

REPUBLIC OF KENYA

MINISTRY OF LANDS AND PHYSICAL PLANNING

THE SECTIONAL PROPERTIES REGULATIONS, 2021

UNDER THE SECTIONAL PROPERTIES ACT, 2020

**REGULATORY IMPACT STATEMENT ON THE SECTIONAL PROPERTIES
REGULATIONS, 2021**

Table of Content

4. Regulatory Impact Statement (RIS)
5. Newspaper public notice on the RIS
6. Gazette Notice on the RIS
7. Ministry letter requesting independent review of the RIS
8. Kenya Law Reform Commission on the review of the RIS
9. Certificate of Compliance on the RIS process



MINISTRY OF LANDS AND PHYSICAL PLANNING


REGULATORY IMPACT STATEMENT

FOR

THE SECTIONAL PROPERTIES REGULATIONS, 2021

JUNE 2021

This Regulatory Impact Assessment (RIA) has been prepared by the Ministry of Lands and Physical Planning pursuant to Section 6 and 7 of the Statutory Instruments Act (No. 23 of 2013)

 THE NATIONAL ASSEMBLY PAPERS LAID		
DATE: 02 DEC 2021		
<table border="1"><tr><td style="width: 50px;">DAY.</td></tr></table>		DAY.
DAY.		
TABLED BY:	L.O.M	
CLERK-AT THE-TABLE:	Kalama	

Contents

ABBREVIATIONS 5

Chapter 1: INTRODUCTION AND BACKGROUND 6

 1.1 Introduction 6

 1.1.1 Regulatory-Making Authority and the Legal Mandate 6

 1.1.2 Requirements of the Statutory Instruments Act 6

 1.1.3 What is a Regulatory Impact Statement? 6

Chapter 2: OBJECTS OF THE SECTIONAL PROPERTIES REGULATIONS, 2021 8

 2.1 General Objective 8

 2.2 Specific Objectives 8

Chapter 3: BACKGROUND AND CONTEXT 9

 3.1 Land reforms in Kenya 9

 3.2 Domestic context 10

 3.3 International context 10

Chapter 4: EVALUATION OF THE PROBLEM 11

 4.1 Identified challenges 11

 4.1.1 Charge and Discharge 11

 4.1.2 Corporation vis-à-vis Management Company 11

 4.1.3 Slow uptake of the Act 11

 4.1.4 Building plans/sketch plans irregularly used as the basis of registering sectional properties 11

 4.1.5 Compromised proprietary interest on sectional property 12

 4.1.6 Non-closure of head lease on opening registers in respect to units 12

 4.1.7 Reversionary interest 12

 4.1.8 Title did not include proportionate share of common area 12

 4.1.9 Dealings on registration to be done under LRA 12

 4.1.10 Ground rent and rates 12

 4.1.11 Review of Long-Term Leases/Sub-Leases 12

Chapter 5: LEGAL AND POLICY FRAMEWORK FOR THE PROPOSED SECTIONAL PROPERTIES REGULATIONS 13

 5.1 The National Land Policy 2009 13

 5.1.2 The Constitution of Kenya 14

 5.1.2.1 Housing as a Human Rights Issue under the Constitution 14

 5.1.2.2 Division of housing Function between the two level of government 14

 5.1.2.3 Principles of land policy 14

5.1.3	Legal Framework on Land Reforms in Kenya.....	14
5.1.3.1	Land Act, 2012:	14
5.1.3.2	Land Registration Act, 2012:.....	14
5.1.3.3	Community Land Act, 2016	15
5.1.3.4	National Land Commission Act, 2012.....	15
5.1.3.5	Housing Act, (Cap 117).....	15
5.1.3.6	Physical and Land Use Planning Act, 2019.....	15
5.1.3.7	Sectional Properties Act, 2020.....	18
Chapter 6: PUBLIC CONSULTATIONS		20
6.1	Legal requirements relating to public participation and consultation.....	21
6.2	Industry Stakeholders.....	21
6.3	The Process of public consultation.....	22
6.3.1	Earlier consultative process	22
6.3.2	Public Consultations on the Sectional Properties Regulations, 2021	22
6.4	Public Consultation Approach and Methodologies.....	23
Chapter 7: AN OVERVIEW OF THE PROPOSED SECTIONAL PROPERTIES REGULATIONS: SALIENT FEATURES		25
7.1	Design of Forms and application of the LRA	26
7.1.1	Process of application for registration of a sectional plan	27
7.1.2	Additional particulars of a sectional plans register	27
7.1.3	A Certificate of Title and a certificate of lease for sectional property.....	27
7.1.4	Execution and verification of instruments	28
7.1.5	Sub-division and consolidation	28
7.1.6	Contents of sectional plan	29
7.1.7	Conversion of sub-leases/long-term leases to units	29
7.1.8	By-laws of the corporation.....	29
7.1.9	Other salient features.....	30
Chapter 8: COST-BENEFIT ANALYSIS.....		31
8.1	Costs and Benefits Generally	31
8.2	Matrix of Benefits and Costs on the Sectional Properties Regulations.....	31
Chapter 9: CONSIDERATION OF ALTERNATIVES TO THE SECTIONAL PROPERTIES REGULATIONS		34
9.1	Option one: Maintenance of the Status Quo	34
9.2	Option two: Administrative measures.....	34
9.3	Option three: Developing the Sectional Properties Regulations, 2021	34

9.4	Impact analysis of the Options	35
9.4.1	Matrix of impact of options on key sectors	35
9.5	Preferred Option	40
Chapter 10: COMPLIANCE AND IMPLEMENTATION		41
Chapter 11: CONCLUSION		41
11.1	The Regulatory-Making Authority and the legal mandate:	41
11.2	Conduct of public consultations:	41
11.3	Effect on other existing legislation:	42
11.4	Clarity, consistency and coherence:	42
11.5	Recommendation:	42
ANNEXURES		42
The Sectional Properties Regulations		42
Stakeholder consultations matrix		42

ABBREVIATIONS

AAK	Architectural Association of Kenya
COG	Council of Governors
COVID-19	Coronavirus Disease, 2019
EARB	Estate Agents Registration Board
KBA	Kenya Bankers Association
KEPSA	Kenya Private Sector Alliance
KIP	Kenya Institute of Planners
KPDA	Kenya Private Property Developers
KRA	Kenya Revenue Authority
ISK	Institute of Surveyors of Kenya
LIMS	Land Information Management System
LRA	Land Registration Act
LSK	Law Society of Kenya
NHC	National Housing Corporation
NLC	National Land Commission
NMS	Nairobi Metropolitan Service
NSSF	National Social Security Fund
RDA	Registration of Documents Act
RLA	Registered Land Act
RIA	Regulatory Impact Assessment
SIA	Statutory Instruments Act
SPA	Sectional Properties Act
VRB	Valuers Registration Board

Chapter 1: INTRODUCTION AND BACKGROUND

1.1 Introduction

1.1.1 Regulatory-Making Authority and the Legal Mandate

Section 59 of the Sectional Properties Act gives the Cabinet Secretary, Ministry of Lands and Physical Planning the power to make regulations in respect of forms to be used for the purposes of giving full implementation of the Act. These Regulations include the form of certificates of title and lease to units, the manner of registering sectional plans, prescribing the fees to be paid for any procedure or function required or permitted to be done under the Act, the practice and procedure of handling disputes internally, all matters that by the Act are required or are permitted to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

In exercise of the above powers, the Ministry has drafted the Sectional Properties Regulations, 2021. The Regulations constitute a statutory instrument which seeks to give full effect to the Sectional Properties Act, 2020.

The Ministry has now prepared this RIA and undertaken public consultations and in partial fulfilment of the requirements of the Statutory Instruments Act.

1.1.2 Requirements of the Statutory Instruments Act

The Statutory Instruments Act, No. 23 of 2013 is the legal framework governing the conduct of RIA in Kenya. Sections 6 and 7 require that if a proposed statutory instrument is likely to impose significant costs on the community or a part of the community, the regulation-making authority shall, prior to making the statutory instrument, prepare a regulatory impact statement about the instrument. The Act further sets out certain key elements that must be contained in the RIA namely:

- (a) a statement of the objectives of the proposed legislation and the reasons;
- (b) a statement explaining the effect of the proposed legislation;
- (c) a statement of other practicable means of achieving those objectives, including other regulatory as well as non-regulatory options;
- (d) an assessment of the costs and benefits of the proposed statutory rule and of any other practicable means of achieving the same objectives; and
- (e) the reasons why the other means are not appropriate.

Section 5 of the Act requires that a regulation-making authority to conduct public consultations drawing on the knowledge of persons having expertise in fields relevant to the proposed statutory instrument and ensuring that persons likely to be affected by the proposed statutory instrument are given an adequate opportunity to comment on its proposed content.

1.1.3 What is a Regulatory Impact Statement?

RIA is a systematic policy tool used to examine and measure the likely benefits, costs and effects of new or existing regulation. A RIA is an analytical report to assist decision makers. As an aid to decision making RIA includes an evaluation of possible alternative regulatory and non-regulatory approaches with the overall aim of ensuring that the final selected regulatory approach

provides the greatest net public benefit. Typically, the structure of a RIA should contain the following elements:

- (a) title of the proposal;
- (b) the objective and intended effect of the regulatory policy;
- (c) an evaluation of the policy problem;
- (d) consideration of alternative options;
- (e) assessment of all their impacts distribution;
- (f) results of public consultation;
- (g) compliance strategies, and
- (h) processes for monitoring and evaluation¹.

RIA is usually conducted before a new government regulation is introduced to provide a detailed and systematic appraisal of the potential impact of a new regulation in order to assess whether the regulation is likely to achieve the desired objectives. RIA promotes evidence-based policy-making as new regulations typically lead to numerous impacts that are often difficult to foresee.

From a societal viewpoint, RIA should confirm whether or not a proposed regulation is welfare-enhancing, in that, the benefits will surpass costs. RIA therefore has objectives of improving understanding of the real-world impact of regulatory action, including both the benefits and the costs of action, integrating multiple policy objectives, improving transparency and consultation; and enhancing governmental accountability.

¹ Regulatory Policy Division Directorate for Public Governance and Territorial Development: Building an Institutional Framework for Regulatory Impact Analysis (RIA): Guidance for Policy Makers. OECD, 2008

Chapter 2: OBJECTS OF THE SECTIONAL PROPERTIES REGULATIONS, 2021

2.1 General Objective

The objective of the Sectional Properties Regulations, 2021 are to give full effect to the Sectional Properties Act, 2020.

