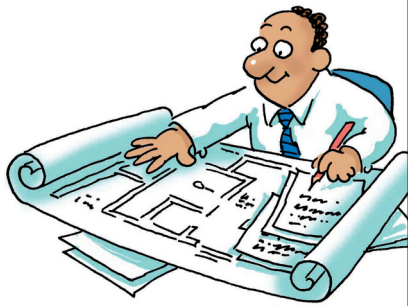
Where a condition was imposed in favour of the local authority, it may also be possible to cancel a restrictive condition by means of notarial agreement between the Council and the land owner concerned.

MAKING AN APPLICATION

How do I prepare and make an application for removal of title deed restrictions?

An application for amendment or removal of restrictions in terms of Act No. 84 of 1967 must be submitted to the Western Cape Department of Environmental Affairs and Development Planning at Private Bag X9086 Cape Town 8000.

Simultaneously, with any other planning application that may be required, a copy must also be submitted to your local district planning office (see address list at the end of this booklet). In addition to Council's standard Land Use Management application form, a separate Removal of Restrictions application form must be completed, copies of which are available from the provincial department or your local district planning office.



In addition to the two completed application forms and the correct application and advertising fee (please consult your local district planning office for an estimation in this regard), an amendment or removal of title deed restrictions application submission should be accompanied by the following documentation in order for it to be considered valid and processed properly:

- copy of relevant title deed or deed of transfer (original submitted to PGWC)
- separate annexure quoting in full the conditions to be removed
- conveyancer's certificate (where necessary)
- locality plan (ie cadastral plan extract showing subject property in its context)
- if bonded, bondholder's consent to the proposed removal of the relevant conditions
- power of attorney by registered owner(s) to make the application (if applicant is not the owner)
- motivation report (based on the likely impact of the proposal on the surrounding area's character and general public interest)
- copy of Surveyor General diagram or noting sheet extract of the subject premises
- site development or building plan, illustrating the proposed development (where new buildings or extensions are proposed, a footprint of both existing and new work is to be shown in relation to property boundaries, as well as the footprints of adjacent buildings), or subdivision plan if applicable
- two separate completed application forms, as mentioned above
- application and advertising fee, as mentioned above (as confirmed by local district planning office)
- any other documentation required in respect of the

simultaneous land use management or building plan application or required by the PGWC

Also ensure that the correct number of copies of the above documentation are submitted, as required by your local district planning office to enable the application to be properly processed.

Once an application has been accepted as complete and valid, and on instruction by the competent authority (i.e. the provincial department), Council will proceed to advertise the application to interested and potentially affected parties. This will include surrounding registered property owners and where applicable, the person or party in whose favour the condition was imposed originally. This may include notices by registered post and advertisements published in the press and Provincial Gazette, which will be arranged to occur simultaneously and in combination with any advertising required on a concurrent land use application.

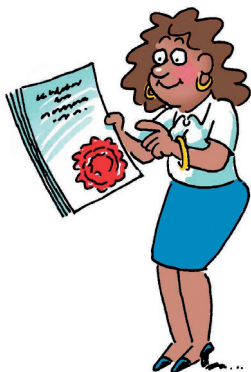
In the meantime, Council will also forward its own recommendation together with all other relevant documentation to the competent authority for decision.

It should be noted that a decision on any related concurrent land use or building plan application may only be made after the Removal of Restrictions application has been decided on by the competent authority and Council has been informed of such decision.



