

THE NATIONAL ASSEMBLY
PAPERS LAID

DATE: 02 DEC 2021

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BY:

L.O.M

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Kalana

REPUBLIC OF KENYA

MINISTRY OF LANDS AND PHYSICAL PLANNING

PUBLIC PARTICIPATION ON THE DRAFT SECTIONAL PROPERTIES
REGULATIONS, 2021

UNDER THE SECTIONAL PROPERTIES ACT, 2020

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Formulation of the Sectional Properties Regulations under the Sectional
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minutes
17. Collated views from the stakeholders' engagement meetings
18. Taskforce report

printed as "I.R. 5137/1" to read "I.R.N. 5137/1".

IN Gazette Notice No. 2160 of 2021, amend the expression printed as "Lalkipiu/Tigithi/Mutanya Block 51442" to read "Lalkipia/Tigithi/Mutanya Block 5/442".

IN Gazette Notice No. 9661 of 2020, amend the registrar's name printed as "P. M. MENGI" to read "P. M. MUTEGI".

IN Gazette Notice No. 3626 of 2020, Cause No. 158 of 2019, amend the petitioner's name printed as "Rodan Ann David" to read "Priscillah Kazirika", the deceased's name printed as "Erastus Omuka Ndalitwa alias Rasto Ndalitwa" to read "Elasto Omido Deya", the deceased's Sub-location printed as "Chibukwa Sub-location" to read "Mbihi Sub-location" and the deceased's date of death printed as "7th November, 2016 to read "13th October, 2020.

IN Gazette Notice No. 8586 of 2020, amend the expression printed as "Nyaki/Clugu/362" to read "Nyaki/Thuura/4287".

GAZETTE NOTICE NO. 2216

THE COMMON MARKET FOR EASTERN AND SOUTHERN AFRICA (COMESA)

MUTUAL TARIFF CONCESSIONS

IT IS notified for the information of general public that, in accordance with section 112 (2) of the East African Community Customs Management Act, 2004, the commodities specified in the first column of the Schedule, of the tariff numbers specified in the second column and quantities specified in the third column may be imported duty free from COMESA Member States in the year 2021 and that the rate of duty specified in the fourth column shall apply to any quantity above the quantity that may be imported duty free, subject to such sugar meeting the Rules of Origin of the Common Market for Eastern and Southern Africa.

SCHEDULE

Commodity	Tariff No.	Annual quota that may be imported duty free (Metric tonnes)	Rate of duty on quantity above the annual quota that may be imported duty free
Mill white/brown sugar	1701.99.90	210,163	100%

Dated the 2nd March, 2021.

UKUR YATTANI,
Cabinet Secretary for the National Treasury and Planning.

GAZETTE NOTICE NO. 2217

THE TASKFORCE ON FORMULATION OF THE SECTIONAL PROPERTIES REGULATIONS UNDER THE SECTIONAL PROPERTIES ACT, 2020

APPOINTMENT

IT IS notified for the general public that the Cabinet Secretary for Lands and Physical Planning has constituted a Taskforce on Formulation of the Sectional Properties Regulations under the Sectional Properties Act, 2020.

1. The Taskforce shall comprise of the following—

Chairperson:

Esther Omulele

Samuel Mwenje Nihuni
Catherine Ochanda
Stephen Kibungei
Peris Karanja

John Njoroge Kimani

Eva Sawe

Peter Musyimi

Berita A. Choka

David G. Atwa

Lawrence O. Ochieng

Brian Kimutai

THE NATIONAL ASSEMBLY
MEMBERS LAID

DATE: 02 DEC 2021

DAY.

TABLED BY:

Mary Wanjira Macharia

James Mwangi Gikonyo

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THE TABLE

of reference of the Taskforce shall be to—

(a) study and review the Sectional Properties Act, 2020, the Land Registration Act, 2012, the Sectional Properties Regulations, 1991, the Sectional Properties (Corporation By-Laws) Regulations, 1991, the Land Registration (General) Regulations, 2017, with a view to formulate Sectional Properties Regulations;

(b) conduct the process in accordance with the Statutory Instruments Act and specifically carry out public participation and prepare a Regulatory Impact Statement;

(c) perform any other task as may be assigned by the Cabinet Secretary; and

(d) submit draft Sectional Regulations to the Cabinet Secretary within two months of this appointment.

3. In the performance of its functions, the Taskforce—

(a) shall regulate its own procedures;

(b) shall prepare and submit to the Cabinet Secretary its work plan and budget;

(c) shall hold such number of meetings in such places and at such times as it may consider necessary for the discharge of its functions;

(d) may solicit, receive and consider the views of members of the public and any interest groups;

(e) may co-opt not more than three persons who possess relevant expertise, skills or experience where the taskforce considers necessary; and

(f) shall submit the guidelines or rules and a final report to the Cabinet Secretary within two months of this appointment.

4. The Taskforce shall finalize its task within a period of two months from the date this notice is published in the gazette or for such longer period as the Cabinet Secretary may, by notice in the Gazette, prescribe.

5. The costs incurred by the Taskforce including facilitation and payment of allowances in respect of the members and joint secretaries of the Taskforce shall be defrayed from the voted funds of the Ministry of Lands and Physical Planning.

6. The Secretary of the Taskforce shall be at the Ministry of Lands and Physical Planning, Ardhi House, 1st Ngong Avenue, P.O. Box 30450, Nairobi.

Dated the 2nd March, 2021.

FARIDA KARONEY,
Cabinet Secretary for Lands and Physical Planning.

CORRIGENDA

IN Gazette Notice No. 2489 of 2021, Cause No. E24 of 2020, amend the expression printed as "Cause No. E24 of 2020" to read "Cause No. E24 of 2021".

IN Gazette Notice No. 4451 of 2021, Cause No. E1415 of 2021, amend the expression printed as "Cause No. E1415 of 2021" to read "Cause No. E141 of 2021".

IN Gazette Notice No. 9941 of 2020, Cause No. 34 of 2020, amend the expression printed as "for a grant of letters of administration intestate to the estate of" to read "for a grant of probate with written will of the estate of".

IN Gazette Notice No. 3898 of 2021, Cause No. 170 of 2021, amend the petitioner's name printed as "Robina Nyabando Onchieku" to read "Robina Nyabando Onchieku".

IN Gazette Notice No. 11221 of 2020, Cause No. 233 of 2020, amend the petitioner's name printed as "David Ochieng Soko" to read "Daniel Ochieng Soko".

IN Gazette Notice No. 3003 of 2021, amend the expression printed as "E42 of 2021" to read "E45 of 2021".

IN Gazette Notice No. 2387 of 2021, amend the expression printed as "1361 of 2020" to read "E1361 of 2020".

IN Gazette Notice No. 10818 of 2020, amend the expression printed as "Donyo Sabuk/Komarock Block I/4187" to read "Donyo Sabuk/Komarock Block I/4487".

GAZETTE NOTICE NO. 4707

THE STATE CORPORATIONS ACT

(Cap. 446)

THE NATIONAL COUNCIL FOR POPULATION AND DEVELOPMENT ORDER 2004

APPOINTMENT

IN EXERCISE of the powers conferred by section 5 (2) (a) of the National Council for Population and Development Order, 2004, Uhuru Kenyatta, President and Commander-in-Chief of the Kenya Defence Forces of the Republic of Kenya, appoint--

DAVID NGUGI

to be the Chairman of the National Council for Population and Development Board, for a period of three (3) years, with effect from the 21st May, 2021.

Dated the 19th May, 2021.

UHURU KENYATTA,
President.

GAZETTE NOTICE NO. 4708

THE STATE CORPORATIONS ACT

(Cap. 446)

THE LAPSSET CORRIDOR DEVELOPMENT AUTHORITY ORDER

(L.N. 58 of 2013)

APPOINTMENT

IN EXERCISE of the powers conferred by Paragraph 5 (1) (g) of the LAPSSET Corridor Development Authority Order, 2013, I, Uhuru Kenyatta, President and Commander-in-Chief of the Kenya Defence Forces, appoint--

MOHAMMED HASHIM

to be a member of the LAPSSET Corridor Development Authority Board, for a period of three (3) years, with effect from the 21st May, 2021. The appointment* of David Ngugi is revoked.

Dated the 19th May, 2021.

UHURU KENYATTA,
President.

*G.N. 9832/2019

GAZETTE NOTICE NO. 4709

THE TASKFORCE ON FORMULATION OF THE SECTIONAL PROPERTIES REGULATIONS UNDER THE SECTIONAL PROPERTIES ACT, 2020

EXTENSION OF TERM

IT IS notified for the general information of the public that pursuant to paragraph 4 of Gazette Notice No. 2217 of 2021, the Cabinet Secretary for Lands and Physical Planning has extended the term of the Taskforce on Formulation of the Sectional Properties Regulations Under the Sectional Properties Act, 2020, for a period of forty-five (45) days, with effect from the 12th May, 2021.

Dated the 10th May, 2021.

FARIDA KARONEY,
Cabinet Secretary for Lands and Physical Planning.

GAZETTE NOTICE NO. 4710

MINISTRY OF LANDS AND PHYSICAL PLANNING

THE PHYSICAL AND LAND USE PLANNING ACT

(No. 13 of 2019)

CLASSIFICATION OF THE DEVELOPMENT OF NAIROBI RAILWAY CITY AS A PROJECT OF STRATEGIC NATIONAL IMPORTANCE

PURSUANT to the provisions of section 69 of the Physical and Land Use Planning Act, 2019, as read with the provisions of Legal Notice No. 2156 on the Physical and Land Use Planning (Classification of Strategic National or Inter-County Projects) Regulations, 2019, the Nairobi Railway City is classified as a Project of Strategic National Importance.

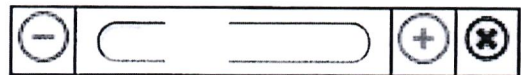
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The Nairobi Railways City is located at the centre of Nairobi City and is surrounded by the industrial area to the south, the CBD area to the north and decrepit residential houses on the eastern side. The total area is 177.04 (413 acres). The project site is comprised of; the Nairobi Railway Station, the Kenya Railways offices, Railway workshops and yards, Kenya Railways Museum, Technical University of Kenya, Markets (Wangari and Muthurwa), residential areas (Landi Mawe, Muthurwa), Barracks, sports facilities, Police offices and quarters, Bus terminus and the Easy Coach yard. The general boundary of the area is defined by the following major roads: Hailie Selassie Avenue to the north, Landhies Road to the east, Bunyala Road joining the intersection of Lusaka Road-Landhies Road junction to the south and Uhuru Highway to the west.

The project is of national significance as it is a critical component towards the regeneration and decongestion of Nairobi City. It is one of the priority projects identified in the Nairobi Integrated Urban Development Plan (NIUPLAN) as a strategy to expand Nairobi's Central Business District (CBD). The redevelopment will create the equilibrium between social benefits and economic returns.

It will also reduce pressure on the central business district growth by opening up the large area to the south and integrating the northern and southern parts of the city across the existing rail track barriers.

Consequent to this classification, the statutory responsibility for the physical and land use planning activities for the entire Nairobi Railway City will lie with the Director-General of Physical and Land



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 sregulations@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: sregulations@gmail.com

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For more information

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**TASKFORCE FOR THE FORMULATION OF THE SECTIONAL PROPERTIES
REGULATIONS**

SCHEDULE OF VIRTUAL PUBLIC PARTICIPATION MEETINGS

No	Targeted Stakeholders	Date	Time
1.	1. Ministry of Lands and Physical Planning 2. National Land Commission	27 th April 2021	9:00 am
2.	1. Law Society of Kenya 2. Association of Licensed Land Surveyors of Kenya	28 th April 2021	9:00 am
3.	Institution of Surveyors of Kenya, IQSK, IEK, ACMK, KEPSA, KPDA, EARB, VRB, KIP, TCPAK, Kenya Bankers Association, Architectural Association of Kenya, Kenya Vision 2030, private developers, Saccos, Housing Co-operatives	29 th April 2021	9:00 am
4.	Council of Governors, Nairobi Metropolitan Services	3 rd May 2021	9:00 am
5.	Kenya Revenue Authority, Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works, National Construction Authority, NHC and NSSF Development Partners	4 th May 2021	9:00 am
6.	Civil Society Organizations, Interested Members of the Public, Kenya Alliance of Resident Associations and Consumer Federation of Kenya	5 th May 2021	9:00 am
7.	Parliamentary Committee on Delegated Legislation	6 th May 2021	9:00 am

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MINISTRY OF LANDS AND PHYSICAL PLANNING

Office of the Principal Secretary Lands

Tel: +254(0)20 2718050
Fax: +254(0)202724470
Email: pslandskenya@gmail.com
Web: www.ardhi.go.ke
When replying please quote:
Ref: MoLPP/SPA/REG/STK/01

Edwin Dande
Executive Director
Cytonn Investments Ltd
Cell +254(0) 709 101 000
Tel +254(0) 20 3929 000
NAIROBI.

 THE NATIONAL ASSEMBLY PAPERS LAID		Ardhi House 1 st Ngong Avenue P.O.Box 30450-001 00 Nairobi, Kenya
DATE: 02 DEC 2021		21st April 2021 DAY.
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CLERK-AT THE-TABLE:	Kalama	

Dear *Edwin,*

TASKFORCE FOR THE FORMULATION OF THE SECTIONAL PROPERTIES REGULATIONS

PROPOSED SECTIONAL PROPERTIES REGULATIONS UNDER THE SECTIONAL PROPERTIES ACT, 2020

The Sectional Properties Act, 2020 was enacted and signed into law on the 15th December, 2020. This Act provides for division of buildings into units to be owned by individual proprietors and the common property to be proportionately owned by respective proprietors as tenants in common. The Act inter alia provides for the use and management of units and common property and other connected purposes.

With a view to give effect to the Act, the Cabinet Secretary for Lands and Physical Planning appointed a taskforce vide Gazette Notice No. 2217 of 2021 to formulate Regulations. The taskforce has since come up with a zero draft Sectional Properties Regulations and a Regulatory Impact Assessment (RIA) Report in respect of which it wishes to invite views from a cross section of stakeholders and members of the

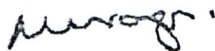
public as required under the Statutory Instruments Act. In this respect, you have been identified as one of the stakeholders whose views on the proposed Regulations will go a long way in adding value to this process.

Consequently, the Taskforce has uploaded the proposed Sectional Properties Regulations, the RIA and the RIA notice in the Ministry's website. You are hereby invited to access the documents to enable you prepare your comments which can be sent through the Ministry's address or through the taskforce email: spregulations@gmail.com

You can also get in touch with Clarah Ketyenya, Phone number 0706661247 or Tom Abuta phone number 0721628302 either by text or otherwise to enable you receive the link for our scheduled virtual public participation meetings as per the attached schedule of public participation meetings. Kindly take note that virtual meetings are taking place between Tuesday April 27, 2021 and Thursday May 6, 2021. We urge you to take note of the date you are slotted to present your views.

Thank you for your continued support and cooperation.

Yours



Dr. Nicholas Muraguri

PRINCIPAL SECRETARY

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MINISTRY OF LANDS AND PHYSICAL PLANNING

Office of the Principal Secretary Lands

Tel: +254(0)20 2718050
Fax: +254(0)202724470
Email: pslandskenya@gmail.com
Web: www.ardhi.go.ke

When replying please quote:

Ref: MoLPP/SPA/REG/STK/01

Ardhi House
1st Ngong Avenue
P.O.Box 30450-00100
Nairobi, Kenya

21st April 2021

Eunice Macharia
Chairperson Estate Agents Registration Board (EARB)
NAIROBI.

Dear *Eunice,*

TASKFORCE FOR THE FORMULATION OF THE SECTIONAL PROPERTIES REGULATIONS

PROPOSED SECTIONAL PROPERTIES REGULATIONS UNDER THE SECTIONAL PROPERTIES ACT, 2020

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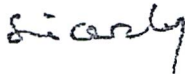
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PRINCIPAL SECRETARY

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MINISTRY OF LANDS AND PHYSICAL PLANNING

Office of the Principal Secretary Lands

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When replying please quote:

Ref: MoLPP/SPA/REG/STK/01

Ardhi House
1st Ngong Avenue
P.O.Box 30450-00100
Nairobi, Kenya

21st April 2021

Mr. Gershom Otachi
The Chairperson
National Land Commission
ACK Annex
1st Ngong Avenue,
P.O. Box 44417 – 00100,
NAIROBI

Dear *Gershom*,

TASKFORCE FOR THE FORMULATION OF THE SECTIONAL PROPERTIES REGULATIONS

PROPOSED SECTIONAL PROPERTIES REGULATIONS UNDER THE SECTIONAL PROPERTIES ACT, 2020

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Dr. Nicholas Muraguri

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MINISTRY OF LANDS AND PHYSICAL PLANNING

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Ref: MoLPP/SPA/REG/STK/01

Ardhi House
1st Ngong Avenue
P.O.Box 30450-00100
Nairobi, Kenya

21st April 2021

Habil Olaka
CEO, Kenya Bankers Association
Kenya Bankers Association
13th Floor, International House
Mama Ngina Street
P.O.Box 73100 - 00200
NAIROBI.

Dear *Habil,*

TASKFORCE FOR THE FORMULATION OF THE SECTIONAL PROPERTIES REGULATIONS

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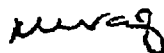
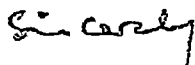
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Ref: MoLPP/SPA/REG/STK/01

Ardhi House
1st Ngong Avenue
P.O.Box 30450-00100
Nairobi, Kenya

21st April 2021

**CEC in Charge of Lands and Housing
All 47 County Governments
Thr'**

**Jacqueline Mogeni,
Chief Executive Officer
Council of Governors
Delta Corner, 2nd Floor
Waiyaki Way,
P.O. Box 40401- 00100
NAIROBI.**

Dear *Jacqueline*,

**TASKFORCE FOR THE FORMULATION OF THE SECTIONAL PROPERTIES
REGULATIONS**

**PROPOSED SECTIONAL PROPERTIES REGULATIONS UNDER THE SECTIONAL
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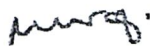
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Thank you for your continued support and cooperation.

Yours



Dr. Nicholas Muraguri
PRINCIPAL SECRETARY

Encl



MINISTRY OF LANDS AND PHYSICAL PLANNING

Office of the Principal Secretary Lands

Tel: +254(0)20 2718050

Fax: +254(0)202724470

Email: pslandskenya@gmail.com

Web: www.ardhi.go.ke

When replying please quote:

Ref: MoLPP/SPA/REG/STK/01

Ardhi House
1st Ngong Avenue
P.O.Box 30450-00100
Nairobi, Kenya

21st April 2021

Jacinta Mutua
Chair, Valuers Registration Board
Ardhi House
NAIROBI.

Dear *Jacinta*

TASKFORCE FOR THE FORMULATION OF THE SECTIONAL PROPERTIES REGULATIONS

PROPOSED SECTIONAL PROPERTIES REGULATIONS UNDER THE SECTIONAL PROPERTIES ACT, 2020

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Nurag.

Dr. Nicholas Muraguri
PRINCIPAL SECRETARY

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Ref: MoLPP/SPA/REG/STK/01

Ardhi House
1st Ngong Avenue
P.O.Box 30450-00100
Nairobi, Kenya

21st April 2021

James Munene
President,
Institute of Quantity Surveyors of Kenya
P.O BOX 13929-00800
NAIROBI.

Dear *James,*

TASKFORCE FOR THE FORMULATION OF THE SECTIONAL PROPERTIES REGULATIONS

PROPOSED SECTIONAL PROPERTIES REGULATIONS UNDER THE SECTIONAL PROPERTIES ACT, 2020

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S. Cooby

NM

Dr. Nicholas Muraguri
PRINCIPAL SECRETARY

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MINISTRY OF LANDS AND PHYSICAL PLANNING

Office of the Principal Secretary Lands

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Ref: MoLPP/SPA/REG/STK/01

Ardhi House
1st Ngong Avenue
P.O.Box 30450-00100
Nairobi, Kenya

21st April 2021

James Mburu
Commissioner General
Kenya Revenue Authority
Times Tower, Haile Selassie Avenue,
P.O.Box 48240- 00100
NAIROBI.

Dear *James,*

TASKFORCE FOR THE FORMULATION OF THE SECTIONAL PROPERTIES REGULATIONS

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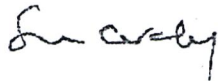
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Ref: MoLPP/SPA/REG/STK/01

Ardhi House
1st Ngong Avenue
P.O.Box 30450-00100
Nairobi, Kenya

21st April 2021

Joakim Nyarangi
Chairman, Kenya Institute of Planners
NSSF eastern wing 10th floor
P.O. Box 10682 00100
NAIROBI.

Dear *Joakim,*

TASKFORCE FOR THE FORMULATION OF THE SECTIONAL PROPERTIES REGULATIONS

PROPOSED SECTIONAL PROPERTIES REGULATIONS UNDER THE SECTIONAL PROPERTIES ACT, 2020

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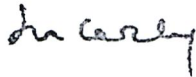
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Ref: MoLPP/SPA/REG/STK/01

Ardhi House
1st Ngong Avenue
P.O.Box 30450-00 100
Nairobi, Kenya

21st April 2021

Julius Rotich

Chairman, Association of Licensed Surveyors of Kenya,

P.O. Box 62093-00200

NAIROBI.

Dear *Julius,*

TASKFORCE FOR THE FORMULATION OF THE SECTIONAL PROPERTIES REGULATIONS

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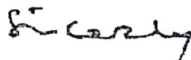
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Ref: MoLPP/SPA/REG/STK/01

Ardhi House
1st Ngong Avenue
P.O.Box 30450-00100
Nairobi, Kenya

21st April 2021

**Kenya Alliance of Resident Associations
Jamhuri Crescent, off Kabarnet Road, off Ngong Road
P.O Box 1411-00100 GPO,
NAIROBI.**

Dear *Sir/Madam,*

TASKFORCE FOR THE FORMULATION OF THE SECTIONAL PROPERTIES REGULATIONS

PROPOSED SECTIONAL PROPERTIES REGULATIONS UNDER THE SECTIONAL PROPERTIES ACT, 2020

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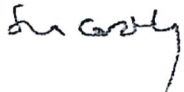
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Ref: MoLPP/SPA/REG/STK/01

Ardhi House
1st Ngong Avenue
P.O.Box 30450-00100
Nairobi, Kenya

21st April 2021

Keith Hansen
World Bank Country director
Delta centre menengai road, upperhill
NAIROBI.

Dear *Keith,*

TASKFORCE FOR THE FORMULATION OF THE SECTIONAL PROPERTIES REGULATIONS

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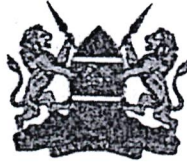
Yours

Sincerely

Nicholas

Dr. Nicholas Muraguri
PRINCIPAL SECRETARY

Encl



MINISTRY OF LANDS AND PHYSICAL PLANNING

Office of the Principal Secretary Lands

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Ref: MoLPP/SPA/REG/STK/01

Ardhi House

1st Ngong Avenue

P.O.Box 30450-00100

Nairobi, Kenya

21st April 2021

Ken Luusa

Chair, Kenya Property Developers Association

Fatima Flats, Suite 4B

Marcus Garvey Road off Argwings Kodhek Road

P. O. Box 76154 – 00508,

NAIROBI.

Dear *Ken*,

TASKFORCE FOR THE FORMULATION OF THE SECTIONAL PROPERTIES REGULATIONS

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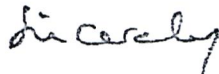
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Ardhi House
1st Ngong Avenue
P.O.Box 30450-00100
Nairobi, Kenya

21st April 2021

Kenneth Mwigie

Kenya vision 2030

Kenya Vision 2030 Delivery Secretariat

KUSCO Centre, 2nd Floor Upper Hill, Kilimambogo Road

P.O. Box 52301-00200

NAIROBI

Dear *Kenneth,*

TASKFORCE FOR THE FORMULATION OF THE SECTIONAL PROPERTIES REGULATIONS

PROPOSED SECTIONAL PROPERTIES REGULATIONS UNDER THE SECTIONAL PROPERTIES ACT, 2020

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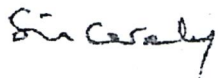
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Dr. Nicholas Muraguri

PRINCIPAL SECRETARY

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MINISTRY OF LANDS AND PHYSICAL PLANNING

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Ref: MoLPP/SPA/REG/STK/01

Ardhi House
1st Ngong Avenue
P.O.Box 30450-00100
Nairobi, Kenya

21st April 2021

Mary W. Mathenge
Chief Executive Officer
National Housing Cooperative Union (NACHU)
Nachu Plaza, No. 15 Kiambere Road, Off Upperhill Road
P.O Box. 51693-00200
NAIROBI.

Dear *Mary*,

TASKFORCE FOR THE FORMULATION OF THE SECTIONAL PROPERTIES REGULATIONS

PROPOSED SECTIONAL PROPERTIES REGULATIONS UNDER THE SECTIONAL PROPERTIES ACT, 2020

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Ref: MoLPP/SPA/REG/STK/01

Ardhi House
1st Ngong Avenue
P.O.Box 30450-00100
Nairobi, Kenya

21st April 2021

Eng. Maurice Aketch
Ag. Executive Director
National Construction Authority
NAIROBI.

Dear *Maurice,*

TASKFORCE FOR THE FORMULATION OF THE SECTIONAL PROPERTIES REGULATIONS

PROPOSED SECTIONAL PROPERTIES REGULATIONS UNDER THE SECTIONAL PROPERTIES ACT, 2020

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Sincerely

NM

Dr. Nicholas Muraguri

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P.O.Box 30450-00100
Nairobi, Kenya

21st April 2021

Nahashon Okoa
Chairperson
Association of Construction Managers of Kenya
Eden Square, Chiromo Road, Westlands,
7th Floor, Block 1,
NAIROBI.

Dear *Nahashon,*

TASKFORCE FOR THE FORMULATION OF THE SECTIONAL PROPERTIES REGULATIONS

PROPOSED SECTIONAL PROPERTIES REGULATIONS UNDER THE SECTIONAL PROPERTIES ACT, 2020

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Thank you for your continued support and cooperation.

Yours

Dr. Nicholas Muraguri
PRINCIPAL SECRETARY

Encl



MINISTRY OF LANDS AND PHYSICAL PLANNING

Office of the Principal Secretary Lands

Tel: +254(0)20 2718050

Fax: +254(0)202724470

Email: pslandskenya@gmail.com

Web: www.ardhi.go.ke

When replying please quote:

Ref: MoLPP/SPA/REG/STK/01

Ardhi House
1st Ngong Avenue
P.O.Box 30450-00100
Nairobi, Kenya

21st April 2021

Eng. Nathaniel Omwolo Matalanga
President, Institution of Engineers of Kenya,
Transcom Annex, 1st Floor Ngong Rd,
P.O. Box 41346-00100
NAIROBI.

Dear *Nathaniel,*

TASKFORCE FOR THE FORMULATION OF THE SECTIONAL PROPERTIES REGULATIONS

PROPOSED SECTIONAL PROPERTIES REGULATIONS UNDER THE SECTIONAL PROPERTIES ACT, 2020

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Thank you for your continued support and cooperation.

Yours *Ji Coraly*

NM

Dr. Nicholas Muraguri
PRINCIPAL SECRETARY

Encl



MINISTRY OF LANDS AND PHYSICAL PLANNING

Office of the Principal Secretary Lands

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Web: www.ardhi.go.ke

When replying please quote:

Ref: MoLPP/SPA/REG/STK/01

Ardhi House
1st Ngong Avenue
P.O.Box 30450-00100
Nairobi, Kenya

21st April 2021

**Deputy Director General,
Nairobi Metropolitan Service,
20th Floor Ambank Hse, University Way,
P.O. Box 30119-00100
NAIROBI.**

Dear Sir,

TASKFORCE FOR THE FORMULATION OF THE SECTIONAL PROPERTIES REGULATIONS

PROPOSED SECTIONAL PROPERTIES REGULATIONS UNDER THE SECTIONAL PROPERTIES ACT, 2020

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Yours

Dr. Nicholas Muraguri

N. Muraguri

Dr. Nicholas Muraguri

PRINCIPAL SECRETARY

Encl



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Office of the Principal Secretary Lands

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When replying please quote:

Ref: MoLPP/SPA/REG/STK/01

Ardhi House

1st Ngong Avenue

P.O.Box 30450-00100

Nairobi, Kenya

21st April 2021

Peter Gichangi
Chair, Safaricom Investment Company Ltd
4th floor, Westcom point building
Opposite Safaricom Headquarters
Westlands
NAIROBI.

Dear *Peter,*

TASKFORCE FOR THE FORMULATION OF THE SECTIONAL PROPERTIES REGULATIONS

PROPOSED SECTIONAL PROPERTIES REGULATIONS UNDER THE SECTIONAL PROPERTIES ACT, 2020

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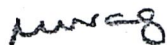
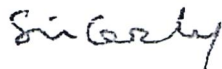
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Ref: MoLPP/SPA/REG/STK/01

Ardhi House
1st Ngong Avenue
P.O.Box 30450-00100
Nairobi, Kenya

21st April 2021

Peter Njuguna
Ag. Chief Executive Officer.
The Sacco Societies Regulatory Authority (SASRA)
P.O. Box 25089-00100,
NAIROBI.

Dear *Peter,*

TASKFORCE FOR THE FORMULATION OF THE SECTIONAL PROPERTIES REGULATIONS

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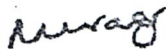
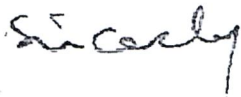
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Ardhi House
1st Ngong Avenue
P.O.Box 30450-00100
Nairobi, Kenya

21st April 2021

Ravi Kohli
Managing Director
Karibu Homes
NAIROBI.

Dear *Ravi,*

TASKFORCE FOR THE FORMULATION OF THE SECTIONAL PROPERTIES REGULATIONS

PROPOSED SECTIONAL PROPERTIES REGULATIONS UNDER THE SECTIONAL PROPERTIES ACT, 2020

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Ref: MoLPP/SPA/REG/STK/01

Ardhi House
1st Ngong Avenue
P.O.Box 30450-00100
Nairobi, Kenya

21st April 2021

Rose Mwaura
Chief Executive Officer
10th Floor Reinsurance Plaza
Taifa Road, Aga Khan Walk
P.O. Box 40707-00100
NAIROBI.

Dear *Rose*,

TASKFORCE FOR THE FORMULATION OF THE SECTIONAL PROPERTIES REGULATIONS

PROPOSED SECTIONAL PROPERTIES REGULATIONS UNDER THE SECTIONAL PROPERTIES ACT, 2020

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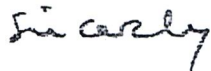
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Ref: MoLPP/SPA/REG/STK/01

Ardhi House

1st Ngong Avenue

P.O.Box 30450-00100

Nairobi, Kenya

21st April 2021

Wafula Nabutola
Chairman, Building Surveyors Registration Board
Contact: 0722617444
NAIROBI.

Dear *Wafula,*

TASKFORCE FOR THE FORMULATION OF THE SECTIONAL PROPERTIES REGULATIONS

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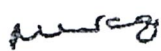
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Ref: MoLPP/SPA/REG/STK/01

Ardhi House
1st Ngong Avenue
P.O.Box 30450-00100
Nairobi, Kenya

21st April 2021

Mr. Mairura Omwenga
Chairman,
Town county Planners of Kenya,
Galana road, Kilimani,
Block 2 White court,
P.O. Box 15692- 00100
NAIROBI.

Dear *Mairura,*

TASKFORCE FOR THE FORMULATION OF THE SECTIONAL PROPERTIES REGULATIONS

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Yours

Sincerely,

Muraguri

Dr. Nicholas Muraguri
PRINCIPAL SECRETARY

Encl



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Office of the Principal Secretary Lands

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Ref: MoLPP/SPA/REG/STK/01

Ardhi House
1st Ngong Avenue
P.O.Box 30450-00100
Nairobi, Kenya

21st April 2021

Andrew Saisi
Managing Director,
National Housing Corporation
P. O. Box 30257-00100
NAIROBI.

Dear *Andrew,*

TASKFORCE FOR THE FORMULATION OF THE SECTIONAL PROPERTIES REGULATIONS

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Ardhi House
1st Ngong Avenue
P.O.Box 30450-00100
Nairobi, Kenya

21st April 2021

Dr. Anthony O. Omerikwa
Ag. Managing Trustee/CEO
National Social Security Fund
P.O. Box 30599 – 00100
NAIROBI.

Dear *Anthony,*

TASKFORCE FOR THE FORMULATION OF THE SECTIONAL PROPERTIES REGULATIONS

PROPOSED SECTIONAL PROPERTIES REGULATIONS UNDER THE SECTIONAL PROPERTIES ACT, 2020

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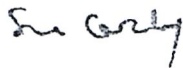
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Ardhi House
1st Ngong Avenue
P.O.Box 30450-00100
Nairobi, Kenya

21st April 2021

Carole Kariuki Karuga
CEO, Kenya Private Sector Alliance KEPSA
5th Floor, Shelter Afrique Building, Mamlaka Rd.
P.O. Box 3556-00100
NAIROBI.

Dear *Carole*,

TASKFORCE FOR THE FORMULATION OF THE SECTIONAL PROPERTIES REGULATIONS

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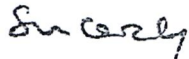
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Thank you for your continued support and cooperation.

Yours



Dr. Nicholas Muraguri

PRINCIPAL SECRETARY

Encl



MINISTRY OF LANDS AND PHYSICAL PLANNING

Office of the Principal Secretary Lands

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Email: pslandskenya@gmail.com

Web: www.ardhi.go.ke

When replying please quote:

Ref: MoLPP/SPA/REG/STK/01

Ardhi House
1st Ngong Avenue
P.O.Box 30450-00100
Nairobi, Kenya

21st April 2021

Charles Hinga CBS
Principal Secretary
Ministry of Transport, Infrastructure, Housing
Urban Development and Public Works
Ardhi House 6th Floor Wing C
NAIROBI.