2.2 Specific Objectives

Specifically, the Regulations seek to:

1. Simplify the process of registration of sectional properties and create an enabling environment for investors and property owners.
2. Guarantee rights of property owners by conferring exclusive rights to unit owners.
3. Respond to the emerging market needs including the growing demand for affordable housing, mixed use and master-planned communities as well as efficient mortgage transactions.
4. Enhance revenue collection since each unit will be assessed separately for purposes of payment of ground rent and rates and create direct accountability of unit owners to the relevant authorities.
5. Provide for the closure of the mother title or head lease to prevent further dealings with a view to protect the rights of unit owners.
6. Provide for a mechanism of defining each owner's interest in the property or unit by way of georeferencing, i.e. assigning each unit a unique identification
7. Provide for a mechanism of apportioning the common property to each unit owner according to their respective unit factor in the property.
8. Establish the Corporation as a special management vehicle of the property on behalf of the unit owners.
9. Align the registration of sectional properties to the provisions of Article 68 (a) & (b) of the Constitution.

Chapter 3: BACKGROUND AND CONTEXT

3.1 Land reforms in Kenya

Article 68 (a) and (b) of the Constitution requires Parliament to revise, consolidate and rationalize existing sectoral land laws in conformity with the principles of land policy. Land reforms in Kenya have been taking place over the last couple of years. These reforms have seen the enactment of various laws including the Land Act, 2012, the Land Registration Act, 2012 and, the Community Land Act, 2016. The enactment of these laws also culminated in the repeal of several other laws as shown elsewhere in this report.

The Sectional Properties Act, 1987 was repealed by the new Sectional Properties Act, 2020 owing to the difficulty faced in its implementation. The following were the challenges:

- (a) The repealed Act only applied to properties registered under the RLA (repealed) which then meant that a property registered under a different registration regime had to be converted to RLA leading to lengthy and complex registration processes;
- (b) The repealed Act did not provide for ownership of common property in proportionate shares;
- (c) The payment of rent and rates by unit owners was corporately paid through the holder of the mother title thus leading to delays in dealings in the units;
- (d) There was lack of clarity on the registration of the corporation; and
- (e) The corporate status of the corporation was not clearly defined.

As a result of the aforesaid challenges, developers and practitioners bypassed this by opting to register units through long-term leases or sub-leases which in turn presented the following challenges:

- (a) The registration status of the mother title or head lease that remained intact and under the developer after sale of the units thus giving room to abuse and further dealings without the knowledge of the unit owners;
- (b) There was no requirement for the units to be georeferenced thus failing to uniquely identify units;
- (c) The ownership and status of the common area (stair ways, corridors, swimming pools, and boreholes) was not clearly defined;
- (d) Lack of a standardized form of the lease thus leading to registration of many forms of leases which are often complex to interpret and apply uniformly in respect of terms and conditions; and
- (e) There was lack of or minimal control of the management companies by unit owners thus not having the deserved corporate full say in matters of their property.

The new Sectional Properties Act, 2020 addressed these challenges, repealed the 1987 Act and required the Cabinet Secretary to develop Regulations to give it full effect. It is on this background that the Sectional Properties Regulations, 2021 have been developed.

3.2 Domestic context

According to Kenya Vision 2030, Kenya has an annual housing demand of 250,000 units per annum with an estimated supply of 50,000 units, culminating in a housing deficit of 2 million units, or 80% deficit. Nearly 61% of urban households live in slums and yet urbanization is growing at a rate of 4.4%, which is equivalent to 0.5 million new urban entrants every year.

The enactment of the Sectional Properties Act, 2020 is part of the many government initiatives aimed at providing accessible and adequate housing as required under Article 43 of the Constitution.

3.3 International context

Internationally, the concept of condominium (popularly known as condo) has been employed to solve land shortage in urban areas. This concept is applied in building complexes containing several units of individually owned apartments with shared facilities.

In the United States and Canada, a condominium is a collection of apartment units, town-houses, garden homes or single homes that share common property. In British Columbia condominiums are referred to as *stratas*. By owning a unit in a condominium, a person has access to the common facilities. The shared use of these facilities is legally guaranteed as part of the property. Such facilities may include hallways, a heating system, elevators, gardens, and recreational facilities.

In South Africa, the South Africa Sectional Titles Act provides for the division of buildings into sections and common property and for the acquisition of separate ownership in sections coupled with joint ownership in common property and the establishment of bodies corporate to control common property.

Regionally, Ethiopia, Uganda and Rwanda employ this concept.

Chapter 4: EVALUATION OF THE PROBLEM

On the 8th March, 2018, an Inter-Ministerial Committee to review the Sectional Properties Act, 1987 (SPA 1987) was constituted by the Cabinet Secretary, Ministry of Lands and Physical Planning.

The Committee was inter alia tasked with review of the SPA to align it with the Constitution and the new land laws as well as propose amendments geared to address the challenges faced in the implementation of the Act. The Committee identified pertinent challenges with the SPA 1987 which required its overhaul.

4.1 Identified challenges

4.1.1 Charge and Discharge

Purchasers of sectional unit under a mortgage arrangement were being partially discharged because they were considered as part-of-the whole and not recognized as stand-alone title holders.

4.1.2 Corporation vis-à-vis Management Company

Owing to the unclear legal provisions, there is a mix-up on the concept of a corporation as applied in the SPA and a management company currently being applied in the registration of long-term leases.

Although both entities serve the same purpose, of management, control and administration of the common property or common areas, there are substantial difference between the two entities. The corporation provided for under section 17(1) of the SPA, comes into existence upon the registration of a sectional plan under the name "The Owners, Sectional Plan No." and it comprises of the owners of all the units of a building or parcel to which the sectional plan relates. The SPA under section 17(5) provides that the Companies Act shall not apply to this corporation.

On the other hand, the management company, for purpose of long term leases, is registered under the Companies Act as a private company and is under the control of the developer and is governed by Memorandum and Articles of Association. The management company creates a reversionary interest in favor of the head lessor that the owner of a unit is required to renew his interest over the unit on expiry of the long term period of the leases. Under the SPA, the unit owners have absolute ownership of their unit. The Management Company is not provided for by SPA.

4.1.3 Slow uptake of the Act

The implementation of the SPA has been slow because developers have been exploiting the provisions of the Registration of Documents Act to circumvent conferring of ownership under long term leases to unit buyers. This enables the developers to continue holding outright ownership rights over the units which they have sold so as to continue leasing, renting and selling of common areas.

4.1.4 Building plans/sketch plans irregularly used as the basis of registering sectional properties

The definition of a sectional plan in the 1987 Act did not require them to be georeferenced or be prepared by a qualified surveyor and approved by Survey department. This omission allowed

registration of sectional properties based on sketch plans and building plans registered under Registration of Documents Act. The new Act rectifies this by adopting the definition of a sectional plan that requires it to be georeferenced, prepared by a surveyor and approved by the Survey department.

4.1.5 Compromised proprietary interest on sectional property

The 1987 Act did not guarantee an absolute certificate of lease or certificate of title to the owners of the sectional units. Long-term leases/sub-leases did not confer full ownership rights to unit owners because the mother title remains intact even after the sale of all units. It was therefore possible for purchasers of sectional units to hold their titles against a charged mother title or head lease without their knowledge. Sometimes purchasers of units discover too late that the reversionary interest of the head lease remained with the developer thus compromising their proprietary interest on the sectional property.

4.1.6 Non-closure of head lease on opening registers in respect to units

The SPA did not provide for the closure of head lease or mother title on registration of the sectional plan. This had led to a situation where the developer retained the head lease title to endanger the security of title held by unit owners.

4.1.7 Reversionary interest

Reversionary interest continued to be held by the developer even after selling off all the units. This state of affairs made sectional property very unattractive to would-be purchasers.

4.1.8 Title did not include proportionate share of common area

The certificate of lease or certificate of title held by the unit owner did not include a proportionate share of the common area of the sectional property. This lacuna encouraged developers to interfere with the common area as they wished to the discomfort of purchasers.

4.1.9 Dealings on registration to be done under LRA

Upon registration of a sectional plan there was no unequivocal requirement that all dealings and dispositions regarding the unit shall be conducted under the LRA as the sole land registration regime in Kenya.

4.1.10 Ground rent and rates

Ground rent and rates in respect of each unit title were not assessed separately.

4.1.11 Review of Long-Term Leases/Sub-Leases

There was no mechanism for regularizing long-term leases/sub-leases irregularly registered.

Chapter 5: LEGAL AND POLICY FRAMEWORK FOR THE PROPOSED SECTIONAL PROPERTIES REGULATIONS

An evaluation of the legal and policy frameworks related to the sectional properties industry is intended to answer the question whether there is a legal basis for developing the proposed Regulations. It is also intended to bring out the context and legal environment within which the proposed Sectional Properties Regulations are being developed. Regulatory processes should be structured so that all regulatory decisions rigorously respect the principles of 'rule of law' that is, responsibility should be explicit for ensuring that all regulations are authorised by higher-level regulations and are consistent with the supreme law and treaty obligations. In addition, they should complement other legal requirements and ensure statutory harmony of the entire statute book.

5.1 The National Land Policy 2009

Kenya passed its first National Land Policy in 2009. The policy aims at addressing land issues arising from the sector. The National Land Policy recognizes the need for security of tenure for all Kenyans (all socio-economic groups, women, pastoral communities, informal settlement residents and other marginalized groups).

The overall objective of the National Land Policy is to secure rights over land and provide for sustainable growth, investment and the reduction of poverty in line with the Government's overall development objectives. More specifically the policy provides for:

- (a) The right of all citizens with the opportunity to access and beneficially occupy and use land.
- (b) An economically, socially equitable and environmentally sustainable allocation and use of land.
- (c) The efficient, effective and economical operation of the land market.
- (d) An efficient and effective utilization of land and land-based resources.
- (e) Efficient and transparent land dispute resolution mechanisms.

The policy acknowledges that inefficient and time consuming land information systems have complicated planning, zoning and overall management of land. The Policy therefore requires Government to prepare and implement national guidelines to improve the quality and quantity of land information through computerization at both national and local levels. This will cover all aspects such as standards, geo-referencing, pre-requisites for Land Information Management System (LIMS), security, intellectual property rights and land information dissemination and pricing. The Government is also required to Computerize land records and facilitate access to land information.