As a **quick reference guide**, the application process thus involves the following steps:

- **Step 1** Obtain copy of title deed/deed of transfer for application site from Deeds office and scrutinise it for possible restrictions. Obtain a conveyancer's certificate if necessary.
- **Step 2** Pre-application meeting with local district planning office to discuss development proposal, identify any relevant policies or development frameworks/structure plans and potential problem issues and obtain application forms, submission requirements and information on applicable procedures.
- **Step 3** Collect supporting information and prepare application according to guidelines, undertake pre-application consultation with neighbours if required.
- **Step 4** Submit application with supporting documentation to PGWC with a copy (including the relevant application fee) to local district planning office, simultaneously with any concurrent planning or building plan application.
- **Step 5** Public participation/advertising and formal consultation with all relevant interested and affected parties and surrounding property owners conducted by local district planning office. Maintain regular contact with the local planning office to monitor progress regarding processing of application.
- **Step 6** Respond to objections against the application (if any received).
- **Step 7** Receive final decision on both removal of restrictions and concurrent land use or building plan application and exercise appeal right on latter if necessary.
- **Step 8** Commence proposed development after all conditions of approval (if any) have been complied with and any other required approvals (if any) have been obtained.



THE DECISION AND THEREAFTER

What happens once a decision has been made?

Once a decision has been made on the Removal of Restrictions application by the competent authority, it is conveyed to the local authority to enable a final decision by Council on any concurrent land use or building plan application. The applicant will then be informed of the outcome of both applications in writing. In the case of approval, the respective title deed for the property will then be formally amended in the Deeds office. Often, approval in this regard is subject to conditions with which the applicant or developer must comply before the proposed development may commence.

While the right to appeal against the decision on any concurrent land use or building plan application exists, it should be noted that no such appeal right is provided for in terms of Act No. 84 of 1967, as the decision on a removal of restrictions application is made directly by the provincial government. Such a decision can thus not be appealed and may therefore where necessary only be challenged in court. If no appeals are received against the concurrent land use or building plan application decision, the proposed development may proceed, subject to compliance with any conditions of approval.

Throughout the above process, applicants may contact their local district planning office to make enquiries regarding the application or its progress. Please supply the application reference number when making such enquiries.

CONCLUSION

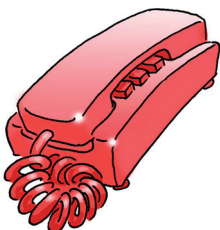
Where can I get more information?


Should you have any further enquiries regarding the above or want to find out more, kindly contact the nearest district office of the Planning and Building Development Management department on the numbers provided at the back of this booklet.

In addition, you may also wish to contact the local branch of the Deed's office or the provincial Department of Environmental Affairs and Development Planning for more information and advice at the following address and contact numbers:

Registrar of Deeds (Deeds office)
90 Plein Street
Private Bag X9073
Cape Town 8000
Telephone 021 464 7600
www.ruraldevelopment.gov.za

**Department of Environmental Affairs
and Development Planning**
Provincial Government: Western Cape
Private Bag X9086
Cape Town 8000
Telephone 021 483 3009
www.capegateway.gov.za/eadp





Other titles available in this Development Management Information guideline series include:

- Land use management and the development process
- Making a planning application
- Acquiring new or additional land use and development rights
- Subdivision of land
- Site development plans
- Landscape plans
- Zoning scheme departures
- Building development management
- Building plan preparation and submission
- Land use and building complaints, contraventions and enforcement

Should you wish to comment on or have any further ideas in respect of any of the above booklets, kindly contact the department on phone number 021 400 3525 or e-mail us at lums@capetown.gov.za.

This booklet forms part of a series which provides useful information on land use and development matters in the City of Cape Town. Look out for other information guides dealing with 'Heritage advice' as well as 'Outdoor advertising guidelines' available at Council's public counters.

In line with the City of Cape Town's language policy, these booklets are also available in Afrikaans and isiXhosa on request by emailing lums@capetown.gov.za or on the City's website at www.capetown.gov.za.



LEGAL DISCLAIMER

Although based on law, the information provided in this booklet is presented in an informal and plain language format for the purposes of providing advice on development matters and procedures to customers and members of the public. Should there be any discrepancy with provisions in the underlying legislation, the actual legislation takes precedence and should be consulted directly. Alternatively, please obtain independent professional advice on the matter. The City of Cape Town does not accept any liability for any action taken on the basis of the information contained herein.