Dear *Charles,*

TASKFORCE FOR THE FORMULATION OF THE SECTIONAL PROPERTIES REGULATIONS

PROPOSED SECTIONAL PROPERTIES REGULATIONS UNDER THE SECTIONAL PROPERTIES ACT, 2020

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Ardhi House
1st Ngong Avenue
P.O.Box 30450-00100
Nairobi, Kenya

21st April 2021

**Secretary General
Consumers Federation of Kenya (COFEK)
Rehema Place, Block F-45 Ngong Road/Ring Rd Kilimani Junction
P.O Box 28053-00200
NAIROBI.**

Dear *Sir*,

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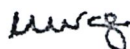
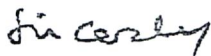
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Ardhi House
1st Ngong Avenue
P.O.Box 30450-00100
Nairobi, Kenya

21st April 2021

Daniel Marube
Executive Director
Co-operative Alliance of Kenya
Co-operative University College of Kenya
NAIROBI.

Dear *Daniel*

TASKFORCE FOR THE FORMULATION OF THE SECTIONAL PROPERTIES REGULATIONS

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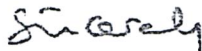
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Ardhi House
1st Ngong Avenue
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Nairobi, Kenya

21st April 2021

Edermann Properties

info@erdemann.co.ke

Phone: (+254) 20 3513306

Cell : (+254) 0733 209 709 | (+254) 0724-209 709

NAIROBI.

Dear *Sir/Madam,*

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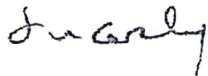
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COMMENTS BY THE STATE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ON THE SECTIONAL PROPERTIES (SPA) ACT, 2020 AND SPA REGULATIONS, 2021

S/No	ISSUE	RECOMMENDATION/ CLARIFICATION
1	Term of Board being a year is too short for the Board to have implemented its vision and mission.	We recommend at least two years renewable once to allow the Board adequate time to implement its vision and mission.
2	For Tenant Purchasers, basing stamp duty at the date of purchase period would undermine affordability of housing.	We recommend that for Tenant purchase, stamp duty be based on purchase price at commencement of the agreement to make home ownership affordable.
3	Residual term of the leasehold properties being 21 years will deter mortgage financiers to keep off such properties or go for loan periods of 10 or 15 years	The residual term of leasehold properties should be at least 30 years to encourage banks to lend.
4	Definitions and abbreviations	There should be a definitions and abbreviations sections
5	Reluctance to migrate to SPA by property owners/ Developers	The regulations should be clear on how to enforce migration to SPA by developers and property owners
6	Fastracking implementation of SPA	The regulations should propose a helpdesk to help fastrack implementation of SPA and dealing with day to day queries on SPA
7	Phased development and issuance of subleases and eventually sectional titles	i. There are developers who have subdivided their developments into phases yet each phase is part of the whole development. For each phase, unit titles (subleases) have been given. What happens to the subleases once the whole development is complete and sectional titles are to be issued? This is because subleases do not include common areas

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 02 DEC 2021	DAY:
TABLED BY:	L.O.M
CLERK-AT THE TABLE:	Kalama

		<p>ii. In phased developments, Conflict between developer and buyers may arise as buyers may lay claim of part or all of the remaining vacant land or buildings as part of the common utilities</p>
8	Issuance of sectional titles for mixed developments	<p>in some instances, the developers opt to do mixed developments whereby some floor(s) are meant for commercial purposes and which the developer retains in his name for rental purposes while the other floors are sold out for residential purposes. How will the titling be done in such instances bearing in mind that the mother title is one?</p>
9	Dealing with SPA issues and conversion	<p>We propose a committee to be established in the regulations to deal with these emerging issues</p>
10	(2) This Act shall apply only in respect of land held on freehold title or on a leasehold title where the unexpired residue of the term is not less than twenty-one years and there is an intention to confer ownership.	<p>Slums are mostly located on public land which in most cases do not have titles.</p> <p>So what would be the position of social housing programmes in the Act/ Regulations?</p>
11	Stamp duty	<p>The Act should have exempted first time home owners benefiting from social housing programmes from stamp duty payable on transfer of property.</p> <p>How can the issue be addressed under the regulations?</p>
	THE SECTIONAL PROPERTIES REGULATIONS, 2021	
12	19. (1) Pursuant to section 13(2) of the Act a registered proprietor of a parcel or a developer making an application for conversion of longterm leases to sectional units shall submit a sectional plan for registration to the registrar in form SP 13 set out in the schedule.	<p>What's the procedure for conversion of public land (neither freehold/ leasehold) to sectional units?</p> <p>The regulations should clearly introduce procedures on how to deal with public land</p>

13	<p>20 (3) The registrar shall issue a notice to be published in the <i>Gazette</i> calling for the title for purpose of conversion.</p> <p>(4) At the expiry of sixty days from the date of notice, if the title is not availed, the registrar shall proceed to close the parcel register and register the sectional plan.</p>	<p>There are cases of titles issued to private entities yet the land is predominantly public land. These titles have been an issue when developing social housing programmes.</p> <p>Will the Act/ Regulation provide for how to deal with such cases?</p>
14	<p>22 (1) An owner desiring to rent his unit shall notify the corporation in form14 set out in the schedule wherein he shall provide his address for effecting a notice under Regulation 23.</p> <p>(2) Upon renting the unit, the owner shall within 21 days from commencement of the tenancy notify the corporation of the name of tenant residing in the unit in form15 Set out in the schedule.</p> <p>(3) On lapse of tenancy agreement, the owner shall within 20 days give notice to the corporation in form set out in the schedule</p>	<p>Social housing programmes to some extent allow for the renting of parts of the unit to allow the beneficiary repay their mortgages.</p> <p>This need to be relooked at when developing the regulations</p> <p>22(3) what form?</p>
15	Board membership	<p>Board membership should not be limited to owners only. Since some unit owners rent them out as a source of income, and in some instance majority of occupants may be by tenants, its key to give tenant rights to management issues. They should not only be co-opted but atleast should be considered for a slot in the board membership to represent tenants' issues.</p>
16	Capital Replacement reserve fund	<p>There is need for clarity on the establishment, operationalization and sources of the Capital Replacement reserve fund. We propose that a small proportion probably 10% of the service charge be set aside every month for use in capital</p>

		repairs and renovations to avoid burdening owners/tenants from several contributions
17	Approval by the corporation before the sectional titles are processed	Issue of the corporation having to approve before the sectional titles are processed may delay individuals who may need to process their titles urgently for use as collateral or other purposes. We propose that the developer who develops units for sale that fall in this category to initiate the process for all the titles at once during registration then transfers to owners individually upon completion of payment by each owner
18	Operationalization of the corporation	There is need to provide for a party to initiate the practical operationalization of the corporation upon registration, possibly/preferably the developer at first instance, so that he brings the owners together.
19	Parking spaces	Where a development comprises parking spaces, they should be considered as part of the common property to be owned by proprietors as tenants in common, and where possible have them allotted to owners to avert unnecessary conflicts and disputes



ASSOCIATION OF LICENSED LAND
SURVEYORS OF KENYA (ALLSK)

**PROPOSALS ON SECTIONAL PROPERTIES REGULATIONS_2021
SUBMITTED TO THE TASKFORCE CONSTITUTED BY THE CS
RESPONSIBLE OF LANDS**

BY

**THE ASSOCIATION OF LICENSED LAND SURVEYORS OF KENYA
(ALLSK)**

26TH MAY, 2021

**ASSOCIATION OF LICENSED LAND SURVEYORS OF KENYA
(ALLSK)**

SPA 2021 REGULATIONS				
MATRIX OF SUBMISSIONS				
S/No	Section	Proposed Amendments	Remarks	Justification
01	3(b)	Delete the word "Corporation" and in its place insert the word "Corporations"	This is to take care of the event where there may be a necessity of registering more than "1" Corporation	Where a development of a mixed use nature or the size necessitates registering more than one corporation for ease of management
02	Insert a New Section	Insert a Section as follows:- No individual separate unit shall be registered unless the area is at least 4 square meters (4m ²)	This is to ensure that buildings shall not be subdivided into uneconomical portions; which would exert pressure on social amenities and infrastructure	This is to set out a minimum unit area which can be considered as adequate residential space or a viable business premises
03	Insert a clause or regulation	Where any right to all or part of a building may have been conferred by any other law other than SPA, The Office responsible for Survey may delegate the regularization of the same to Licensed Surveyors. For purposes of complying with SPA 2020	The purpose of this clause is to build capacity and give developers a free hand to engage licensed surveyors in the regularization of buildings where long sub-leases had been issued under RDA	It is important that all efforts are put in play so as to comply with the "Two Year" window timeline provided for in the SPA 2020 for regularization of existing buildings where buyers were issued with subleases in Contravention of SPA 1987
04	Schedules SP9	Insert: On Applicant Details, Insert the words "License No"... Immediately after the dotted lines appearing after the word "Surveyor"	This detail is necessary to ensure completeness of the Applicant details captured in the Application process.	This will enhance traceability, ease of references & Communication as pertains to the registration process of the Sectional Plan
05	14(b)	The existing Section 14(b) to be renamed as 14(b)(i); Delete the word "building" after the word "the" and in its place insert the words "building's Ground Floor"	This will give clarity in respect to which external extents of the building or buildings are documented in the site and location plan	The Georeferenced external limits of the actual location of the building shall bear a true relationship with the parcel boundary in 2 D

06	14(b)	Insert a new subsection 14(b)(ii) as follows: "the georeferenced external limits of the largest upper floor which extends beyond the limits of the building's Ground floor, additional reference points on such upper floor shall be georeferenced and adequately described.	This serves to demonstrate that this upper floor is within the parcel boundaries. The altitude of the floor shall be referred to an acceptable Bench Mark (BM) such as the Mean Sea Level (MSL)	It is necessary to show the location of the building at the Ground level as well as document any other aspect of the building which is at variance with its ground location tie lines
07	Insert: New Section to provide for fees chargeable for preparation of sectional plans	1. The basic minimum charge per unit (inclusive of VAT) a) 1- 25 : Ksh 75,000/= b) 26 - 50 : Ksh 65,000/= c) 51 - 100 : Ksh 55,000/= d) 101 – 150: Ksh 45,000/= e) Over 150 : Ksh 35,000/= 2. Notwithstanding subsection (1) above, there shall be additional charges for resurvey of the parcel boundary and or fixing as per section 19 of the LRA No 3 of 2012 if boundaries were not previously fixed.	Section 59(1)(a) of the SPA 2020 allows the cabinet Secretary responsible of Lands to cause regulations to be enacted to guide as to the fees payable for various processes.	The chargeable fee shall serve as a guide to avoid undercutting while at the same time being cognizant of the practitioners' professional time outgoings and the prevailing economic situation
08	Insert: New Section to provide for "Mixed Use Developments" I.e. Creation of Multi-Tier Corporations within the same section plan	Insert: "Where the development whose Section plan is being submitted for registration, Application of multiple Corporations each to cater for each user shall accompany the Application"	This will allow the unit owners to belong to the corporation which serves their distinct interest and or uses	1. Where the development is a missed use nature it is only fair that the unit owner are given an option to belong to a Corporation which best serves their common interests. 2: Where a development is so large that it may be necessary to split the area into manageable sectors, it is only fair that more than one corporations are allowed to exist within the same section plan

09	Unreferenced in the Regulations and SPA 2020	The SPA 2020 needs to be amended to capture "Phased Developments" situations; i) Multi- Tier Corporation ii) Bare Land Sectional Properties	Provision should be given for all this in the SPA 2020 by effecting amendments. Therefore ALLSK proposes amendments to the ACT to accommodate these scenarios.	The future is highly tilted towards these issues and the current ACT does not give provision for it. Therefore amendment need to be initiated.
10	15(1)	The existing Section 15(1) to be renamed as 15 (2) Insert a new Section 15(1) as follows: 15(1)(a) Before any proprietor of a unit or units applies to the County Government for approval of a subdivision or amalgamation of any unit or units, Consent of at least two(2) other unit owners in the section plan and at least one where the section unit has only two registered unit owners. 15(1) (b) Consent of unit owners shall be in the Form SP13 and shall form part of requisite documentation necessary for application of subdivision of Amalgamation to the County Government in compliance with Section 12(1) of the SPA 2020.	This will give clarity to the procedure and sequence of events leading to effecting any subdivision or amalgamation of units.	Whereas the owners purchased the units as they are and likelihood of consent for subdivision is very slim; there may exist situation where reasonable subdivision may occur such as in office blocks and go-downs. While this has to be allowed, it is necessary to set a threshold as to number of neighbors consenting to the subdivision and or amalgamation. The TF may need to look into a mitigation measure in case of some neighbors objecting to the subdivision or amalgamation.



J A. GARDNER

TEL NO. 0708086453

EMAIL: ngoziltomsa@gmail.com

27/4/2021

SPREGULATIONS@GMAIL.COM

THE PRINCIPAL SECRETARY,

STATE DEPARTMENT OF LANDS

MINISTRY OF LANDS AND PHYSICAL PLANNING

NAIROBI.

Dear Sir,

REF: SECTIONAL PROPERTIES REGULATIONS 2021

With reference to a Notice which recently appeared in the Nation I wish to support the proposed Regulations relating to the implementation of the Sectional Properties Act Of 2020 but with one amendment concerning the proposed time limit of 2 years for conversion of long term sub-leases into individual title deeds.

I have been the fully paid owner/occupier of an apartment in a residential complex in Nyali Sub-County, Mombasa since September 2011. The developer has failed to form an owner's corporation and frustrated the owners from doing so. Instead he formed a management company with himself as the sole shareholder and has never offered any shares to the owners of apartments.

He has continued to override the terms of the sub-lease and make alterations to the property which greatly affected the owner without any consultation or consent. Our Service charge account is controlled by him and the money is used as he sees fit with no proper accounts being made available.

I have been prevented from disposing of my apartment for the past 5 years due to his refusal to issue the consent letter required by the sub-lease. Instead he makes unreasonable and extortionate demands. Other owners i know became so desperate that they were forced to submit and leave. All attempts to seek arbitration have met with a blank wall from the Law Society, the Judiciary and the Arbitration Council. My plea to the former Chief Justice was ignored.

If this developer is allowed another 2 years to comply with the provisions of the Act and Regulations pertaining thereto, then I and other owners will continue to suffer under his arbitrary and authoritation management. I therefore humbly propose that the period for compliance be reduced from 2 years to a maximum of 2 months so that we may be early released from the avaricious clutches of the developer which is I presume the purpose of the Sectional Properties Act if I have understood the Regulatory Impact Statement.

Thank You.



Safaricom House | Waiyaki Way, Ground Floor
P. O. Box 66827 - 00800 Nairobi, Kenya
Tel: +254 20 427 4802
Mobile: 0722 005627 / 0722 002084
Email: sic@safaricom.co.ke

Date: 10th May 2021

Our Ref: SIC/GEN/2021

Your Ref: TBA

CHAIRPERSON
TASKFORCE, SECTIONAL PROPERTIES ACT REGULATIONS
KAMBURU DRIVE OFF NGONG ROAD,
NAIROBI.

Attn: Esther Omulele

Dear Madam,

RE: CONCERNS TO BE ADDRESSED BY THE PROPOSED SECTIONAL PROPERTIES
REGULATIONS UNDER THE SECTIONAL PROPERTIES ACT, 2020.

We refer to the above matter and the Stakeholder's engagement held on 29th April 2021.

We would like to raise the matters below following a review of the Sectional Properties Regulations;

- a. When will the Sectional Properties Regulations take effect?
- b. How will the implementation of the Regulations affect the existing or ongoing projects?
- c. How do the Regulations address Tenancy Purchase Scheme considering the developer remains the owner of the property until the tenant has fully paid for the unit?
- d. The Regulations are not clear on whose mandate it is to issue Rates and Rent Certificates.
- e. The Regulations are silent on what happens to the assets owned by unit holders upon automatic dissolution of a Corporation.
- f. Section 2(3) of the Regulations does not speak to the status of the Charges and partial discharges of Mother Titles upon closure of Mother Title and registration of a Sectional plan. How will the interest of the Developer be protected?



- g. An owner's Certificate of Lease or Certificate of Title shall include the unit's proportionate share in the common property. Will valuation of the unit be inclusive of the common property and in the event of a dispute, how will it be resolved?
- h. How will the Regulations address public use land where persons are required to surrender a portion of land to be used as a public utility for example schools?
- i. The act is silent on how phased development be treated where one Mother Title exists with the project delivered in phases such that development some phases is ongoing while sales is underway in others.

Thank you once again for extending an invitation to us to participate in the Stake holders forum. We look forward to more engagements.

Yours faithfully,

Safaricom Investment Co-operative Society limited,

Peter Gichangi

Chairman





RE: KENYA REVENUE AUTHORITY COMMENTS ON THE DRAFT
SECTIONAL PROPERTIES REGULATIONS, 2021

The Regulations are formulated in accordance with Section 59 of the Sectional Properties Act, 2020 (SPA, 2020). Following review of the Regulations, below are our comments;

1. Regulation 2 on registration of sectional plans

- For new sectional developments not previously registered elsewhere Stamp duty and Capital Gains Tax (CGT) will be payable on registration of the Corporation. For existing sectional developments already registered and stamp duty and CGT had already been paid then the same is not payable on conversion.
- Form SP 1 (*Application for registration of Corporation*) consider including KRA PIN for the individual and non-individual owners of the units as part of the details to be provided.
- Form SP 3 (*Corporation Register*) consider including a column for physical address and telephone number.
- Form SP 5 (*Unit Register – freehold*) and SP 6 (*Unit Register – Leasehold*) under Section B - Proprietorship Section consider including KRA PIN, National ID or business registration certificate or incorporation certificate as applicable.

2. Regulation 19 on conversion of units

- Stamp duty is payable on conversion from Long term lease to sectional units unless proprietor/management company or owner can prove that stamp duty was already paid as per the provisions of Section 13(3) of the SPA, 2020.
- Form SP 14 (*Application for conversion of sub-leases/long term leases*) should include evidence of stamp duty paid (if any) as part of enclosed documents.
- Paragraph 19(7) should provide where a chargee exercises its statutory power of sale, then from the proceeds of sale, the chargee should prioritise remittance of KRA dues (stamp duty and CGT) where applicable.

3. Regulation 20 on documents to accompany an application for conversion

- Consider including KRA PIN certificates for all parties involved (including unit owners, surveyors, lawyers and other service providers) as part of the documents to accompany applications.



4. *Regulation 22 on Notice by owner*

- Form SP 15 (*Intention to rent notice to corporation*) consider including the tax status of the unit owner (resident or non resident).
- Regulation 22(3) the form referenced does not have a number so include the form number for notice on lapse of tenancy agreement.

5. *Regulation 25 on Transfer of parcel*

- Creates a tax incidence for the corporation when it transfers the parcel therefore it is important that the corporation obtains a KRA PIN

6. *Regulation 28 on Notification of change of corporation*

- Form SP 22 (*Notice of change of Board membership on exit of unit owner*) consider including the PIN of unit owner exiting and entering the corporation and also reason for exit of unit owner. If exit is as a result of a unit sale then a tax incidence is created and stamp duty and CGT are payable.

FIRST SCHEDULE: SECTIONAL PROPERTIES CORPORATION BY-LAWS

7. *Paragraph 5 on power of the corporation*

- Other than the unit owners having a KRA PIN, there is need for the registered corporation to have a KRA PIN of its own in order to undertake its roles such as paying PAYE for its employees, borrowing money, acquiring movable and immovable property, file returns and pay taxes such as WHT and income tax for interest and other activities.

GENERAL COMMENTS

- The forms referenced in the regulations should be synchronized with the labelling of Forms in the schedules.
- Consider including KRA PIN as part of the details in form SP 13, SP 14.



LAW SOCIETY OF KENYA
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LSK LAND ENVIRONMENT AND CONVEYANCING COMMITTEE

15TH MAY 2021

The Chairperson,
The Task Force on The Formulation of The Sectional Properties Regulations, 2021

Dear Ms. Omulele,

RE: Memorandum of The Law Society Committee on Lands Environment and Conveyancing To The Task Force on The Formulation of The Sectional Properties Regulations, 2021 Under The Sectional Properties Act 2020.

Greetings,

The LSK Committee on Lands Environment and Conveyancing comments the Task Force for the good work done so far on this important task of land reform. We also appreciate the opportunity to make a contribution to the Task Force which we do in good faith and in alignment with the land reform process and the goal of easing the cost of doing business in Kenya.

We shall present the memorandum in support of our verbal presentation in the following paragraphs.

I. Background and Basis

- A. The Law Society of Kenya ("LSK") is a professional body duly established under the Law Society Act 2014. Its chief mandate is to advise and assist members of the legal profession, the government and the larger public in all matters relating to the administration of justice in Kenya.

- B. The Law Society of Kenya is a key stakeholder in reforms being undertaken in the land sector. Consistent with its broad mandate, the Law Society Conveyancing Committee ("the LSK Conveyancing Committee") is mandated to originate proposals on reform of the law and practice to address challenges encountered by practitioners in the real estate sector.

- C. LSK is aware of the appointment of The Task Force On The Formulation Of The Sectional Properties Regulations, 2021 Under The Sectional Properties Act 2020 (the "Task Force") as per Gazette Notice No 2217 of 2021 ("Gazette Notice") and the current public participation exercise by the Task Force.
- D. The LSK submits this memorandum upon invitations by both the Task force and also the Office of the Principal Secretary Lands, within the Ministry of Lands and Physical Planning to make recommendations concerning the Proposed Sectional Property Regulations under the Sectional Properties Act 2021.
- E. In making our submission the LSK is cognizant of the terms of reference of the Task Force and the fact that it has been imbued with the power to not only make regulations but also and quite importantly to **review** the SPA, the Land Registration Act 2012 ("LRA") the Land Registration (General) Regulations 2017 (the "LRA Regulations") and other ancillary laws and regulations so as to bring coherence and ensure alignment with other laws and the Constitution.
- F. The LSK hereby submits its comments structured as follows:

Part I - General Comments and Situation Analysis

1. As part of the land law reform process, the Constitution called for the revision, consolidation and rationalization of the existing land laws (Per Article 68(1)). This was achieved by the collapse of most of the then existing land statutes and the enactment of: (i) the **Land Registration Act 2012** ("LRA") and the LRA Regulations as a uniform code of title registration and (ii) the **Land Act** ("LA") and the **Community Land Act (CLA)** as the substantive land Acts together with the **Sectional Properties Act 1987**.
2. The **Sectional Properties Act, 2020** ("SPA") reviewed improved and replaced the Sectional Properties Act, 1987 (the "SPA 1987") which, though being a carefully crafted piece of legislation, had dismally failed to gain traction with industry players due to, *inter alia*, institutional rigidity and being alien to the local practice as detailed below. With the enactment of the new land laws, there was need to revise the SPA 1987 which required registration of sectional units as per the now repealed **Registered Land Act**.

3. The SPA and the LA and the CLA all deal with long term leases. The following facts are commonplace between the three Acts:-
- 3.1. The creation of a lease is an **inherent right of a registered proprietor of land**- (per sections 56 of the LA and of the 4(3), 16 (b) and 32 of the CLA).
 - 3.2. A **lease** may be for the whole or only part of the Land- (section 56 of the LA)
 - 3.3. A lease includes a sublease - (per sections 2 of both LRA and LA).
 - 3.4. A **sublease** refers to a demise for a term that is to **expire at the same time as or not later than, the expiry of the term of the head lease** - (per section 63 of the LA)
 - 3.5. For a lease to become eligible for issue of a title, it must be for a term **exceeding 21 years**. The term "**long term lease**" therefore refers to a lease or sublease of a term **exceeding 21 years**.
 - 3.6. The LA, the LRA, the CLA and the SPA contain provisions for **long term leases**.
 - 3.7. Currently upon registration of long-term leases, a register is opened which is separate and independent from the register of the mother title. The register of the long-term lease is a register like any other register under the LRA and is protected by **sections 104 -105 of the LRA** and the Constitution.
 - 3.8. A long-term lease **operates as an encumbrance on the mother title for the duration of the term of the lease**. The long-term lease is **ringfenced for the duration of its term**. Accordingly, any dealing with the mother title is subject to the registered long-term lease.
 - 3.9. **Supremacy of LRA on registration**: all interests in land are registered under the LRA. The LRA is the procedural law on registration of all interest in public, private or community land- (per section 3 of the LRA).
 - 3.10. **Conflict of LRA with other Laws**: Section 5 of the LRA deals with conflict with other laws and expressly provides that the LRA prevails over other laws on land registered under the LRA - (per section 5 of the LRA). "**Except as otherwise provided in this Act, no other written law, practice or procedure relating to land shall apply to land registered or deemed to be registered under this Act so far as it is inconsistent with this Act**"

4. Use of Long-Term Lease

4.1 In Kenya long term Leases are used for various forms of real estate transactions such as:

4.1.1 **Vertical-strata ownership**- such as leases over apartments and buildings both residential and commercial.

4.1.2 **Phased developments** – where an owner wishes to develop property in multiple stages.

4.1.3 **Lease of a part of land** – in both leaseholds and freeholds. For example , (i) an owner of a 100 acres of freehold or leasehold land may lease an acre for 21 years while retaining the reversion, (ii) a community may lease a part of its land under section 32 of the Community Land Act while retaining the reversion. The registration formalities for leases is under section 54 (5) of the LRA.

4.2 The reversion is a **right or interest in land** and in any contract of long term lease has a specific provision regarding the term of the lease, the termination or expiry of the lease, and the person entitled to the reversion, however brief.

PART II. SPECIFIC COMMENTS ON THE SPA

1. Regulation 19 (Conversion of Units) and Regulation 20 (Documents to accompany application for conversion) have misinterpreted the SPA, Section 13 (2) of the SPA and Section 54 (5) of the RLA should be expunged.

1.1. Regulation 19 has failed to distinguish that currently the LRA recognizes and provide for two forms of long term leases:-

1.1.1. Long term leases created under the SPA and registrable in accordance with Sections 54 (3) and (4) of the LRA and the SPA Regulations; and

1.1.2. Long term leases created under the LA and CLA and registrable in accordance with Sections 54 (5) and 54 (6) of the LRA and Regulation 77 of the LRA Regulations .

1.2. The current dual system of long term leases is validly in place and properly anchored in law. There is therefore need to clear the misconception canvassed by Regulations 19 and 20 that:-

- 1.2.1. Long Term Leases under Section 54 (5) of the LRA have to be registered pursuant to the provisions of the SPA;
- 1.2.2. Long term leases already registered under the repealed laws and under LRA have to be brought under the provisions of the SPA.

1.3. The misconception stem from a misinterpretation of section 13 (2) of the SPA on long term leases. Section 13 (2) of the SPA states as follows:

“All 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 this Act shall be reviewed to conform to section 54 (5) of the Land Registration Act, 2012 (No. 3 of 2012) within a period of two years of the commencement to this Act.”

1.4. Section 13 (2) of the SPA obliges registered proprietors of long-term leases to conform to the requirements of section 54 (5) of the LRA and there is a moratorium period of two years from the commencement date of the SPA within which to do so. The SPA commenced on 28th December 2020 and the timeline for compliance therefore extends to 28th December 2022.

1.5. Section 54 (5) of the LRA has two requirements for compliance or conformance-

- 1.5.1. **Georeferencing**-The property (unit) which is the subject matter of the long-term lease must be **georeferenced**; and
- 1.5.2. **Approval**- The plan must be **approved** by the statutory body responsible for the survey of the land.

1.6. Section 54 (6) of the LRA provides that the CS may prescribe Regulations for registration of long-term leases. The CS acting in consultation with the NLC has already prescribed and published Regulations to operationalize Section 54 (5) of the LRA and these are the Land Registration (General) Regulations, 2017 (“the LRA Regulations”).

1.7. Regulation 77 of the LRA Regulations (Part VIII of the LRA Regulations) has comprehensively and specifically dealt with the procedure for registration of a lease “for

a part of a building or a long term leases under Section 54 (5) of the Act". The application for registration for long term leases under Section 54 (5) (other than those under SPA) is by using Form LR 64.

- 1.8. Similarly, Regulation 76 of the LRA Regulations deal with a long term lease over land or part thereof other than long term leases under Section 54 (5) of the LRA.
- 1.9. The reason why there has been non-compliance with section 54 (5) of the LRA and Regulation 76 AND 77 of the LRA Regulations is that the Authority responsible for Surveys has not been able to timeously comply with the requirement to prepare a cadaster and to supply the applicants with the unique prefix number required under the said Regulations. There is an urgent need to build capacity and timeliness in the performance of these services.
- 1.10. Accordingly, Regulations 19 and 20 of the SPA Regulations are in conflict with the LRA and the LRA Regulations for the following reasons:-
 - 1.10.1. *There is already existing a comprehensive Regulation (Regulation 77) to deal with leases under Section 54 (5) of the LRA and the SPA Voluntary process. Regulation 77 was enacted pursuant to the provisions of Section 56 (6) of the LRA (included by Act 28 of 2016).*
 - 1.10.2. Thus, Regulation 19(1) and 20 of the SPA Regulations are inconsistent and contradict specific Regulations under the LRA. We make reference to Section 5 of the LRA regarding conflict. We also make reference to section 54 (3) of the LRA that ringfences the SPA to only those interests that are registered under the SPA.
 - 1.10.3. As noted above, *Section 13 (2) of the SPA does not compel leases registered under Section 54 (5) of the LRA to be brought under the SPA.* The section merely seeks compliance with section 54 (5) of the LRA WHICH WILL MEAN compliance with the Regulation 77 of the LRA Regulation.
 - 1.10.4. The already registered leases have separate registers which are protected under section 104 and 105 of the LRA. Any attempt to bring these properties under the

gated communities during debate on the report - *National Assembly Official Report Thursday, 8th August 201- did not gain traction.*

- 1.3 Accordingly, Section 13 (2) of the SPA is anachronistic to the extent that it is seeking compliance with section 54 (5) of the LRA. It ought to have been in the LRA. The Regulations for the SPA are anchored under section 54 (3) of the LRA.
- 1.4 This poses a challenge noting that a sectional plan presented for registration under ***section 4 (4) (a) of the SPA must describe two or more units in it.*** There is need for clarity on the scope of application of the Act as the same will impact on the implementation of the Act and the Regulations.
- 1.5 ***Section 54 (5) has enabled vibrant legal structures in the real estate sector. The proposed regulations 19 and 20 are an unwarranted unlawful interference with this area of law and will interfere with the ease of doing business.***
- 1.6 The Regulations should reiterate the freedom to contract and freedom of choice in deciding when to bring a development seek application under the SPA. This will be the proper way of embracing and ensuring innovation and dynamism in the real estate sector.