The enactment of the Sectional Properties Act therefore is an actualization of the aspirations of the policy and the Constitution in its quest to give as many citizens as possible access to land by enabling optimum use of land through sectional properties. Through the Sectional Properties Act, many have a secure mode of owning a piece of a building or development where all can share common facilities.

5.1.2 The Constitution of Kenya

5.1.2.1 Housing as a Human Rights Issue under the Constitution

Article 43 of the Constitution provides that every person has the right to accessible and adequate housing, and to reasonable standards of sanitation. This places the responsibility of facilitating accessible and adequate housing to all citizens on the State.

5.1.2.2 Division of housing Function between the two levels of government

Section 20 Part 1 of the Fourth Schedule to the Constitution declares that the Housing Policy shall be functions of the national government while section 8 Part 2 of the Schedule also provides that County Planning and Development including housing shall be functions of the county governments.

5.1.2.3 Principles of land policy

Article 60 of the Constitution provides that land in Kenya shall be held, used and managed in a manner that is equitable, efficient, productive and sustainable, and in accordance with the following principles—

- (a) equitable access to land;
- (b) security of land rights;
- (c) sustainable and productive management of land resources;
- (d) transparent and cost effective administration of land;
- (e) sound conservation and protection of ecologically sensitive areas;
- (f) elimination of gender discrimination in law, customs and practices related to land and property in land; and
- (g) encouragement of communities to settle land disputes through recognized local community initiatives consistent with this Constitution.

Chapter Five of the Constitution provides broadly on the management of land and environment in Kenya. Article 68 in particular requires Parliament to revise, consolidate and rationalize existing land laws; revise sectoral land use laws in accordance with the principles and enact legislation to give effect to the constitutional provisions.

5.1.3 Legal Framework on Land Reforms in Kenya

The latest phase of Land Reforms in Kenya took place immediately after the promulgation of the Constitution and saw the enactment of the following laws:

5.1.3.1 Land Act, 2012:

This Act to revised, consolidated and rationalized all land laws. It provided for sustainable administration and management of land. It repealed the Wayleaves Act (Cap. 292), the Land Acquisition Act (Cap. 295) and amended the Agriculture Act, (Cap 318).

5.1.3.2 Land Registration Act, 2012:

This Act revised, consolidated and rationalized the registration of titles to land and repealed the Indian Transfer of Property Act, 1882, the Government Lands Act (Cap. 280), the Registration of

Titles Act (Cap. 281), the Land Titles Act (Cap. 282) and the Registered Land Act (Cap. 300). The Act provides for detailed land registration procedures and consolidated all five existing registration systems into one. To give it full effect, the Act is supported by the Land Registration (General) Regulations, 2017, the Land Registration (Registration Units) Order 2017, Land Registration (Electronic Transactions) Regulations 2020, the Survey (Electronic Cadastre Transactions) Regulations 2020.

Despite these robust legal frameworks being in place, land registries in Kenya have continued operating under the transitional provisions and issuing titles under the repealed statutes.

Currently, the Ministry has begun the conversion process by applying the Land Registration (Registration units) Order, 2017. The conversion will see land registers maintained under the repealed Land Acts being closed and the particulars in these registers getting migrated to the new land register established under section 7 of the Land Registration Act by operation of law. This Register is maintained in both manual and electronic forms. Land titles issued under the repealed Land Acts will be phased out and replaced by the new generational titles issued under the Land Registration Act.

5.1.3.3 Community Land Act, 2016

The Community Land Act provides for the recognition, protection and registration of community land rights; management and administration of community land. It also provides for the role of county governments in relation to unregistered community land. The Act repealed the Land (Group Representatives) Act, (Cap. 287) and the Trust Lands Act, (Cap. 288). This Act provides for the procedure for adjudication and registration of community land interests including a community land register, registry and a designated registrar to handle dealings in community land.

5.1.3.4 National Land Commission Act, 2012

This Act provides for the functions and powers of the National Land Commission and gives effect to the objects and principles of devolved governance in land management and administration.

5.1.3.5 Housing Act, (Cap 117)

This Act provides for loans and grants of public moneys for the construction of dwellings and establishes the National Housing Development Fund and a housing Board. It is under this Act that the Civil Servants (Housing Scheme Fund) Regulations, 2004 were issued. The Scheme established a Fund whose objective and purpose is to provide housing loan facilities to civil servants for the purposes of either purchasing or constructing a residential house and developing housing units for sale and for rental by civil servants. The Scheme is currently being implemented.

The Housing Act is also currently under review to align it with the Constitution, the Kenya Vision 2030 and the National Housing Policy for Kenya.

5.1.3.6 Physical and Land Use Planning Act, 2019

This Act provides for planning, use, regulation and development of land. With regard to development control, the Act seeks:

- i) to ensure orderly physical and land use development;
- ii) to ensure optimal land use;
- iii) to ensure the proper execution and implementation of approved physical and land use development plans;
- iv) to protect and conserve the environment;
- v) to promote public safety and health;
- vi) to promote public participation in physical and land use development decision-making;
- vii) to ensure orderly and planned building development, planning, design, construction, operation and maintenance; and
- viii) to promote the safeguarding of national security.

The Act further provides that where the development involves the erection of a building, the county government will consider the following—

- i) the use of the building;
- ii) the sitting of the building within the plot;
- iii) the elevations of the building, plinth area, canopies and height of buildings;
- iv) the design, shape, civic design and facade and appearance of the building;
- v) the set back and the building line;
- vi) access to and parking on land which the building is to be erected;
- vii) loading bay;
- viii) density;
- ix) plot coverage;
- x) provision for rainwater harvesting facilities and water storage tanks in every building;
- xi) landscaping;
- xii) ventilation and lighting;
- xiii) infrastructure adequacy;
- xiv) environmental, health and cultural considerations; and
- xv) any other matter that a county government considers necessary for purposes of planning.

The Act further provides that where building plans submitted to a county government do not meet the required standard, a county government shall communicate the areas of improvement to the applicant who shall amend the buildings plans or drawings accordingly and resubmit to the county government.

The building plans or drawings to be submitted include:

- (a) development plan and drawings;
- (b) architectural drawings and specifications;
- (c) civil and structural engineer's drawings and specifications;
- (d) electrical engineer's drawings and specifications; and
- (e) mechanical and plumbing drawings and specifications

The Act vests the power to undertake development control and grant development permission to the county governments which have the power within their areas of jurisdiction to—

- (a) prohibit or control the use and development of land and buildings in the interests of proper and orderly development of its area;
- (b) control or prohibit the subdivision of land;
- (c) consider and approve all development applications and grant all development permissions;
- (d) ensure the proper execution and implementation of approved physical and land use development plans;
- (e) formulate by-laws to regulate zoning in respect of use and density of development;
- (f) reserve and maintain all the land planned for open spaces, parks, urban forests and green belts in accordance with the approved physical and land use development plans; and
- (g) consider and determine development planning applications made in respect of land adjoining or within reasonable vicinity of safeguarding areas.

Other key features of the Act include the following:

- (a) It is illegal for a person to carry out development within a county without a development permission granted by the respective county executive committee member.
- (b) A development permission may be revoked if the applicant contravenes any provision of the Act or conditions imposed on it.
- (c) A person applying for development permission shall also notify the public of the development project being proposed and invite the members of the public to submit any objections on the proposed development project to the relevant county executive committee member for consideration.
- (d) A person applying for development permission shall ensure that any documents, plans and particulars that are provided to the respective county executive committee member while applying for development permission have been prepared by the relevant qualified, registered and licensed professionals.
- (e) Before issuance of the development permission, the county executive committee member shall give a copy of the application to the relevant authorities or agencies to review and comment on all relevant matters including land survey, roads and transport, agriculture and livestock, health, public works and utilities, environment and natural resources, urban development, national security in respect of land adjoining or within reasonable vicinity of safeguarding areas and any other relevant authority.
- (f) When considering an application for development permission, a county executive committee member shall take into consideration —

- i) the relevant approved national, county, local, city, urban, town and special areas plans;
- ii) provision of community facilities, environmental, and other social amenities in the area where development permission is being sought;
- iii) comments made on the application for development permission by other relevant authorities in the area where development permission is being sought;
- iv) comments made by the members of the public on the application for development permission made by the person seeking to undertake development in a certain area;
- v) the Survey Act; and
- vi) in the case of a leasehold property, any special conditions stipulated in the lease.

5.1.3.7 Sectional Properties Act, 2020

This is the parent Act upon which the Sectional Properties Regulations, 2021 under consideration are based. The Sectional Properties Act, 2020 provides for division of buildings into units to be owned by individual proprietors and common property to be owned by proprietors of the units as tenants in common and to provide for the use and management of the units and common property.

The Act repealed the Sectional Properties Act, 1987 and made provision for the following matters:

1. **Sectional plan**-All sectional units must be registered based on a registered Sectional Plan. The process is ring-fenced against an earlier abuse where units were registered based on sketch plans or building plans. Under the new regime, registration of each unit in a sectional property must be premised on a registered sectional plan prepared by a surveyor and authenticated by the Authority responsible for survey. In the registered sectional plan, each registrable interest in the form of a unit is clearly delineated and shown by coordinates.
2. **Closure of the mother title or head lease**-On registration of the Sectional plan, the mother title or head lease is closed and a register of units opened for issuance of individual certificates of titles or certificates of leases to respective new unit owners. Unsold units are registered in the name of the developer. The titles confer absolute ownership to the unit owners who can deal or transact without seeking any consent from the developer as then was the practice.
3. **Reversionary Interest**- As opposed to the past practice where the developer retained the mother title or head lease, after sale of units and therefore reserved the right to exercise reversionary interest upon expiry of lease, this Act cures this anomaly by granting unit owners the right to renew the term of their leases which they corporately exercise through the corporation upon expiry.
4. **Title to include proportionate interest in common area**-The certificate of lease or certificate of title held by any unit owner shall include the proportionate share of the common area of the sectional property. This prevents subsequent interference with the common area as has happened in the past where developers had the latitude to come back and interfere

