

Look out for restrictions on your property

By  Adrian Goslett

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Owning a property does not mean that the owner is entitled to do whatever they want to the property. Every property in South Africa that is privately owned is subject to certain control measures, which may restrict the owner from making the changes they desire.



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Before purchasing a home it is in the buyer's best interest to check the title deed to see whether there are any restrictive conditions that exist on the property, especially if they plan on building on or changing the property in any way. The aim of restrictive conditions in a title deed is to create a property or neighbourhood with specific characteristics that appeal to a certain demographic of resident. Some examples of restrictions include that the property may not be sub-divided, the buildings may not be higher than two storeys, no business use of the property, only 50% of the stand may be covered or built on, all exterior wall must be a certain colour and all structures must have a particular style roof, etc.

Restrictions on sale of property

There might also be restrictions regarding the sale of the home and not just on the property itself. In some instances, parents will stipulate in their will that the property that they left to their children cannot be sold until they reach a particular age. This stipulation will be registered against the title deed of the property.

Control measures and restrictions are governed by several laws and regulatory bodies. If a statutory law or written law of the country does not deal with a particular situation, then common law will apply. Each town will have a general plan or guideline as to how it has been set out with regards to residential, commercial and industrial areas. The local authority plans will set certain rules in place where particular types of building can be built, such as shopping malls and residential developments. A property may not be used for purposes that contravene that of its initial intended purpose.

Land and scheme clauses

A town planning scheme is created to ensure the general welfare of a community, as well as the overall appeal of the area. The town planning scheme will consist of a map showing the zoning of the land and scheme clauses, which should be read in conjunction with the map. Each municipality will have its own town scheme, which is available to the public for viewing. The development controls within the town plan include the use of zones, which controls what is built on a property and what

that property is used for. It will also deal with density zones, which will dictate the minimum size requirement of a stand and the number of dwellings that may be erected on the stand. Other aspects include the number of storeys a building may be built, the total floor space that may be used for building, the percentage of the stand that is allowed to be covered, the minimum distance between the boundaries of the property and buildings and parking.

It is possible to have a restriction lifted on a property, however, this will entail applying to the High Court for an order authorising the restriction to be lifted. This is provided of course that there is a good enough reason for the High Court to grant the request. The buyer can stipulate that they are putting in an Offer to Purchase on the property subject to the restriction being lifted. Alternatively, they can accept the conditions and purchase the home with its subsequent restrictions.

ABOUT ADRIAN GOSLETT

Adrian Goslett is CEO and regional director of RE/MAX Southern Africa. He joined RE/MAX Southern Africa in 2005 as a franchise development consultant, supporting various regions and offices. Throughout his career at RE/MAX he has held various positions. In 2010, after successfully leading 160 offices and over 1500 agents in six countries through the worst years real estate has ever seen in South Africa in 30 years, Goslett was appointed as CEO of RE/MAX Southern Africa.

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