Figure 1 Long Term Leases under the SPA-structure unclear

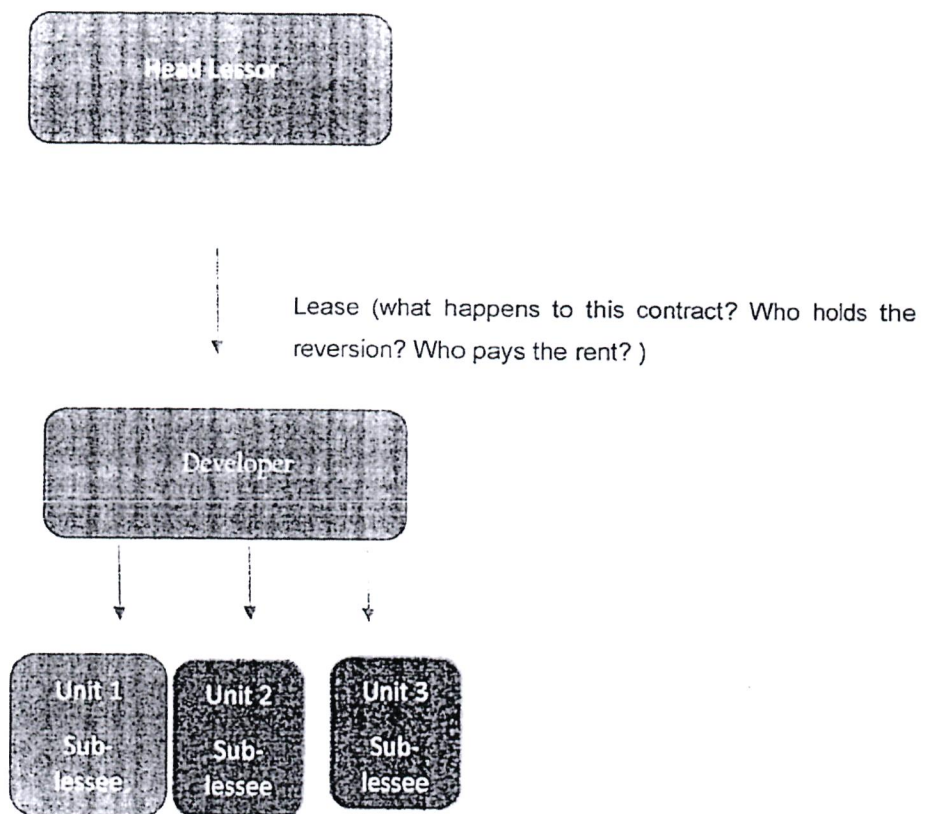
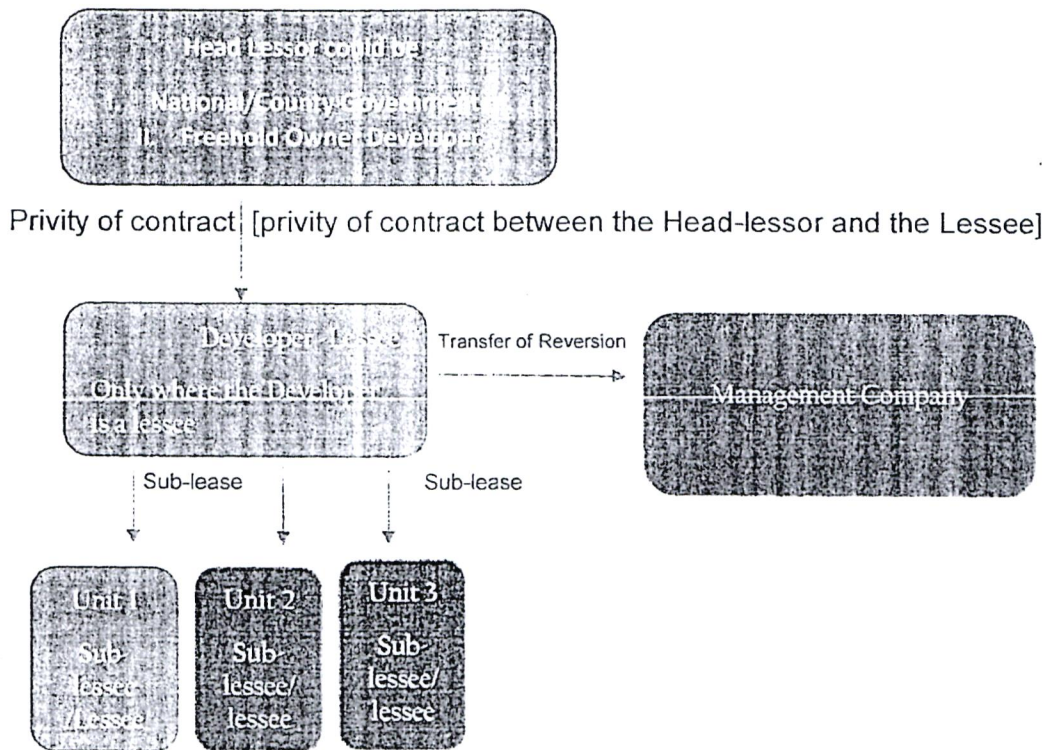


Figure 2. Long Term Leases Under the LA and CLA



Some notable differences are as follows:

LONG TERM LEASES UNDER THE SPA	LONG TERM LEASES UNDER LRA SECTION 54(5) OF THE LRA
<p>a. Applies to freehold and leasehold property where –</p> <p style="padding-left: 40px;">a. the unexpired residue of the term is not less than twenty-one years and</p> <p style="padding-left: 40px;">b. there is intention to confer ownership.</p> <p style="padding-left: 40px;">At least two units</p>	<p>a. Applies to both freehold and leasehold property regardless of intention to confer ownership</p> <p>b. Even one unit</p>
<p>On registration of a sectional plan the register of the mother parcel is closed and separate registers for each unit is opened and title deeds issues.</p>	<p>On registration of the lease, the register of the mother title is not closed for purposes of transfer of the reversionary interest and registration of sub-sequent sub-leases. A separate register for the lease is opened and issuance of titles must comply with section 54(5) of LRA.</p>
<p>Common property owned as part of the unit in the title as tenants in common in shares proportional to the unit factors for their respective units. Who bears the risk of litigation?</p>	<p>Common property owned by the developer or the management company as part of the reversion. Owners are ringfenced by limited liability.</p>
<p>Share of the unit owner in the common property is noted on the title deed for sectional property and the same noted in the register of the unit</p>	<p>Share of the unit owner is not noted in the title but a share certificate is issued where applicable</p>

b. Registration of the sectional plan must be accompanied by an application for the registration of a corporation	Registration of the Management Company does not have to accompany the application of the Lease; registration can progress separately
Corporation is governed by the by-laws and Companies Act, 2015 does not apply	The Management Company is registered and governed by the Companies Act, 2015
Corporation stands dissolved upon termination of the sectional status or by an order of the Court	The winding up of the Management Company will be governed by the Companies Act, 2015 and Insolvency Act, 2015
Corporation manages the common areas but does not hold the reversionary interest	The Management company /lessor manages the common areas and holds the reversionary interest from the Developer
Termination of sectional status may be by unanimous resolution, substantial or total damage to the building or compulsory acquisition	Termination of the leasehold has to be in accordance with the terms of the Lease

11. Specific Comments to the Regulations

In addition to the comments above, the LSK makes the following additional comments-

ISSUE	DETAILS
Lack of a Definitions Clause in the Regulations	The Regulations have used and not defined the following technical terms – such as "Sectional Plan Register", ...In defining these terms there is need to avoid conflict with LRA. For example, the SPA in section 2 defines a "register" to mean a register opened for each unit under section 5 (1) (b) of the Act. On the other hand, section 54 (4) of the LRA provides that the register maintained under Section 7 of

	<p>the LRA shall be the Register for purposes of Sectional Properties. This needs to be better clarified.</p> <p>There is also need to review and clarify the meaning of the phrase "close the register of the parcel" in Section 5 (1) to avoid ambiguity.</p>
<p>Regulation 2 Timeliness of registration of sectional plans</p>	<p>The draft Regulations need to prescribe timelines from when the application for registration of the section plan is submitted until when the Registrar registers the sectional plan and opens a separate register for each unit.</p>
<p>Termination and reversion</p>	<p>It is not clear who is holding the reversion. In the case of a Grant of Lease who is to continue being obliged under the Grant?</p> <p>Who is to pay the rent? Upon expiry of the mother lease who is to seek extension? To whom will the notice by NLC under section 13 of the Land Act be issued?</p> <p>On termination of the unit titles in whose name will the mother title be issued where the number of unit owners could exceed 100?</p>
<p>Closing the register</p>	<p>How is this achieved ? Is the title surrendered and if so does this not extinguish the term of the mother lease?</p> <p>How are the conditions of the mother lease observed?</p>
	<p>There is a typing error of the word "nitify" in the section. There is also a formatting error in that some parts of the section have been unnecessarily bolded.</p>
<p>Regulation 30 Electronic Submission of Forms and Plans</p>	<p>There is need to comprehensively outline the scope and procedure of electronic submission of documents especially in the context of sectional plans which as per Regulation 8 must be "...drawn in waterproof ink, on tracing linen or polyester film or such other</p>

	<p>material that is of size and nature that is acceptable to the Director of Surveys;(b)be prepared in sheets, each sheet of the plan being endorsed in the upper right hand corner with the words "Sheet of Sheets" with the appropriate numbers filled in...."</p> <p>Are sectional plans an exception to this rule? Or will a scanned version suffice? Generally, there is a lot that is left to imagination by this section.</p>
<p>By-Law 5 Powers of the Corporation Need to have reserved matters</p>	<ul style="list-style-type: none"> ▪ The powers of the corporation should be limited to the basic roles of management of the estate . ▪ the powers granted in the by-laws such as powers to borrow, power to acquire movable property and supply gas should be reserve matters requiring a unanimous resolution of the members. This is due to the repercussions of default.
<p>By Law 5(2)(f) Policies of Insurance</p>	<p>The by Law provides inter alia that the Corporation shall on the written request of the owner or a registered chargee of his unit, produce to the owner or chargee, all policies of insurance effected by the corporation together with the receipts for the last premiums paid in respect of the policies.</p> <p>While the Committee does not object to this provision, it is of the view that the same should be extended to include, in addition to policies of insurance, all service agreements relating to the supply of water, electricity or other utilities to the parcel and copies of building contracts for the parcel, including any variations to those contracts so as to offer better protection to owners.</p>
<p>By Law 5 (c)- Power of Corporation to Secure Repayment of Money</p>	<p>The By Law provides that a Corporation may secure the repayment of money borrowed by it and interest on that money by a negotiable instrument, a <u>mortgage on unpaid contributions (whether levied or not)</u>, or a mortgage or charge over any property not being immovable property owned by it or by any combination of those means</p> <p>The fact that a Corporation may secure a mortgage on unpaid contributions, whether levied or not is rather draconian. This</p>

	Regulation should only be allowed to operate within certain confines that ensure that they afford protection to unit owners to avoid occasioning injustice to them if the Corporation defaults in its obligations.
By-Law 9(3) Term of Office	There is a possible cross-referencing error in this by-law. Contextually, it appears that 9(3)(a) should read "the office becomes vacant under by-law 10." It is not clear how, an office can become vacant under By-law 9 other than expiry which is already included under by-law (9)
By law 4(a)- Entry to Inspect	It provides that an owner shall permit the corporation and its agents, at all reasonable times on notice (except in case of emergency when no notice is required) There is need here to delimit what constitutes an emergency.
Payment Plans	The Regulations could also incorporate entering into payment plans with unit owners with respect to overdue contributions subject to the passing of a resolution. The payment plans could also provide for payment of interest on overdue money.
Repetition	There is need to avoid duplicity with the SPA. Some of the Regulations are a word for word replication of the section in the SPA.
Virtual AGMs and Electronic Voting	-The Committee acknowledges that the By Laws provide for the conducting of virtual Annual General Meetings. -The Committee recommends that the By-laws give further regard to the advancements in technology in allowing for not only virtual meetings but also electronic voting. -This could include voting by means of teleconference, videoconferencing, email or other electronic means while participating in a meeting from a remote location or by requiring voters to access a voting website and to vote in accordance with directions contained on that website.

Dispute	Resolution	
Tribunal		<p>Members to have regard that to the recent case of <u>Position before the recent case -Okiya Omtatah Okoiti v Judicial Service Commission & 2 others: Katiba Institute (Interested Party) [2021] Eklr (pg. 42) on whether the proposed tribunal with decision making powers require appointment by the JSC.</u></p>

LSK – COMMITTEE ON LAND ENVIRONMENT AND CONVEYANCING

cc. CS, Ministry of Lands and Physical Planning

PS, Ministry of Lands and Physical Planning

KBA

TEAM OF EASE OF DOING BUSINESS

KENYA BANKERS

**KENYA BANKERS ASSOCIATION SUBMISSIONS
PROPOSED SECTIONAL PROPERTIES REGULATIONS 2021**

Dr. Nicholas Muraguri
Principal Secretary
Ministry of Lands and Physical Planning
Ardhi House, 1st Ngong Avenue
NAIROBI

Dear Dr. Muraguri,

PROPOSED SECTIONAL PROPERTIES REGULATIONS 2021

We refer to the above matter and to your notice requesting for submission of memoranda on the Draft Sectional Properties Regulations 2021 and thank you for allowing us time to present our submissions to the Task Force on Thursday 29th April 2021.

The **Kenya Bankers Association [KBA]** is an association of commercial banks licensed by The Central Bank of Kenya established on 16th July 1962 with the mandate to champion the banking industry's development and access to financial services by the banking public through innovation, advocacy, and promotion of "fair play" among commercial banks.

Having consulted our membership, we submit that the banking industry welcomes the development of the Sectional Properties Regulations 2021 to give effect to the Sectional Properties Act 2020 and proceed to highlight the following:

Regulation & Sub-Clause	Draft Provision	Proposed change	Justification/ Rationale
6 fees	6. The fees payable for any procedure or function under the Act shall be the fees prescribed under the Land Registration Act, 2021.	To provide some variation on fees payable between those converting existing certificates with new applicants.	The law seeks to correct an error made in the repealed Act and the conversion fees need to consider the innocent current unit owners of titles and leases compared to new developments/ applicants.

KENYA BANKERS

- 19. (3)** Section 19. (3) Is it part of the unit If it is all owners, the
Conversion to Where the registered owners (what is the challenge is some unit
units proprietor or the management threshold or %) who may owners may be the
company as the case may be submit an application for developer's proxies and
fails to make the application conversion. or **must it be** unwilling to participate in
under paragraph (1) or (2), **all owners?** conversion.
the unit owners shall submit
a sectional plan for
registration in terms of
paragraph (1).
- 19. (5)** 19. (5) Where a property is Does this refer to a Several unit owners with
Conversion to charged, the application in charge on the mother mortgage from diverse
units paragraph (1) shall be made title or charge to financial institutions, thus
by the proprietor but shall be individual unit (the the need for clarity of
submitted by the charge may more than which institution will be
encumbrancer or appointed one bank) therefore making the submission for
representative for issuance of which bank will be conversion.
a new title noted with the forwarding the
encumbrances, to the application and how will
encumbrancer. the rest of the banks'
interests be secured?
How will Mother Titles
charged for phased
developments with one
or several financial
institutions be handled
during conversion.
- 29** Extension 29. An application for During renewal. must all Some unit owners may
or renewal of extension or renewal of the owners execute the sabotage the renewal
lease lease term shall be made application for renewal process if all are required
through the corporation by all through the corporation? to execute the renewal
the unit owners from the same application.

KENYA BANKERS

sectional plan as provided under the Land (Extension and Renewal of Leases) Rules 2017.

By Laws 16 Seal of the corporation. 16.(1) The Companies Act *Ease of doing business.*
Seal of the The corporation shall have a 2015 has abolished the All statutes requiring
corporation. corporate seal that shall not be use of company seal; to sealing been repealed
used except— (a) under the revise the provision to under the Companies Act
authority of a resolution of the eliminate the sealing and Business Laws
board; (b) in the presence of provision from the amendments.
not less than two members of Bylaws.
the board who shall sign the There should be *The Corporation should*
instrument to which the seal is provision for electronic *have less formalities*
affixed (2) Notwithstanding signing of documents. *comparable to Companies*
paragraph (1) above, if there *Act.*
are two members of the
corporation, one member may
be authorized by the board to
use the seal and sign the
instrument to which the seal is
affixed.

Further concerns and areas of clarification

1. Have clarity on transition of existing management companies to the Sectional Properties Act corporation. How assets and liabilities of the management companies will be treated. The regulations should provide some guide with timelines.
2. Clarity on how to transition the current mortgages and encumbrances secured by the units in the sectional property to the new individual certificates.
3. Clarity on corporation's involvement in land rent and rates now that each unit has been apportioned corresponding common property.

Yours sincerely

Dr. Habil Olaka
Chief Executive Officer
KENYA BANKERS ASSOCIATION

Kara

The Kenya Alliance of Resident Associations

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Isiara Place (Hse No.10),
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Email: info@kara.or.ke
Website: www.kara.or.ke

May 11, 2021

The Principal Secretary
Ministry of Lands and Physical Planning
Ardhi House, 1st Ngong Avenue
NAIROBI

**ATTN: TASKFORCE FOR THE FORMULATION OF THE SECTIONAL
PROPERTIES REGULATIONS**

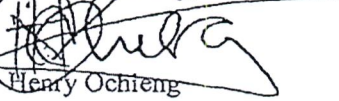
**PROPOSED SECTIONAL PROPERTIES REGULATIONS UNDER THE
SECTIONAL PROPERTIES ACT, 2020**

Reference is made to your letter dated 21st April 2021 on the above mentioned subject.

We are pleased to share with you our comments on the draft Sectional Properties Regulations under the Sectional Properties Act, 2020.

We trust that our input will enrich the draft regulations and look forward to the final document and to working with the Government and other stakeholder in supporting enforcement and compliance to the regulations.

Yours Sincerely,



Henry Ochieng

Chief Executive Officer

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The Kenya Alliance of Resident Associations

MEMORANDUM TO THE TASKFORCE FOR THE
FORMULATION OF SECTIONAL PROPERTIES REGULATIONS

Submission on the Draft Sectional Properties Regulations 2021

Presentation by The Kenya Alliance of Resident Associations (KARA)

11th May 2021

Background

1. The Kenya Alliance of Resident Associations (KARA) supports the development of the Sectional Properties Regulations to streamline sectional property use and management in Kenya.
2. We take note of the Taskforce effort to reach out to various stakeholders including KARA to give their views regarding the Draft Regulations.
3. The Draft Regulations addresses some of the concerns that have been previously raised by property owners and also creates an enabling environment for investors and property owners to manage their affairs as regards sectional property.
4. The Regulations also provides for dispute resolution mechanism through establishment of Dispute Resolution Committee to handle issues that may arise between various Parties referred to in the Act.

Proposals for Consideration in the Draft Regulations:

a) Clause 9

THAT Clause 9 (1) be amended by inserting a new part (d) Resident Association.

Justification

Resident Associations play a key role in land use approvals by the local authorities within their areas. They also ensure that the zoning and change of user by-laws/regulations are adhered to by property owners/developers. The Associations are formed by residents of an area for purposes of protecting interests of the area within which they reside. Resident

Associations should therefore be allowed to participate in the process of signing and endorsement of first sheet of the Sectional Plan.

b) Clause 5 (1e)

THAT Clause 5 (1e) be deleted.

Justification

Common properties should not be subjected to exclusive use by individuals as they belong to community and are maintained/serviced by resources obtained from all owners/tenants.

c) Clause 22 (2)

THAT Clause 22 (2) be amended by reducing the number from twenty onedays' notice to 5 days notice.

Justification

Communication of new tenant should be communicated immediately for security reasons.

d) Clause 22 (3)

THAT Clause 22 (3) be amended by reducing the number from twenty days' notice to 5 days notice.

Justification

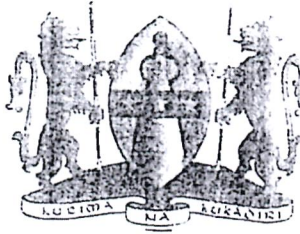
Communication of new tenant should be communicated immediately for security reasons.

Other General Comments:

1. The document has three sections: The regulations (30 articles), the schedules 37 in number and Forms 22 in number. This style of presentation makes it very complicated and raises the question as to who is the consumer of the document. A review should be considered in light of the target population
2. The first part is very legal in approach, perhaps following the common legal drafting format while the second and third sections are very technical and sets itself to interpretation and possible different opinions. Certain portions can only be understood by very technical persons. This should be simplified.
3. The twenty two Forms repeat the points in the regulations and the schedules: these could be reviewed and simplified for use by common property owners.

Contacts:

The Chief Executive Officer
The Kenya Alliance of Resident Associations (KARA)
P.O Box 1411 – 00100, NAIROBI.
Tel: 0725983445; 0203874331/3873828
Email: info@kara.or.ke



INSTITUTION OF SURVEYORS OF KENYA

MEMORANDUM FROM THE INSTITUTION OF SURVEYORS OF KENYA (ISK)

ON

THE SECTIONAL PROPERTIES REGULATIONS, 2021

PRESENTED TO

CHAIRPERSON, TASKFORCE ON THE FORMULATION OF
REGULATION UNDER SECTIONAL PROPERTIES ACT

Head Office:
10th Floor, Reinsurance Plaza,
Taifa Road, Aga Khan Walk,
P.O. Box 40707-00100, Nairobi
Tel: 020-313490/0724 929 737/0737 929 737
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Website: www.isk.or.ke

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2nd Floor, Sifa House,
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P.O. Box 2072-40100, Kisumu
Tel: 0724717608
Email: westernbranch@isk.or.ke

Sectional Properties Act Regulations

Section	Proposal	Proposed amendment	Justification
3 (2)	The section provides for every registered sectional plan to be allocated a progressive number which it may be identified in the Sectional Plan Register	Amend the section by inserting "by the Authority responsible for Survey."	The proposed amendment seeks to bring about clarity and ensure that it is consistent with the provisions of the Land Registration Act, 2012. It will also provide for unique identifier for the section plan generated at source of approval in support of digital migration
6	The section provides for the fees payable for any procedure or function under the Act shall be the fees prescribed under the Land Registration Act, 2021.	Amend the section to provide a new section 6 A to read "The professional fees payable for Surveying and Registration shall be Kshs. 10,000 sq root of the area of the plot plus 0.3% of value of development. the Minimum fee to payable per unit is Kshs. 30,000.	The existing regulations governing professional fees for surveying and registration is not explicit regarding sectional properties. Since the implementation of this act is time-bound (within two years on the commencement of the act), there is need for the regulations to provide guidance on the fees chargeable. This will not only ensure that there is standard for quality control but also cushion the developers/owners. Section 102 of LRA explicitly provides for CS to make regulations on fees chargeable for application of the act which may be reviewed from time to time
9 (1)	Provides for the signing and endorsement of sheets by a surveyor, the County Government; and the owner of the property	Amend the section by deleting "be signed by" with "be endorsed by"	This is to ensure that the section conforms to the provisions of 11 (1) of the Act.
10 (b)	The section provides for requirements of plan sheets and specifies that the sheets shall be to a scale, selected from the standard scales	Amend the section to read "be to a scale, selected as per the survey regulation"	The proposed amendment will give provisions of the scales to be in tandem with conventional scales used in survey plans with any changes in conformity with survey act.

11	<p>tabulated in regulation 89 of the Survey Regulations</p> <p>Provides for the Authority Responsible for Survey to approve, in some instances expression of words, letters, figures and symbols</p>	<p>Amend the section by replacing "approves" with "prescribes"</p>	<p>This will allow the authority responsible for survey to proactively prescribe manner of letters fonts as per the survey act</p>
14 (1) (a)	<p>The section provides for the matters to be set out in a site and building location plan, particularly - abutting boundaries, co-ordinates of beacons, lengths and bearings of external boundaries of parcel as required by regulations 91 and 92 of the Survey Regulations</p>	<p>Amend the section by deleting "regulations 91 and 92"</p>	<p>This is for purposes of conformity with the dynamics of the survey regulations which may be amended from time to time and specific sections on boundaries details not covered under 91 or 92</p>
20	<p>The section provides for application for conversion and the Documents to accompany an application for conversion</p>	<p>Amend the section to imply that when application for registration is made for the section plans with endorsements and relevant attachments the conversion is implied unless there is unwillingness of developer or management corporation from complying with the SPA provisions</p>	<p>The proposed amendments seek to shorten the processes of conversion and enhance ease of doing business. There may be no need for separate application for conversion to give effect to section 4 of the act</p>
22	<p>The section provides for the notice by the owner on the new tenancy</p>	<p>Amend the section to provide notice by owner on the "existing" tenancy</p>	<p>The is need to ensure that the corporation is notified of all the tenants within the units, both existing and new.</p>

23 (1)	The section provides for notice by the Corporation where the tenant is in breach of the by-laws	Amend the section to include "tenant and owner"	There are instances where the owners of the units are residents and are in breach of the bylaws. The regulations ought to provide for a form to this effect. This also ensures that the owners are accountable just like the tenants.
First Schedule (5) (1)	The section provides for powers of the corporation	Amend to include a new provision to read as follows; (k) To levy service charge subject to approval by AGM and subject it to mandatory Auditing (l) The corporation to be mandated to levy and maintain Capital Reserve subject to approval by Annual General Meeting	One of the challenges in managing Sectional Properties is dealing with capital works such as painting of common areas and road works and payment and administration of the service charge. The corporation should therefore be empowered to levy service charge that has been agreed by all members during an Annual General Meeting. The service charge should also be also be audited. The corporation should also be given powers to levy and maintain capital reserve that will be primarily used to fund specified capital projects that are at times capital intensive.
First	The section provides that	Amend the Section to read "The board	Registered Estate Agents and Property Managers

Schedule 18 (2)	the Board to "The board may employ on behalf of the corporation any agents and employees....."	may employ on behalf of the corporation Registered Estate Agents or Property Managers necessary to control, manage and administer the movable and immovable property of the corporation and the common property and in that respect may authorize those persons to exercise the powers of and carry out the duties of the corporation.	have relevant and necessary qualifications and experience in property management. The provisions therefore ensure that the sectional units are managed professionally. The Registered Estate Agents and Property Managers subscribe to the professional code of ethics that ensures that they are professionally accountable.
First Schedule 19	Provides for the duties of the board, which include among others avail books of account for inspection at a reasonable fee upon payment of reasonable fee	Amend the section by deleting "at a reasonable fee"	The owners of the units should be able to inspect books of accounts upon request. A requirement for them to pay a fee serves to discourage the unit owners from seeking to inspect the books of account. Furthermore, "reasonable fee" is ambiguous and can be subject to abuse.
Form SP13	The form provides for Consent of Unit Owner(S) for Sub-Division or Consolidation of a Sectional Plan	Amend the form to clarify that the consent being sought is before the consent from County Government	The consent ought to be sought before approval by the County Government. This is because the subdivision changes the dynamics of the development. In the case where the owners have already purchased the units, the likelihood of consent for subdivision is very slim. There is also need for provision that seeks to mitigate scenarios where few consents or where a number of residents objects to the proposed sub-division of consolidation.

General comments/suggestions

1. There is need to clarify tax liabilities by the corporation by the corporation. Furthermore, there is need to explore possibility of exempting service charge that shall be levied by the corporation from VAT. Currently this is a major grey area affecting the existing corporations
2. There is need to also consider the capital expenditure computation of service charge and capital gain tax that arise from capital expenditure including among others establishment of a borehole
3. The regulations should explicitly indicate how the common areas including club houses, swimming pool among others, shall be documented.
4. The taskforce should also consider guidelines for the processing and approval of sectional property surveys at Survey of Kenya to ensure that the implementation of the Act is not slowed. Such guidelines shall include among others, requirements for geo-referencing and engagement of surveyors in private practice to enable realization of the two-year moratorium on conversion of existing developments to conform to the SPA while the Government Surveyors FastTrack the quality control and authentication processes.
5. The regulations should provide for the transition to the existing act, particularly for the existing corporations with assets and liabilities. Such transition needs to include the timelines.
6. Section 11 (1) of the Act provides for Certificates to accompany sectional plans, specifically a certificate from the County Government stating that the proposed division of the structure as illustrated on the plan has been approved by the county government. There is need for a standard certificate to give effect to this section of the act and endorsed by the Surveyor and County Government. This will ensure that there is uniformity and standardization.

Thank you,



Rose Mwaura

Chief Executive Officer

E ERDEMANN PROPERTY LIMITED

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Telephone: +254 20-351 3306 • Facsimile: +254 20-351 3305 • +254 733 209 709, +254 724 209 709
E-mail: info@erdemann.co.ke • Website: www.erdemann.co.ke

Our Ref:
EPL/ 0408/PRT

Your Ref:

Date:
April 29, 2021

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

Attn : Dr. Nicholas Muraguri

Dear Sirs,

RE: ERDEMANN PROPERTY LIMITED OVERVIEW OF THE SECTIONAL
PROPERTY REGULATIONS -QUESTIONS AND CONCERNS

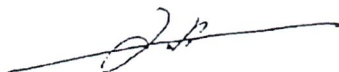
We refer to the above matter and your invitation for public participation on your letter dated 21st April, 2021 to be held on 29th April, 2021 on the Zero draft on the sectional Properties Regulations.

Erdemann Property as a major stakeholder in the industry would wish to have the following questions addressed in the said meeting and the concerns considered in arriving at the final draft.

POINTS WE WISH THE COMMITTEE TO CONSIDER

1. What is the relationship between the old and the new Act?
2. How shall the new Act affect the projects from the planning stage, purchase of the units and design?
3. Impact of the new law in construction of the project?
4. Impact of the new law in terms of sales & marketing
5. Clarification on when the certificate of title should be applied for, issued? Shall this be during construction or after completion of the project?
6. How is the management of common areas and provision of services of the common areas to be conducted?
7. How shall the relationship of the developers and purchasers be governed?

When replying please quote our reference number



8. Who shall be responsible in the estate for the operation to maintain the value & standard of the estate?
9. What are the roles of the developers, purchasers, Advocates handling the transactions, owners of the unit and possible tenants to occupy the same?

QUESTIONS ON THE REGULATIONS

1. Does the Developer form part of the board of management? If no, we propose for inclusion to assist in the handover and management of the units before full handover especially for big projects like those done by EPL.
2. The Sectional Act requires the developer to be call for a meeting of all purchasers to form a management board upon selling of at least 50% of the units in the project or within 180 days from the day of the first sale. Noting that in off plan purchases completion of payment for the unit is not done immediately, what criteria will the developer use to determine what units are already sold to call the first meeting? What amounts to a sold unit. Is it upon booking or upon full purchase of the full purchase price including the end costs.
3. For the units that have been registered under the former regime what provisions have been put to assist in the transition from Management Company to Corporation? Who should form the corporation is it the developer or the home owners and when will the same be done?
4. Do the LSK conditions of sale apply to this type of transaction?
5. How will easements on property be registered noting the system envisages doing away with the mother title and every owner having a separate title?
6. What happens to units with balances in purchase price with regard to registration?
7. When does the developer cease being part of the project? Is it after handover of the unit or immediately a corporation is formed or immediately they lodge the documents for registration and the certificate of title issued?
8. The act in Section 21 states that the corporation shall not have power to carry out any trading activities. Does this restrict provision of services that are for the convenience of the homeowners? Can the management agreement incorporate for provision of services like electricity and water for convenience of the running of the Estate?
9. When shall the developer issue the certificate of title to the developer (at what point)
10. Who should apply for the issuance of the title, does this fall on the developer or on the purchaser?

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11. What is the relationship between issuance of the certificate of title and completion of the project?
12. What is the difference between the occupation of the unit & issuance of the certificate of title?
13. Relationship between the developer & purchaser during the construction of the project (what shall be the roles of each party)?
14. How do you define the construction period from the start to the end?
15. Kindly clarify the 180 days & 90 days period provided in the act for the formation of the corporation?
16. Who should apply for the issuance of the certificate of title, when should the application be done, and how should the application be conducted?
17. In the event the mother title is charged to a financial institution and after the completion of the project & the title has not been discharged, how do we proceed with processing of the certificates of title?
18. Who shall bear the cost of paying the surveyor to prepare the sectional plan (shall it be borne by the developer, or the purchaser and at what point should this payments be made)?
19. In the event the construction of a project takes longer than anticipated, how do you handle the delay in terms of issuance of the certificates of title?
20. In the event the County offices decline to issue approvals for the project how can the certificates of title be processed and issued?
21. In the event a purchaser does not pay the full purchase price in time and the project is complete, in whose name shall the unit be registered?
22. How shall the payments of land rents & rates be conducted noting that the unit owners shall pay the same individually? Could the same be paid by the corporation?
23. How is the valuation process to be conducted and what procedure should be followed?

PROPERTY MANAGEMENT

1. Who shall form the corporation
2. What is the developers role in the management of the property
3. How shall the payment & management of cleaning, security, water, parking, garbage collection & those related to management be handled, what shall the developers role be?

When replying please quote our reference number



ONGOING PROJECTS

What shall happen to those projects that are ongoing in terms of registration? Shall we require to be issued with certificates of title and what conveyance documents shall be prepared to facilitate the conveyance of the units?

We shall appreciate a response and or consideration of our views and concerns above even as you reach to the final draft of the regulations.

Yours faithfully,
ERDEMANN PROPERTY LIMITED



ZHEYUN YANG
MANAGING DIRECTOR

When replying please quote our reference number

DORCHES PARK RESIDENTS ASSOCIATION

SUBMISSIONS

on

Proposed Sectional Properties Regulations 2021

Wednesday 28 July 2021

Mr John Gray
Chairman

7071 85-05 1

Regulation	Proposed provision	Recommendation	Reasons
Regulation 6 fees	6. The fees payable for any procedure or function under the Act shall be the fees prescribed under the Land Registration Act, or long term leases.	We urge that the Government should waive conversion titles and leases existing before the Act came into force in December 2020.	The conversion should not be burdensome to unit owners with titles and leases obtained before the Act came into force in December 2020. <i>Unit owners for conversion will have already incurred costs for sectional plans development (Regulation 8).</i>

7071 85-05 1

<p>Regulation 19. (3)</p>	<p>Section 19. (3)</p>	<p>Provide % of unit</p>
<p>Conversion to units</p>	<p>Where the registered proprietor or the management company as the case may be fails to make the application under paragraph (1) or (2), the unit owners shall submit a sectional plan for registration in terms of paragraph (1).</p>	<p>Some unit owners who can may not be interested in conversion/ working with developer to derail the process.</p>

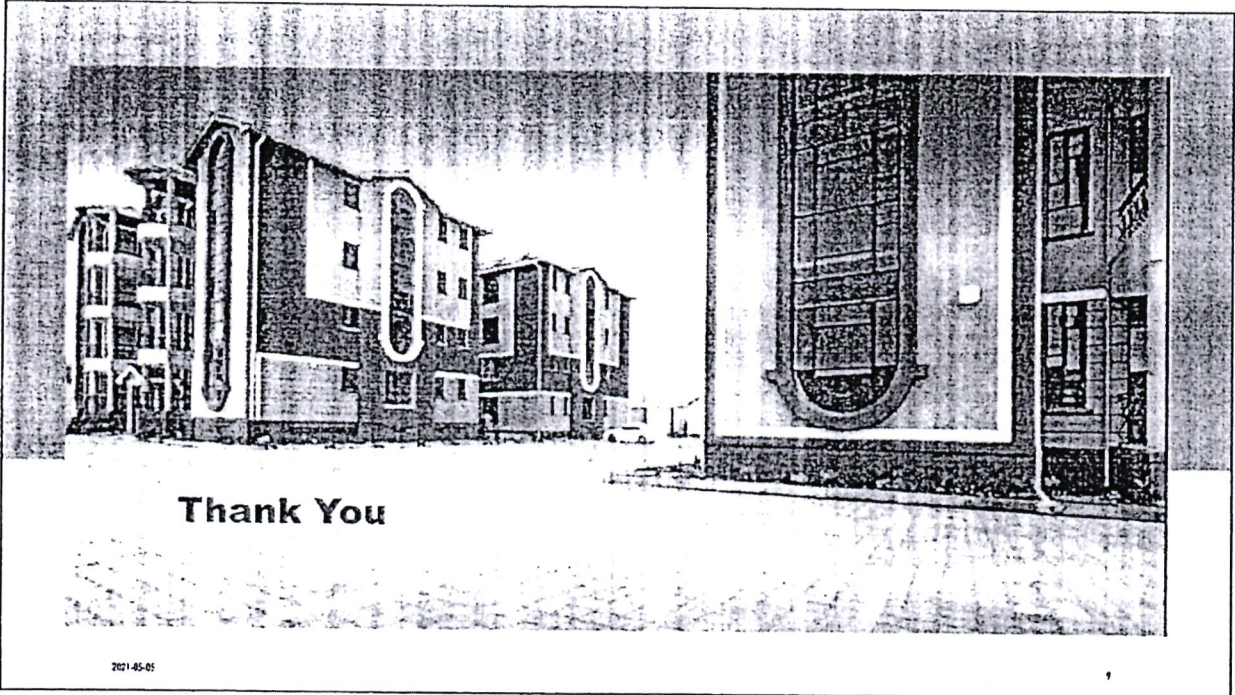
<p>Regulation 20. (5)</p>	<p>20. (5) The registrar shall register the sectional plan and issue the owners of the unit with certificate of title/lease in accordance with section 54(5) of the Land Registration Act, 2012.</p>	<p>Provide for the process to be followed when an application for conversion is rejected, conversion after presenting all developer or management documentation under Regulation 20 (1).</p>
<p>Conversion to units</p>	<p>There is a possibility of rejection of conversion after presenting all developer or management documentation under Regulation 20 (1).</p>	<p>What is the recourse for the unit owners?</p>

Regulation and Plans	Proposed provision	Recommendation	Reasons
<p>Regulation 21. (1) Amendment of Bylaws</p>	<p>21. (1) where the corporation deems it necessary to amend its bylaws pursuant to section 29 of the Act, the amended copy shall be filed with the registrar who shall note on the sectional plan if satisfied that the amendments are in conformity with the Act.</p>	<p>The Bylaws should be subdivided into: a) Mandatory with minimal provisions that corporations may improve on. b) Best practice and discretionary.</p>	<p>To streamline the nature of amendments that corporations may make.</p>

Regulation and Plans	Proposed provision	Recommendation	Reasons
<p>Regulation 29 Extension or renewal of lease</p>	<p>29. An application for extension or renewal of the lease term shall be made through the corporation by all the unit owners from the same sectional plan as provided under the Land (Extension and Renewal of Leases) Rules 2017.</p>	<p>Reword the regulation to allow some owners to apply back for renewal if others are non-committal on the renewal?</p>	<p>To avoid a few unit holders holding the rest due to ulterior motives/selfish interests.</p>

By Laws 16 Seal of the corporation. 16.(1) The corporation The Company Act has The shall have a corporate seal that shall not be used abolished the use of Corporation except— (a) under the authority of a resolution of company seal. To align should have the board; (b) in the presence of not less than two the corporation with the flexible members of the board who shall sign the instrument simplified process. processes. to which the seal is affixed (2) Notwithstanding paragraph (1) above, if there are two members of the corporation, one member may be authorized by the board to use the seal and sign the instrument to which the seal is affixed.