- with the common area to the detriment and discomfort of unit owners. In this respect unit owners in a sectional property are protected from this vice.
5. **One registration regime under the Land Registration Act-**When the register to each unit in a registered sectional plan is opened, all dealings and dispositions regarding the unit shall be conducted under the Land Registration Act. This is meant to streamline land registration which can only be done under Land Registration Act as a sole land registration regime in Kenya.
 6. **Buyers on loan under Mortgage schemes-** as opposed to the past where a unit owner purchasing his or her property on loan under a mortgage scheme could get a partial discharge from a financial institution upon completion of payment of the loan, this Act reforms this practice by allowing such a purchaser to get fully discharged on completion of payment of the loan. Unit owners are therefore treated individually and not corporately as happened in the past.
 7. **Ground rent and rates-** as opposed in the past where Ground rent and rates in respect of the sectional property were paid corporately, the Sectional Properties Act reforms this process by apportioning rent and rates to be borne by each individual unit owner. This way, an individual unit owner has the latitude to deal or transact in his or her property without the unnecessary hindrance hitherto occasioned by vices connected to corporate compliance to payment of rent and rates.
 8. **Review of Long-Term Leases/Sub-Leases through conversion process-**The Sectional Properties Act has appreciated the existence of irregular long-term leases/subleases issued under the repealed Act. In this respect, the Act has provided for a mechanism to regularize these leases. All such irregular long-term leases/sub-leases shall be reviewed to be in conformity with the Act. On review, stamp duty shall not be demanded in respect of properties under review.
 9. **The Corporation-**Before enactment of this Act, the legal status of the corporation was not clearly spelt out thus leading to developers exploiting this lacuna whereby management companies or corporations were registered under the companies Act thus defeating the intent and purpose of sectional ownership. In this respect, this Act reforms this practice by specifically making the Sectional Properties Act to be the sole registration regime of corporations. The certificate of registration of a corporation automatically issues upon registration of the respective sectional plan. This enables the corporation to attain the corporate status including opening a bank account and do other roles capable of being performed by a legal entity.
 10. **Corporation to Manage Property and Resolve Disputes-** The Act vests management of the sectional property with the corporation through a property manager or any other person unit owners may deem fit. In addition, the Bill gives the corporation powers to resolve disputes by constituting a Dispute Resolution Committee to hear disputes arising within the sectional property on need basis.

Chapter 6: PUBLIC CONSULTATIONS

An evaluation of the public consultation process is necessary to ascertain whether all interested parties had the opportunity to present their views. Regulations should be developed in an open and transparent fashion, with appropriate procedures for effective and timely input from interested parties such as affected businesses, interest groups, professional bodies and other government ministries, departments and agencies.

6.1 Legal requirements relating to public participation and consultation

Participation of the people, inclusivity, transparency and accountability are a constitutional requirements whenever the State or public officer applies the Constitution, enacts any law or makes or implements a public policy². This requirement is premised on the sovereignty principle³ which vests all sovereign power to the people of Kenya. This power entitles the people to unfettered access to the process of making public decisions through their involvement.

Further, the objects of devolution⁴ give powers of self-governance to the people and enhance their participation in the exercise of the powers of the State and in making decisions affecting them and recognize the rights of communities to manage their own affairs and to further their development. Finally, the values and principles of public service⁵ requires the involvement of the people in the process of policymaking and part, transparency and provision to the public of timely and accurate information.

With regard to the subsidiary legislation making process, the Statutory Instruments Act requires that the regulatory making authority shall undertake public consultations before making statutory instruments (Regulations), and particularly, where the proposed Regulations are likely to have a direct or a substantial indirect effect on business or restrict competition. The Act provides that in determining whether any consultation that was undertaken is appropriate, the regulation making authority shall have regard to all relevant matters, including the extent to which the consultation:

- (a) drew on the knowledge of persons having expertise in fields relevant to the proposed statutory instrument; and
- (b) ensured that persons likely to be affected by the proposed statutory instrument had an adequate opportunity to comment on its proposed content.

The Statutory Instruments Act further requires that the persons to be consulted should either directly or by advertisement through representative organizations be invited to make submissions by a specified date, which should not be lesser than 14 days or be invited to participate in public hearings concerning the proposed instrument.

6.2 Industry Stakeholders

The following stakeholders were identified for purposes of developing the Sectional Properties Regulations:

1. Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works
2. Ministry of Lands and Physical Planning
3. The National Land Commission
4. The County Governments through Council of Governors (CoG)

² Article 10 of the Constitution

³ Article 1 of the Constitution

⁴ Article 174(c) of the Constitution

⁵ Article 232 (1) of the Constitution

5. Law Society of Kenya (LSK)
6. Institute of Surveyors of Kenya (ISK),
7. Kenya Private Sector Alliance (KEPSA),
8. Kenya Private Property Developers (KPDA),
9. Estate Agents Registration Board (EARB),
10. Valuers Registration Board (VRB),
11. Kenya Institute of Planners (KIP),
12. Kenya Bankers Association (KBA),
13. Architectural Association of Kenya,
14. Kenya Vision 2030,
15. Association of Lands Surveyors,
16. National Housing Corporation (NHC),
17. National Social Security Fund (NSSF)
18. Council of Governors
19. Nairobi Metropolitan Service (NMS)
20. Kenya Revenue Authority (KRA)
21. All members of the public

6.3 The Process of public consultation

6.3.1 Earlier consultative process

When the draft Bill repealing the 1987 SPA was being developed two years ago, there was an elaborate public consultation process whose reports and comments have informed the contents of these Regulations.

The Committee visited the following regions on the dates shown:

- a) Nairobi, covering Nairobi, Kiambu, Kajiado, Nakuru and Machakos counties on 17th April 2018 at Kenya Bankers;
- b) Kisumu, covering Kisii, Nyamira, Migori, Siaya, HomaBay, Kakamega, and Bungoma counties on 24th April, 2018 at Sunset Hotel;
- c) Eldoret, covering Kericho, Uasin Gishu, TransNzoia, Nandi, Elgeyo Marakwet and Baringo counties on 26th April, 2018 at Sirikwa Hotel; and
- d) Mombasa, covering Mombasa, Kwale, Lamu, Tana River, Taita Taveta and Kilifi counties on 3rd May, 2018 at Mombasa Beach Hotel.

6.3.2 Public Consultations on the Sectional Properties Regulations, 2021

On the 12th March, 2021, the Cabinet Secretary for Lands and Physical Planning appointed the Taskforce on Formulation of the Sectional Properties Regulations vide Gazette Notice No. 2217 of 2021. On the 21st May, 2021, the Cabinet Secretary extended the term of the Taskforce for 45 days with effect from the 12th May, 2021.

The mandate of the Taskforce was to formulate Regulations to give effect to the Sectional Properties Act, 2020. The membership of the Taskforce comprised of experts drawn from both public and private sectors. It has representatives from the Ministry of Lands and Physical Planning, the Attorney General, the National Land Commission, the State Department of Housing and Urban Development, the Council of Governors, the Kenya Vision 2030 and the Kenya Law Reform Commission. The private sector was represented by the Law Society of Kenya, the Association of Licensed Land Surveyors of Kenya, The Institute of Surveyors of Kenya, The Kenya Private Developers Association, and the Estate Agents Registration Board.

Pursuant to section 5 of the Statutory Instruments Act,⁶ the Taskforce identified the above specified stakeholders whom it engaged in consultative process. These include the main professional and specialist institutions and individuals who will be directly or indirectly affected by the proposed statutory instruments⁷.

6.4 Public Consultation Approach and Methodologies

According to the Taskforce calendar of events, the stakeholder consultations were intended to be undertaken during the months of April to May 2021. Unfortunately, this coincided with the global pandemic of the COVID-19 disease, which has seen governments across the world employ certain health protocols aimed at minimizing infections. During this period, there are movement restrictions, prohibition of public or social gathering, maintaining social distance and a requirement for people offering non-essential services to work from their homes. It was therefore neither lawful nor practical to convene physical stakeholder consultative sessions.

This therefore forced the taskforce to adopt an approach and methodology that was conducive to the circumstances of the day. The taskforce opted to adopt the following methodology:

1. Post draft copies of the draft Sectional Properties Regulations, 2021 and the Regulatory Impact Assessment onto the Ministry's website and publish copies in wide circulating print media inviting representations generally and specifically from the identified stakeholders;
2. Notify the stakeholders of the ongoing process and invite them to require their submissions on the draft Regulations within a specified reasonable period;
3. Publish a notice of the intended stakeholder engagement in the Kenya Gazette;
4. Post an advertisement in a newspaper with national circulation inviting any person or institution to make their submissions within a specified date and directing them on where they can get copies of the Regulations;
5. Supplement with the advertisement other electronic media;
6. Hold virtual/online meetings with select stakeholders where possible.

⁶ Institutions from where there can be drawn knowledge of persons having expertise in fields relevant to the proposed statutory instrument and persons likely to be affected by the proposed statutory instrument.

⁷ See list of consulted institutions below

OPA ON THE SECTIONAL PROPERTIES REGULATIONS, 2021

Based on the above approach, a total of 6 virtual meetings were held between the Taskforce and key stakeholders. The following is the full list of persons and institutions consulted between May and June, 2020.

No	Targeted Stakeholders	Date	No of participants
1	<ol style="list-style-type: none"> 1. Law Society of Kenya 2. Association of Licensed Land Surveyors of Kenya 	28 th April 2021	128
2	<ol style="list-style-type: none"> 3. Institution Of Surveyors of Kenya (ISK) 4. Institution Of Quantity Surveyors Of Kenya (IQSK) 5. Institution Of Engineers Of Kenya (IEK) 6. Association Of Construction Managers Of Kenya (ACMIK) 7. Kenya Private Sector Alliance (KEPSA) 8. Kenya Property Developers Association (KPPDA) 9. Estate Agents Registration Board (EARB) 10. Valuers Registration Board (VRB), Kenya 11. Institute Of Planners (KIP) 12. Town And County Planners Association Of Kenya (TCPAK) 13. Kenya Bankers Association (KBA) 14. Architectural Association Of Kenya (AAK) 15. Private Developers, Saccos and Housing Co-operatives 	29 th April 2021	245
3	Council of Governors, County Governments	3 rd May 2021	52
4	<ol style="list-style-type: none"> 1. Kenya Revenue Authority, 2. Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works - State Department of Housing and Urban Development, 3. National Construction Authority, 4. NHC and 5. NSSF 	4 th May 2021	28
5	<p>CSO's</p> <ol style="list-style-type: none"> 1. Kenya Land Alliance 2. Pamoja Trust 3. We Effect 4. Action Aid 5. Dorothy Park Home owners 6. Nakuru County Public Opinion Consultative Initiative 7. Taita Taveta Human Rights Watch 8. ISK 	5 th May 2021	41
6	<ol style="list-style-type: none"> 1. Ministry of Lands and Physical Planning 2. National Land Commission 3. Kenya Vision 2030 	7 th May 2021	81

In addition to the above, the Ministry received written representations from the following persons or institutions:

1. Law society of Kenya (LSK)
2. Erdeman property limited
3. Association of Licensed Land Surveyors of Kenya (ALLSK)
4. Kenya Institute of Planners (KIP)
5. State Department of Housing and Urban Development (SDHUD)
6. Safaricom Investment Co-operative Society limited,
7. Kenya Institute of Planners (KIP)
8. Nancy Migwi-Waweru Advocates
9. Nazir Madatali
10. Philip Talam
11. Toshie Mbaya
12. Borowo & Kipsigis Self Help Group
13. Institution of Surveyors of Kenya (ISK)
14. J A. Gardner
15. Dorothy's Park Residents Association
16. The Kenya Alliance Of Resident Associations (KARA)
17. Jasper N mwenda (Department of Geospatial and Space Technology, University of Nairobi)
18. Moses Mugendi
19. Kenya Revenue Authority
20. Kenya Bankers Association

Attached to the report is a detailed matrix indicating representations received from the stakeholders, their comments and action taken in revising the Regulations.

