

New ruling prevents municipalities reclaiming undeveloped property

By [Aidan Kenny](#)

30 Oct 2017

It has been common practice for municipalities to sell vacant properties for both commercial and residential development, subject to a title deed condition that the property must be improved within a certain period or the properties would revert back to the municipality.



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These properties were sold at discounted rates, as part of the municipal development framework for a designated area.

In the past, municipalities achieved this objective by inserting a clause in the Deed of Sale which later manifested as a condition in the Title Deed pertaining to such land, which clause, for example stated that:

"If after the expiration of two (2) years from date of sale the purchaser has failed to complete building to the value of not less than R100 000,00 on the property, ownership of the property shall revert to the seller (Municipality) which shall be entitled to demand re-transfer of the property from the purchaser who shall be obliged to transfer to the seller against payment by the seller to the purchaser of all payments received"

This type of clause is known as a reversionary clause, which compels the purchaser of the property to re-transfer the property if it remains undeveloped upon the expiration of the conditional period contained in the Title Deed. If the property remains undeveloped upon the expiration of the prescribed period, the municipality would merely invoke the reversionary clause and demand the re-transfer of the property, without any recourse on the part of the purchaser and/or any financial institution which may have partially financed the envisaged development.

But due to recent judicial developments, municipalities are warned to err on the side of caution when selling state-owned land, subjected to reversionary rights, as more specifically pronounced by the Supreme Court of Appeal in the case of *eThekweni Municipality v Mounthaven Pty Ltd*.

In this case, the Court diluted the effect of a reversionary clause by unequivocally and expressly ruling that same does not confer an absolute right and that it is subject to prescription if not exercised within the contractual or the statutorily imposed three year period.

The result is twofold: On the one hand, the municipality, when alerted to non-compliance on the part of the purchaser, is legally obliged to claim re-transfer of the property either within the period stipulated in the Title Deed condition, or for the latest, within the statutorily prescribed period of three years. On the other hand, purchasers that acquired property from the municipality at discounted rates and whether for commercial or residential development, are no longer compelled to re-transfer such property, should same remain undeveloped upon the expiration of the conditional period.

The judgment as it stands, arguably constrains the municipality by closing its back-door means of reclaiming property, when purchasers default on their obligation to develop same within a certain period of time.

Another implication is that financial institutions will, upon the expiration of the conditional period and had the municipality not enforced its rights within the contractual or statutorily prescribed period, be able to lend funds against the property as security -even if the purchaser failed to develop it.

The purchaser will accordingly derive an extended period within which to develop the property, without fear of losing the security due to a re-transfer being claimed by the municipality.

Municipalities will now have to obtain extensive legal advice in order to ensure the adoption and implementation of adequate compliance mechanisms, should they wish to ensure development within a certain period, especially since the rights which stem from reversionary clauses lapse after a period of three years.

ABOUT THE AUTHOR

Aidan Kenny is a director and property specialist at Werksmans Attorneys.

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