1. Provide regulations on transition process from existing management companies for Sectional properties to the new corporations. Address the issue of assets and liabilities of the management companies during the transition with deadlines. There is a Swahili adage that says: Ahadi ni deni; clarify how companies or developers should address liabilities which comprise amenities verbally or contractually committed.
- 2.
- 3.
- 4.
- 5.



2021-45-05

Mrs. Esther Omulele,

Chairperson, Task Force on the Sectional Properties Act Regulations, 2021

COMMENTS ON THE ZERO DRAFT OF THE PROPOSED SECTIONAL PROPERTIES REGULATIONS, 2021

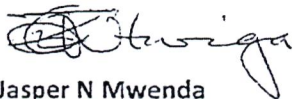
Thanks for the recent invitation to give a feedback on the above subject. Congratulations for the excellent work you are doing for Kenya. We look forward to its successful completion.

I have looked at the zero-draft of the proposed "The Sectional Properties Regulations, 2021" and have the following comments for your attention.

1. There is a provision in the Survey (Electronic Cadastre Transactions) Regulations, 2020 for the "parcel plan". Perhaps you can consider an equivalent document in these Regulations.
2. Section 8 (a) makes reference to the "Director of Surveys" while sections 9 and 11 refer to "Authority Responsible for Survey". If this is meant to refer to the same Office, then some harmonization may be necessary
3. Section 6 mentions that Fees payable under the Act shall be prescribed under the Act. Survey Fees and other fees (by Government and Licensed Surveyors) are currently prescribed under the Survey Act – specifically in the Fifth, Sixth, Seventh and Eighth Schedules of the Survey Regulations. Kindly address this issue
4. The Sectional Properties Act, 2020 and The Sectional Properties Regulations, 2021 use the term "Consolidation" while The Land Registration Act, 2012 uses the term "Combination" for combination/consolidation of two or more properties. Reference to "Consolidation" in The Land Registration Act, 2012 is in reference to the Land Consolidation Act (CAP 283). A linkage/ definition of these terms between the statute dealing with Survey and the other which deals with Registration may be necessary.

Once again receive my congratulations and best wishes for the task that you are undertaking.

Best Regards,



Jasper N Mwenda

Department of Geospatial and Space Technology,

University of Nairobi

jnmwenda@yahoo.co.uk

1st May 2021

MINUTES OF THE 12TH MEETING/1ST STAKEHOLDER'S ENGAGEMENT OF THE TASKFORCE ON FORMULATION OF THE SECTIONAL PROPERTIES REGULATIONS UNDER THE SECTIONAL PROPERTIES ACT, 2020 WITH LAW SOCIETY OF KENYA (LSK) AND ASSOCIATION OF LICENSED LAND SURVEYORS OF KENYA (ALLSK) HELD VIRTUALLY ON WEDNESDAY, APRIL 28TH 2021 AT 09:00 A.M.

Taskforce Attendance

S/ No	NAME	ORGANIZATION
1.	Esther Omulele	MMC/LSK - Chairperson
2.	John Kimani	SDHUD - Member
3.	Ada Mwangola	VDS - Coopted Member
4.	Lawrence Gakwa	EARB - Member
5.	Clarah Ketyenya	MoLPP - Joint Secretary
6.	James Mwangi	SDHUD - Joint Secretary
7.	Peris Karanja	KPDA - Member
8.	Tom Abuta	MoLPP - Joint Secretary
9.	Berita Choka	MoLPP - Member
10.	George Arwa	MoLPP - Member
11.	Wallace Mbugua	ISK - Member
12.	Stephen Kibungei	LSK - Member
13.	Joseph Ngaruthi	NLC - Coopted Member
14.	Samuel Nthuni	NLC - Member
15.	Eva Sawe	CoG - Member
16.	Brian Kimutai	MoLPP - Member

Apologies

1.	Peter Musyimi	KLRC - Member
2.	Mary Macharia	NLC- Joint Secretary
3.	Catherine Ochanda	AG - Member

In Attendance

1.	Anthony Maseno	Wambua & Maseno Advocates
2.	Ahmed Lenkidi	KMALLP
3.	James Sogoh	
4.	John Gitau	Planland Geoconsult Ltd
5.	Mohammed Issa	
6.	Irene Mutai	MOLPP- Registration
7.	Stephen Njoroje	MOLPP
8.	Irene Odhiambo	
9.	Lydia Kemboi	
10.	Caroline Hossfeld	Kaplan & Stratton advocates
11.	Ribin Ondari	Ashitiva Advocates LP
12.	Nderitu June	
13.	Wanjiru Mutero	

14.	Ann Gitonga	
15.	Stephen Ouma	Gikera & Vadgama Advocates
16.	Irene Kiwool	Muchemi & CO. Advocates
17.	Grace Kihungi	G.N. Kihungi Advocates
18.	Angela Njeri	
19.	Richard Amati	KISM
20.	Sylvia Maina	
21.	Tatiana Mbeyu	
22.	Maureen Akama	
23.	Nadia Gitu	Karanja- Njenga Advocates
24.	Festus Rimbere	
25.	Betty Ng'etich	Mckay Advocates
26.	Mark Ndirangu	
27.	Cynthia Munuve	
28.	Beauttah Siganga	Estate Agents Registration Board
29.	Rita Karau	
30.	Gladys Mwangi	Nderi & Mwangi Advocates
31.	Linda Lockwood	
32.	Nicholas Ongwae	ALLSK
33.	Lilian Kiruri	Kimani & Michuki Advocates
34.	Victor Orina	
35.	Bellinda Akello	LSK
36.	Baptista Kihingo	
37.	Naomi Wangari	Mohammed Muigai LLP
38.	Felix Mulaku	
39.	Judy Kabubu	MMAN Advocates
40.	Laureen Ong'ayo	Naomi & Kilemi Advocates
41.	Michael Njuguna	
42.	Anthony Miti	J.K. Kibicho & Co. Advocates
43.	Brian Mogaka	
44.	Janet Muriithi	
45.	Mercy Wanjiru	Gikera & Vadgama Advocates
46.	Janet Othoro	
47.	Viona Midikila	
48.	Yvone Ndamu	
49.	Catherine Nganga	
50.	Jackline Ngari	
51.	Waiswa Abed	
52.	Barbara Malowa	LSK
53.	Omondi Omollo	Omolo & Omollo Advocates
54.	Gatu Kirubi	MMC ASAFO
55.	Victoria Muya	
56.	Mercy Njeru	KUSCCO Limited
57.	Renice Midar	
58.	Bridgit Atieno	

59.	Njeru Kamande	NCBA
60.	John Kihagi	ALLSK
61.	Maureen Kibatha	
62.	Janet Muema	J.N. Muema & Co Advocates
63.	Chris Ochieng	
64.	Omondi Owino	Acorn Law Advocates - LLP
65.	Eric Theuri	LSK Nairobi
66.	Wendi Muganda	LSK Nairobi
67.	Julius Odera	KUSCCO Ltd
68.	Peter Mwangi	Walker Kontos
69.	Kelvin Bett	
70.	Roselyn Muyaga	
71.	Benard Leitich	
72.	Faith Gititu	J.K. Kibicho & Co. Advocates
73.	Vitalis Luseka	Kenya Airports Authority
74.	Lilian Lofty	Daly & Inamdar Advocates
75.	Harry Masawi	
76.	Pauline Gitimu	SoK
77.	Sharon Buyanzi	
78.	Francis Kenyeru	Orioki Kenyeru & Co Advocates
79.	Vincent Olala	Akoto & Akoto Advocates
80.	Jessica Mwenje	
81.	Anne Mumbi	Fidel Mwaki & Co Advocates
82.	Edward Ngugi	McKay Advocates
83.	Betty Atieno	
84.	Sarah Maina	
85.	Patricia Lelei	McKay Advocates
86.	Nafysa Adams	Hamilton Harrison & Mathews
87.	Diana Ngei	
88.	Hannah Githuku	
89.	Phillip Mukamba	
90.	Henry Omukubi	
91.	Charles Misicko	Geosolutions international Ltd
92.	Richa Khataw	
93.	Lilac Omollo	Omollo & Omollo Advocates LLP
94.	Stella Musembi	GVA
95.	Pat Mbugua	
96.	Mary Kamunyu	
97.	Caren Mumbua	
98.	Rashid Abdullahi	Association of Licensed Land Surveyors of Kenya
99.	Esther Jowi	
100.	Caroline Muchiri	MoLPP
101.	Natalie Aol	
102.	Sylvia Chepkoech	
103.	Sylvia Nyabuto	Kenya School of Law

104.	Leah Muchiri	J.K. Kibicho & Co. Advocates
105.	Tom Onyango	Tripleoklaw
106.	Mutava Musyoki	
107.	Nancy Harriet	HOAA
108.	Lydia Owuor	Dentons, Hamilton Harrison & Mathews
109.	Martha Gitonga	
110.	Effie Atieno	JKK
111.	Christopher Kinyua	ALLSK
112.	Caroline Menine	MOLPP
113.	Bibiana Omala	Arch Surveys
114.	Boru Hussein	
115.	Nancy Migwi	Nancy Migwi- Waweru Advocates
116.	Samuel Odoyo	KeNHA
117.	Karim Chakera	
118.	Jacob Oyato	
119.	Simuli Carol	
120.	Hannah Wahu	
121.	Patricia Kirui	
122.	Happy Apia	
123.	Joyce Mukururi	
124.	John Mwangi	Kimani Mwangi Advocates LLP
125.	Peter Keya	
126.	Emma Ochieng	Gikera and Vadgama Advocates
127.	Fred Njihia	Mucheru Law LLP Advocates
128.	Miriam Naserian	Mckay
129.	Vivianne Mwangi	Walker Kontos

AGENDA

1. Preliminaries
2. Presentation of the SPA draft Regulations
3. Plenary
4. Way Forward

MIN.1/12/2021	PRELIMINARIES
	<ul style="list-style-type: none"> • The meeting commenced at 09:15 a.m. with a word of prayer from the Clarah Ketyenya. • The Chair welcomed members to the meeting. She introduced the Taskforce and laid out the rules of engagement.

MIN.2/12/2021	PRESENTATION OF THE DRAFT SPA REGULATIONS
	The presentation on the draft regulations was done by the Chair Esther Omulele, George Arwa and Tom Abuta.
MIN.3/12/2021	PLENARY
	<p>The Chair gave a chance to the head of the two organizations to make some remarks. LSK was represented by Peter Mwangi while ALLSK was led by Christopher Kinyua.</p> <p>Peter Mwangi said that LSK would share a written Memorandum. Other comments were given by Eric, Theuri and Ribin Ondwari of LSK.</p> <p style="text-align: center;">LSK Comments</p> <ol style="list-style-type: none"> 1. The issue of conferring ownership of the main Land Lease is also in the Land Registration Act, 2021. <p>Response: The intention of this regulation is limited to conferment of partial ownership of the unit owner.</p> <ol style="list-style-type: none"> 2. Services provision for some services such as gas. 3. Issue of Reversionary Interest will need to be clear without so much flexibility. 4. On the structure of statutory form SP 9. the applicant, being a Surveyor, should avail his/her Land Survey License number. To this end, provide the words "Survey License No." within the dotted line after the word Applicant. 5. To the Technical Team. Section 4 (4) (a) of SPA states that the registrar shall not register a sectional plan unless the sectional plan describes two or more units in it; the question is what will happen to maisonettes which had been hitherto registered under SPA? 6. I have a comment on the Board term. Having the company board have a one-year term does not make sense. We would suggest a minimum of three years' renewable for a further term. In one year a corporate board is not able to achieve much. <p>Comments from ALLSK</p> <ol style="list-style-type: none"> 1. Phased development on one parcel of land. <p>Suggestions The remaining land should be treated as a unit. Provide a proviso so that the remaining land should be treated as a unit. The owner may subdivide the parcel into three areas and apply for property registration. There is a challenge with the common property, since it common property may not be duplicated in every parcel.</p>


	<p>2. Huge Projects. Creating a Corporation of members for example 2000 units. Is there a provision where this project can have 2 or more corporation depending on the corporation will and desire?</p> <p>The full report of the plenary session is hereby annexed.</p>
MIN.4/12/2021	WAY FORWARD
	<ul style="list-style-type: none"> • The written memorandum to be sent by 7th April, 2021. • Tom to correct the typos in the presentation and George to review slides on Unit Factor.
	There being no other business, the meeting ended at 11:54 am with a word of prayer by Mary Macharia

Signed by: -

Esther Omulele

CHAIRPERSON:  Date: 12th May 2021

SECRETARY:  Date: 12th May, 2021

SECRETARY:  Date: 12th May 2021

Plenary Session 28th April 2021

No	Stakeholders Name/ Organization	Issue	COMMENTS	Remarks/ Action
1	Peter Mwangi, Eric Theuri, Ribin Ondwari LSK	Conferring ownership of the main lease	<ol style="list-style-type: none"> 1. The issue of conferring ownership of the main land lease is also in the Land Registration Act, 2012 2. Services provision for some services such as gas. 3. Issue of Reversionary Interest will need to be clear without so much flexibility. 	The intention of this regulation is limited to conferment of partial ownership of the unit owner
2	Christopher Kinyua ALLSK	Phased development on one parcel of land	<p>The remaining land should be treated as a unit. Provide a proviso so that the remaining land should be treated as a unit.</p> <p>The owner may subdivide the parcel into three areas and apply for property registration. There is a challenge with the common property, since it common property may not be duplicated in every parcel.</p> <p>Huge Projects. Creating a Corporation of members for example 2000 units. Is there a provision where this project can have 2 or more corporation depending on the corporation will and desire?</p> <p>On the structure of statutory form SPg the applicant, being a surveyor should avail his/her land license survey number. To this end, provide the words "Survey License No." within the dotted line after the word applicant.</p>	
3	Tom Ouyango	Corporation Board	Having the company board have a one-year term doesn't make sense. We would suggest a minimum of three years' renewable for a further term. In one year a corporate board is not able to achieve much.	
4	Jacob Oyato		Section 4 (a) of SPA states that the registrar shall not register a sectional plan unless the sectional plan describes two or	

No	Stakeholders Name/ Organization	Issue	COMMENTS	Remarks/ Action
			more units in it. The question is what will happen to maisonettes which had been hitherto registered under SPA	

MINUTES OF THE 13TH MEETING/ 2ND STAKEHOLDERS ENGAGEMENT OF THE TASKFORCE ON FORMULATION OF THE SECTIONAL PROPERTIES REGULATIONS UNDER THE SECTIONAL PROPERTIES ACT, 2020 WITH THE INSITUATION OF SURVEYORS OF KENYA (ISK), INSTITUTION OF QUANTITY SURVEYORS OF KENYA (IQSK), INSTITUTION OF ENGINEERS OF KENYA (IEK), ASSOCIATION OF CONSTRUCTION MANAGERS OF KENYA (ACMK), KENYA PRIVATE SECTOR ALLIANCE (KEPSA), KENYA PROPERTY DEVELOPERS ASSOCIATION (KPDA), ESTATE AGENTS REGISTRATION BOARD (EARB), VALUERS REGISTRATION BOARD (VRB), KENYA INSTITUTE OF PLANNERS (KIP), TOWN AND COUNTY PLANNERS ASSOCIATION OF KENYA (TCPAK), KENYA BANKERS ASSOCIATION (KBA), ARCHITECTURAL ASSOCIATION OF KENYA (AAK), KENYA VISION 2030, PRIVATE DEVELOPERS, SACCOS AND HOUSING CO-OPERATIVES HELD VIRTUALLY ON THURSDAY 29TH APRIL 2021 AT 9:00 AM.

Taskforce Attendance

S/No.	Name	Position
1.	Esther Omulele	Chair
2.	George Arwa	Member
3.	John Kimani	Member
4.	Lawrence Gakwa	Member
5.	Tom Abuta	Joint Secretary
6.	Wallace Mbugua	Member
7.	Clarah Ketyenya	Joint Secretary
8.	Peris Karanja	Member
9.	Peter Musyimi	Member
10.	Samuel Nthuni	Member
11.	Mary Macharia	Joint Secretary
12.	Eva Sawe	Member
13.	Berita Choka	Member
14.	Stephen Kibungei	Member
15.	Catherine Ochanda	Member
Apologies		
16.	Ada Mwangola	Member
17.	Joseph Ngaruthi	Member
18.	James Gikonyo	Joint Secretary
19.	Brian Kimutai	Member

In Attendance (ISK, IQSK, IEK, ACMK, KEPSA, KPDA, EARB, VRB, KIP, TCPAK, KBA, AAK, KV2030, Private Developers, SACCOS, Housing Co-operatives)

S/No	Name	Organization
1.	Beth Henry	Safaricom Investment Cooperative
2.	Agnes Anjao	SIC

3.	Agnes Kanjejo	O & M Law LLP
4.	Anna Wanjohi	CM Advocates LLP
5.	Azmeena Bhanji	PDM Kenya Limited
6.	Beauttah Siganga	EARB
7.	Catherine Masyuki	
8.	Christine Muchiri	AAK
9.	Daniel Marube	Co-operative Alliance of Kenya
10.	Dedan Wachiuri	CBK Pension Fund
11.	Isaac Mitei	CPF Financial Services Limited
12.	Jacob Ruwa	ITT UK
13.	John Mbatia	GAPL
14.	Joyce Kariuki	
15.	Kenneth W. Mutuma	University of Nairobi
16.	Mercy Thuo	CPF Financial Services Limited
17.	Mildred Ambani	Kenya Institute of Planners
18.	Msafiri Seboru	GIBB International Limited
19.	Patrick Mwangi	
20.	Paul Karuri	
21.	Paul Wanjohi	Anjarwalla & Khanna
22.	Joakim Nyarangi	Kenya Institute of Planners (KIP)
23.	Raimond Molenje	KBA
24.	Rose Mwaura	ISK
25.	Roy O. Okello	Catholic Relief Services
26.	Ruth Hinga	Erdemann Properties
27.	Samuel Kiarie	
28.	Sarah Wahogo	Safaricom Investment Co-operative
29.	Victor Mwongera	Kenyatta University
30.	Wachira Wanjira	Laser Property Services
31.	Wafula Nabutola	Building Surveyors Registration Board
32.	Bramuel M. Wanyonyi	Utmost Eng Consultants
33.	Jacinta Mutua	VRB
34.	Paul Odak	ISK
35.	Robert Koech	ISK
36.	Vivian Koskey	KCB
37.	Zacharia Ndirangu	Nyeri County
38.	Faith Mukolwe	Zed Achoki Hussein Advocates LLP
39.	Nancy Tanui	University of Eldoret
40.	Nancy Ondicho	REREC
41.	Kimata Kiarie	
42.	Jude T. Wetangula	Polish Investment and Trade Agency
43.	Judy Guandaru	CM Advocates
44.	Judy Kabubu	MMAN Advocates
45.	Joseph Mugwanga	National Cooperative Housing Union
46.	Godrick Oduu	Shelter Cost Solutions Ltd
47.	Jennifer Musyimi	VP, IQSK

48.	James Sogoh	
49.	Jasper Mwenda	
50.	Job Kaguongo	
51.	Jared Nyagwoka	
52.	Justus Too	ISK GIS Chapter
53.	Kenneth Sabatia	ISK
54.	Mercy Njeru	KUSCCO Limited
55.	Mwamzali Shiribwa	
56.	Nashon Okowa	Association of Construction Managers of Kenya
57.	Peter Makachia	
58.	Mutinda Mutuku	Buildnett
59.	Rosemary Mathenge	
60.	Simon Ochieng	
61.	Sum Kipyego	Moi University
62.	Wangechi Kariuki	Safaricom Investment Co-operative Limited
63.	Wilson Mugambi	AAK
64.	Zainab	
65.	Adoss	
66.	Benard Weche	
67.	Cyrus Maina	
68.	Irene Kibiego	Vishwa Developers Limited
69.	Philip Cheplong	
70.	Wilson Kamau	Geodata Surveys Limited
71.	Roselyne Muteshi	
72.	Oscar Matano	Kenya Pipeline Company
73.	Mary Mathenge	National Cooperative Housing Union
74.	Mary Macharia	
75.	Mairura Omwenga	Town and County Planners Association of Kenya
76.	Kabaru Duncan	Norcent Projects Limited
77.	Judy Okaka	
78.	Joash Onguko	National Housing Corporation
79.	Isaac Kinuthia	
80.	Gikonyo Gitonga	Axis Real Estate Limited
81.	Eric Kinyungu	
82.	Paul C.K. Kioko	
83.	Erastus Chege	ISK
84.	Mbiu Kimani	
85.	Elizabeth Mwangi	KPDA
86.	Dennis Muhindi	MW & Company Advocates
87.	David Ruto	Judiciary
88.	Albert Were	
89.	Adnan Khan	Anjarwalla & Khanna
90.	Muimi Mwendwa	Edward Kiguru Land Surveyors
91.	Nadia Gitu	
92.	Nathaniel Matalanga	Institution of Engineers of Kenya

93.	Samuel N. Njihia	
94.	Sam Mbinda	Heritage Property Consultants Limited
95.	Solomon Gitau	
96.	Reuben Kimani	Username
97.	Florence Asiimwe	
98.	Julius Odera	KUSCCO
99.	Michael Olanya	EPL
100.	Catherine Kariuki	
101.	David Luwigi	GenAfrica Asset Managers Limited
102.	Dorothy Joseph	
103.	Edel Loko	KETRACO
104.	Eric Mwangi	
105.	John Kihagi	ISK
106.	Julius K'Obado	Juliko Geospatial Consultants Limited
107.	Julius Rotich	ISK
108.	Mariah Muheirwe	OM Law LLP
109.	Miriam Mugo	CM Advocates LLP
110.	Miriam Oketch	
111.	Natasha Karanja	Karanja Njenga & Co Advocates
112.	Nderitu Macharia	
113.	Nelson Reru	Supreme Plans Consultant Ltd
114.	Nicholas Gitau	Karkan Partnership
115.	Nyagaka Charles	Adrian
116.	Zoravar Singh	KPDA Affordable Housing
117.	Caro Wahito	
118.	Judy Akinyi	Kenya Wildlife Service
119.	Roselyne Anguzu	Erdemann
120.	Salome Wabuye	
121.	Mathew Mutero	
122.	Mwangi Wahome	
123.	Nathaniel Mbugua	
124.	Nicole Gichuhi	
125.	Noah C. Ng'eno	County Government of Kericho
126.	Otieno Joshua M.D.	Ministry of Lands and Physical Planning
127.	Patricia Muthoni	
128.	Paul Datche	GA Ltd
129.	Peter Gichangi	Safaricom Investment Co-operative
130.	Peter Kones	
131.	David Choka	
132.	Ruth Muchira	
133.	Simon Awiti	
134.	Sonia Kamau	The Technical University of Kenya
135.	Stanley Maina	Blackberry House
136.	Thomas Ngigi	JKUAT
137.	Thomas Ngunjiri	SoK

138.	Victor Ondicho	
139.	Wilberforce Ogado	
140.	Wycliffe Onchiri	
141.	Jackson Musyoka	
142.	Joshua Ng'atat	KETRACO
143.	Mwangi Wanjiku	
144.	Agnes Marete	
145.	Alex Ndecho	Kamwere and Associates
146.	Andrew Njuru	
147.	Bartholomew Mwanyungu	
148.	Benson Kimeu	Nile Surveys
149.	Bibiana Omala	ISK
150.	Caroline Karugu	
151.	Carol Asamba	
152.	Casty Mbae	Technical University of Kenya
153.	Dalmat Kisilu	
154.	Daniel Mukiri	County Government of Nyeri
155.	David Gatimu	Salute Spatial Solutions
156.	Dennis M. Muthama	University of Nairobi
157.	Edwin Kaburu	Building Surveyors Registration Board
158.	Ephantus Mbaya	SMEC
159.	Evar Kiyuki	
160.	Geoffrey Kibowen	
161.	Harun Mwangi	Geospace Surveyors
162.	Irene Kanyari	
163.	Irene Wamuyu	University of Nairobi
164.	Jacob Oyato	Jooyato Surveys
165.	Jamin Kipkemoi	
166.	Josyline Kendi	Kenya Marine and Fisheries Research Institute
167.	Julius Abot	CGK
168.	Lukio Omullo	Adley Bernards Real Estate Limited
169.	Martin Musa	JKUAT
170.	Martin Otunga	KETRACO
171.	Abach Owino	SoK
172.	James Matakali	Geomodel
173.	Eunice Macharia	EARB
174.	Herbert Were	ISK
175.	Ernest Gicugu	Self
176.	Michael Lumadede	GGE
177.	Maina Rwingo	Seline Consultants
178.	Kipoopo Cren	
179.	Mike Murithi	
180.	Elvis Mwaura	Karanja P. M. & Associates
181.	Richard Amati	KISM
182.	Ramadhan Abdul	Milligan Valuers

183.	Nicholas Lukwaya	
184.	Grace Mathai	CRVWWDA
185.	Wanyoike David	Network Surveys
186.	Emily Njeru	ISK
187.	Grace Mwaura	Karen Roses
188.	Nicodemus Wanjala	
189.	Margaret Okoth	MoLPP
190.	Brian Mwongera	
191.	Ching Chong	CC
192.	Kamau Saru	
193.	Rhoda Odongo	
194.	Shujauddin Adamjee	
195.	G. Wamboga	Shelter Consult Associates
196.	Hezron Dede	Plan B Consultants
197.	Peter Mathenge	Topmark Valuers
198.	Michael Murimi	Ministry of Lands
199.	Tarlochan Walia	Sancas Architects Associates
200.	Kishore Nayar	BBK
201.	Dominic Collins	Total TTVC
202.	Paul Ngugi	Paul K. Ngugi Associates
203.	Chemtai Biwott	Knight Frank
204.	Silas Ngiela	RMS Valuers
205.	Irene Kyatu	GIS Chapter
206.	Silas Tumo	
207.	Mercy Arafa	County Government of Kilifi
208.	Daniel Muchiri	KURA
209.	Paddy Makene	National Land Commission
210.	Isaac Maiyo	Geocity Surveys
211.	Paul Kiarie	Somers Engineering Limited
212.	Stephen Matu	Dreamscape Valuers Limited
213.	Dennis Okutoyi	NCBA
214.	Paul Mwangi	Geodetic
215.	John Rajwayi	Erdemann Properties
216.	Kipkurui Ng'eno	
217.	Cyrus Mbisi	
218.	Kiprono Talam	SoK
219.	Harron Musumba	Transnational Valuers and Estate Agents Ltd
220.	Cecilia Musyoka	REA
221.	Ibrahim Nambati	
222.	Sam Mathaiya	Geoland
223.	Denis Kinanga	Tsebo
224.	Hillary Kemboi	
225.	Lorraine Ooma	
226.	Elector Oduor	Trinity Geospatial
227.	Sebastian Adala	KPLC

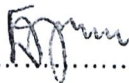
228.	Anthony Borus	Space Forge Construction Limited
229.	Jackson Maseghe	SoK
230.	Chrispine Okongo	KU (Student)
231.	John Owuor	SIC
232.	Abdullah Amin	
233.	John Onienga	Kisumu County
234.	Gideon Muange	Interurban Valuers and Property Consultants Ltd
235.	Duncan Okello	SoK
236.	Kipkoech Evans	ISK
237.	James Wainaina	
238.	Maurice Kagwi	IEK
239.	Jordan Rabach	Swiftcost LLP
240.	Paul C. Kioko	South Eastern Kenya University
241.	Lo Jebi	Self
242.	Suleman Harunani	
243.	Immaculate Njogorio	
244.	Alex Mosei	Cambrian Valuers
245.	Zeyun Yang	Erdemann Properties
MIN.1/13/2021	AGENDA	
	1. Preliminaries 2. Presentation of the SPA draft Regulations 3. Plenary 4. Adjournment	
MIN.2/13/2021	PRELIMINARIES	
	<ul style="list-style-type: none"> • The meeting commenced at 09:10 a.m. with a word of prayer from the John Kimani. • The Chair welcomed members to the meeting and highlighted the decorum to be observed 	
MIN.3/13/2021	PRESENTATION OF THE SPA DRAFT REGULATIONS	
	<p>First part on Introduction was presented by the Chair. She introduced the Taskforce and Terms of Reference.</p> <p>The Second part was done by the George Arwa. He covered the background on SPA and preparation of the Sectional Plans.</p> <p>Part three on registration was covered by Tom Abuta.</p>	

MIN.4/13/2021	PLENARY
	<p>The Chair invited the heads/representatives of the various organizations to make their remarks.</p> <p>Remarks were made by Julius Obado (ISK), Jennifer Musyimi (IQSK), Nathaniel Matalanga (IEK) Nahashon Okowa (ACMK), Wafula Nabutola (BSRB), Joakim Nyarangi (KIP), Gikonyo Gitonga (KEPSA/KPDA), Mairura Omwenga (TCPAK), Wilson Mugambi (AAK), Mercy Njeru (KUSSCO), Eunice Macharia (EARB), Raimond Olenje (KBA), Peter Gichangi (SIC) and Desterius Busuru (NACHU). The organizations pledged to submit written memoranda</p> <p>Other participants gave their submissions as well.</p> <p>The full report of the plenary session and chat box is hereby annexed.</p>
MIN.5/13/2021	ADJOURNMENT
	<p>The Chair thanked the participants for availing themselves after which a closing prayer was said by Wallace Mbugua at 2.45pm.</p> <p>Next meeting to be held on 3rd May 2021 at 9.00am.</p>

Signed by: -

Esther Omulele

CHAIRPERSON:



Date:

12th May 2021

SECRETARY:



Date:

12th May 2021

SECRETARY:



Date:

12th May 2021

Plenary Session 29th April 2021

No	Stakeholders Name	Issue	COMMENTS	Remarks/ Action
1	Julius Obado – ISK Licensed Land surveyor	Derivation of unit factor	<p>The Act provides for common properties is to be held by unit owners as tenants in common. The regulations we appear to have reverted the way we used to derive the unit factors which was amended 3 years ago? There is a current formula that was agreed upon by the director of survey?</p> <p>The institution of Engineers of Kenya appreciates the invitation and shall submit written submissions to the task force. The following issued were highlighted:</p>	Need to confirm of whether there is an agreed approach with DOS
2	Eng. Nathaniel Matalanga President of Institution of Engineers of Kenya	Linkage with PLUPA Sectional plan sheet	<ol style="list-style-type: none"> 1. There is need to provide a model that works well with the County and other professionals- Is it possible to embed these regulations with PLUPA and building code which is being revised? 2. Requirement of plan sheet at Regulation 10Site plan to allow these to encompass engineers and architects.....This assumes that the plans originates from surveyors. 3. Signing and endorsement of sheet....this ignores the aspects of engineering plans which are not necessarily surveying plans ...Engineers to endorse as well..... 4. First schedule item 1(d) This is vague and may be open to abuse and needs to be clarified 5. First schedule 4(e).....Making structural adjustments without permission of the board....provide that the board to work with relevant professionals and relevant county approvals.....Building code provides for such alterations. 	<p>The sectional plans comes at the tail end of the process</p> <p>By the time this is carried out the building is already implemented and approvals have already been provided</p> <p>Sectional 37 of the Act highlights the documents to be given to the unit owners</p> <p>On substantial change in a unit the corporation does not give approval but just gives a no objection/objection for any material change.</p> <p>This regulations are seeking to operationalize the act and any</p>

No	Stakeholders Name	Issue	COMMENTS	Remarks/ Action
	Registration Board		<p>2. Shall submit a written memorandum in due course</p>	intention to confer ownership to unit owners
6	Joakim Nyarangi Kenya Institute of Planners		<p>The regulations are missing the physical planning aspects. The regulations to provide for the following Physical Planning aspects:</p> <ol style="list-style-type: none"> 1. Plot coverage and density 2. Use compatibility and usability for the unit owners 3. Access and traffic flow factoring other neighborhoods 4. Utility provision to be guaranteed 5. Planning is key in registration of title, the certificate should indicate use of the unit, density 6. Original plan is missing and how site access shall be there... 7. Suggest where a unit owner be required to subdivide/consolidate....professional advice to be provided. 8. Section 29 of the Act to make reference to Subsection 6 of PLUPA on extension and renewal of lease. 	<p>Section 11(4) of the Act provides for the respective county governments issue an endorsement after being satisfied that the building complies with planning and approval laws.</p> <p>SPA section 5 of the Act provides that provisions of PLUPA does not apply on subdivision of buildings.</p>
7	Mairura Omwenga TCPAK		<p>This is one of the progressive statutes that have been done.</p> <p>This is a statute that is very close to town planners:</p> <ol style="list-style-type: none"> 1. It's important to include within the regulations a clause that links it is subject to other enabling legislations to address the concerns raised by stakeholders 2. To submit substantive memorandum on the regulations 	<p>Corporation was initially under SPA 1987 and has all legal mandate of being sued/sue and borrow money</p>

No	Stakeholders Name	Issue	COMMENTS	Remarks/ Action
8	Joyce Kariuki	Regulation 14 By law 19	<ol style="list-style-type: none"> 3. Corporation-Needs to addressed....should this corporation be a legal entity registered under companies Act rather than under this Act so as to allow registrar deal with land matters 4. Now this is a legal entity and borrowing and investing money.....shall this be subjected to taxation regime like the companies act? 5. In the provision of many items in the regulations we refer to user rather than use ...kindly consider changing that to "use" 6. In terms of sectional properties it denotes that it applies in 2 or more units in a parcel of landwill this apply there also like gated communitiesthis needs to be clarified 7. Inputs on what to be submitted to land registrar – Besides the master plan that is prepared by a planner this is a key input that needs to be consideredland size, density and use of the land. The input of town planner needs to be respected...site master plan is important 8. Unit factor calculation....The unit factor, needs to be clarified....100 should be used for percentages 9. Use....It's not possible to maintain the same use over timeThe laws dealing with this should apply.....in terms of subdivision the town planner needs to be on board. 10. Professional responsibility – We must continue to protect ourselves from other responsibilitiesIt is as built drawings to have corporately we have a responsibility 11. We need a certificate or a letter saying the approvals have been granted.....Counterchecking each other to ensure things are done properly 12. The residual lease term of 21 years in the SPA Act- What informs the unexpired lease term of 21 years? 	<p>This is under SPA act because it's a special purpose vehicle that helps operationalize the act with an intention to centralize the operations of the corporation.</p>
			<ol style="list-style-type: none"> 1. Regulation 14(1) (c) make reference to any subsisting assessment? Did you want to mean easement or assessment? If no. what are these assessments? 	