Chapter 7: AN OVERVIEW OF THE PROPOSED SECTIONAL PROPERTIES REGULATIONS: SALIENT FEATURES

This overview is intended to assess whether the proposed regulation is clear, consistent, comprehensible and comprehensive enough to address the identified problem. The regulations

should be understood by likely users, and to that end the Regulator should take steps to ensure that the text and structure of rules are as clear as possible.

The structure of the proposed Sectional Properties Regulations, 2021 is as follows:

7.1 Design of Forms and application of the LRA

The registration of sectional properties like any other land registration process will be undertaken under the Land Registration Act and the Regulations made thereunder. This includes the Forms designed under the LRA Regulations. In addition, the following new Forms have been developed under these Regulations:

1. Rent Apportionment Form
2. Application for Endorsement by County Government
3. Schedule of Unit Factors
4. Derivation of Unit Factors
5. Legend
6. Application for Registration of Corporation
7. Sectional Plan Register(freehold)
8. Sectional Plan Register(leasehold)
9. Certificate Of Registration
10. Unit Register (Freehold)
11. Unit Register (Leasehold)
12. Certificate Of Title For Sectional Property
13. Certificate Of Lease For Sectional Property
14. Consent of Unit Owner(s) for Sub-Division or Consolidation of a Sectional Plan
15. Application For Conversion of Sub-Leases/Long-Term Leases
16. Intention to Rent Notice to Corporation
17. Notice of Tenancy/End of Tenancy to Corporation
18. Corporation Notice to Unit Owner
19. Tenant in Breach of By-Laws
20. Vacation Notice to Tenant By Corporation
21. Public Notice on the Termination of Sectional Status
22. Notice of Change of Address of Board
23. Notice of Change of Board
24. Notice of Change of Board Membership on Exit of Unit Owner

7.1.1 Process of application for registration of a sectional plan

An application for registration of a sectional plan shall be using the relevant Form under the Land Registration (General) Regulations, 2017 and shall be done simultaneously with an application for registration of the corporation. The Registrar shall proceed with the application in the manner provided under the LRA. The particulars to be captured for purposes of registering the corporation include a list of the persons who are the owners of the units in the parcel which shall be updated from time to time on need basis capturing name, contact, address and signature. Upon registration of the corporation the Registrar shall issue a certificate in the prescribed form.

7.1.2 Additional particulars of a sectional plans register

There will be a sectional plans register, a unit register (freehold) and a unit register (leasehold). The Registrar shall also keep a register of corporations. The register shall contain the property section, the proprietorship section and the encumbrance section.

The property section of a sectional unit register for a lease shall contain the following additional details:

- i) a section plan number;
- ii) a unique suffix number to the section unit;
- iii) the approximate floor area of the section unit; and
- iv) approximate area in case of lease of part of the parcel.

The proprietorship section of a register shall contain a description of a proprietor of a parcel specifying:

- i) the name of a proprietor including the identification details in the case of individual or, if the proprietor is a corporate entity, the registration number;
- ii) the gender of a proprietor, where applicable;
- iii) the postal and physical address of the proprietor for service in Kenya;
- iv) the telephone numbers and email address of a proprietor;
- v) the personal identification number of a proprietor;
- vi) the nationality of the proprietor;
- vii) any inhibitions, cautions or restrictions affecting the proprietor's right of disposition and which are required to be noted under the Act; and
- viii) such other matters as may be required to be entered under the Act or any other law.

7.1.3 A Certificate of Title and a certificate of lease for sectional property

This shall capture the following particulars:

- i) Title Number
- ii) Unit Number
- iii) Shares in the common property
- iv) Approximate Unit Floor Area
- v) User details
- vi) Sectional Plan Number

- vii) Nature of title: freehold or leasehold
- viii) Date opened
- ix) Easement
- x) Name of proprietor
- xi) Encumbrance details including the name and address for service of the encumbrancer, dealings with the encumbrancer including matters affecting its priority capable of being noted on the register.

For purposes of allocating shares to the common property, there shall be assigned a unit factor so that the total of the unit factors for all units in a parcel is equal to ten thousand.

7.1.4 Execution and verification of instruments

Verification of instruments shall be by the following persons:

Instrument executed in Kenya—

- i) a person qualified to practice as an advocate;
- ii) a Judge, Magistrate or Kadhi;
- iii) the Registrar or the Deputy Registrar of the High Court;
- iv) a Registrar; or
- v) a Superintendent of Prisons.

Instruments executed in foreign countries —

- i) a notary public;
- ii) a Kenyan High Commissioner;
- iii) a Kenyan Ambassador; or
a Kenyan Head of Consulate.

7.1.5 Sub-division and consolidation

Sub-division and consolidation of sectional units shall proceed in the same manner, with necessary modifications, as registering a new sectional unit.

On the registration of a sectional plan of subdivision or consolidation, units comprising the sectional plan are subject to the burden and have the benefit of any easements affecting those units in the original sectional plan which are included in the sectional plan of subdivision or consolidation.

Before registering a proposed sectional plan of sub-division or consolidation, the Registrar shall amend, the original sectional plan in accordance with the manner endorsed by a surveyor.

A sub-division or consolidation plan which affects incidental rights of any other unit owner shall not be registered unless the affected owner gives consent.

An endorsement certificate is provided.

7.1.6 Contents of sectional plan

In addition to the following details required under section 9 of the Act, it shall contain a "Site and Building Location Plan" and "Floor Plan" drawn to the scale required by the Survey Regulations:

- i) be described in the heading of the plan as a sectional plan;
- ii) be geo-referenced;
- iii) bear a statement containing those particulars as may be necessary to identify the title to the parcel;
- iv) include a drawing illustrating the units and distinguishing the units by numbers or other symbols; (e) show the approximate floor area of each unit;
- v) have endorsed on it a schedule specifying in whole numbers the unit factor for each unit in the parcel;
- vi) be signed by the proprietor;
- vii) be signed and sealed by the office or authority responsible for survey;
- viii) have endorsed on it the address at which documents may be served on the Corporation concerned in accordance with section 54; and
- ix) clearly indicate the user of the unit.

A floor plan of a sectional plan presented for registration shall illustrate the units which shall be numbered consecutively commencing with unit 1 and terminating with a unit number to correspond to the total number of units comprised in the parcel. Where a unit consists of more than one part, each part shall be numbered as part of that unit.

Upon registration of a sub-division of consolidation, the original unit shall be cancelled in the existing sectional plan and the new unit shall be numbered consecutively, the lowest new unit number being greater by one than the highest number in the existing sectional plan.

7.1.7 Conversion of sub-leases/long-term leases to units

Long term sub-leases that are intended to confer ownership of an apartment, flat, maisonette, town house or an office that were registered before the commencement of the Act shall be reviewed and registered under the Act if the property comprised is properly geo-referenced and approved by the statutory body responsible for the survey of land.

An applicant shall submit a sectional plan for registration to the registrar within 2 years from the date of the SPA, 2020.

The registrar shall register the sectional plan and issue the owners of the unit with certificate of title/lease

7.1.8 By-laws of the corporation

The Regulations include a set of model by-laws which would be applicable before a corporation customizes its own with the model provided. The by-laws provide for:

- i) duties of a unit owner
- ii) Powers of the corporation
- iii) Election of the Board of the corporation
- iv) Eligibility to sit on the Board

- v) Voting
- vi) Term of office
- vii) Removal of a member of the Board.
- viii) Vacating of the office of a member of the Board
- ix) Vacancy
- x) Officers of the Corporation.
- xi) Majority vote and quorum of the Board.
- xii) Written resolution.
- xiii) Seal of the corporation.
- xiv) Signing authority.
- xv) Duties and powers of the board
- xvi) Procedure at meeting of the board.
- xvii) Meetings other than an annual general meeting
- xviii) Notice and quorum at meetings of the corporation
- xix) Procedure at meeting of the corporation
- xx) Capital replacement reserve fund
- xxi) Restrictions in use
- xxii) Amendment of by-laws

7.1.9 Other salient features

There are provisions relating to:

- (a) termination of sectional status of a building;
- (b) extension/renewal of lease;
- (c) submission of electronic forms;
- (d) fees payable for sectional properties (same fees prescribed by the Registration of Titles (Fees) Rules, 2010, the Land Titles (Survey Fees) Rules, the Land Titles (Registration Fees) Rules, 1994 and any other applicable fees; and
- (e) provisions relating to power of attorney.

Chapter 8: COST-BENEFIT ANALYSIS

8.1 Costs and Benefits Generally

The analysis of the expected costs and benefits of the proposed Sectional Properties Regulations contained in this Part seeks to answer the question whether the benefits justify the costs. This would enable the Regulator to estimate the total expected cost and benefit of every aspect of the Regulations. This will in turn inform the decision makers since the cost of government action should be justified by its benefits before action is taken.