No	Stakeholders Name	Issue	COMMENTS	Remarks/ Action
	Kenya Institute Planners Geoscope Ltd	Section 60 of SPA 2020 Mode of conducting business	<p>Correct the word assessment and replace with "easement"</p> <p>The bylaws.....Mentions audited book of accounts and trustees.....At what point do we appoint auditors and trustees under the regulations. This needs to be clarified.</p> <p>This is work in progress.....Section 60 of the mother Act is not quoted as the repealed act. One may be compelled to imagine that the regulations we doing is on repealed act.</p> <p>Consider making a provision where the corporation may conduct its business virtually borrowing from the Covid 19 scenarios</p>	Deliberate on appointment of auditors This is covered under Bylaw 2(2)
9	Gikonyo Gitonga KEPSA/KPDA	Rent and rates Service charge	<p>1. Apportionment of land rent.....It also should deal with land rates apportionment or will it be that land rates will apportioned to each properties?</p> <p>2. In every property that will be under SPA, there is the element of service charge-The regulations have omitted the definition of service charge and how this shall be charged to each unit. Why the concept of service charge not been addressed in this regulation? Provide in the regulations on what constitutes service charge and segregate the components on this. It's important to address this issues on what it constitutes to allow for smooth management of sectional properties?</p>	To be reconsidered Consider defining what constitutes a service charge in the bylaws
	Reg. 22(2) of Notice of tenancy	Management of common areas and	<p>3. Form 15-Notification of the corporation when you need to rent a unit.....Include ID number , Huduma Number to identify the details of individuals The corporation to put an obligations on the corporation to maintain some details of KYC incase the owner is out of the country but have his representative to represent him.</p> <p>4. Management of common assets-Is there provision of creating a sinking fund to fund any future assets or developments of the future after the exit of the developer- How do you address this to avoid decay of assets?</p>	Consider other details that can be added to the form of notice There bylaws provides for capital replacement fund under Bylaw 33. This can be reconsidered further.

No	Stakeholders Name	Issue	COMMENTS	Remarks/ Action
		provision of sinking fund Facilities in a phased development	<ol style="list-style-type: none"> 5. Define what constitutes a capital replacement charge in the regulations and the purpose of this fund? Provide clarity on these gray areas. 6. A development has been done but this is to be done in phases and the developer has a sewer treatment plant, water, golf course etc. and where he still has some units sold-At what point will he be compelled to give out these facilities? 7. Is the corporation able to charge any penalties on late payment to the corporation? e.g. Landscaping services being introduced as a service charge instead as a development cost...Need to define what service charge entails? 8. Can the corporation deny any services to any of the unit owners? e.g. locking cars from entry cars what is legality of such actions? 9. Will matters of engaging a third parties be dealt with under the bylaws e.g. hiring of properties managers. The bylaws to guide on how this shall be done. 10. How will these regulations be applied to a development where there have been sale of land and the owners are developing their plots e.g. gated communities with mixed use-at what stage does the corporation take charge in the development and management of the common properties 	<p>The common facilities apart from buildings. Provide for how this shall be handled and in case they don't form part of common areas under a development.</p> <p>Need to define what service charge may entail...</p> <p>What is the legality of such actions</p> <p>To be considered under the bylaws</p>
10	Mercy Njeru KUSSCO LTD	Appointment of third parties Mixed use gated communities	KUSSCO has been financing Sacco's doing the developments and notes as follows:	

No	Stakeholders Name	Issue	COMMENTS	Remarks/ Action
11	Eunice Macharia Estate Agents Registration Board	Shared facilities and collection of service charge By law 5(2) Auditing of service charge account Payment of deposit Multiple ownership Bylaw 35(1)(b)	<p>1. Fees -The regulations do not bring about of fees to make it difficult to developers. This is a good incentive to developers to continue doing developments</p> <p>2. What did you mean when you said the act applies after the event?</p> <p>3. How will these regulation affect investors who already developing?</p> <p>4. How this will these regulations benefit members who are who have continued to lose money to rogue developers who never delivers on their promise?</p> <p>5. Gated communities and commercial buildings-This will guide them on how they can apply it in the future</p> <p>1. Shared common facilities—how do you collect service charge. How can we use the regulations to ensure everyone contributes within good time? The collection of security deposit to come out strongly in these regulations. Period of compliance to be specified</p> <p>2. Expand facilities that have been defined in Subsections 5(2) to include all the management cost e.g. personnel's, caretakers costs.</p> <p>3. The regulation should provide a provision for auditing to inform the cost of the service charge.</p> <p>4. Regulations should include for payment of deposits so that service charge is paid advance for management purposes</p> <p>5. Regulation 5 (Votes of co-owners).....The regulation to address a scenario of one person owning various units</p> <p>6. Definition of owner "includes a tenant" needs to reconsidered</p>	

No	Stakeholders Name	Issue	COMMENTS	Remarks/ Action
12	Raymond Molenje Director Legal KBA Kenya Bankers Association	Definition of owner Multiple occupancy and notices Management of the sectional properties Management of commercial spaces	<p>7. Where one unit being occupied by several people and have tenants coming in for one day or 2 days... Does this qualify for notification to corporation?</p> <p>8. Mother title and borrowing-well handled</p> <p>9. Appointment of management companies-The regulations should be clear on allowing registered estate agents to be hired to do that</p> <p>10. Redevelopment of the property has not been covered in the regulations-This is in cases where the owners may wish to redevelop the properties after some years</p> <p>11. Commercial spaces-These management of commercial spaces differs from the management of residential spaces. The regulations should take cognizance of this and provide for it.</p> <p>1. Reg. 6 on Fees...The fees chargeable are like any other fees Proposal- Have a variance between the conversion of existing certificates with new applicants</p> <p>2. Reg. 19(3) ... Unit owner reverting to register sectional plan....Is it part of the unit owners (What is the threshold of owners who can make that application for sectional plan and conversion)</p> <p>3. Reg. 19 (5)-Encumbrances and charges...Does this refer on the charge on the mother title or charge by individual unit owners (In latter case there may be more than one bank involved) which bank will forward the application?</p> <ul style="list-style-type: none"> • The mother title may also be charged by various institutions? • How will the interest of other financial institution be catered for? <p>4. Reg. 29 (Extension on renewal of lease)...During renewal must all owners execute the application for the renewal?...To avoid sabotage by some unit owners on the</p>	
		Reg. 6- Fees Reg. 19 (3) Reg. 19(5) Reg. 29		

No	Stakeholders Name	Issue	COMMENTS	Remarks/ Action
		<p>Bylaw 16(1)</p> <p>Transition regulation clause</p> <p>Transitioning from current mortgages</p> <p>Land rent and rates payment through the corporation</p>	<p>renewal process if all are to execute the renewal....Need to recheck this.</p> <p>Bylaw no. 16 (1) Seal of the corporation-The regulations has Introduced sealThe companies act abolished the use of seal to revise the provision to eliminate the sealing provision from the bylaws.</p> <ul style="list-style-type: none"> • Provide for electronic signing of documents <p>6. Have clarity on transition of existing management companies to SPA corporations. How assets and liabilities of the management companies will be treated , regulations should provide a guide with timelines</p> <p>7. Clarity on how transition the current mortgages and encumbrances secured by the units in the sectional property to the new individual certificate of title or lease</p> <p>8. Clarity on corporations involvement in land rent and rates, now that each unit has been apportioned corresponding to common property. This may create jeopardy if some units fails to pay. Each unit should be independent on payment of these.</p>	
13	Peter Gichangi Chairperson Safaricom Investment Cooperative		<ol style="list-style-type: none"> 1. Transition of existing projects-What is the proposed timelines in terms of whether this shall be done in regions 2. Dispute resolution committee-Would like to know at point are the committee constituted? <ul style="list-style-type: none"> • Aspects of non-payment of service charge and repair of common facilities-Provide clarity • If you are doing concepts such as gated communities - How shall these disputes be handled 3. Valuation-Determining value of unit purchased-The unit shall have in it a share of common property. The assumption is that the value of the unit shall include the ratio of common property-How will this be treated in charging of the property? 4. Charges and partial discharge-Mass buyers and developers of the units at times charges the property to 	

No	Stakeholders Name	Issue	COMMENTS	Remarks/ Action
14	NACHU Arch. Desterius Busurnu		<p>develop and develop them in phases-Need to be much more solid on how this will work in terms of discharge for properties that have been charged. What is the act proposing on this aspects? Clarify on the process on how this shall work.</p> <p>5. Transition of projects that are there now-It's critical to clarify in the transition from Management Company that has specific assets such as common properties, boreholes, lawns etc. How do we intend to move this to SPA from the existing management companies?</p> <p>6. The involvement of the County Gvt and National Government on rent and rates –Why would the corporation want to be involved in this?</p> <p>7. Tenant purchase-Sacco have been undertaking the TPS. How does the Act envisage this to work? Can the developers go for sectional ownership but the units be transferred at the end of completion of payment</p> <p>8. When these regulations come into effect the developers be required to migrate to the new act on the ongoing projects?</p> <p>9. How will the developments in gated communities that include social amenities where government has interests such as social amenities owned by Government or County be regulated? Will government also regulated if it owns schools or commercial properties?</p> <p>To submit a written memorandum on Tuesday. Can the Government consider having the national housing fund benefit the public as well?</p>	<p>The National Housing Fund is established under the Housing Act Voluntary contributions are now opened to the public where one can contribute towards home ownership and can benefit from Government affordable housing projects that are currently being undertaken by Government.</p>
Other queries from Participants				

No	Stakeholders Name	Issue	COMMENTS	Remarks/ Action
15	Tom Onyangu	Term of the Board Bylaw 9	Having company board have a one year term does not make sense. We would suggest a minimum of 3 years renewable for a further term. In one year a corporate board is not able to achieve much.	Reconsider the term of the board
16	Jacob Oyato	Section 4(a)	Section 4(a) of SPA states that the registration shall not register a sectional plan unless the sectional plan describes 2 or more units in it. What happens to maisonettes which had been hitherto registered under SPA?	
17	Christopher Kinyua	Reg. 9(2)	On the structure of statutory form SP9, the applicant being a surveyor should avail his land survey license number. To this end provide the words "survey license no" within the dotted line after the word applicant	Comment for consideration
18	Keneth Mutuma	Sharing of presentations	Hello organizers. Is the presentation being recorded? Will the presentation be shared? Thank you	
19	David Ruto	Unit factor computation	How do you measure the size of the unit in calculating the unit factor? Is it plinth area or internal space? What happens to the common areas?	For flexibility we shall be guided by the provisions of the Act
20	Samuel Njatha Njihia		Where developer foundation allowed for the use of floors, how will it be addressed?	
21	Cyrus Maina	Corporation vis management company Transition clause on management company	1. Why can the corporation be registered under the companies Act? 2. What happens to the existing management companies registered under the companies registered?	
22	Catherine Masyuki		What will happen to current ongoing projects where some have been under earlier regime and some units are still pending?	

No	Stakeholders Name	Issue	COMMENTS	Remarks / Action
23	Adnan Khan	Registration of sectional plan Common areas Conversion of management companies Phased development Cost of conversion Staffing Exceptions under this ACT	<ol style="list-style-type: none"> 1. When is the sectional Plan required to be registered? At the beginning of the development or once the units have been completed constructed? If the registration is to be done before construction is complete are we not creating titles for something that does not exist? If done after construction is completed will certificates of title for unsold units be issued to the developer or will only be issued once the units are sold? 2. When mother title is surrendered and certificates of titles/lease are issued for the units where the common areas such as lawns do, gardens, community halls sit? 3. What happens to existing developments in terms of: <ol style="list-style-type: none"> i. Conversion of management companies incorporated under these companies act. Do these get converted to a corporation under SPA? ii. If developments is being done in phases and partly sold how does this impact the completed section and the section yet to be completed? iii. If the development is being in phases who bears the responsibility for conversion for units sold? 4. Is the process of geo-referencing in place? What steps will be taken to build up capacity to undertake the conversion of existing developments and geo-referencing of new developments? 5. Is there an exception for certain developments from the applications of the provisions of SPA? There are some developments that have been developed purely as investments such as holiday homes and a lot of the purchasers do not want to be involved in the day to day management or the development units form a very small part of the overall project which the land owner continues to maintain control so as to maintain the overall quality of the project? 	

No	Stakeholders Name	Issue	COMMENTS	Remarks/ Action
		Long term leases conditions	<p>In a lot of these instances the investors are foreigners and may not be available for the day to day running of the corporation.</p> <p>6. Long term leases usually have conditions in relation to maintenance of the individual units and the common areas. I do not see any such document that would form part of the documents of title. Will there be an allowance for such documentation to set out conditions for the units?</p>	
24	QS. Mutinda Mutuku	Addressing abuse on this act	<p>Will the Act be effected retrospectively? There are many cases of abuse of sectional property owners by rogue/unscrupulous developers. Some have sold the units developed but held on to the management companies. Others and as case in point one developer upon selling units in a shopping complex has come back and reclaimed the circulation spaces and toilets into more shops that they proceed to rent out as shop spaces and am sure there are many cases of abuse of the law the 1987 act as it were. How will the new law help in addressing these blatant abuses?</p>	
25	Paul Datche	Survey	<p>We should endeavor to have a fresh survey done after the buildings are complete to capture the correct data on site because this shall provide the actual unit sizes-This is a key point</p>	
26	Mwamzali Shiribwa	Costs of conversion	<p>What is the total estimated cost of seeking for conversion of the existing sectional shares to sectional titles?</p>	
27	Adoss	Application for registration of sectional plan	<p>Is it recommended for applications to be sort for a whole building that has many apartments or individually?</p>	
28	Jasper Mwenda	Electronic submission of plans Fees	<ol style="list-style-type: none"> 1. The regulations do not mention submission of sectional plans in electronic format –should be included since land recorded are being converted to digital format? 2. Fees in section 6 are as per LRA. Checking fees for surveys are provided for under Survey act and regulations 	

No	Stakeholders Name	Issue	COMMENTS	Remarks/ Action
29	Thomas		<ol style="list-style-type: none"> 3. Section 8(a) mentions "Director of Surveys" but Section 11 mentions "Authority responsible for survey"-Should preferably use one terminology 4. Would there be need for an equivalent to the parcel plan" under the survey (Electronic cadastre transaction s) Regulations 2020 in these regulations? 5. Is the term consolidation in these regulations equivalent to combination under LRA- clarify 	
30	David Gatimu		<p>Unit factor-Instead of dealing with percentages we have floor area over all total floors areas</p> <ol style="list-style-type: none"> 1. Theoretical and actual developments on site- When you speak of a master plan it may apply in phases. In this case, compliance certificate is required to be applied for architectural plan you need an occupation certificate is issued. These two instruments are key before preparation of a sectional plan. 	Comment
31	Wilson Mugambi AAK	Regt. 26 Typo error	<ol style="list-style-type: none"> 1. Small typographical error in regulations 26 where there is change of address the corporation shall (notify)...not "nity"... 2. Also surveyor or architect should prepare the location plan, not just surveyor alone. Also process of approval should be laid down step by step from start to finish to avoid ambiguity. 	
32	Caroline Wahito	Developer a member of corporation	<ol style="list-style-type: none"> 1. Can the developer be part of the corporation and or the board of management? Especially in the case where not all units have been sold? 2. What the definition is of "sold" especially for developers selling off plan? Is it to mean that the corporation will be formed before completion of the development and what will be its role in this instance? 3. In regards to owners who want to use their units as short term rentals within a development , how does the law apply in terms of submission of occupants details of the rentals units given that the law gives the owner a 21 day leave to submit occupants details to the corporation 	
		Short term rental arrangement		

No	Stakeholders Name	Issue	COMMENTS	Remarks/ Action
		Defects liability Clearance certificate during conversion	<p>Short term rentals of less than 21 days</p> <p>4. The question on the defects liability period has still not been addressed?</p> <p>5. During the transition period for the current owners looking to change to the SPA, will the owners still require a clearance certificate from the management company</p>	
33	Michael Luumadede	Role of building surveyors	6. The role of professionals and especially at the end point the building surveyors services will be required	
34	Wilson Kamau	Mixed use developments	<p>1. Clarify the mixed use development scenario approvals where the undeveloped area of the title is proposed for development for commercial /profit use. It requires harmonization of SPA with numerous other statutes</p> <p>2. Are all registries throughout the county up to task on sectional titles registration?</p>	
35	Paul Datche	Capacity of registries	<p>1. The process of preparing the plan for submission and approval of the sectional property be preserve of the surveying profession. There are many specific details to do with geo-referencing of the plans and as the process continues interior mobile mapping of the properties shall need to be done and incorporated into the qualitative aspects of the registration (the national cadaster). In as much as our brothers the architects would like to also submit plans for approvals and registration they shall be in error by virtue of not being licensed surveyors and therefore not authorized by the law, the survey act to undertake surveys of any kind. Each submission and approval shall need to follow a fresh survey carried out using modern methodologies and documents signed on and forwarded by the surveyor for legal registration of ownership. Architects shall assist with plans for verification purposes after the building is already built.</p>	

No	Stakeholders Name	Issue	COMMENTS	Remarks/ Action
36	Daniel Mwaniki	Phased development	2. Although I must add for clarity and accuracy of the data being submitted a fresh survey will suffice of both exteriors and interiors of the said property a fact which will confirm or negate issues like true sizes of the said property Clarify the scenario on phased development	
37	Kiprono Talam	Size of units that can have a title	Can commercial sections of about 2 meters by 3 metres (like malls) be registered under SPA?	
38	Michael Olanya	Developer tenure in a project	When the developer does stops being part of the project? After handing over of the units or immediately the corporation is formed?	
39	Ruth Hinga	Easements DLP Reg. Trading activities restriction 21- Registration Of SP	1. How will easements on the property be registered noting that the act envisages cancellation of the mother title and issuance of certificates of the titles to individual's owners once the sectional plan is registered? 2. What's the defect liability period and for how long is a developer allowed to be on the property after completion of the project? 3. There was also a provision under regulation 21 of the regulations where the corporation shall not have power to carry out trading activities. Doesn't this restrict provision of services that are for the convenience of the units owners? 4. Should the sectional plans be registered at the completion of construction of the units or prior to commencement of construction noting that some developers sell houses off plan? 5. Thanks for the answer on section 21. The understanding that is all activities should be for the benefit of the estate. 6. What counts as a unanimous decision by the corporation? As unanimity seems to be very crucial in the decision making.	
40	Julius Rotich	Unanimous resolution	1. How will horizontal and vertical geo-referencing be implemented in SPA? I mean which coordinates system	

No	Stakeholders Name	Issue	COMMENTS	Remarks/ Action
			(UTM), Cassini or WGS84) and mean sea level on vertical height?	
41	Gideon M. Muange		The regulations need to consider inclusion of a sinking fund to cater for common areas such as roads and external walls and roads	
42	Job Kaguongo	Preparation of a sectional plan	What of cases where the actual plan dimensions differs with actual ground settings, what are the mitigations /remedies? This happens where buildings are not regular and contractors fail on proper settings?	
43	Cyrus Maina	Individual titles Corporation trading activities Notices by owners Ease of doing business Long term leases and SPA for phase's dev.	<ol style="list-style-type: none"> The regulations should allow property owners to get individualized titles even where the units have not been sold? This is critical when one intends to use some units for raising capital instead of charging the entire building The corporation should be allowed to trade e.g. supply of gym services (which can be used by outsider) , water or electricity The presentation on tenant notification (15 days) ignores the aspects of short term stay. May owners are using their apartments for Airbnb This regulation makes the doing of business hard. It means owners of Phased development will be unnecessarily delayed in getting their titles In the circumstances we shall allow long term leases to continue being used until the sectional properties act has been amended to cater for phased developments. In relation to transitioning to the new regimes the regulations should provide that the new bylaws should mirror what was in the managements company articles of association How will car parking spaces and which are now regarded as indivisible part from the leased premises (in the current 	
		Treatment of parking under SPA		

No	Stakeholders Name	Issue	COMMENTS	Remarks/ Action
			long term leases regime be treated) Will car parks be included in the sectional title?	
44	Sam Mbinda	Reg. 18 (2)	<ol style="list-style-type: none"> 1. Regulations 18(2) provide that the board may employ agents and employees it thinks necessary to control, manage, and administer etc. Specify who shall qualify to manage the facilities on behalf of the corporation. This will open it up to quacks yet there are qualified personnel equipped to manage such facilities. The previous SPA was clear about the qualifications of such managers. This should be specified. 2. Regulation 26-28 (Notices by owner/corporation). The notices to tenants are clear but silent on notices to owners who breach bylaws. Owners are more notorious than tenants; there should be clear guidelines and penalties /remedies against owners who breach bylaws. 	
45	Andrew Njuru	Lease of land registration	Can lease of part of land be registered under SPA? If so what documents are needed to effect registration?	
46	Roselyne Anguzu	Corporation trading restrictions	The act in section 21 states that the corporation shall not have power carries on any trading activities. Does this restrict provision of services that are for the convenience of home owners like electricity and water?	
47	Dennis Muhindi		Does this mark the end of the registration of long term sub leases taking into consideration section 13(2) of the act	
48	Patricia Muthoni	Taxes and service charge	The service charge aspect is key and taxes on the same like VAT on service charge for commercial units	
49	Jennifer Musyimi	Where units are vacant – Payment of service charge	Talking of service charge it should be clear if some units are vacant and therefore not utilizing the common services, they should be exempted part or fully of the service charge payment	
50	Erastus Chege		<ol style="list-style-type: none"> 1. That the sectional property survey be undertaken at the time when practical completion certificate is submitted and the county issued a certificate of occupation. This presupposes that the development has been approved 	

No	Stakeholders Name	Issue	COMMENTS	Remarks/ Action
		Timelines for Do Prescribed fees under this Act	<p>through the current provisions for development control, including the user requirements.</p> <ol style="list-style-type: none"> 2. The act aims at issuing government backed titles rather than leases. This should be supported and simplified as much as possible. 3. There are timelines for registration of approved sectional plans. Timelines should also be imposed on the DOS for approval of sectional plans. 4. The regulations may prescribe fees for the services by National government. The CS may be given permission through to waive such fees through a gazette notice. 5. Please prescribe fees for services rendered under the act 	
51	Dalmat Kisilu	Conversion process Prescribe fees for estate agents	<ol style="list-style-type: none"> 1. My question is how the process will be actualized from old regime to new law regime where some landlords of the apartments are in demise and sale agreements are not actualized .In dealing with such case. 2. What is prescribed fee for agents managing the common area because it is not catered in Estate Agents Cap 533. This act need to address this 3. I have seen cases where this management companies are engaging in trading activities like operations of car washes etc. which brings conflict of interests 	
52	James Matakali	Parking treatment	The CS yesterday talked of doing away with subleases on this registration once the unit is registered it gets a title and the mother title ceases to exist the common area which will include car parks will be registered under all tenants. Is the new act towards this?	

MINUTES OF THE 14TH MEETING/ 3RD STAKEHOLDERS ENGAGEMENT OF THE TASKFORCE ON FORMULATION OF THE SECTIONAL PROPERTIES REGULATIONS UNDER THE SECTIONAL PROPERTIES ACT, 2020 WITH COUNCIL OF GOVERNORS AND COUNTY GOVERNMENTS HELD VIRTUALLY ON MONDAY 3RD MAY 2021 AT 09:00 A.M.

Taskforce Attendance

S/No.	Name	Organization
1.	Esther Omulele	MMCASAFO/LSK - Chairperson
2.	George Arwa	MoLPP/SDHUD
3.	Eva Sawe	CoG
4.	John Kimani	SDHUD
5.	Peris Karanja	KPDA
6.	Tom Abuta	MoLPP
7.	Clarah Ketyenya	MoLPP
8.	Wallace Mbugua	ISK
9.	Samuel Nthuni	NLC
10.	Berita Choka	MoLPP
11.	Joseph Muthomi	NLC
12.	Stephen Kibungei	LSK
13.	Lawrence Gakwa	EARB
14.	Ada Mwangola	VDS

Apologies

1.	Mary Macharia	NLC
2.	Peter Musyimi	KLRC
3.	Catherine Ochanda	AG
4.	James Mwangi	SDHUD
5.	Brian Kimutai	MoLPP

In Attendance (CoG and County Governments)

1.	John Mutie	Kiambu County
2.	Francis Kiti	County Government of Kilifi
3.	Caleb Nyamwange	
4.	Hannah Maranga	Nyeri County Government
5.	Moses Munga	County Government of Kilifi
6.	Francis Parsimei	Municipality of Kajiado
7.	Tasneem Kasmani	K. A. Kasmani & Company Advocates
8.	Dick Obungu	Kisumu County Government
9.	Samson Masila	C.G. of Kitui

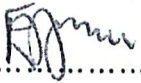
10.	Patrick Nyongesa	C.G
11.	Eric Chirchir	Bomet County
12.	Jackson Kibocha	Rumuruti Municipality
13.	Waithira Waiyaki	Kiambu C.G
14.	Alexander Muchemi	Laikipia C.G
15.	Paul Muchira	Kirinyaga Municipal Manager
16.	Vivianne Mmbaka	Kakamega C.G
17.	Edward Mwakalamu	Mwatate Municipality
18.	Perister Kigwa	Nyeri C.G
19.	Dorcas Kilile	Kilifi C.G
20.	Bii Ng'eny	Makueni C.G
21.	Samuel Mwangi	Kirinyaga C.G
22.	Nadia Gitu	Karanja Njenga Advocates
23.	Evelyn Bosibori	Nyamira C.G
24.	David Ngombo	Kilifi C.G
25.	Harry Ndumia	Nyeri C.G
26.	Musa Olwalo	Migori C.G
27.	Erastus EtheKon	Turkana C.G
28.	Matiko Mang'era	Migori C.G
29.	Kipyego Ziwi	
30.	Alex Nthiwa	Makueni C.G
31.	Irene Ogamba	C.o.G
32.	Hassannoor Abdullahi	Mandera Municipality
33.	Geoffrey Mutinda	Makueni C.G
34.	Caroline Kinyua	Kirinyaga C.G
35.	Faith Jepchirchir	Uasin Gishu C.G
36.	Ernest Kinuthia	Physical Planning
37.	Nicodemus Mbwika	C.o.G
38.	Mukami Kibaara	C.o.G
39.	Wairimu Gitau	MMCAsafo
40.	Mwanawani Sheti	Kwale C.G
41.	Beatrice Macharia	Nyandarua Lands
42.	Natasha Karanja	Karanja Njenga Advocates
43.	Elizabeth Mburu	Meru C.G
44.	Michelle Fondo	Kilifi C.G
45.	Sam Mugo	Kiambu C.G
46.	Charles Obondo	Homa Bay C.G
47.	Koech Beatrice	
48.	Ore David	Migori C.G
49.	Evans Kipruto	C.o.G
50.	Jacktone Rono	Uasin Gishu C.G
51.	Abraham Barsosio	Elgeyo Marakwet C.G

52.	Julius Kaloi	Makueni C.G
MIN.1/14/2021	AGENDA	
	<ol style="list-style-type: none"> 1. Preliminaries 2. Presentation of the SPA Regulations 3. Plenary 4. Closing Remarks 5. Adjournment 	
MIN 2/14/2021	PRELIMINARIES	
	Meeting started at 9.20 a.m. with a word of prayer from Eva Sawe. The Chair welcomed the participants to the meeting and laid down the rules of engagement.	
MIN 3/14/2021	PRESENTATION OF THE SPA REGULATIONS	
	The presentation of the draft sectional properties regulations was done by the Chair of the Taskforce, Wallace Ngugi and John Kimani.	
MIN 4/14/2021	PLENARY	
	<p>The Chair gave the CoG and County representatives a chance to make some remarks.</p> <p>Caleb B. Nyamwange (Deputy Chair County Attorneys Forum) spoke on behalf of the Counties and Beatrice Macharia Director Land Administration Nyandarua County also made some remarks.</p> <p>Other participants gave their views as well, and this is captured in the full report of the plenary session annexed herewith.</p>	
MIN 5/14/2021	CLOSING REMARKS	
	<p>These were made by Eva Sawe</p> <ul style="list-style-type: none"> • Thanked the counties for attending the meeting • Stated the need to have site master plan to be of the documents to be forwarded during registration • Requested the counties to go through the regulations and make comments, which comments would be forwarded through the Council of Governors. 	
MIN 6/14/2021	ADJOURNMENT	
	<ul style="list-style-type: none"> • The Chair thanked the participants for taking the time to attend the meeting. 	


	<ul style="list-style-type: none">• Samuel Nthuni said the closing prayer at 11.40 a.m.• The next stakeholders meeting is scheduled for 4th May 2021 at 9.00 A.M.
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Signed by: -

Esther Omulele

CHAIRPERSON:  Date: 12th May 2021

SECRETARY:  Date: 12th May 2021

SECRETARY:  Date: 12th May 2021

Plenary Session 3rd May 2021

No	Stakeholders Name	Issue	COMMENTS	Remarks/ Action
1.	Bii Ng'eny	Application of the SPA	<ol style="list-style-type: none"> 1. Is the law applicable to all developments beneath the land and under the sea or ocean 2. Does it mean that those leaseholds which are more than 21 years are not eligible for sectional properties act? 3. Freehold titles have absolute ownership up to perpetuity, shall the issuance of subleases still be under Lands Act Cap 300? 4. It's my observation that the SPA once applicable must take cognizance of the zoning regulations that shall form the basis of special conditions in the sub-leases? 	<p>The Act applies to all approved buildings under the County</p> <p>If a lease of at least 21 years intends to confer ownership, then it falls under the purview of the SPA</p> <p>Issuance of leases shall be under LRA, 2012</p>
2.	Caleb B. Nyamwange Nakuru County Deputy Chair County Attorney Stakeholders Forum	Appreciation	<p>Appreciated the invitation of County assemblies and said they will be giving written presentations.</p>	<p>The written memorandum to be sent before the end of the week</p>
3.	Beatrice Nyambura Director Land administration Nyandarua County	Privatization of public land	<p>Under the AHP most of the projects are being undertaken in Public land. When these apartments are sold to private members and reversionary interest is vested in the corporation. Will this lead to privatization of public land since the projects are mostly done under this arrangement?</p>	<p>The projects structured in such a way that the reversion is to the unit owners then it means the land shall be to the unit owners.</p> <p>This means that the land is moving from public land to private land...</p> <p>The committee to deliberate on such reversions</p>

No	Stakeholders Name	Issue	COMMENTS	Remarks/ Action
4	Eng. Sam Mugo CEC Lands, Housing & Urban Development Kiambu County	Phased development Appreciation	<ol style="list-style-type: none"> 1. Is the mother title is a 5 acre parcel and the developer is using 1 acre in the first phase does this law then requires one to subdivide the land or how does the law envisage this to happen? 2. Appreciates the forum convened for involving the counties to participate in the process. Comments to the taskforce Counties are encouraged to forward more 	<p>The act does not address phased development but deals with registration of existing units.</p> <p>Comments to be forwarded before the end of this week to allow committee finalize its tasks</p>
5	Julius Kaloi CEC Makueni County	Term of the lease	If a property is sitting on a leasehold title and the lease is to expire in 15 years, will the property serve for 99 years or the remainder term of the lease?	
6	Nicodemus Mbwika	Reg. 9 of the regulations Legality of the bylaws Communication mechanisms	<ol style="list-style-type: none"> 1. Need to be more specific on what the counties should do in regards to reg. 9 2. Are these bylaws legally binding and what happens if someone does not play by the rules? How do you enforce them? 3. What is the communication mechanism between the registrar and the county governments? Is there a provision in which the two levels can communicate to determine what properties have been registered? 	<p>Reg. 9-12(2) provides clarity on the process</p> <p>These are generic bylaws and the bylaws provide for establishment of the board where they can charge interest and enforce the bylaws. They are legally binding.</p> <p>Under LRA 2012, there land electronic registration provided how communication can be done to various persons. There is also a manual where the registrar can forward the sectional plan. The ministry has also developed national land management systems and expects the counties to be done.</p> <p>This act is a registration act and therefore assumes that at the point of registration all planning issues had been approved. In this case, the role of</p>
		Linkage with PLUPA on approved master plans	<ol style="list-style-type: none"> 4. How these regulations 8 and 9 relate to other planning do acts-Under Regulations 8, on preparation of sectional plan there is an omission of recognizing master plan under PLUPA. There is need for endorsement by 	

No	Stakeholders Name	Issue	COMMENTS	Remarks/ Action
		prepared by physical planner	Physical planner on the prepared master plan. There seems to be a conflict a conflict with these two laws, kindly address this?	physical planner in preparation and approval of master plan had already been dispensed with increase of mixed use developments. However, where there is a significant deviation between what was approved and was implemented then the surveyor alert the developer, the county government and the physical planner who prepared the master plans.
7	Waihera Wayaki Kiambu County Attorney	Rating and Renting	1. Have noted that titles will be leasehold and freehold.....how will you determine the rating considering that there are different what happens?	Determination of rent is based on optimal use of the land while rates are determined based on the services and utilities that have been provided on the land by County Government. This is specific and differs from one County to the other.
8	Francis Parsmei Municipal Manager	Minimum unit area to be issued with a title	1. There is need to put a rider in the regulations that approval shall be given by the counties or its other relevant agencies e.g. municipal boards, city boards as the situation may dictate.	This is a drafting issue and taskforce shall at the possibility of including this.