Table1:

8.2 Matrix of Benefits and Costs on the Sectional Properties Regulations

Problem	Proposed Reform	Benefits	Cost
Use of building plans and sketch plans which were not georeferenced as the basis of registering sectional properties	Requirement that Sectional Plans must be georeferenced, prepared by a surveyor and approved by the survey department	Enables geo-positioning and unique identification of units	Cost of preparation of sectional plan Statutory charges are nominal
Compromised proprietary interest on sectional property	a) Provides for regularization of long-term leases/sub-leases that were issued in respect of parcels and units that were not georeferenced. b) A certificate of lease or certificate of title is capable of conferring exclusive ownership rights to unit owners because the mother title is closed	a) Geo-referenced units b) Guarantees complete certificate of lease or certificate of title to the owners of the sectional units.	Cost of preparation of sectional plan

Problem	Proposed Reform	Benefits	Cost
Reversionary interest remains with the developer	Reversionary interest goes to the owners of sectional units in proportionate shares since the head lease/mother title is closed	Owner of sectional unit is capable of renewing or extending lease term as Government issues titles directly to unit owners. Upon expiry of lease the owners of units may through the corporation apply for renewal/extension	Minimal statutory cost
Unclear ownership model relating to common property. Ownership of the common areas is not clearly defined and this lacuna encouraged developers to alienate the same to the discomfort of unit owners.	The sectional title issued to the individual purchaser of a unit shall include the proportionate share of the unit owner in the common area of the sectional property	Eliminates fraud and other irregular dealings. Removes legal lacuna and enhances clarity	No cost
Failure to close the head lease leading to interference of sanctity of title of the sectional unit owners	Requirement to close the mother title or head lease upon registration of sectional plan	Cures abuses occasioned by developers charging the mother title without the consent or knowledge of unit owners	No cost
Partial discharge by banks to owners of sectional units even after servicing their mortgages	Full discharge of a charge upon payment regardless of status of the adjoining sectional units	Purchaser's title is no longer encumbered by the obligations of the corporation	No cost
Requirement for an owner of sectional	Ground rent and rates to be paid by unit	Ground rent and rates in respect of each	No cost

Problem	Proposed Reform	Benefits	Cost
property to pay rent and rates through the developer/management company	owners in respect of each sectional unit	unit title shall be assessed individually and shall be the responsibility of each individual owner	
Irregularly registered long-term leases	Provision for review and conversion to conform with section 54 (5) of the Land Registration Act	A developer, an owner, or the corporation may, apply to the registrar, initiate the review	Minimal cost
Unclear provisions relating to the formation of the corporation	Requirement that the corporation must be formed at the time the sectional plan is being registered	Eliminates practices where unit owners have had to incorporate limited liability companies	No cost

Chapter 9: CONSIDERATION OF ALTERNATIVES TO THE SECTIONAL PROPERTIES REGULATIONS

This Part considers the question whether the proposed regulation is the best form of government action. The Statutory Instruments Act requires a regulator to carry out, early in the regulatory process, an informed comparison of a variety of regulatory and non-regulatory policy measures, considering relevant issues such as costs, benefits, distributional effects and administrative requirements.

Regulation should be the last resort in realizing policy objectives. There are alternatives, which could come in handy in dealing with certain aspects of the construction industry.

The options considered under this part are the following:

9.1 Option one: Maintenance of the Status Quo

Maintaining the status quo means that no regulations will be developed and therefore the new Sectional Properties Act, 2020 will not get fully implemented. The development of the Regulations is a requirement of the Act which seeks to address the problems and challenges that have faced the sector since 1987. As enacted the Act requires these Regulations for its full implementation. Key aspects of the Regulations which may impact on the implementation of the Act include designing Forms to be used, setting out application and registration procedures, providing for the register and registry and prescribing by-laws for the corporation.

The failure to develop new regulations would also mean that the Regulations developed under the repealed Sectional Properties Act, 1987 will continue to apply. However, these Regulations are either inconsistent with the new Act or obsolete.

9.2 Option two: Administrative measures

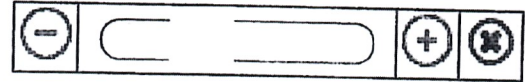
This is a non-regulatory measure which if applied, will depend on the good will of public officers to implement the provision of the new Act. Administrative measures involve issuance of directives and circulars to the various land registries and hoping that they will be implemented. Administrative measures do not have the force of law and may be challenged in court of law.

9.3 Option three: Developing the Sectional Properties Regulations, 2021

Given the shortcomings the 1987 Act, Parliament enacted the Sectional Properties Act, 2020 which largely addresses the challenges of the former law. For this new Act to be fully implemented there is need to develop the Regulations.

The proposed Regulations seek to:

- i) Design the prescribed Forms including the form of certificates of title to units;
- ii) Prescribe the manner of registering sectional plans;
- iii) Prescribe the procedure of registering a corporation
- iv) Prescribe the manner of opening and keeping the registers in respect of Sectional plans, Sectional units and corporations



**REPUBLIC OF KENYA
MINISTRY OF LANDS AND PHYSICAL PLANNING**

**PUBLIC NOTICE
THE STATUTORY INSTRUMENTS ACT
(No. 23 of 2020)
NOTIFICATION OF REGULATORY IMPACT STATEMENT**

PURSUANT to section 8 of the Statutory Instruments Act, 2013, the Cabinet Secretary for Lands and Physical Planning notifies the general public that a Regulatory Impact Statement on the proposed Sectional Properties Regulations, 2021 to effect implementation of the Sectional Properties Act, 2020 has been prepared to assess the impact of the regulations on the community and businesses.

The main objective of the proposed regulations is to facilitate the implementation of the Sectional Properties Act, 2020 which provides for division of buildings into units to be owned by individual proprietors and common property to be owned by the proprietors of the units as tenants in common. The Act also provides for the use and management of the units and common property and other connected purposes.

Given that the main objective of the Act is to give ownership of units in an apartment and high-rise buildings or even units developed in a horizontal setting albeit on one parcel of land, it is necessary to make regulations that facilitate this model of ownership and living within the framework provided by the Act. Power to make regulations is provided under Section 59 of the Act. The following is a summary of what the regulations seek to provide for:

- (a) Procedure for making application for registration of a Sectional Plan and a corporation.
- (b) The procedure for registration of sectional plans and consequent keeping of a Sectional Plans Register where all Sectional Plans will be registered.
- (c) The procedure for registration of a Corporation and the corresponding keeping of a corporation register.
- (d) Procedure for opening unit registers both for freehold and leasehold parcels based on the Registered Sectional Plan and subsequent procedure of issuing certificates of title and certificates of lease respectively.
- (e) Procedure for preparation of Sectional Plans and the provision of standard forms to guide the process.
- (f) Procedure for converting long-term leases in respect of properties or units not properly georeferenced
- (g) Prescribe fees payable under the Act.

This is therefore to request all persons likely to be affected by the proposed regulations to submit written memoranda on the proposed regulations to reach the undersigned within fourteen (14) days from the date of publication of this notice.

The draft Regulatory Impact Statement and the proposed regulations are available on the Ministry's website: <https://lands.go.ke>. The proposed regulations and the Regulatory Impact Statement are also available on request through the Ministry's email address at spreulations@gmail.com during normal working hours.

Due to the prevailing global health concerns, the Ministry also welcomes any stakeholder who would prefer virtual interaction on the subject matter to notify the Ministry through the email address given below in order for the Ministry to prepare for such meetings. The virtual meetings will be scheduled as public fora and will take place between Tuesday, 27th April and Thursday, 6th May 2021 starting from 10.00 a.m. to 4.00 p.m. to discuss the proposed Regulations and the Regulatory Impact Statement and comments received.

Please send your written comments to:

The Principal Secretary
State Department of Lands
Ministry of Lands and Physical Planning
Ardhi House, 1st Ngong Avenue
P. O. Box 30450-00100
NAIROBI

OR

Email to: spreulations@gmail.com

**THE NATIONAL ASSEMBLY
PAPERS LAID**

DATE: 02 DEC 2021 DAY: []

TABLED BY:	L.O.M
CLERK AT THE TABLE:	Kalamu

Sal
an
or
me
[]
Se
Co

Ho
in
So
for
tee
on
let
the
ch

Du
ca

We
JG
Ne

Th
Bu
the
ve

PL
1.
2.

SE
CO

- v) Prescribe the fees to be paid for any procedure or function required or permitted to be done under the Act;
- vi) Prescribe the model by-laws for the corporations;
- vii) Prescribe all matters that are required or that are necessary or convenient for carrying out or giving effect to the Act.

9.4 Impact analysis of the Options

Table 2:

9.4.1 Matrix of impact of options on key sectors

Impact on sectors	Option one: Maintaining the Status quo	Option two: Administrative measures	Option three: Developing the Sectional Properties Regulations
	This entails doing nothing and retaining the current state of affairs.	This entails putting in place administrative measures to ensure implementation of the Act.	This entails designing the Forms, prescribing the fees, manner of registration, applications to Court, by-laws for the corporations and all matters that are necessary giving effect to the Act.
Impact on Public sector	<ul style="list-style-type: none"> • Continued convoluted process of registration of sectional properties to persist. • No guarantee of rights unit owners. • Reversionary interest challenges. • Indifference to market needs including the growing demand for affordable housing, mixed use and master-planned communities as well as efficient mortgage transactions. 	<ul style="list-style-type: none"> • It is unlikely that administrative processes without the force of law will effectively address the convoluted registration process of sectional properties. 	<ul style="list-style-type: none"> • The proposed measures in the Regulations will not only address the challenges but also create an enabling environment for investors and property owners. • Registration and issuance of a sectional title premised on a registered sectional plan prepared by a surveyor will eliminate the irregular practice where titles are issued based on sketch plans or building plans. • Closure of head lease or mother title on registration of the sectional plan ensures

REGULATIONS ON SECTIONAL PROPERTIES REGULATIONS, 2021

	<ul style="list-style-type: none"> Revenue collection challenges for ground rent and rates. Non-closure of the mother title or head lease/continued mischief by property developers. Long term lease/sublease challenges in conferring ownership. 		<p>that the developer does not retain the same to endanger the security of title held by unit owners.</p>
Impact on Private sector	<ul style="list-style-type: none"> The private sector which is expected to boost the sectional property market will largely remain unaffected 	<ul style="list-style-type: none"> There is no guarantee that administrative measures will address private sector concerns on sectional property market. 	<ul style="list-style-type: none"> Addresses private sector concerns through transfer of all the rights arising from the mother title to the unit owners as opposed to the current scenario the interest lies with the developer and provides that sectional title issued to the individual purchaser of a unit shall include the proportionate share of the unit owner in the common property. Assigning the proportionate interest in the common area eliminates room for fraud or irregular dealings
Economic Impact	<ul style="list-style-type: none"> No evidence of promotion of sectional property industry 	<ul style="list-style-type: none"> No guarantee that administrative measures will expand the market or 	<ul style="list-style-type: none"> The Regulations largely promote the adoption of the sectional property industry by addressing the obtaining challenges. For instance, where a

		<p>promote adoption of the sectional property.</p>	<p>purchaser of unit buys the property under a mortgage arrangement and has finished servicing the mortgage, the purchaser shall consequently be individually fully discharged as opposed to partial discharge given by banks under the current practice. This is to avoid a situation where a purchaser's title remains encumbered despite completely discharging his obligations.</p>
<p>Social Impact</p>	<ul style="list-style-type: none"> Continued suppression in growth of sectional property markets Ownership of the common property is not clearly defined. This is a lacuna which encourages developers to interfere with the common property to the discomfort of sectional unit purchasers. 	<ul style="list-style-type: none"> Risk of unfair social and business practices. No guarantee that the challenges affecting the sectional property industry will be addressed. 	<ul style="list-style-type: none"> Promotes sectional property as a means of social access to housing. Resolves the challenges affecting adoption of sectional properties. Certificate of lease or certificate of title held by the unit owner shall include the proportionate share of the common area of the sectional property.
<p>Human Rights Impact</p>	<ul style="list-style-type: none"> Discrimination of sectional unit owners with regard to property rights/reversionary interest Discrimination in relation to discharge of charges. Sectional 	<ul style="list-style-type: none"> No guarantee that property rights of sectional unit owners will be secured. Discrimination in relation to 	<ul style="list-style-type: none"> As opposed to the past practice where the developer retained the mother title or head lease, after sale of units and therefore reserved the right to exercise reversionary interest upon

	<p>unit owners accorded partial discharge on the basis that their liabilities are joint</p> <ul style="list-style-type: none"> Discrimination related to ownership of common property. Ownership of the common property is not clearly defined. This is a lacuna which encourages developers to interfere with the common property to the discomfort of sectional unit purchasers. 	<p>discharge of charges.</p> <p>Sectional unit owners accorded partial discharge on the basis that their liabilities are joint</p> <ul style="list-style-type: none"> 	<p>expiry of lease, the new Act cures this anomaly by granting unit owners the right of reversionary interest which they corporately exercise upon expiry of the lease.</p> <ul style="list-style-type: none"> Where a purchaser of unit buys the property under a mortgage arrangement and has finished servicing the mortgage, the purchaser shall consequently be individually fully discharged as opposed to partial discharge given by banks under the current practice. This is to avoid a situation where a purchaser's title remains encumbered despite completely discharging his obligations
<p>Impact on business</p>	<ul style="list-style-type: none"> Existing mortgage problems relating to sectional properties to continue 	<ul style="list-style-type: none"> No guarantee that existing mortgage problems relating to sectional properties will be addressed 	<ul style="list-style-type: none"> The case where a purchaser's title remains encumbered despite completely discharging his obligations is addressed. A sectional unit owner who buys property under mortgage arrangement and has fully met his/her obligations, the purchaser shall individually be fully discharged as opposed to partial discharge given by banks under the current practice.

			<ul style="list-style-type: none"> • All long-term leases/sub-leases irregularly registered shall be reviewed to conform with the provisions of section 54(5) of the LRA. A developer, an owner, or the corporation may, on an application made to the registrar, initiate the review.
Impact on environment	<ul style="list-style-type: none"> • No environmental considerations. 	<ul style="list-style-type: none"> • No guarantee environmental considerations shall be taken. 	<ul style="list-style-type: none"> • Requirement for geo-referenced sectional plans means that sectional properties will conform to general physical planning and environmental requirements.
Impact on taxes	<ul style="list-style-type: none"> • No effect on tax collection 	<ul style="list-style-type: none"> • No effect on tax collection 	<ul style="list-style-type: none"> • Enhances tax collection • Ground rent and rates in respect of each unit title shall be assessed in respect of each unit and shall be the responsibility of each individual owner. This is to avoid scenarios where unit owners have to pay through the developer/management company which often led to delays/default
	<ul style="list-style-type: none"> • 	<ul style="list-style-type: none"> • 	<ul style="list-style-type: none"> • The Corporation envisaged in the Sectional Properties Act is comprised of unit owners and is responsible for the management of the sectional property. The

			Act provided clarification by specifically providing that upon registration of the sectional plan, the registrar shall issue a certificate of registration signifying registration of the corporation. This grey area has led to practices where owners have had to incorporate limited liability companies commonly called management companies under the Companies Act.
Impact on existing legal frameworks	<ul style="list-style-type: none"> The existing legal gaps will not be addressed. 	<ul style="list-style-type: none"> Regulatory concerns will remain un-addressed. 	<ul style="list-style-type: none"> Addresses all the identified gaps. Provides harmony with related legal frameworks. No further legal amendments or enactments will be required.

9.5 Preferred Option

Based on the above analysis it is clear the third option (Developing the Sectional Properties Regulations, 2021) is the preferred option. Although it is not capable of providing monetary cost of the options, it is clear that the benefits and impact of developing Sectional Properties Regulations by far outweigh any estimated cost of its implementation. The other two options have little or no impact in addressing the problem.

Chapter 10: COMPLIANCE AND IMPLEMENTATION

As different aspects of the proposed regulations are evaluated and analyzed, it is important to determine how compliance and implementation of the actual provisions will be achieved. It is the duty of the regulator to assess the adequacy of the institutional framework and other incentives through which the regulation will take effect, and design responsive implementation strategies that make the best use of them⁸.

The implementation and enforcement of the Sectional Properties Regulations will be undertaken through the existing institutional framework under the Ministry of Lands and Physical Planning.

Chapter 11: CONCLUSION

Based on the above analysis, the following matters are apparent:

- 11.1 The Regulatory-Making Authority and the legal mandate:
- i) Section 59 of the Sectional Properties Act, 2020 empowers the Cabinet Secretary to make regulations generally to give effect to the Act and in particular prescribe:
 - ii) Design the prescribed Forms including the form of certificates of title to units;
 - iii) Prescribe the manner of registering sectional plans;
 - iv) Prescribe the procedure of registering a corporation
 - v) Prescribe the manner of opening and keeping the registers in respect of Sectional plans, Sectional units and corporations
 - vi) Prescribe the fees to be paid for any procedure or function required or permitted to be done under the Act;
 - vii) Prescribe the model by-laws for the corporations; and
 - viii) Prescribe all matters that are required or that are necessary or convenient for carrying out or giving effect to the Act.

It is therefore clear that the regulatory-making authority has the requisite legal mandate to make the Regulations under considerations.

11.2 Conduct of public consultations:

Section 5 of the Statutory Instruments Act requires that a regulation-making authority to conduct public consultations and to drawing on the knowledge of persons having expertise in fields relevant to the proposed statutory instrument; and to ensure that persons likely to be affected by the proposed statutory instrument had an adequate opportunity to comment on its proposed content. This RIA is prepared in part preparation for the public consultation exercise on the draft Regulations.

It is therefore clear the public consultations are scheduled to be conducted as stipulated under the Statutory Instruments Act.

⁸ Source: OECD (1995), The 1995 Recommendation of the Council of the OECD on Improving the Quality of Government Regulation, Paris.

11.3 Effect on other existing legislation:

The draft Sectional Properties Regulations, 2021 do not propose to have any new legislation enacted or any of the existing laws to be amended. It harmonizes with other laws making their implementation more effective.

It is therefore clear that the Regulations do not conflict or have any negative effect on the existing legislation.

11.4 Clarity, consistency and coherence:

The draft Sectional Properties Regulations, 2021 as drafted are clear, consistent and comprehensible.

11.5 Recommendation:

In view of the above conclusions, it is recommended that the Sectional Properties Regulations, 2021 be adopted.

ANNEXURES

The Sectional Properties Regulations

Stakeholder consultations matrix

CORRIGENDA

IN Gazette Notice Nos. 3208 and 3209 of 2021, *amend* the proprietor's name printed as "Anthony Akelo Okula" to read "Anthony Akelo Okulo" where it appears.

IN Gazette Notice No. 1330 of 2021, *amend* the expression printed as "Cause No. 124 of 2020" to read "Cause No. E124 of 2020" and the date of death printed as "15th April, 2019" to read "5th April, 2020".

IN Gazette Notice No. 1331 of 2021, *amend* the expression printed as "Cause No. E78 of 2020" to read "Cause No. 78 of 2020".

IN Gazette Notice No. 1333 of 2021, *amend* the date of death printed as "30th July, 2020" to read "31st July, 2020".

IN Gazette Notice No. 2427 of 2021, Cause No. 74 of 2020, *amend* the deceased's name printed as "Juliet Wangu Ndegwa" to read "Juliet Wangu Ndegwa".

IN Gazette Notice No. 10492 of 2020, Cause No. 289 of 2020, *amend* the deceased's name printed as "Benedicto Okwako Okumu" to read "Benedicto Owako Okumu".

IN Gazette Notice No. 12228 of 2012, *amend* the expression printed as "Cause No. 421 of 2012" to read "Cause No. 422 of 2012" and the deceased's name printed as "Jairo Macharia Githingi" to read "Jairo Macharia Gathithi".

IN Gazette Notice No. 2037 of 2021, Cause No. E11 of 2021, *amend* the petitioner's name printed as "George Otieno Alaka" to read "Peter Oriema Gor".

GAZETTE NOTICE NO. 3660

THE STATUTORY INSTRUMENTS ACT

(No. 23 of 2013)

REGULATORY IMPACT STATEMENT

PURSUANT to section 8 of the Statutory Instruments Act, 2013, the Cabinet Secretary for Lands and Physical Planning notifies the general public that a Regulatory Impact Statement on the proposed Sectional Properties Regulations, 2021 to effect the implementation of the Sectional Properties Act, 2020 has been prepared to assess the impact of the regulations on the community and businesses.

The main objective of the proposed regulations is to facilitate the implementation of the Sectional Properties Act, 2020 which provides for division of buildings into units to be owned by individual proprietors and common property to be owned by the proprietors of the units as tenants in common. The Act also provides for the use and management of the units and common property and other connected purposes.

Given that the main objective of the Act is to give ownership of units in an apartment and high-rise buildings or even units developed in a horizontal setting albeit on one parcel of land, it is necessary to make regulations that facilitate this model of ownership and living within the framework provided by the Act. Power to make regulations is provided under section 59 of the Act. The following is a summary of what the regulations seek to provide for:

- (a) Procedure for making application for registration of a Sectional Plan and a corporation.
- (b) The procedure for registration of sectional plans and consequent keeping of a Sectional Plans Register where all Sectional Plans will be registered.