Plenary Session 4th May 2021

No	Stakeholders Name	Issue	COMMENTS	Remarks/ Action
1.	Margaret Masaku-KRA	Tax Collection	<ol style="list-style-type: none"> 1. Form SP1- Include KRA pin as a requirement. 2. Form SP3- 	
2.	Presentation shared by Jane Muguchu	Conversion of units-Stamp Duty	<ol style="list-style-type: none"> 1. Reg: 14: Include proof of Stamp Duty Payments. 2. 	
3.		Documents to accompany application for the conversion	Consider KRA Pins for all parties, Surveyors, Lawyers.	
4		Forms	The forms referenced in the regulations should be synchronized with the labelling of Forms in the schedules.	
5		Inclusion of KRA pin in form SP13 and Sp 14.	Team to explore.	
6	Hilda Kosgei KRA	Clarity on Stamp Duty	The Stamp given and endorsement of the same should be sufficient proof that Stamp Duty has been paid.	Provided by Stamp Duty Act.
7	Faith Nthale KRA	Reg: 19 part 7	It should be clear that the chargee will be responsible for paying the CGT upon transfer of the unit.	CGT is also provided in the Act, so we should clarify on the Income Tax Act.
8	Doris Ing'ahizu KRA	General Clarity of responsibilities	The Regulations should be clear on various responsibilities of the actors.	
9.	Eliud Okwaro KRA	Temporary Structures	SPA has not considered the temporarily structures registration.	They are not considered
10.	Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works	Definitions	The definitions should be clear and provided for.	Taskforce to consider.
		Reg 14 (1)	Reference is not correct.	Taskforce to consider.
		14(2)	What would happen in the event they don't have the original documents from the developer.	Regulations provide that the Registrar has power to dispense upon

No	Stakeholders Name	Issue	COMMENTS	Remarks/ Action
	Jane Mwangi-Director Housing	Slums and Informal settlement Mixed user, residential and commercial	Provide a write up on what should be included. How this will be done. The Act does not differentiate uses.	gazettement. Consider a recommendation for inclusion in the SPA act to emphasize that
		Difference between Management and Corporation	Corporation is made of unit owners, Management Company is registered in the Management Acts while Corporation is regulated by the SPA Act.	The Clarification was given.
		Board Existence Term	One year is very short, consider 2 or 3 years.	To consider 2 years.
11	NHC: State Corporation Housing: John Agutu To share a written memorandum.	Affordable Housing-Issue of the Stamp Duty	Stamp Duty payment on Tenant Purchase is paid on current value and it may be difficult for the affordable housing. Values of the property in the future will change and this will affect the Stamp Duty.	For transfer the commutation is referred to the transaction date. A recommendation to have KRA review and consider the value of property at purchase time for affordable housing.
11.	Julius K'Obado NHC	Joint property ownership	The common property should be owned as Tenant on Common.	Taken care of.
12	Annette Ondoro NHC	Definition of the Corporation	It should be clarified	
13	Samson Lukoba, National Construction Authority	The issue of other building plans as part of the Sectional Plan	All the other plans and approvals were done prior to the construction of the building.	This is outside the SPA.
14	Pius Omullo from National Housing Corporation	Issue of Conversion	There is a commitment from the Government on Regularization of Sectional Properties that were not in conformity with the Sectional Properties Act 2020 and related amendments.	

No	Stakeholders Name	Issue	COMMENTS	Remarks/ Action
15.	NSSF- Caroline Rakama	<p>Corporation formation</p> <p>Registration of the Corporation for existing units</p> <p>CGT</p> <p>Appointment of Board members</p> <p>Consent given by NSSF to the Registrar.</p>	<p>Has the government mapped and budgeted for this resource intensive exercise which includes collection of geospatial data and title conversion process?</p> <p>Does the proposed Act envisage a scenario where the value of the land rises rendering the existing development with sectional titles economically obsolete and therefore possibility of redevelopment more viable? For instance sectional titles for a 4-storey building which over time becomes economically infeasible hence the need for say a 30-storey building?</p> <p>This is clear.</p> <p>Done at registration of Sectional Plan.</p> <p>Where property is sold to many other parties, then KRA makes request to have the Original owner pay the CGT to KRA.</p> <p>The Board should be appointed by the unit owners.</p> <p>This was requested because there was no clarity but the regulations have clarified.</p>	<p>One must surrender the title and the process will start again.</p> <p>Where sectional titles have been provided then no need to register afresh.</p> <p>The Board can have the developer and unit owners.</p>

MINUTES OF THE 16TH MEETING/ 5TH PUBLIC PARTICIPATION ENGAGEMENT OF THE TASKFORCE ON FORMULATION OF THE SECTIONAL PROPERTIES REGULATIONS UNDER THE SECTIONAL PROPERTIES ACT, 2020 WITH CIVIL SOCIETY ORGANIZATIONS (CSO's) AND INSTITUTION OF SURVEYORS OF KENYA (ISK) HELD VIRTUALLY ON WEDNESDAY 5TH MAY 2021 AT 9.00 A.M.

Taskforce Attendance

S/No.	Name	Organization
1.	Esther Omulele	MMCASAFO/LSK - Chairperson
2.	John Kimani	SDHUD
3.	Mary Macharia	NLC
4.	Clarah Ketyenya	MoLPP
5.	Wallace Mbugua	ISK
6.	George Arwa	MoLPP
7.	Peris Karanja	KPDA
8.	Lawrence Gakwa	EARB
9.	Stephen Kibungei	LSK
10.	Catherine Ochanda	AG
11.	Samuel Nthuni	NLC
12.	Berita Choka	MoLPP
Apologies		
1.	Peter Musyimi	KLRC
2.	Joseph Muthomi	NLC
3.	James Mwangi	SDHUD
4.	Brian Kimutai	MoLPP
5.	Tom Abuta	MoLPP
6.	Ada Mwangola	VDS
7.	Eva Sawe	CoG
In Attendance		
1.	John Liboyi	Dorothy's Park Residents Association
2.	Kitasi Wanga	Action Aid
3.	Andrew Nyanchoga	Dorothy's Park Residents Association
4.	Pauline Nyamu	Dorothy's Park Residents Association
5.	Nick Kuntner	Dorothy's Park Residents Association
6.	Peninah Ogama	
7.	Lucy Wanjiru	Home Hunters
8.	Nazir Madatali	
9.	Collins Mwange	ISK
10.	Marygorety Otieno	

11.	Ciiru Njoroge	
12.	Abraham Samoei	ISK
13.	Paul Obara	
14.	Rose Mwaura	ISK
15.	Winnie Chepkemoi	
16.	Waeni Ngea	
17.	Robert Koech	ISK
18.	Peris Mugo	
19.	Ardelline Masinde	
20.	Mercine Milimu	Kenya Land Alliance
21.	Hillary K'Odieny	
22.	Diana Wachira	Pamoja Trust
23.	Daniel Murugu	Nakuru County Public Opinion Consultative Initiative
24.	Nadia Gitu	
25.	Kenneth Sabatia	ISK
26.	Irene Kinoti	Pamoja Trust
27.	Sophie Adhiambo	Namati
28.	Lynn Rotich	
29.	Peter Mugo	GCES
30.	Rose Gatobu	Ministry of Agriculture
31.	Rafiki Kamweru	Pamoja Trust
32.	Brian Miheso	
33.	Nancy Nyange	Activist
34.	Maina John	ISK
35.	Raimond S. Molenje	Dorothy's Park Residents Association
36.	Cynthia Suge	
37.	Faith Alubbe	Kenya Land Alliance
38.	Beatrice Mjomba	Taita Taveta Human Rights Watch
39.	Jane Maina	Kenya Institute of Surveying and Mapping
40.	Kipkoech Evans	
41.	Sally Miruri	Pamoja Trust
MIN.1/16/2021		
AGENDA		
	1. Preliminaries 2. Presentation of the SPA Regulations 3. Plenary 4. Closing Remarks and Adjournment	
MIN 2/16/2021		
PRELIMINARIES		
	Meeting started at 9.15 a.m with a word of prayer from Mary Macharia.	

	The Chair welcomed all the participants and thanked them for making time to attend.
MIN 3/16/2021	PRESENTATION OF THE SPA REGULATIONS
	<p>The presentation was done in three parts.</p> <ul style="list-style-type: none"> • The Chair who covered introduction and rules of engagement; • Wallace Ngugi who introduced the Sectional Properties Act and preparation of the Sectional Plan; and • John Kimani who covered registration of the Sectional Plan and Bylaws.
MIN 4/16/2021	PLENARY
	<p>The Chair welcomed the representatives of the various organizations to give their remarks.</p> <p>Faith Alubbe of Kenya Land Alliance was the first to give her remarks which were appreciative and said she would share a written memorandum.</p> <p>Diana Wachira of Pamoja Trust also made her remarks on the internal dispute structure.</p> <p>ISK President Abraham Samoei made his remarks and together with his colleagues shared a presentation.</p> <p>Kitasi Wanga of Action Aid shared his views.</p> <p>John Liboyi of Dorothy's Park Residents Association made some remarks after which he shared a presentation.</p> <p>Lucy Wanjiru of Home Hunters also made her remarks.</p> <p>Other participants shared their views and concerns via the chatbox.</p> <p>The full report of the plenary session is annexed herewith.</p>
MIN 5/16/2021	CLOSING REMARKS AND ADJOURNMENT
	<ul style="list-style-type: none"> • The stakeholder meeting ended at 12.25 p.m. with a word of prayer from Berita Choka.

	<ul style="list-style-type: none">The next stakeholder's meeting is scheduled for 7th May 2021 at 9.00 A.M.
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Signed by: -

Esther Omulele

CHAIRPERSON: *Esther Omulele* Date: *12th May 2021*

SECRETARY: *[Signature]* Date: *12th May 2021*

SECRETARY: *[Signature]* Date: *12th May 2021*

Plenary Session 5th May 2021

S. No.	Stakeholders Name/ Organization	Issue	COMMENTS	Remarks/ Action
1.	Kenya Land Alliance Faith Alubbe	Appreciation	The Regulations are progressive. The team will share the written memorandum.	
2.	Diana Wachira Irene Kinoti Pamoja Trust	Internal dispute resolution structure	How will the structure work.	
3.	ISK President, Abraham Samoei CEO-Rose Mwaura Robert Koech	Regulation 3(2)	Link with LRA and add	
		18 (2)	Provide for estate managers and professionals.	
		Reg 6 on Fees	This to be aligned with the Survey Regulations	
		14 (1)(a)	Refer to the Survey Regulations in general but not specific regulations. Need to have harmony.	
4.	Kitasi Wanga Action Aid Kenya Members of the non-Land State Actors	Gender considerations missing in the SPA act. The land and the Building are owned by different people.	The Land Laws cater for all gender equally. Will this be regulated in the SPA.	The Act has not catered for this.
5.	John Liboyi Dorothy's Park Resident	Fees	Conversion fees to be waived. Statutory and other costs incurred in conversion.	This is administrative to go to the MoLPP, Taskforce to make Recommendations.

	Association Chairperson	Reg 19 (3) application for Conversion percentage Seal of the Corporation Capital Gain Tax Computation	Provide for percentage of the unit owners to apply for conversion. Remove the Seal as it is removed in the Corporation Act. Value is factor of the unit and percentage of common property. Cost of improvements should be deducted and contributions in general development.	Even one unit owner may initiate the process and so no need to have percentage. Taskforce to consider.
6.	Daniel Murugi Nakuru County Public Opinion Consultative Initiative	The regulations have vested a lot of powers on the land registrars who presently are too overworked. Similarly, there is no reference to Land Digitization. Can get a clarification	Work in progress in the digitization.	

MINUTES OF THE 17TH MEETING/ 6TH STAKEHOLDERS ENGAGEMENT OF THE TASKFORCE ON FORMULATION OF THE SECTIONAL PROPERTIES REGULATIONS UNDER THE SECTIONAL PROPERTIES ACT 2020 WITH MINISTRY OF LANDS AND PHYSICAL PLANNING, NATIONAL LAND COMMISSION AND KENYA VISION 2030 HELD VIRTUALLY ON WEDNESDAY 7TH MAY 2021 AT 9.00 A.M.

Taskforce Attendance

S.No	Name	Organization
1.	Esther Omulele	MMCAsofo/LSK - Chairperson
2.	George Arwa	MoLPP/SDHUD
3.	Samuel Nthuni	NLC
4.	Clarah Ketyenya	MoLPP
5.	Brian Kimutai	MoLPP
6.	Mary Macharia	NLC
7.	James Mwangi	SDHUD
8.	John Kimani	SDHUD
9.	Ada Mwangola	Kenya Vision 2030
10.	Wallace Mbugua	ISK
11.	Tom Abuta	MoLPP
12.	Stephen Kibungei	LSK
13.	Eva Sawe	CoG
14.	Peris Karanja	KPDA/LSK
15.	Joseph Muthomi	NLC
16.	Catherine Ochanda	AG
17.	Berita Choka	MoLPP

Apologies

1.	Peter Musyimi	KLRC
2.	Lawrence Gakwa	EARB

In Attendance

S.No.	Name	Organization
1.	Pauline Pesa	MoLPP
2.	Brian Ikol	NLC
3.	Stephen Njoroge	MoLPP
4.	Kithunka Dan	NLC
5.	Stephen Githinji	MoLPP
6.	Peter Kathuo	MoLPP
7.	Gertrude Nguku	NLC - Vice Chair
8.	Geoffrey Kibowen	MoLPP

9.	Rachel Dinda	MoLPP
10.	Calvins Otieno	NLC
11.	Moses Mugendi	MoLPP
12.	Gershom Otachi	NLC Chairman
13.	Mitto Kobado	
14.	Timina Ingonga	MoLPP
15.	Jacinta Mutua	MoLPP
16.	Juma Boaz	MoLPP
17.	Reginald Okumu	NLC - Commissioner
18.	Nelson Odhiambo	MoLPP
19.	Simon Chebii	NLC
20.	Edmond Gichuru	NLC
21.	David Nyandoro	MoLPP
22.	Sarah Maina	MoLPP
23.	Joel Atuti	MoLPP
24.	Pamela Mutegi	MoLPP
25.	Samuel Masoo Mwati	MoLPP
26.	Ben Bett	NLC
27.	Hellen Mutai	MoLPP
28.	David Kuria	NLC
29.	Rosemary Nderitu	Kenya Vision 2030/MKA LLP
30.	Tom Ogutu	UDD-SDHUD
31.	Paul Tonui	MoLPP
32.	Joyce Njeri	NLC
33.	Zaverio Kinyua	MoLPP
34.	Mercy Njamwea	NLC
35.	Kenneth Mwige	Kenya Vision 2030
36.	Ben Maina	MoLPP
37.	Cecilia Harriet	
38.	Joyce Kamire	MoLPP
39.	Anne Kariithi	MoLPP
40.	Patrick Ndungu	MoLPP
41.	Paul Ndungu	MoLPP
42.	JK Tuitoek	NLC - Commissioner
43.	Alice Kariri	MoLPP
44.	John Njogu	MoLPP
45.	Carolyne Sang	MoLPP
46.	Diana Yagomba	MoLPP
47.	S. Muteithia Kibira	Kenya Vision 2030/MKA LLP
48.	Saida Isak	NLC
49.	Henry Mwaura	MoLPP
50.	Mutua Charles	MoLPP

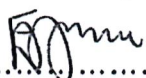
51.	Ken Alela	NLC
52.	Philip Odidah	MoLPP
53.	Anne Ng'etich	MoLPP, Secretary Administration
54.	Caleb Sunguti	MoLPP
55.	E C	
56.	Edith Lumire	NLC
57.	Zawadi Kingi	MoLPP
58.	Thomas Maiyo	NLC
59.	Quency Otieno	MoLPP
60.	Daisy Mwaruka	MoLPP
61.	Jane Gitari	MoLPP
62.	Nora Matindi	SDHUD
63.	Matano Ngati	NLC
64.	George Maina	
65.	Edward Bosire	NLC
66.	Wairimu Gitau	MMCAsafo
67.	Eric Ndeda	NLC
68.	Benard Leitich	MoLPP
69.	Michael Muturi	
70.	Stanley Kariuki	
71.	Terry Gathagu	
72.	Susan Kidemi	NLC
73.	Paul Kasimbu	
74.	Truphosa Achar	MoLPP
75.	Nadia Gitu	
76.	Carolyne Menin	MoLPP
77.	Chrispine Odhiambo	
78.	Irene Muttai	MoLPP
79.	Esther Mathenge	NLC - Commissioner
80.	Caroline Khasoa	
81.	Betty Atieno	MoLPP
MIN 1/17/2021		
AGENDA		
	1. Preliminaries 2. Presentation of the SPA Regulations 3. Plenary 4. Way Forward 5. Closing Remarks and Adjournment	
MIN 2/17/2021		
PRELIMINARIES		
	Meeting started at 9.10 a.m with a word of prayer from Clarah Ketyenya.	


MIN 3/17/2021	PRESENTATION OF THE SPA REGULATIONS
	<p>The presentation was done in three parts as follows:</p> <ul style="list-style-type: none"> a) Remarks by the Chair b) Introduction to SPA and preparation of sectional Plan by George Arwa. c) Registrations of sectional plan and Bylaws by John Kimani.
MIN 4/17/2021	PLENARY
	<p>The Chair gave an opportunity to the various organizations to make remarks.</p> <p>The NLC Chair, Gershom Otachi gave his remarks after which the Vice Chair introduced herself and the Commissioners present and gave them a chance to speak. Remarks were made by the three Commissioners present that is Prof James Tuitoek, Esther Mathenge, and Reginald Okumu.</p> <p>The DG Kenya Vision 2030 Kenneth Mwige gave his remarks on behalf of the organization. SK Muteithia also gave his remarks.</p> <p>The Acting Chief Land Registrar, Ministry of Lands and Physical Planning David Nyandoro also gave his remarks. Moses Mugendi, Paul Ndung'u and Sarah Maina of the Ministry also made comments.</p> <p>Norah Matindi of the State Department of Housing and Urban Development also made remarks.</p> <p>Remarks were also made by a participant, Caroline Khasoa.</p> <p>Other participants shared their views and concerns via the chatbox.</p> <p>The full report of the plenary session is annexed herewith.</p>
MIN 5/17/2021	WAY FORWARD
	<ul style="list-style-type: none"> a) Meeting with Parliamentary Committee on Delegated Legislation. This meeting is when the document is final before publication. b) Agree on the next date for the Meeting to confirm Minutes.

	<p>c) A retreat would be a good way forward to include the Stakeholders comments.</p> <p>d) A final report draft should be prepared.</p> <p>e) Extension of Term. This should be extended to 45 days. Chair and Tom to act.</p>
MIN 6/17/2021	CLOSING REMARKS AND ADJOURNMENT
	<ul style="list-style-type: none"> • The Chair thanked the Ministry of Lands and Physical Planning for participating in the stakeholder engagement. • She also thanked the Chair of the NLC, Vice-Chair and Commissioners for their participation. • Thanked the Vision, 2030 team and she said we were looking forward to receiving written comments. • The stakeholder meeting ended at 12.50 p.m. with a word of prayer from Peris Karanja. • Next meeting to be held on Tuesday 11th May 2021 at 9.00 a.m. Secretariat to prepare a work plan moving forward.

Signed by: -

Esther Omulele

CHAIRPERSON:  Date: 12th May 2021

SECRETARY:  Date: 12th May, 2021

SECRETARY:  Date: 12th May 2021

Plenary Session 7th May 2021

S. No.	Stakeholders Name/ Organization	Issue	COMMENTS	Remarks/ Action
1.	<p>National Land Commission.</p> <p>The Chairman of the Commission, Vice-Chair and 3 Commissioners were present.</p> <p>The Commission will present a written memorandum.</p>	<p>Upon closure of the mother title, how will the Terms and Conditions on the Lease be transferred to the Unit titles. How will the role of the authority be safe guarded?</p>	<p>The role of the Commission is before the development of the units, since the Commission is involved in the Renewal and Extension of Lease.</p>	

2.		The regulations should be clear on what happens when the government has interest on the property upon expiry of Lease since the mother title is extinguished.		
3.		Service Charge	It's easier to compute the service charge per unit in this regulations.	
4.		What happens when one of the owners does not want to convert?	Status of that title will not be affected if the others are converted.	Taskforce to clarify
5.		Sectional status are only applicable if the Lease is 21 years or more remaining period.		
6.		Successes of the repealed SPA.	Not captured in the RIA	
7.		Resistant by Professionals in implementation of the repealed SPA.		

8.		How are the units numbered, is it standard.	Units are numbered by the authority responsible for survey	
9.		How will the Service charge and Reserve Fund be managed?	Define capital repairs.	
10.		Be clear on how the Fund will be spent.	It should be passed during the AGM on the use of the Fund.	
11.		Use of measurements, floor area, capital area, how its measured, internal or external.	Floor areas is the Carpet area.	
12.		Rent apportionment. Ground rent had been assessed during allotment.	Land rent and stand premium are done on allotment. The rent is apportioned appropriately to the unit owners.	
13.		Certificate of Lease is per unit	What Terms and Conditions are carried, will they be copied from Head Lease	
14.		By Laws	Make it clear that the BY Laws can be amended after registration.	

15.	Regulation should generally cover the main items of By Laws.	Issues like Parking. There are some conditions for use of the common area. There is the exclusive use area defined.	
16.	Elections of Board members should be done separately. Unit owners may not be in the country.	Allow online meetings.	To be considered by the Taskforce.
17.	Community meetings are normally done once in an year.	Provide what should be in the AGM Agenda. Maintenance plan for the unit should be included.	To be considered by the Taskforce.
18.	Corporation	constituted to the SPA and not the Company's Act.	

19.		Nuisance Tenant	<p>Whatever happens to the Nuisance owner should happen to the Tenant.</p> <p>Whatever happens to the Tenant</p>	
20.		<p>Deregistration</p> <p>What does the closure of the Mother title mean.</p>	<p>Is SPA are deregistered and the Parcel title is extinguished.</p>	<p>Sectional Status to be terminated, then it will be handled as the development control procedure.</p> <p>It will be resurveyed.</p>
21.		Term of the Board not clear.		
22.		Categories of meetings.	By Laws are generic.	
23.		Dispute Resolution Committee	This may not be made of legal experts. It will deal with day to day issues that relate to the apartments.	

24.		DOS and authority responsible for Survey are used interchangeably.		
25.		Fees of the Sectional Property should be provided in the Survey Act.	Survey Act is being developed and as such, the fees schedule for undertaking sectional property survey will be addressed in this Act.	
26.		Combination(RTA) and Consolidation (LRA) should be defined		
27.		Allow for submission of digital data	This is taken care of under NLIMS	
28.		If an owner of a unit does not pay rates, how will they claim it.	The County Government will go to the owner of the unit for recovery.	
29.		How will unit owners control borrowing of the Management.	The Board must present in the AGM for members to pass it.	

30.		State the Sectional Property documents conventional minimum documents.	Include the Approved plans	This should be considered for clarity.
31.		Relationship between SPA management with County land use board and Urban and Cities Areas Board	SPA management will be looking at the property only and not like the other boards.	
32.		Has the regulations factored in the street addressing concept especially considering the adoption of a standardized numbering system?	Such a standardized numbering and adaptable street addressing system when deployed will fuse easily with NLIMS since the sectional properties will be georeferenced.	This is considered under the the street adoption act, which shall link these properties digitally through the GIS platform and fuse it with the NLIMS

33.	<p>Kenya Vision 2030 Director General- Kenneth Mwigie</p> <p>They will share a written submission.</p>	SPA whether it applies to stand alone units.	It applies to two (2) or more units sitting on a single parcel	Provided for in Sec 4(4)(a) of SPA
34.	MOLPP- David Nyandoro- Ag Chief Land Registrar.	SPA requires that the units are built and existing.	The SPA cures the issue of conformity with other building regulations since they refer to as built.	As per Sec 4(1) of SPA
The issue of house numbering.		It will be standardized by the Director of Survey. This should link with the Survey Act.		Numbering of survey maps is the preserve of Authority in charge of survey matters (DOS)

		If properties are charged in the bank	Then owners should initiate the process. This process should be fast tracked.	This is referred in the SPA under conversion Sec 13(4)
35.		Section 8 on the maps	Allow for digital maps.	The on-going digitization process being undertaken by lands will ensure digital submission of all land records including survey plans
		9 (1)(b) Authentication of the plan at the County.	CEC in charge of Physical planning has no role, since all approvals had been undertaken prior to preparation of sectional plans. The CEC in charge of buildings is more ideal because of their skill in interpretation building or architectural plans.	
36.		9 (3)	There is a typo	


37.		Reg. 15	Material change should be clarified.	Material change include changes that can compromise the structural stability of the building. It is therefore mandatory to subject those changes to approval by the authority on buildings at the county before implementation
		Sec 29	Renewal and extension of Lease. This should be individual based not common renewal.	Renewal and extension of the lease is now the responsibility of a unit owner.

TASKFORCE FOR THE FORMULATION OF THE SECTIONAL PROPERTIES REGULATIONS UNDER THE SECTIONAL PROPERTIES ACT, 2020

MATRIX OF THE PUBLIC PARTICIPATION COMMENTS

SECTIONAL PLAN

NO.	STAKEHOLDER	COMMENTS/QUERIES	RELATED REG.	REMARKS/JUSTIFICATION	ACTION
1.	i. NLC, ii. David Ruto	Standard measurement under SPA Are we measuring the floor area or plinth area? We need to have a national standard of measurement.	14(3), 13(1)	The regulations provides for A floor area is the Carpet area. Well-articulated in Reg. 14(3), 13(1)	Taskforce to define if the regulations what is a floor area
	i. NLC ii. Ederma iii. Gikonyo Gitonga KEPSA/ KPDA	Rent apportionment. 1. Clarify on how land rent shall be apportioned and who apportion the rent between NLC and the Ministry of Lands & Physical Planning? 2. Who does the apportionment – Is it the land officer or the person presenting the application? This is a mathematical issue.	-	Rent apportionment shall be done by the Ministry land admin. Officer. Need to formulate a regulation on rent apportionment	Taskforce shall formulate a provision on rent apportionment.
	NLC.	Director of Survey (DOS) and authority responsible for Survey are used interchangeably. Need to harmonize the two.	9(1), 8(a)	For consistency and to avoid the need to amend the regulations should the position of DOS be abolished	Amend 8(a) regulations to reflect “responsible for Survey”
4.	ISK	Fees in respect the preparation of a Sectional Plan should be provided in the regulations.	6	Professional and Statutory fees? Professional fee to be in Survey Act	Provide a schedule for statutory fees in the regulations


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TASKFORCE FOR THE FORMULATION OF THE SECTIONAL PROPERTIES REGULATIONS UNDER THE SECTIONAL PROPERTIES ACT, 2020
MATRIX OF THE PUBLIC PARTICIPATION COMMENTS

NO.	STAKEHOLDER	COMMENTS/QUERIES	RELATED REG.	REMARKS/JUSTIFICATION	ACTION
		Amend the section to provide a new section 6 A to read "The professional fees payable for Surveying and Registration shall be Kshs. 10,000 sq root of the area of the plot plus 0.3% of value of development. the Minimum fee to payable per unit is Kshs. 30,000.			Amend regulation 6
5.	NLC.	The existing regulations governing professional fees for surveying and registration is not explicit regarding sectional properties (SPA) should be defined	12(3)	SPA provides for consolidation and subdivision and not combination	No action
6.	NLC.	Allow for submission of digital data	30	Regulation 30 provides for submission in electronic format	No action
7.	NLC.	State the Sectional Property conventional minimum documents to be submitted during registration. Include the Approved plans Approved plans to be submitted to authority responsible for Survey for verification. RIM after authentication to be submitted for registration.	2(1), 8	The documents to be submitted during registration have clearly been provided for in the regulations. Provide further clarity on the format of a sectional plan	Taskforce to provide a comprehensive form on sectional plan in addition to what is provided in S9 of the Act

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MATRIX OF THE PUBLIC PARTICIPATION COMMENTS

NO.	STAKEHOLDER	COMMENTS/QUERIES	RELATED REG.	REMARKS/JUSTIFICATION	ACTION
8.	i. Kenya Vision 2030 Ruth Hinga ii.	SPA requires that the units are build and existing. What happens to off-plan developments? Should the sectional plans be registered at the completion of construction of the units or prior to commencement of construction noting that some developers sell houses off plan?	SPA,2020 Sec 4(1)	The Act does not apply to off-plan developments since the building must be in existence before a sectional plan is prepared	No action
9.	MOLPP	SPA requires that the units are build and existing.	SPA,2020 Sec 4(1)	The SPA cures the issue of conformity with other building regulations since they refer to as built unit	No action
10.	MOLPP	The issue of unit numbering should bear the identity of the mother title for the purpose of tracing the history of the parcel.	12(1)	Link between unit numbering an the parcel number has not been provided for in the regulations	The regulations to provide for linking of the parcel number and the unit
11.	MOLPP	Section 9 on endorsement of sectional plan -The regulations provides for approval by County Government. There is need to be specific in terms of the act	9(1)b	The regulations to be emended to reflect the CEC(M)	Amend Reg. 9 (1) (b) to reflect CEC(M) in charge of approval of buildings at the County Government
12.	Christopher Kinyua	On the structure of statutory form SP9, the applicant being a surveyor should avail his land survey license number. To this end provide the words "survey license no" within the dotted line after the word applicant	Reg. 8	To include the attributes of license number into the Sectional Plan	Amend to include "Survey License no" in the Sectional Plan

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NO.	STAKEHOLDER	COMMENTS/QUERIES	RELATED REG.	REMARKS/JUSTIFICATION	ACTION
		The inclusion of a surveyor's license number would further help in the authentication of plans by the Director of Surveys and discourage quacks			
13.	Julius Obado - ISK Licensed Land surveyor	The regulations we appear to have reverted the way we used to derive the unit factors which was amended 3 years ago? There is a current formula that was agreed upon by the director of survey?	13(2)	Preparation process of the section plan is well in the regulations and the Act including the derivation of the unit factor	No action
14.	Eng. Nathaniel Matalanga - President Institution of Engineers of Kenya	The Site plan should bear the endorsement of engineers and architects. The regulation assumes that all plans including site plans originate from the surveyors.	10	By the time the building is up and sectional plan is being prepared the input of the engineers and architects among others have already been dispensed with. The surveyor prepares site and building location plan when the building is complete.	No action
15.	Nahashon Okoa Association of Construction Managers of Kenya	Registration requirements need to ensure buildings being registered are not defective. Include requirement for an occupational certificate for the buildings in preparation of a sectional plan.	Section 2	The safety of buildings is beyond the scope of the Act. N The issue of safety of building is addressed in other legislations such as NCA Act.	No action

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NO.	STAKEHOLDER	COMMENTS/QUERIES	RELATED REG.	REMARKS/JUSTIFICATION	ACTION
16.	Joyce Kariuki Kenya Institute Planners Geoscope Ltd	Regulation 14(1)(c) make reference to any subsisting assessment? Did you want to mean easement or assessment?	14(1)(c)	It is a typo should be easement	Amend regulation 14(1)(c) to read easement.
17.	Julius Rotich	How will horizontal and vertical georeferencing be implemented in SPA? I mean which coordinates system (UTM), Cassini or WGS84) and mean sea level on vertical height?		This issues are well covered under the Survey Act	None
18.	Erastus Chege	Are there timelines for registration of approved sectional plans? Timelines should be imposed on the DOS for approval of sectional plans.		The timelines are provided under Land Registration (General) Regulations, 2017. This is provided within the Survey Act	None
19.	Job Kaguongo	What of cases where the actual plan dimensions differs with actual ground settings, what are the mitigations /remedies? This happens where buildings are not regular and contractors fail on proper settings?		Georeferencing is done after the building is complete. The Georeferencing is done based on the existing boundaries of the ground/parcel.	None
20.	Ederman Properties	Who shall bear the cost of paying the surveyor to prepare the sectional plan (shall it be borne by the developer, or the purchaser and at what point should this payments be made?	Reg 2	The developer in case of a new development In cases of conversion, subdivision or consolidation of a building it is the developer, management	None

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NO.	STAKEHOLDER	COMMENTS/QUERIES	RELATED REG.	REMARKS/JUSTIFICATION	ACTION
21.	Institution Surveyors of Kenya	Reg 3(2) on progressive numbers in a sectional Plan register Amend the section by inserting "by the Authority responsible for Survey."	Reg 3(2)	Regulation 3(2) regulates the registration of sectional plans in the sectional plan register and not the numbering of units in the sectional plans which are in this case given by the DOS	None
22.		Reg 9(1) Amend the section by deleting "be signed by" with "be endorsed by" to ensure that the section conforms to the provisions of 11 (1) of the Act.	Reg 9(1)	Word signing should be replaced by endorsement is to support, to back, to give one's approval to, especially officially or by signature	Signing to be replaced by endorse Review regulations 1 to 14
23.		Reg 10(b) - Which provides for requirements of plan sheets. Amend the section to read "be to a scale, selected as per the survey regulation to give provisions of the scales to be in tandem with conventional scales used in survey plans with any changes in conformity with survey act.	Reg 10(b)	Also Ref to Sec 11(1), (2) & (3) Consider removing regulation 89 and leaving as per the survey regulation	Remove the word regulation 89 and amend to read "be to a scale selected from the standard scales tabulated in the survey regulations..
24.		Reg 11.	Reg 11	The regulation is quite clear	None

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NO.	STAKEHOLDER	COMMENTS/QUERIES	RELATED REG.	REMARKS/JUSTIFICATION	ACTION
25.		<p>Amend the section by replacing 'approves" with 'prescribes" This will allow the authority responsible for survey to proactively prescribe manner of letters fonts as per the survey act</p> <p>Reg 14 (1) (a) provides for the matters to be set out in a site and building location plan</p> <p>Amend the section by deleting "regulations 91 and 92"</p> <p>For purposes of conformity with the dynamisms of the survey regulations which may be amended from time to time and specific sections on boundaries details not covered under 91 or 92</p>	Reg 14(1)(a)	<p>Consider removing 91 & 92 and leaving. The survey Act is under review</p>	Amend regulation 14 (1)(a) by deleting 91&92;
26.		<p>Form SP13 which provides for Consent of Unit Owner(S) for Sub-Division or Consolidation of a Sectional Plan.</p> <p>Amend the form to clarify that the consent being sought is before the consent from County Government</p>	Form SP13	<p>Approving authority i.e. County is missing in the form</p>	<p>SP13 to be amended accordingly. delete from "1/wepurchaser"</p> <p>Amend regulation 17 to capture the order of giving consent by the owner,</p>

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					corporation and the county. Approval by the county to be preceded by the owner and the corporation Apart from development control requirements needed by county, the applicant for sub division or/consolidation shall be required to provide consent issued by the affected unit owner and the corporation Such consent shall not be rejected unreasonably Change of use- subject to approval by the county government the

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27.		The regulations should explicitly indicate how the common areas including club houses, swimming pool among others, shall be documented.	Section 5(1),(2)	Implied in section 5(1)a(1) and 5(2)b Ownership of common property is well articulated in the Act and the regulations	owners may unanimously agree to change use of the entire development None
28.		The taskforce should also consider guidelines for the processing and approval of sectional property surveys at Survey of Kenya to ensure that the implementation of the Act is not slowed. Such guidelines shall include among others, requirements for geo-referencing and engagement of surveyors in private practice to enable realization of the two-year moratorium on conversion of existing developments to conform to the SPA while the Government Surveyors FastTrack the quality control and authentication processes.	No mandate	No mandate	None
29.		Section 11(1) of the Act provides for Certificates to accompany sectional plans, specifically a certificate from the County Government stating that the proposed division of the structure as illustrated on	Sec 11(1)	Applications done through a form, and the CEC(M) in charge of building endorses on the sectional plan	None

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NO.	STAKEHOLDER	COMMENTS/QUERIES	RELATED REG.	REMARKS/JUSTIFICATION	ACTION
30.	Nicodemus Mbwika	the plan has been approved by the county government. There is need for a standard certificate to give effect to this section of the Act and endorsed by the Surveyor and County Government. This will ensure that there is uniformity and standardization. How these regulations 8 and 9 relate to other planning acts-Under Regulations 8, on preparation of sectional plan there is an omission of recognizing master plan under PLUPA. There is need for endorsement by Physical planner on the prepared master plan. There seems to be a conflict with these two laws, kindly address this?	Regulation 8 & 9	This act is a registration act and therefore assumes that at the point of registration all planning issues had been approved. In this case, the role of physical planner in preparation and approval of master plan had already been dispensed with in case of mixed use developments. However, where there is a significant deviation between what was approved and was implemented then the surveyor alert the developer, the county government and the physical planner who prepared the master plans.	None
31.	KRA	Tax Collection To include KRA pin in Form SP1 and Form SP3 as a requirement	Reg. 2	Include requirements for parking	Taskforce to include KRA PIN of unit owners in SP 1

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NO.	STAKEHOLDER	COMMENTS/QUERIES	RELATED REG.	REMARKS/JUSTIFICATION	ACTION
32.	Samson Lukoba, NCA	I propose that building plans should form part of the sectional plan at registration.		Building plans inform preparation of the sectional plan and therefore are not needed at the point of registration of the sectional plan	None
33.	SDHUD	Where a development comprises parking spaces, they should be considered as part of the common property to be owned by proprietors as tenants in common, and where possible have them allotted to owners to avert unnecessary conflicts and disputes		This is provided for in the bylaw 5(h)	None
34.		Section 2(3) of the Regulations does not speak to the status of the Charges and partial discharges of Mother Titles upon closure of Mother Title and registration of a Sectional plan. How will the interest of the Developer be protected?	Reg. 2(3)	On registration of a sectional plan the following will be done simultaneously : <ul style="list-style-type: none"> • Discharge in respect of the mother title • Registration of the sectional plan and issuance of unit leases in the name of the applicant(developer) • Registration of a replacement charge over each unit discharged/unsold unit • Registration of any other existing encumbrances 	No action. Provided for in S5(2) of the Act

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35.		An owner's Certificate of Lease or Certificate of Title shall include the unit's proportionate share in the common property. Will the valuation of the unit be inclusive of the common property and in the event of a dispute, how will it be resolved?		Valuation of a unit will include its share of common property	No action
36.	Jasper Mwenda Department of Geospatial and Space Technology, UON	There is a provision in the Survey (Electronic Cadastre Transactions) Regulations, 2020 for the "parcel plan". Perhaps you can consider an equivalent document in these Regulations.	Reg. 8.	Sectional plan suffices	No action
37.	LSK	Geo-referencing: The property (unit) which is the subject matter of the long-term lease must be georeferenced	Sec 9(1)(b) of the act	<ol style="list-style-type: none"> 1. One Parcel can be geo-referenced having sub-plots without sub-division 2. Long-term leases will continue to be issued in respect to properties where SPA does not apply. 3. SPA will apply on high-rise buildings and horizontal developments where they chose that option. 	No action

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38.	LSK	The reason why there has been non-compliance with section 54 (5) of the LRA and Regulation 76 AND 77 of the LRA Regulations is that the Authority responsible for Surveys has not been able to timeously comply with the requirement to prepare a cadaster and to supply the applicants with the unique prefix number required under the said Regulations. There is an urgent need to build capacity and timeliness in the performance of these services		The same shall be carried in our recommendation	Make recommendation on survey Capacity
39.	LSK	Phased development where an owner wishes to develop their property in multiple successive stages. For example, an owner of a five acre piece of land who want to develop the land in phases can currently do so under section 54 (5) of the LRA.	Not in the act		Make recommendation on survey Capacity
40.	LSK	The Report on the Departmental Committee on Lands approved on 31st July 2019 and tabled, shows in general comments that attempts to expand the scope of the Bill to cover phased developments was declined. Similarly attempts to extend it to gated		Gated communities constitute built environment	Make recommendation on phased development

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41.	Jacob Oyato	communities during debate on the report - National Assembly Official Report Thursday, 8th August 2019- did not gain traction Section 4 (a) of SPA states that the registrar shall not register a sectional plan unless the sectional plan describes two or more units in it. The question is what will happen to maisonettes which had been hitherto registered under SPA		This act applies so long as the buildings are on the same parcel of land then the conversation will be around conversion	None
REGISTRATION					
1.	NLC.	Upon closure of the mother title, how will the Terms and Conditions on the Lease be transferred to the Unit titles. How will the role of the NLC be safe guarded?	3	On issue of sectional titles terms and conditions of the lease are substantially fulfilled. Moreover the property section of the sectional title bears the necessary terms and conditions under which the title is held.	On termination of status and vesting of the property on the owner by the registrar, the taskforce will formulate more regulations to shed more light.
2.	NLC.	The regulations should be clear on what happens when the government has interest on the property upon expiry of	-	Owners have the preemptive rights on expiry of the term. In cases where the government wants to compulsorily acquire, the	None

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NO.	STAKEHOLDER	COMMENTS/QUERIES	RELATED REG.	REMARKS/JUSTIFICATION	ACTION
		Lease since the mother title is extinguished.		Land Act and regulations will apply.	
3.	NLC.	Deregistration What does the closure of the Mother title mean?	3	Closure of mother title gives way to issuing of sectional titles. Its continued existence is therefore not possible. Such that no search is possible on the mother title.	None
4.	NLC.	SPA could be able to regulate the subleases of residential areas.	-	The Act provides for conversion under section 13.	None
5.	Mairura Omwenga TCPAK	Inputs on what is to be submitted to land registrar – Besides the master plan that is prepared by a planner this is a key input that needs to be considered like land size, density and use of the land. The input of town planner needs to be respected... site master plan is important.	Reg. 2	At the point the sectional plan is prepared the input of all the other professional actors have been sought.	None
6.	Gikonyo Gitonga KEPSA/KPDA	How will every unit be apportioned land rates?	Rates	Land Rates is a County function under the Valuation for Rating Act as such different counties approach it differently	The taskforce will make a recommendation on rent and rating. The shift from unimproved site

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				After registration the Registrar notifies the county of the registration and thus apportionment is then done	value (USV) to improved site value.
7.	Raimond Molenje Director Legal KBA Kenya Bankers Association	Is there variance in fees charged for conversion of long-term leases and new applications?	Reg. 6	The fees payable for preparation of the sectional plan are set out in the Survey Act while registration fees are set out in the Land Registration Act.	None
8.		What is the threshold of owners who can make an application for conversion to SPA?	Reg. 19(3)	The SPA doesn't set threshold on owners who can move the conversion process. Any owner (s) can make the application.	None
9.	Peter Gichangi Chairperson Safaricom Investment Cooperative	Valuation -Determining value of unit purchased-The unit shall have in it a share of common property. The assumption is that the value of the unit shall include the ratio of common Property How will this be treated in charging of the property?		The unit and its corresponding share in the corporation are not distinct or separate; valuation is done on the unit which includes the share in the common property as one. Similarly, the proprietor will charge the unit and the attendant share of the common property.	None

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10.	Safaricom Investment Erdemann Properties	Charges and partial discharge -Mass buyers and developers of the units at times charge the property to develop and develop them in phases-Need to be much more solid on how this will work in terms of discharge for properties that have been charged. What is the act proposing on this aspects? Clarify on the process on how this shall work.		After the sectional plan is registered, the mother title is discharged before being closed and the charge transferred to the unsold units. Discharges will thus be accompany a transfer after a unit is sold	None
11.		The involvement of the County and National Government on rent and rates -Why would the corporation want to be involved in this?		The Corporation is not involved as each unit is apportioned rent and rates independently	None
12.	Edermann Properties	Clarification on when the certificate of title should be applied for, issued? Shall this be during construction or after completion of the project?	Reg 2	Title is applied for and issued after the building has been put up and the sectional plans prepared by a surveyor.	None
13.		How will easements on property be registered noting the system envisages doing away with the mother title and every owner having a separate title?	SPA Sec 14,15 &16	Easements will be registered on each unit title	Easements part should be inbuilt into each unit title form Brian to amend the form
14.		What happens to units with balances in purchase price with regard to registration?		Registration is not necessarily a transfer of the unit title.	None

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		When shall the developer issue the certificate of title to the developer (at what point).		On registration of the sectional plan, titles are issued in the name of the developer. Subsequently, the sectional titles are transferred to the purchasers upon application.	None
15.		Who should apply for the issuance of the title, does this fall on the developer or on the purchaser?		The developer or his/her agent on registration of the sectional plan	None
16.		How shall the payments of land rents & rates be conducted noting that the unit owners shall pay the same individually? Could the same be paid by the Corporation		Every unit owner is obliged to pay his/her land rent and rates. The corporation can coordinate, though not mandatory	None
17.		What shall happen to those projects that are ongoing in terms of registration? Shall we require to be issued with certificates of title and what conveyance documents shall be prepared to facilitate the conveyance of the units?		Pending applications for registration are subject to SPA 2020 save for ongoing registration in respect of which stamp duty has been paid and partly sold developments.	
18.	Home Hunters	Proposal that part of the documents that should accompany the sectional property plan registration to include:		Management contract has been cured by the existence of the corporation.	None

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NO.	STAKEHOLDER	COMMENTS/QUERIES	RELATED REG.	REMARKS/JUSTIFICATION	ACTION
		<ol style="list-style-type: none"> 1. A management contract of at least 12 months between the applicant and a registered estate agent firm. 2. Rules and regulations that bid the unit owners in the sectional property 3. Draft service charge contract to be signed by all unit owners. The service charge will be used to cater for the repairs, wear and tear of common areas, garbage collection, security and daily maintenance of the property in addition to insurance, land rates and rents. 		Rules and regulations including service charge provisions are provided for in the bylaws.	
19.	Bii Ng'eny	<p>Freehold titles have absolute ownership. Upon issuance of sectional titles, will application of SPA affect tenure?</p> <p>Shall issuance of subleases still be under Registered Land Act Cap 300?</p>		<p>Where the underlying mother title constitutes a freehold interest, that interest will be cascaded to the sectional titles.</p> <p>Registration of leases shall be under Land Registration Act, 2012, which replaced the RLA Cap 300.</p>	None
20.	Nicodemus Mbwika	What is the communication mechanism between the registrar and the county governments? Is there a provision in		Upon registration of the sectional plan, the registrar is required within	None

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26.	Daniel murugi Nakuru county public opinion consultative initiative	Regulations have vested a lot of powers to land registrars who presently are overloaded similarly there is no reference to land digitization ..need clarification		Regulation 30 addresses digitization and this will reduce workload.	None
27.	LSK	Do long term leases under Section 54 (5) of the LRA have to be registered pursuant to the provisions of the SPA; Regulation 77 of the LRA Regulations (Part VIII of the LRA Regulations) has comprehensively and specifically dealt with the procedure for registration of a lease for a part of a building or a long term leases under Section 54 (5) of the Act". The application for registration for long term leases under Section 54 (5)		SPA does not provide for long term leases beyond 21 years	The taskforce will make recommendations o developments that should continue to l governed by the LR

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NO.	STAKEHOLDER	COMMENTS/QUERIES	RELATED REG.	REMARKS/JUSTIFICATION	ACTION
28.	LSK	<p>(other than those under SPA) is by using Form LR 64.</p> <p>The already registered leases have separate registers which are protected under section 104 and 105 of the LRA. Any attempt to bring these properties under the SPA will mean a closure of those existing registers and a migration (together with their encumbrances) to the SPA and the new registers under the SPA. The register of the mother title with any encumbrance on it (possible where the reversion is substantial) will require to be closed. Invariably such a process will disrupt or extinguish accrued rights. It is likely that rights of encumbrancers will be prejudiced and a forcible closure of registers will be unconstitutional (Article 40 of the Constitution)</p>	Reg 2 (f) LRA General Regulations 2017	The registrar shall open the new registers as guided by SPA 2020	The Taskforce takes cognizance of the fact that the SPA 2020 has not expressly provided on how to convert long-term leases registered under the LRA so as to conform with the SPA, 2020. In the circumstance, long-term leases issued under the LRA shall in the view of the Taskforce continue existing along with sectional titles under SPA.
					TF will thus make recommendations on the manner of geo-referencing to inform the registration of long-term leases

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NO.	STAKEHOLDER	COMMENTS/QUERIES	RELATED REG.	REMARKS/JUSTIFICATION	ACTION
					<p>Alternatively, TF will make recommendations providing a clear pathway for conversion of long-term leases to SPA</p> <p>TF to make recommendations on developments to be governed by/exempted from SPA 2020</p>

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29.	ISK	<p>Lease of a part of the land. For example, a registered proprietor of freehold land of 100 acres of land who is only leasing 4 houses on 2 acres of the land for 21 years or such longer term as the parties may agree should not be obliged to come under the SPA. The reversion remains with the owner and there is no intention of relinquishing this freehold interest. The position would be same if the registered owner had a leasehold interest of say 99 years and is leasing a term less than what the owner is holding but with the intention that the reversion is still with the lessor</p>		SPA does not apply to such leases.	TF to recommend modalities for Geomodalties for Geo-referencing the leased area on the cadastre.
30.	ISK	<p>Ownership by non-citizens. The SPA has not provided for how such ownership is to be structured in the case of a freehold title</p>		The ownership of property by non-citizens are guided by the provisions of the Constitution.	None
31.	LSK	<p>Regulation 30 Electronic Submission of Forms and Plans There is need to comprehensively outline the scope and procedure of electronic submission of documents especially in the context of sectional plans which as per Regulation 8 must be "... drawn in waterproof ink, on tracing linen or polyester film or such other @LSK</p>	Reg 30	Electronic submissions covered under SPA Draft Regulation 30 and the Survey Act	None

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		Committee – Land Environment and Conveyancing 15052021			
		15 material that is of size and nature that is acceptable to the Director of Surveys;(b)be prepared in sheets, each sheet of the plan being endorsed in the upper right hand corner with the words “Sheet of Sheets” with the appropriate numbers filled in....” Are sectional plans an exception to this rule? Or will a scanned version suffice? Generally, there is a lot that is left to imagination by this section.			
32.	Toshie Mbaya	How to divide common area spaces of apartment buildings equitably under the new Act?		The Act provides for the Unit factor which determines your proportionate share of the common property.	None
33.	Vincent Calvins	What is the role of Land Administration officer under the SPA 2020		Apart from land rent apportionment, the Land Administration Officer plays no other role.	None
34.	Christopher Kinyua	The remaining land should be treated as a unit. Provide a proviso so that the remaining land should be treated as a unit.	ALLSK	SPA is only applicable to existing buildings/developments	None

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		<p>The owner may subdivide the parcel into three areas and apply for property registration. There is a challenge with the common property, since it common property may not be duplicated in every parcel.</p> <p>Huge Projects. Creating a Corporation of members for example 2000 units. Is there a provision where this project can have 2 or more corporation depending on the corporation will and desire?</p>		<p>The by-laws are generic and can be customized to enable operations for different corporations.</p> <p>None</p>	
CORPORATION					
1.	NLC.	<p>Service Charge It's easier to compute the service charge per unit in this regulation.</p>	Section 20 SPA 2020	Administrative expense is per unit.	No action
2.	NLC.	<p>How will the Service charge and Reserve Fund be managed? Define capital repairs.</p>	By-law 33	<p>They shall be managed separately-Administrative Expenses Fund for costs which are recurrent and the Capital Reserve Replacement Fund for those costs of a capital nature.</p> <p>To include capital improvement in 33 (1) after the word replacement By law 13 to be reworked. Numbering. Amend bylaw 24 (2) to include appointment of</p>	

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					auditors and presentation and approval of the following year's budget.
3.	NLC.	Be clear on how the Fund will be spent. It should be passed during the AGM on the use of the Fund.	By-law 33	Control mechanisms well provided for in the bylaws.	No action
4.	NLC.	Elections of Board members should be done separately. Unit owners may not be in the country. Allow online meetings.	By-laws 6, 7, 8, 9, 10	It is not viable to have a separate general meeting only for the purpose of electing officials. The regulations have provided for proxies at virtual meetings.	Elections at AGM, allow virtual meetings and voting
5.	NLC.	Community meetings are normally done once in a year. Provide what should be in the AGM Agenda. Maintenance plan for the units should be included.	By-laws 24	AGM agenda clear in Regulation 24. Maintenance plan also provided for in regulation 24 in reports of the officers and the budget.	No action
6.	NLC. Tom Onyang'o	Term of the board not clear. One year term is too short	By-laws 9		Term to be set to three years instead of one. A third to retire annually though eligible for reelection. Subregulation 2 to be removed.

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						Board to be reconstituted every year
7.	NLC.	Is the corporation constituted under the SPA or the Companies Act?	2(b) and 3(b)	It's under the SPA 2020.		No action
8.	NLC.	What are the categories of meetings.	By-laws 2(2)	General meetings which may be annual or extraordinary meeting		Special in regulation (2) to be replaced with extraordinary
9.	NLC.	Dispute Resolution Committee Make provisions for witnesses to testify.	By-laws 36	This may not be made of legal experts. It will deal with day-to-day issues that relate to the apartments.		We need to amend regulation 36(3) to capture the issue of the board designating the Chair and the Secretary
10.	NLC.	How will unit owners control borrowing by the Corporation.	By-law 5.1(b)	The Board must present it in the AGM for members to pass it.		No action
11.	ISK	Service charge enforcement other than just levying interest. Legal redress? Defaulting on payment of service charge is rampant	By-law 5.1(d)	The corporation can sue to recover charges The corporation should be allowed to recover service charge from rent where applicable The corporation may also withdraw services		Amend the regulations/bylaws
12.	Jennifer Musyimi	It's not clear when the management company comes into being and how it is formed especially when only a few units	Reg. 2 Corporation formation	The Corporation comes into being on registration of the sectional plan as long you have 2 units or more.		None

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	Vice President, IQSK	have been sold. Under which law is the corporation registered		The act provides for the corporation under SPA 2020.	A new regulation to be prepared
13.		Management Company-What are the relations of the management company to the corporations		Provision for winding up of management companies to be done. Winding up should be done within a certain period.	None
14.	Mairura Omwenga TCPAK	Should the corporation be a legal entity registered under companies Act rather than under this Act so as to allow registrar deal with land matters?		The corporation is a non trading entity that only exists for the benefit of managing the units. It is thus expedient that formation, management and dissolution go hand in hand with the property.	None
15.	Joyce Kariki Kenya Institute Planners	Consider making a provision where the corporation may conduct its business virtually borrowing from the Covid-19 scenarios	Mode of conducting business	covered under Bylaw 2(2)	None
16.	Gikonyo Gitonga KEPSA/KPDA	Form 15-Notification of the corporation when you need to rent a unit... Include ID number, Huduma Number to identify the details of individuals. The corporation to put an obligation on the unit owner to maintain some details of Know Your Customer (KYC) incase the owner is out of the country but have his representative to represent him.	Reg. 22(2) Notice of tenancy	Consider other details that can be added to the form of notice	Adopt expansion of the information of the tenant. Enrich form SP15 and SP16

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17.		Will matters of engaging third parties be dealt with under the bylaws e.g. hiring of properties managers. The bylaws to guide on how this shall be done	Bylaw 18	This has been addressed by section 20(1)(j)	Adjust 18(2) to correspond with section 20(1)(j)
18.		How will these regulations be applied to a development where there have been sale of land and the owners are developing their plots e.g. gated communities with mixed use-at what stage does the corporation take charge in the development and management of the common properties	Mixed use gated communities	The SPA is applicable to properties developed on the same parcel (one title). It cannot apply to a mixed use/gated community where everyone has their own unique parcel number and tile thereto.	None
19.	Eunice Macharia Estate Agents Registration Board	Expand facilities that have been defined in Subsections 5(2) to include all the management cost e.g. personnel's, caretaker's costs.	Bylaw 5(2)	This is included in the administrative expenses. It is provided in the Act under section 20)(2)	None
20.		Votes of co-owners the regulation to address a scenario of one person owning various units	Bylaw 6(5)	Co-owners of a unit will be treated as one vote while an owner of several units shall be treated as one unless in cases when a vote is called.	Amend 6(5) to reflect that despite the number of units owned an owner can only have one position in the board
21.	Ruth Hinga	The regulations provide that the corporation shall not have power to carry out trading activities. Doesn't this	Reg: 21	The Corporation is only restricted to engaging in activities that further its	None

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		restrict provision of services that are for the convenience of the units owners?		mandate of management and administration of the property	None
22.		What counts as a unanimous decision by the corporation? As unanimity seems to be very crucial in the decision making.		A unanimous decision/resolution is where there is full concurrence by all persons present and voting	None
23.	Ederman Properties	Who shall be responsible in the estate for the operation to maintain the value & standard of the estate?		The corporation-Section 20 of the Act	None
24.		Does the Developer form part of the Board of management? If no, we propose for inclusion to assist in the handover and management of the units before full handover especially for big projects like those done by EPL		If the developer still owns some units, he becomes a member of the corporation but not necessarily to assist in handover and management. The developer can be coopted on the board if need be.	None
25.		The Sectional Properties Act requires the developer to call for a meeting of all purchasers to form a management board upon selling of at least 50% of the units in the project or within 180 days from the day of the first sale; Noting that in off plan purchases completion of payment for the unit is not done immediately, what criteria will the developer use to determine what units are already sold to call the first meeting? What amounts to a sold unit: Is it upon booking or upon full purchase of the full purchase price including the end costs.		This Act nor its regulations does not deal with off-plan purchases	None

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26.	When does the developer cease being part of the project? Is it after handover of the unit or immediately a corporation is formed or immediately they lodge the documents for registration and the certificate of title issued?		Immediately the last unit is transferred of the first meeting of the corporation is held whichever is later.	
27.	The Section 21 of SPA states that the Corporation shall not have power to carry out any trading activities. Does this restrict provision of services that are for the convenience of the homeowners? Can the management agreement incorporate for provision of services like electricity and water for convenience of the running of the Estate?	Sec 21 of the SPA 2020	The corporation is a non-trading entity only mandated to provide services for the benefit of the unit owners	No action
28.	Kindly clarify the 180 days & 90 days period provided in the Act for the formation of the Corporation? Sec 27 of SPA The SPA requires the developer to be call for a meeting of all purchasers to form a management board upon selling of at least 50% of the units in the project or within 180 days from the day of the first sale	S27 of SPA	Section 27 of the Act provides for convening of first meeting of the corporation to elect the board.	None
29.	Who shall form the Corporation?		All unit owners are members of the corporation	None
30.	What is the developers' role in the management of the property? The Act to provide clarity		When majority of the units are owned by the developer, the corporation may enter into a management agreement Sec. 44, SPA 2020	No action

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31.		How shall the payment & management of cleaning, security, water, parking, garbage collection & those related to management be handled, what shall the developers role be?	Reg. 5(2)	The Corporation is charged with this task. All the management aspects shall be catered for under the management agreement where applicable.	No action
32.	Institution Surveyors of Kenya	Reg. 22. Notice by owner to new tenancy. Amend the section to provide notice by owner on the "existing" tenancy	Reg. 22	The notices has expressly been provided for under regulation 22	No Action
33.		Reg 23 (1) notice by the Corporation Amend the section to include "tenant and owner"	Reg 23	Corporation is made up of unit owners and not tenants	Make a provision under by-law 35 where a notice can be given to the owner on breach of by-laws
34.	Tax issues	There is need to clarify tax liabilities by the Corporation. Furthermore, there is need to explore possibility of exempting service charge that shall be levied by the Corporation from VAT. Currently this is a major grey area affecting the existing corporations		Tax issues can be addressed by the various other taxation statutes	No action
35.		There is need to also consider the capital expenditure computation of service charge and capital gain tax that arise from capital expenditure including among others establishment of a borehole		Capital gains tax arising from the capital expenditure- This can be addressed through other statutes dealing with domestic tax	No action

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36.	Kenya Bankers Association	Seek clarity on transition of existing management companies to the Sectional Properties Act corporation. How will the assets and liabilities of the management companies will be treated? The regulations should provide some guide with timelines.		The issue of transition to be addressed through regulations	TF to formulate transition provisions
37.		Seek clarity on corporation's involvement in land rent and rates now that each unit has been apportioned corresponding common property		Already addressed	No action
38.	NSSF- Caroline Rakama	Whether Registration of the Corporation for existing units is Done at registration of Sectional Plan.		Where sectional titles have been provided then no need to register afresh.	TF Provide a regularization mechanism under the regulations for properties already registered but no corporation in place
39.	SDHUD	Social housing programmes to some extent allow for the renting of parts of the unit to allow the beneficiary repay their mortgages. This need to be relooked at when developing the regulations		The issue of social housing cannot be addressed under SPA	No action
40.		Specify the form being referred to in Reg. 22(3)		For clarity	TF to include this form (Brian)

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41.		There is need to provide for a party to initiate the practical operationalization of the corporation upon registration, possibly/preferably the developer at first instance, so that he brings the owners together.		The issue is addressed under Section 27 of the ACT	No action
42.	Diana wachira, Irene kinoti Pamoja Trust	Internal dispute Resolution structure -How will the structure work?		This has been provided for under By-law 36. However a provision for conduct of its business to be included under the by-laws	Amend By-law 36 to include a provision for conduct of business by the corporation
43.	John Liboyi, Dorothy,s Park resident association chairperson	Seal of the corporation -Remove the seal as it is removed in the corporation		Adopt best practice	TF to recommend amendment of S 17 to do away with the requirement of a common seal
44.	Abraham samoei ISK President CEO Rose mwaura,Robert t koech	Regulation 18(2)		Provide for estate managers and professionals	Already addressed under the Act ... 20(1)(j)
45.	LSK	Long term leases under section 54 (5) of the LRA apply to a broader category of leases which would otherwise not be easily registrable under the SPA. These structures provide for vertical and horizontal ownership where the owner does not			To be considered by the Taskforce.

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		want to relinquish the reversionary interest to the lessee(s). some common examples			
46.	LSK	Dispute Resolution Tribunal Members to have regard that to the recent case of Position before the recent case -Okiya Omtatah Okoiti v Judicial Service Commission & 2 others; Katiba Institute (Interested Party) [2021] Eklr (pg. 42) on whether the proposed tribunal with decision making powers require appointment by the JSC.	Reg	Internal dispute resolution committee is not a tribunal. The Act provides for an internal dispute resolution committee which shall be appointed by the corporation	No Action
BYLAWS					
1.	NLC.	By Laws Make it clear that the By-laws can be amended after registration.	By-law 3. (2) & Reg. 21	Captured under section 29 of the SPA 2020	Reword bylaw 3(2) to capture aspect of customization
2.	NLC.	Regulation should generally cover the main items of By Laws. Issues like Parking. There are some conditions for use of the common area. There is the exclusive use area defined.	-	Use and management of common areas is the function of the corporation and the same is covered in the regulations and the by-laws. Moreover, by-laws can be customized to address such issues.	None
3.	NLC.	Nuisance Tenant Whatever happens to a Nuisance owner should happen to the Tenant. Whatever happens to the Tenant	By-law 5-1(i)	It is provided under by-law 35 (2)(b). However, the taskforce will introduce some penalty under it	To review by-law 35(2)(b) to introduce the aspect of penalty and notice.