- (c) The procedure for registration of a Corporation and the corresponding keeping of a corporation register.
- (d) Procedure for opening unit registers both for freehold and leasehold parcels based on the Registered Sectional Plan and subsequent procedure of issuing certificates of title and certificates of lease respectively.
- (e) Procedure for preparation of Sectional Plans and the provision of standard forms to guide the process.
- (f) Procedure for converting long-term leases in respect of properties or units not properly georeferenced.
- (g) Prescribe fees payable under the Act.

This is therefore to request all persons likely to be affected by the proposed regulations to submit written memoranda on the proposed regulations to reach the undersigned within fourteen (14) days from the date of publication of this notice.

The draft Regulatory Impact Statement and the proposed regulations are available on the Ministry's website: <https://lands.go.ke>. The proposed regulations and the Regulatory Impact Statement are also available on request through the Ministry's email address at spreulations@gmail.com during normal working hours.

Due to the prevailing global health concerns, the Ministry also welcomes any stakeholder who would prefer virtual interaction on the subject matter to notify the Ministry through the email address given below in order for the Ministry to prepare for such meetings. The virtual meetings will be scheduled as public fora and will take place between Tuesday 27th April and Thursday 6th May 2021, starting from 10.00 a.m. to 4.00 p.m. to discuss the proposed Regulations and the Regulatory Impact Statement and comments received.

Please send your written comments to:

The Principal Secretary
State Department of Lands
Ministry of Lands and Physical Planning
Ardhi House, 1st Ngong' Road
P. O. Box 30450-00100
Nairobi

Email to: spreulations@gmail.com

Dated the 21st April 2021.

FARIDA KARONEY
Cabinet Secretary for Lands and Physical Planning.

GAZETTE NOTICE NO. 3661

THE COUNTY GOVERNMENTS ACT

(No. 17 of 2012)

THE URBAN AREAS AND CITIES ACT, 2011

(Amended 2019)

COUNTY GOVERNMENT OF KERICHO

ESTABLISHMENT OF LITEIN MUNICIPALITY

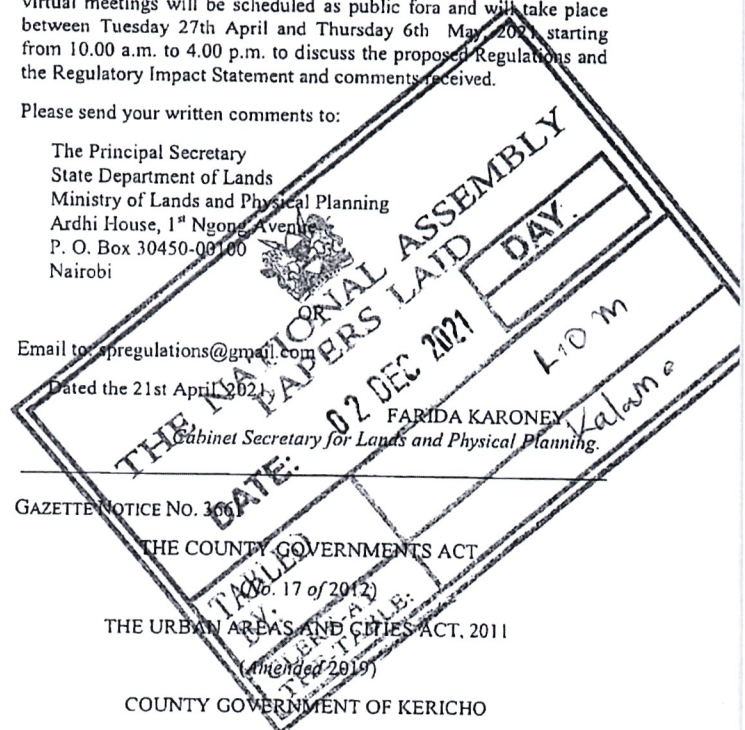
PURSUANT to section 9 of the Urban Areas and Cities Act, 2011 (Amended 2019), notice is given that the establishment of Litein Municipality has been approved by the County Assembly of Kericho upon meeting the statutory requirements.

In accordance to Article 187 of the Constitution of Kenya and the powers conferred to me under sections 30 and 31 of the County Governments Act, 2012 (Amended 2020), and under section 9 of the Urban Areas and Cities 2011 (Amended 2019), Litein Municipality is established by way of a Charter executed under my hand and the seal of the County Government of Kericho.

Dated the 9th April, 2021.

MR/1815608

PAUL KIPRONO CHEPKWONY,
Governor, County Government of Kericho.






REPUBLIC OF KENYA

MINISTRY OF LANDS AND PHYSICAL PLANNING
Office of the Cabinet Secretary

Tel: +254(0)20 2718050
Email: mlpp@aridhi.co.ke
Web: www.aridhi.co.ke
When replying please quote:

Ref. No. MOLPP/ADM/CSO/1/846

Hon. Josephine Sinyo, EBS
Ag, Secretary/CEO
Kenya Law Reform Commission
Reinsurance Plaza
P.O. Box 34999-00100
NAIROBI

 THE NATIONAL ASSEMBLY PAPERS LAID P.O. BOX 30450-00100 NAIROBI, KENYA July 16, 2021 DAY:	
DATE: 02 DEC 2021	
TABLED BY:	L.O.M
CLERK-AT THE-TABLE:	Kalama

Dear *Hon. Sinyo,*

RE: REGULATORY IMPACT ASSESSMENT ON THE DRAFT SECTIONAL PROPERTIES REGULATIONS, 2021 UNDER THE SECTIONAL PROPERTIES ACT, 2020

The above matter refers.

To bring the provisions of the Sectional Properties Act, 2020 into effect, the Ministry of Lands and Physical Planning has formulated the Sectional Properties Regulations, 2021 (Proposed Regulations) which I intend to forward to Parliament for scrutiny as provided under the Statutory Instruments Act. A Regulatory Impact Assessment (RIA) in respect of the same has also been prepared. Pursuant to Section 7(3) of the Statutory Instruments Act, I wish to forward the Proposed Regulations together with the RIA for your review with a view to giving your independent advise as to the adequacy of the RIA in respect of issues assessed and as to whether the same is obtained and considered in accordance with the guidelines.

Thank you for your continued support and cooperation.

Yours *Sincerely*


Farida Karoney, EGH
CABINET SECRETARY

Encl

KENYA LAW REFORM COMMISSION




"A Vibrant Agency for Responsive Law Reform"

Telegrams: "LAWREFORM" NAIROBI
Telephone: Nairobi. +254-20-2241186/2241201
Fax: +254-20-2225786
www.info@klrc.go.ke

When replying please quote

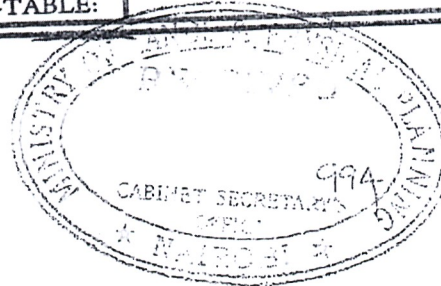
Ref. No. KLRC/RES/45 VOL. XVIII (15)
and Date

"WITHOUT PREJUDICE"

 THE NATIONAL ASSEMBLY PAPERS LAID		KENYA LAW REFORM COMMISSION REINSURANCE PLAZA 3RD FLOOR HAIFA ROAD P.O. Box 34999-00100 NAIROBI, KENYA
DATE: 02 DEC 2021		DAY: 2nd JUL 2021
TABLED BY:	L'O.M	
CLERK-AT-THE-TABLE:	Kalama	

Ms. Farida Karoney, EGH
Cabinet Secretary
Ministry of Lands and Physical Planning
Ardhi House, 1st Ngong Avenue
P.O. Box 30450 -00100
NAIROBI.

Dear *CS*,



RE: REGULATORY IMPACT ASSESSMENT ON THE DRAFT SECTIONAL PROPERTIES REGULATIONS, 2021 UNDER THE SECTIONAL PROPERTIES ACT, 2020

We acknowledge with thanks receipt of your letter Ref.No.MOLPP/ADM/CSO/1/846 dated 16th July, 2021 on the above subject.

The Kenya Law Reform Commission has studied both the Draft Regulations and the attendant Regulatory Impact Assessment and advises as follows:-

- a) that the Regulatory Impact Assessment adequately addresses all the requirements set out under the Statutory Instruments Act No.23 of 2013.
- b) that the assessment included in the Regulatory Impact Statement has been subjected to the necessary public consultations and covers all matters required to be addressed under the Statutory Instruments Act.
- c) that the Regulatory Impact Statement has been considered in accordance with the criteria set out under provisions of the Statutory instruments Act.

In view of the above the Kenya Law Reform Commission, being an independent entity from the Ministry of Lands and Physical Planning advises that for purposes of Section 7(3) of the Statutory Instruments Act, the RIA statement on the Draft Sectional Properties Regulations, 2021 is adequate and that the assessment has been obtained in accordance with the laid down law.

We thank the Ministry for undertaking this important national assignment.

Please accept our assurance of continued support and cooperation.

Yours

Sincerely,
Joash Dache

Joash Dache, MBS
Secretary/CEO

STATUTORY INSTRUMENTS ACT
(NO. 23 of 2013)

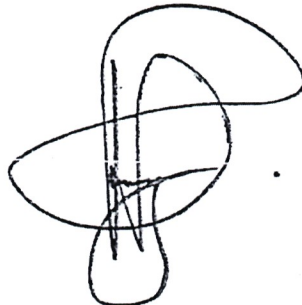
CERTIFICATE OF COMPLIANCE

(Pursuant to Section 7(4) of the Statutory Instruments Act)

Whereas the Cabinet Secretary for Lands and Physical Planning has caused the preparation of a Regulatory Impact Statement of the proposed Sectional Properties Regulations, 2021 pursuant to Section 6 of the Statutory Instruments Act, IT IS HEREBY CERTIFIED that the aforesaid Regulatory Impact Statement of the proposed Sectional Properties Regulations, 2021:

- a) Meet the requirements relating to regulatory impact statement in the Statutory Instruments Act No. 23 of 2013 and the guidelines have been complied with; and
- b) In my opinion, the regulatory impact statement adequately assesses the likely impact of the proposed Sectional Properties Regulations, 2021

Dated at Nairobi this^{2ND}..... Day of^{AUGUST}.....2021



FARIDA KARONEY, EGH

Cabinet Secretary for Lands and Physical Planning