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4.	Institution of Engineers of Kenya	Material change should be clarified. Making structural adjustments without permission of the board....provide that the board to work with relevant professionals and relevant county approvals....Building code provides for such alterations.	By-law 4(e)		Taskforce to amend by-law 4 (e) to capture the three-stage consent
5.	ISK	Voting rights: does an owner with two units or more have votes equivalent to the units?	By-law 6.5	Has one voting right	No action
6.	ISK	Voting rights: can an owner who owns 25% of the units	By-law 6.5	NO. Has one voting right	No action
7.	Eng. Nathaniel Matalanga - President Association of Construction Managers of Kenya	How do the regulations ensure that the county has employed registered professionals competent of going through the documents and giving the approvals? The CEC may not be a professional in any of this fields Need to recheck the bylaws on alterations and changes - There should be nothing left to doubt on approvals by the board. <ul style="list-style-type: none"> • Clarify on when that approval is given? • Who submits the approval? 		The Act provides for the endorsement by the CECM. Administration is beyond the ambit of the regulations.	None

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		<ul style="list-style-type: none"> What happens if the county says yes, and board says no <p>Centrality of professionals in the alterations-Provide clarity</p>			
8.	Joyce Kariuki Kenya Institute of Planners Geoscope Ltd	At what point do we appoint auditors under the regulations.	By law 19	Auditors to be appointed at the AGM	
9.	Eunice Macharia Estate Agents Registration Board	The regulations should provide a provision for auditing to inform the cost of the service charge.		Provided in regulation 13 (4)(iv)(b)	None
10.	Gikonyo Gitonga KEPSA/KPDA	In every property that will be under SPA, there is the element of service charge- The regulations have omitted the definition of service charge and how this shall be charged to each unit. Why is the concept of service charge not addressed in this regulation? Provide in the regulations on what constitutes service charge and segregate the components on this. It's important to address this issues on what it constitutes to allow for	Service charge		Consider defining what constitutes a service charge in the bylaws

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		smooth management of sectional properties?	Bylaw 5(d) Penalties on delayed payment		
		Is the corporation able to charge any penalties on late payment to the corporation? e.g. Landscaping services being introduced as a service charge instead as a development cost... Need to define what service charge entails?			
11.		Management of common assets-Is there provision of creating a sinking fund to fund any future assets or developments of the future after the exit of the developer-How do you address this to avoid decay of assets?	Bylaw 33 Management of common areas and	The bylaws provide for capital replacement reserve fund under Bylaw 33.	None
12.		Define what constitutes a capital replacement charge in the regulations and the purpose of this fund? Provide clarity on these gray areas		Covered by by-law 33	None
13.	Eunice Macharia	Definition of owner "includes a tenant" needs to be reconsidered	Bylaw 35(1)(b)	Definitions under by-law 35 apply specifically to by-law 35	None
	Estate Agents Registration Board				
14.	Edermann Properties Limited	How shall the relationship of the developers and purchasers be governed?		The relationship is governed by the sale agreement	None

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15.	Institution Surveyors of Kenya	<p>By Laws (5) (1) powers of the Corporation</p> <p>Amend to include a new provision to read as follows;</p> <p>(k) To levy service charge subject to approval by AGM and subject it to mandatory Auditing</p> <p>(l) The Corporation to be mandated to levy and maintain Capital Reserve subject to approval by Annual General Meeting</p>		Covered by the Act in section 20(2)(c)	
16.		<p>Bylaw 18 (2) on employment by Board</p> <p>Amend the Section to read "The Board may employ on behalf of the Corporation Registered Estate Agents or Property Managers necessary to control, manage and administer the movable and immovable property of the Corporation and the common property and in that respect may authorize those persons to exercise the powers of and carry out the duties of the Corporation.</p>	Bylaw 18(2)	See comment above	
17.		<p>Bylaw 19</p> <p>Amend the section by deleting "at a reasonable fee"</p> <p>The owners of the units should be able to inspect books of accounts upon request. A</p>	Bylaw 19	This was to deter the constant requests for books of accounts since the Board of the Corporation is made up of volunteering unit owners.	None

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		requirement for them to pay a fee serves to discourage the unit owners from seeking to inspect the books of account. Furthermore, "reasonable fee" is ambiguous and can be subject to abuse.		Reasonable fee is to help defray costs.	
18.	Nicodemus Mbwika	Are these bylaws legally binding and what happens if someone does not play by the rules? How do you enforce them?		They are legally binding. These are generic bylaws and the bylaws provide for establishment of the board where they can charge interest and enforce the bylaws.	None
19.	Tasneem Kasmani Advocate Mombasa	Under existing regime where someone was in the process of subdividing land and issuing subleases the developer would have some say in the conditions of the leases. Would it be possible for developer to have a say in the conditions under SPA?		It is possible to prepare customized by-laws. If there are special conditions that need to be provided it can be done through the bylaws	None
20.	Director, Housing Jane Mwangi	Existence of the board. One year is very short, consider 2 or 3 years.		This has been considered above	None
21.	Annette Ondoro NHC	Definition of corporation should be clarified		Clearly defined under Section 3 of the Act	None
22.	NSSF- Caroline Rakama	The Board should be appointed by the unit owners.		Covered in by-law 6	None

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23.	SDHUD	Term of Board. A year is too short for the Board to have implemented its vision and mission and recommend at least two years renewable once.		Covered above	None
24.		Board membership should not be limited to owners only. Since some unit owners rent them out as a source of income, and in some instance majority of occupants may be by tenants, its key to give tenant rights to management issues. They should not only be co-opted but atleast should be considered for a slot in the board membership to represent tenants' issues.		The board is given leeway to coopt not more than two members as covered in by-law 7(1) who are not unit owners	None
25.		There is need for clarity on the establishment, operationalization and sources of the Capital Replacement reserve fund. We propose that a small proportion probably 10% of the service charge be set aside every month for use in capital repairs and renovations to avoid burdening owners/tenants from several contributions		Considered above	
26.	LSK	Powers of the Corporation Need to have reserved Matters	By-law 5	The power to borrow has been limited. All other requirements for proper management of the	None

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	<ul style="list-style-type: none"> ▪ The powers of the corporation should be limited to the basic roles of management of the estate. ▪ the powers granted in the by-laws such as powers to borrow, power to acquire movable property and supply gas should be reserved matters requiring a unanimous resolution of the members. This is due to the repercussions of default. 		estate can be customized to fit the development	
27.	<p>Power of Corporation to Secure Repayment of Money The By Law provides that a Corporation may secure the repayment of money borrowed by it and interest on that money by a negotiable instrument, a mortgage on unpaid contributions (whether levied or not), or a mortgage or charge over any property not being immovable property owned by it or by any combination of those means The fact that a Corporation may secure a mortgage on unpaid contributions, whether levied or not is rather draconian. Regulation should only be allowed to operate within certain confines</p>	By-law 5(c)	See comment 26 above	None

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28.	LSK	that ensure that they afford protection to unit owners to avoid occasioning injustice to them if the Corporation defaults in its obligations. Term of Office There is a possible cross-referencing error in this by-law. Contextually, it appears that 9(3)(a) should read "the office becomes vacant under by-law 10." It is not clear how, an office can become vacant under By-law 9 other than expiry which is already included under by-law (9)	By-Law 9(3)	Typographical errors	Amend 9(3)(a) to read 10.
29.	LSK	Entry to Inspect It provides that an owner shall permit the corporation and its agents, at all reasonable times on notice (except in case of emergency when no notice is required) There is need here to delimit what constitutes an emergency.	By law 4(a)-	Emergencies are dynamic and cannot be delimited	None
30.	LSK	Payment Plans The Regulations could also incorporate entering into payment plans with unit owners with respect to overdue contributions subject to the passing of a resolution. The payment plans could also	Not in regulations	Introducing payment plans can be abused and tie the hands of the corporation.	None

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		provide for payment of interest on overdue money.				
31.	LSK	Repetition There is need to avoid duplicity with the SPA. Some of the regulations are a word for word replication of the section in the SPA		Noted		To be reviewed
32.	LSK	Virtual AGMs and Electronic Voting -The Committee acknowledges that the By Laws provide for the conducting of virtual Annual General Meetings. -The Committee recommends that the By-laws give further regard to the advancements in technology in allowing for not only virtual meetings but also electronic voting. -This could include voting by means of teleconference, videoconferencing, email or other electronic means while participating in a meeting from a remote location or by requiring voters to access a voting website and to vote in accordance with directions contained on that website.				Taskforce to consider the manner of voting to include electronic.
33.	Peter Mwangi, Eric Theuri, Ribin Ondwari LSK	1. The issue of conferring ownership of the main land lease is also in the Land Registration Act, 2012				

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		<p>✓ By Laws 19 (f) – Is the corporation an appropriately registered association to represent interests of owners during stakeholder meetings under Urban Areas and Cities Act, 2011 and County Governments Act, 2012b</p>			<p>The input of a planner just like many other professional who do their input during development control and approval stage was given and no need to capture the same during registration stage</p>	None
35.		<p>Form SP5 and SP6-On Approved Physical and Land Use Development Plan Number-- Under section 56(a) of the Physical and Land Use Planning Act, 2019 a county government shall control use and development of buildings within the context of An approved relevant physical and land use plan as indicated in section 61(1)(a) . Hence the need for a plan's detail to be included in the register</p>				
CONVERSION						
1.	NLC.	<p>What happens when one of the owners does not want to convert?</p>	Sec. 19 & 20	<p>Status of that title will not be affected if the others are converted.</p>	<p>Conversion process is already covered</p>	<p>To be considered by the Taskforce.</p>
2.	Nazir Madatali	<p>I would like to know how one applies for the sectional certificate of a title of already existing flats (12) on one title.</p>				None

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3.	Ngozi	<p>Developer formed management company with himself as the sole shareholder and has never offered any shares to the owners of apartments.</p> <p>Developer overrides the terms of the sub-lease and make alterations to the property which greatly affected the owner without any consultation or consent. The Service charge account is controlled by him and the money is used as he sees fit with no proper accounts being made available.</p> <p>Developer has refused to issue consent when one wants to dispose his unit.</p> <p>Proposes the reduction of conversion period from 2 years to 2 months.</p>	<p>Regulations provide for a process through which owners can apply for conversion.</p>	None
4.	Raymond Molenje Director Legal KBA	Unit owner converting to SPA. Is it part of the unit owners (What is the threshold of	<p>The period is provided for in the Act</p> <p>The Act states that any owner may initiate conversion.</p>	

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	Kenya Bankers Association	owners who can make that application for sectional plan and conversion)			
5.		Encumbrances and charges... Does this refer on the charge on the mother title or charge by individual unit owners (In latter case there may be more than one bank involved) which bank will forward the application? The mother title may also be charged by various institutions? How will the interest of other financial institution be catered for?	Reg. 19 (5)-	The chargees will need to liaise with each other as the title to the property can only be held by one charge at a time Conversion does not interfere with the security	None To be considered
6.		Have clarity on transition of existing management companies to SPA corporations. How assets and liabilities of the management companies will be treated, regulations should provide a guide with timelines			
7.		Clarity on how transition the current mortgages and encumbrances secured by the units in the sectional property to the new individual certificate of title or lease		The procedure is covered by the regulations	None

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8.	Peter Gichangi Chairperson Safaricom Investment Cooperative	What is the proposed timelines in terms of whether this shall be done in regions?	Transition of existing projects-		
9.		It's critical to clarify in the transition from Management Company that has specific assets such as common properties, boreholes, lawns etc. How do we intend to move this to SPA from the existing management companies?	Transition of projects that are there now-		To be considered
10.		When these regulations come into effect the developers be required to migrate to the new act on the ongoing projects?			None
11.	Cyrus Maina	In relation to transitioning to the new regimes the regulations should provide that the new bylaws should mirror what was in the managements company articles of association			Taskforce to consider
12.	Ederman Properties	For the units that have been registered under the former regime what provisions have been put to assist in the transition from Management Company to Corporation? Who should form the Corporation is it the developer or the home owners and when will the same be done?	Reg 19	There is no transitional clauses to manage transition from the management company to a corporation	Transitional clauses can be considered The Corporation is formed by the unit owners

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13.	Institution Surveyors of Kenya	The regulations should provide for the transition to the existing Act, particularly for the existing corporations with assets and liabilities. Such transition needs to include the timelines.	Sec 19	Not provided for	Maybe we can think of some transitional clauses in the regulation on the winding up of the management companies
14.	KRA	Include proof of Stamp Duty Payments.	Reg 14		
15.	KRA	Consider KRA Pins for all parties, Surveyors, Lawyers for documents need in conversion. Inclusion of KRA pin in form SP13 and Sp 14.			
16.	Faith Nthale KRA	It should be clear that the chargee will be responsible for paying the CGT upon transfer of the unit.	Reg 19	CGT is also provided in the Act, so we should clarify on the Income Tax Act.	
17.	MTIHUD	What would happen in the event they don't have the original documents from the developer		Regulations provide that the Registrar has power to dispense upon gazettelement.	
18.	Pius Omullo from National Housing Corporation	There is a commitment from the Government on Regularization of Sectional Properties that were not in conformity with the Sectional Properties Act 2020 and related amendments. Has the government mapped and budgeted for this resource intensive exercise which includes collection of geospatial data and title conversion process?			

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19.	SDHUD	regulations should be clear on how to enforce migration to SPA by developers and property owners				
20.		What's the procedure for conversion of public land (neither freehold/ leasehold) to sectional units? The regulations should clearly introduce procedures on how to deal with public land	19(1)			
21.		There are cases of titles issued to private entities yet the land is predominantly public land. These titles have been an issue when developing social housing programmes. Will the Act/ Regulation provide for how to deal with such cases?	Reg 20(3) Reg 20(4)			
22.	Safaricom investment Corporation	How will the Regulations address public use land where persons are required to surrender a portion of land to be used as a public utility for example schools? Fees				
23.	John Liboyi, Dorothy,s Park resident association Chairperson				Conversion fees to be waived ,statutory and other costs incurred in the conversion	This is an administrative process by MoLPP. Taskforce to make recommendations.

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		Regulation 19(3) application for conversion percentage		Provide for percentage of the unit owners to apply for conversion	Even one unit owner may initiate the process and so no need to have percentage
24.	Abraham samoei ISK President CEO Rose mwaura, Robert t koech	Conversion process seem to be a separate process in the registration process		Need to have harmony	
25.	LSK	Reg 19-(Conversion of Units) and Reg 20-(Documents to accompany application for conversion) Regulation 19 has failed to distinguish that currently the LRA recognizes and provide for two forms of long-term leases: 1. Long term leases created under the SPA and registrable in accordance with Sections 54 (3) and (4) of the LRA and the SPA Regulations; and 2. Long term leases created under the LA and CLA and registrable in accordance with Sections 54 (5) and 54 (6) of the LRA and Regulation 77 of the LRA Regulations	Reg 19 and 20	SPA specific deals with build environment and the developer has intention of conferring ownership to units. -Bare land long term leases will continue to be registered under LRA and CLA.	No act

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26.	LSK	The current dual system of longterm leases is validly in place and properly anchored in law. There is therefore need to clear the misconception canvassed by Regulations 19 and 20 that:-	Reg 19 and 20		To be considered by the Taskforce.
27.	LSK	Long term leases already registered under the repealed laws and under LRA have to be brought under the provisions of the SPA	Reg 19 and 20	Yes. Though the period of two years might not be enough	To be considered by the Taskforce.
28.	ISK				
MISCELLANEOUS					
1.	NLC.	Sectional status is only applicable if the Lease is 21 years or more remaining period.	SPA, 2020 Sec. 2	In the Act	No action
2.	NLC.	Successes of the repealed SPA.	-		No action
3.	NLC.	Resistant by Professionals in implementation of the repealed SPA.	-	Most developers preferred to use RDA	No action
4.	NLC.	If an owner of a unit does not pay rates, how will they claim it.	By-law 4(b)	The County Government has responsibility to recover rates	No action
5.	NLC.	Relationship between SPA management with County land use board and Urban and Cities Areas Board	-	SPA management will be looking at the property only and not like the other boards.	None

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6.	NLC.	Has the regulations factored in the street addressing concept especially considering the adoption of a standardized numbering system? Such a standardized numbering and adaptable street addressing system when deployed will fuse easily with NLLMS since the sectional properties will be geo-referenced. Street addressing once defined, should be adopted.	-			To be considered by the Taskforce as a recommendation to MolPP
7.	MOLPP	This will be in the NLLMS	30		The regulations have taken care of electronic submission	No action
8.	MOLPP	If properties are charged in the bank	-		Then owners should initiate the process. This process should be fast tracked.	No action
9.	MOLPP	9 (3)	-		There is a typo	?
10.	MOLPP	regulation 29	Reg. 29		Renewal and extension of Lease. This should be individual based not common renewal.	To be considered by the Taskforce
11.	ISK	Is contribution to Capital Fund for major development e.g. bore hole deductible when computing Capital Gain Tax after a sale	Not in Act		This is a tax issue	No action
12.	ISK	How will the corporation PAYE tax, e.g. PAYE to KRA			This is a tax issue handles in other jurisdictions	No action
13.	ISK	Qualification of agents employed by corporations to manage common areas.	18(2)		Respective corporations have liberty to source management	None

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				services as they deem necessary.	
14.	Nahashon Okoa Association of Construction Managers of Kenya	The regulations to align themselves to the building code and NCA regulations on defects liability period		This is a contractual issue governed by other laws.	None
15.	Wafula Nabutola Chairman Building Surveyors	The challenge of buildings meeting the standards during use. How will this be accommodated in these regulations. -Provide for standards during occupancy, disasters, and maintenance	Building standards and safety	There are other legislations that provides on how the buildings and development control is done. This act aims at dealing with registration of sectional properties where there is an intention to confer ownership to unit owners	None
16.	Mairura Omwenga TCPAK	The residual lease term of 21 years in the SPA Act- What informs the unexpired lease term of 21 years?		Unexpired term of 21 years is the minimum period capable of being issued with a certificate of Lease	None
17.		In terms of sectional properties, it denotes that it applies in 2 or more units in a parcel of land. Will this also apply to gated communities?		The SPA applies to all developments that share the same title. If a gated community is just sharing a few amenities but have individual titles then SPA does not apply	None
18.	Peter Gichangi Chairperson	Sacco have been undertaking the Tenant Purchase Scheme. How does the Act envisage this to work? Can the	Tenant purchase	the Act recognizes that a developer can indeed form the corporation and register the	None

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	Safaricom Investment Cooperative	developers go for sectional ownership but the units be transferred at the end of completion of payment		sectional plan before sale of units	
19.		How will the developments in gated communities that include social amenities where government has interests such as social amenities owned by Government or County be regulated? Will government also regulate if it owns schools or commercial properties?		This model is not compatible with SPA	
20.	Cyrus Maina	Why can't the corporation be registered under the companies Act? What happens to the existing management companies registered under the companies Act?		Corporation is provided under SPA as an entity. Existing management companies will transit to the Corporation under the SPA	None
21.	Catherine Masyuki	What will happen to current ongoing projects where some have been under earlier regime and some units are still pending?		Conversion shall apply including the unregistered units	none
22.	Ruth Hinga	How will easements on the property be registered noting that the act envisages cancellation of the mother title and issuance of certificates of the titles to individual's owners once the sectional plan is registered?		Easements shall move to sectional titles. The same is provided in the easements section of the register.	None
23.		What's the defect liability period and for how long is a developer allowed to be on the property after completion of the project?		No specific period provided but corporation board is constituted on sale of fifty per centum of	None

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24.	Cyrus Maina	This regulation makes the doing of business hard. It means owners of Phased development will be unnecessarily delayed in getting their titles		the units or 180 days after the first unit is sold. SPA 2020 doesn't cover phased development	None
25.		How will car parking spaces and which are now regarded as indivisible part from the leased premises (in the current long term leases regime be treated) Will car parks be included in the sectional title?		Where parkings are individually owned, they will upon conversion be common property for exclusive use of the owner who had purchased it. The car park will be shown in the sectional plan.	None
26.	Edermann Properties	What is the relationship between the old and the new Act?	SPA 1987 and SPA 2020	The SPA 2020 repeals the SPA 1987	None
27.		How shall the new Act affect the projects from the planning stage, purchase of the units and design?		The SPA 2020 is a survey and registration statute. It doesn't deal with the planning stage, purchase of the units and design	None
28.		Impact of the new law in construction of the project?		The SPA 2020 does not cover the construction of a project	none
29.		Impact of the new law in terms of sales & marketing		Statute does not cover sales and marketing	None
30.		What are the roles of the developers, purchasers, Advocates handling the transactions, owners of the unit and possible tenants to occupy the same?		Developer – Unit title registered in his name for possible transfer	none

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			Advocates – will handle the transfer and other transactions on the unit title Owners of the unit – they form a corporation of the unit owners Tenants – have the obligation of adhering to the bylaw	None
31.	Do the LSK conditions of sale apply to this type of transaction?		Yes where applicable and parties subject themselves to the conditions.	None
32.	What is the relationship between issuance of the certificate of title and completion of the project?		Sectional plan is prepared and registered upon completion of construction	None
33.	What is the difference between the occupation of the unit & issuance of the certificate of title?		The developer allows access to the unit upon obtaining an occupation certificate Certificate of title is issued upon registration of the sectional plan	None
34.	Relationship between the developer & purchaser during the construction of the project (what shall be the roles of each party)?		This statute does not cover the relationship between developers and purchasers	None
35.	How do you define the construction period from the start to the end?		This statute does not cover the construction period	None
36.	In the event the construction of a project takes longer than anticipated, how do you handle the delay in terms of issuance of the certificates of title?		This Act envisages a completed building	None

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37.		In the event the County offices decline to issue approvals for the project how can the certificates of title be processed and issued?		Sectional plan is prepared on a complete building. The building must have been approved. Sectional titles are issued upon registration of the sectional plan.	None
38.	Kenya Bankers	Seek clarity on how to transition the current mortgages and encumbrances secured by the units in the sectional property to the new individual certificates.		Encumbrances on the closed mother title will move to respective sectional titles	None
39.	Bii Ng'eny	Is the law applicable to all developments beneath the land and under the sea or ocean		The Act applies to all approved buildings under the County	None
40.		Does it mean that those leaseholds which are more than 21 years are not eligible for sectional properties act?		If a lease of at least 21 years intends to confer ownership, then it falls under the purview of the SPA	None
41.		It's my observation that the SPA once applicable must take cognizance of the zoning regulations that shall form the basis of special conditions in the sub-leases?		This is correct as planning approval is governed by the county government.	None
42.	Beatrice Nyambura Director Land Administration	Under the Affordable Housing Project most of the projects are being undertaken in Public land. When these apartments are sold to private members and reversionary interest is vested in the corporation. Will this lead to privatization		The normal process of conversion from public to private still applies	None

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	Nyandarua County	of public land since the projects are mostly done under this arrangement?			
43.	Eng. Sam Mugo CEC Lands, Housing & Urban Development Kiambu	If the mother title is a 5 acre parcel and the developer is using 1 acre in the first phase does this law then require one to subdivide the land or how does the law envisage this to happen?		The Act does not address phased development but deals with registration of existing units.	None
44.	Julius Kaloi CEC Makueni County	If a property is sitting on a leasehold title and the lease is to expire in 15 years, will the property serve for 99 years or the remainder term of the lease?		The Act only ensures the title is registered if there are at least 21 years to the expired term	None
45.	Nicodemus Mbwika	Need to be more specific on what the counties should do in regards to reg. 9	Reg 9	What the county does is apparent on the sectional plan. The county endorses the plan as provided in Section 11(2).	None
46.		When making reference to surveyors are we referring to private surveyor or Government surveyors? Do the regulations have a provision for County surveyors?		There are only two types of surveyors recognized under the survey act that is Director of survey and officers working under him and licensed surveyors mostly in private practice. The counties will need to services of licensed surveyors to help where needed.	None
47.	Waithera Waiyaki Kiambu	I have noted that titles will be leasehold and freehold..... how will you determine		Determination of rent is based on optimal use of the land while rates are determined based on	None

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	County Attorney	the rating considering that it is a devolved function. What happens?		the services and utilities that have been provided on the land by County Government. This is specific and differs from one County to the other.	
48.	Francis Parsimei Municipal Manager, Kajjado County	There is need to put a rider in the regulations that approval shall be given by the counties or its other relevant agencies e.g. municipal boards, city boards as the situation may dictate.		The County Government Act is very clear on this matter.	None
49.		When the mother title has 15 years residual term what happens? Need to make it easy for the extension of the lease under the mother title to make developments viable for such projects.		The extension of leases has been provided for under Land Act. The prudent thing that developers can do is to apply for extension of the lease before beginning the projects to ensure that the residual term is over 21 years.	None
50.		The regulations to be bold enough to be able to specify the minimum standard area where SPA can be applicable to avoid leaving a leeway for different bylaws in the county		This Act comes into play after a building has been approved by the County. This means that the bylaws of the county come into play on what has been agreed as the bare minimum area of a habitable room that can be approved.	None
51.	Dorcas Kilile Kilifi County	What is the recommended minimum size of the land to be titled?		The bylaws of various counties govern the approval in terms of the recommended size of a	None

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				habitable unit. It is the county that looks at the technical aspects of the plan. SPA picks up from approval of county believing all technical aspects have been approved and addressed.	Taskforce has noted
52.	KRA	The forms referenced in the regulations should be synchronized with the labelling of Forms in the schedules.		Noted	None
53.	Hilda Kosgei KRA	The Stamp given and endorsement of the same is not sufficient proof that Stamp Duty has been paid. Validation of the evidence		Provided by Stamp Duty Act.	None
54.	Doris Ing'ahizu KRA	The Regulations should be clear on various responsibilities of the actors.		Noted	None
55.	Eliud Okwaro KRA	SPA has not considered the temporary structures registration.		Outside SPA domain	None
56.	MTIHUDPW	The definitions should be clear and provided for.		Noted	None
57.	Jane Mwangi. Director Housing	On Mixed use, residential and commercial. How will this be done? The Act does not differentiate uses.		So long as necessary approvals are given by the county, mixed use will apply.	None
58.		What's the Difference between Management and Corporation		Clarification was given	None
59.	NHC: State Corporation Housing: John Agutu	Stamp Duty payment on Tenant Purchase is paid on current value and it may be difficult for the affordable housing. Values of the property in the future will		For transfer the commutation is referred to the transaction date. A recommendation to have KRA review and consider the value of	To make a recommendation accordingly on the Stamp Duty Act

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	SDHUD	change and this will affect the Stamp Duty.	property at purchase time for affordable housing.
60.	Julius K'Obado NHC	Joint ownership. The common property should be owned as Tenant on Common	Taken care of
61.	Pius Omullo from National Housing Corporation	Does the proposed Act envisage a scenario where the value of the land rises rendering the existing development with sectional titles economically obsolete and therefore possibility of redevelopment more viable? For instance sectional titles for a 4-storey building which over time becomes economically infeasible hence the need for say a 30-storey building?	SPA provides for the option of termination of sectional status. Refer to section 48 SPA 2020.
62.	NSSF- Caroline Rakama	Where property is sold to many other parties, then KRA makes request to have the Original owner pay the CGT to KRA.	Tax issues
63.		There should be a definitions and abbreviations sections	Noted
64.		The regulations should propose a helpdesk to help fastrack implementation of SPA and dealing with day to day queries on SPA	Noted
65.		We propose a committee to be established in the regulations to deal with these emerging SPA issues and Conversion	Noted
66.		Stamp duty. The Act should have exempted first time home owners	Tax issue

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		benefiting from social housing programmes from stamp duty payable on transfer of property. How can the issue be addressed under the regulations?				None
67.	Safaricom Investment cooperative	When will the Sectional Properties Regulations take effect?		Upon formulation	None	
68.		How will the implementation of the Regulations affect the existing or ongoing projects?		These regulations have provided a conversion mechanism for existing developments. Ongoing projects shall follow suit.	None	
69.		The Regulations are not clear on whose mandate it is to issue Rates and Rent Certificates.		Certificates are issued by the respective authorities.	None	
70.		The Regulations are silent on what happens to the assets owned by unit holders upon automatic dissolution of a Corporation.		The same is provided by section 46-50 of SPA	None	
71.	Jasper Mwenda Department of Geospatial and Space Technology, UON	Section 6 mentions that Fees payable under the Act shall be prescribed under the Act. Survey Fees and other fees (by Government and Licensed Surveyors) are currently prescribed under the Survey Act — specifically in the Fifth, Sixth, Seventh and Eighth Schedules of the Survey Regulations. Kindly address this issue		Fees in respect to survey plans are governed by the Survey Act	None	

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72.		<p>The Sectional Properties Act, 2020 and The Sectional Properties Regulations, 2021 use the term "Consolidation" while The Land Registration Act, 2012 uses the term "Combination" for combination/consolidation of two or more properties. Reference to "Consolidation" in The Land Registration Act, 2012 is in reference to the Land Consolidation Act (CAP 283). A linkage/definition of these terms between the statute dealing with Survey and the other which deals with Registration may be necessary.</p>		Regulations are formulated under the SPA	None
73.	John Liboyi, Dorothy's Park resident association chairperson	Capital gain tax computation		Tax issue	None
74.	Kitasi Wanga Action Aid Kenya Members of the non state actors	<p>Gender considerations missing in the Taskforce constitution.</p> <p>The land and building are owned by different people</p>		<p>Gender considerations shall apply where necessary</p> <p>Tenants at will. SPA doesn't apply.</p>	None
75.	Faith Alubbe Kenya Land Alliance	Appreciated taskforce work Regulations are progressive.		Noted with thanks.	None

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76.	Abraham samoei ISK President CEO Rose mwaaura, Robert Koech	Regulation 3(2) Link with LRA and add Regulation 6 on fees This to be aligned with the survey regulations Regulation 14(1)a Refer to survey regulations in general but not specific regulations		Noted	None
77.	ISK	Regulations 19 and 20 of the SPA Regulations are in conflict with the LRA and the LRA Regulations for the following reasons: 1. Section 13 (2) of the SPA does not compel leases registered under Section 54 (5) of the LRA to be brought under the SPA. The section merely seeks compliance with section 54 (5) of the LRA WHICH WILL MEAN compliance with the Regulation 77 of the LRA Regulation.		Conversion	To be addressed by the Taskforce
78.	ISK	The choice to register a long term under the SPA is (and has always been) voluntary and depends on the contract between the parties. Regulations 19 and 20 of the SPA Regulations use a coercive procedure that is unconstitutional in its	Reg 19 & 20	Conversion	To be considered by the Taskforce.

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79.	LSK	attempts to divest ownership of registered interests i.e. reversionary interests meant to reside with either the registered owner or a management limited liability company. An interpretation that enables a party's interest to be extinguished without compensation is unconstitutional. Where there is no intention to extinguish the reversion the proprietor of the reversion deserves protection under the law	Not in the act	Conversion	To be considered by the Taskforce.
80.	LSK	Are Regulations for the SPA anchored under section 54 (3) or 54 (5) of the LRA.	Reg 24. 4	Conversion	To be addressed by the taskforce
81.	LSK	Long term leases under SPA 1. what happens to this contract? (between head lessor and Developer) 2. Who holds the reversion? Who pays the rent?	Reg 4 (b)	Conversion	To be addressed by the taskforce
82.	ISK	Long Term Leases Under the LA and CLA	Not in the act	Conversion issue	To be addressed by the taskforce
83.	LSK	The Regulations have used and not defined the following technical terms – such as “Sectional Plan Register”, ...In defining these terms there is need to avoid conflict with LRA. For example, the SPA in section 2 defines a “register” to mean a register opened for each unit			Taskforce to consider, To provide a link with section 7 of LRA

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		<p>under section 5 (1) (b) of the Act. On the other hand, section 54 (4) of the LRA provides that the register maintained under Section 7 of the LRA shall be the Register for purposes of Sectional Properties. This needs to be better clarified. There is also need to review and clarify the meaning of the phrase "close the register of the parcel" in Section 5 (1) to avoid ambiguity.</p>					
84.	ISK	<p>Timelines of registration of sectional plans</p> <p>The draft Regulations need to prescribe timelines from when the application for registration of the section plan is submitted until when the Registrar registers the sectional plan and opens a separate register for each unit.</p>	Reg 2				To be considered by the Taskforce.
85.	LSK	<p>Termination and reversion</p> <ol style="list-style-type: none"> 1. It is not clear who is holding the reversion. In the case of a Grant of Lease who is to continue being obliged under the Grant? 2. Who is to pay the rent? 3. Upon expiry of the mother lease who is to seek extension? 4. To whom will the notice by NLC under section 13 of the Land Act be issued? 			<ol style="list-style-type: none"> 1. There is no reversion 2. Unit owners 3. The mother lease extinguishes upon registration of the sectional plan and subsequently the term is transferred to the sectional titles. Upon expiry of the term, unit 		

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86.	LSK	5. On termination of the unit titles in whose name will the mother title be issued where the number of unit owners could exceed 100?		owners will apply for renewal. 4. Unit owners 5. On termination of sectional status, the title will vest on the unit owners.
87.	Borowo & Kipsigis Self Help Group	Closing the register How is this achieved? Is the title surrendered and if so does this not extinguish the term of the mother lease? How are the conditions of the mother lease observed? Requesting for assistance in dispensing with a case on historical land injustices committed to them.		Title is surrendered. The process of closure is as provided in the SPA ie on registration of the sectional plan. Not in SPA purview



REPUBLIC OF KENYA

**TASKFORCE FOR FORMULATION OF THE SECTIONAL
PROPERTIES REGULATIONS UNDER THE SECTIONAL
PROPERTIES ACT, 2020**

REPORT

 THE NATIONAL ASSEMBLY PAPERS LAID	
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initiatives to gather information to enable it execute its mandate. The Taskforce also researched on best practices in countries where the sectional property regime has been implemented successfully, engaged various stakeholders as detailed in this Report as well as received memoranda from the public. The recommendations received as a result of the engagements have been taken into account in the formulation of the proposed regulations.

The proposed regulations among others provide for procedural aspects including the preparation of a sectional plan; registration of the sectional plan and the corporation; simultaneous opening of sectional titles registers and closure of mother title or head lease and; issuance of certificates of titles and leases respectively in respect of freehold and leasehold tenures; management of the sectional property through the corporation; termination of the sectional status; and providing for the corporation by-laws. The Regulations also contain various forms for various procedural transactions or processes so as to afford predictability and clarity.

Corporations will take over responsibilities of managing developments from management companies guided by the corporation by-laws which are designed to *inter alia*, ensure accountability, transparency and participation of the unit owners.

In the words of Franklin D. Roosevelt *“Real Estate cannot be lost or stolen nor can it be carried away. Purchased with common sense, paid for in full and managed with reasonable care, it is about the safest investment in the world”*.

The operationalization of the Sectional Properties Act through the Regulations will provide safe investments for property owners.

Esther Omulele,
Chairperson, the Taskforce for formulation of the Sectional Properties Regulations

ACKNOWLEDGEMENTS

The Taskforce wishes to extend its gratitude and appreciation to all persons who in one way or another contributed to the success and delivery of this Report.

First and foremost, we express our gratitude to *Ms. Farida Karoney, EGH*, the Cabinet Secretary for Lands and Physical Planning for appointing this Taskforce and for the unwavering support that went a long way to enable members execute their mandate. Our appreciation also goes to *Dr. Nicholas Muraguri* the Principal Secretary, Lands and Physical Planning for providing resources to the Taskforce to enable it perform its mandate. Special thanks go to the Chief Administrative Secretary Hon. Alex Mwiru for coordinating engagement between the Taskforce and the Law Society of Kenya.

Our utmost appreciation also goes to various organizations and individuals who heeded our call to submit views and memoranda on the developed Regulations and for their valuable insights and proposals during the virtual meetings. In particular, we wish to thank the Ministry of Lands and Physical Planning; Ministry of Transport, Infrastructure, Housing Urban Development and Public Works; Law Society of Kenya; National Land Commission, Council of Governors and County Governments; Institution of Surveyors of Kenya; Kenya Bankers Association; Kenya Private Sector Alliance; Town and County Planners Association of Kenya; Kenya Institute of Planners ; Kenya Property Developers Association ; Kenya Revenue Authority ; National Land Commission ; National Housing Corporation ; Kenya Vision 2030; Estate Agents Registration Board ; Association of Licensed Land Surveyors of Kenya ; Institution of Quantity Surveyors of Kenya ; National Construction Authority ; Association of Construction Managers of Kenya; Building Surveyors; University of Nairobi ; Kenya Land Alliance; Institution of Engineers of Kenya ; National Social Security Fund ; Safaricom Investment Co-operative ; Edermann Properties Limited; Pamoja Trust; Home Hunters; Geoscope Limited; Action Aid Kenya; Nakuru County Public Opinion Consultative Initiative; Dorothy's Park Residents Association and Tasneem Kasmani Advocates for their invaluable inputs to the Taskforce.

Above all, the Taskforce acknowledges the Almighty God for His wisdom, guidance and grace throughout its mandate.

ABBREVIATIONS

AAK	Architectural Association of Kenya
ALLSK	Association of Licensed Land Surveyors of Kenya
COG	Council of Governors
COVID-19	Coronavirus Disease, 2019
EARB	Estate Agents Registration Board
GLA	Government Land Act (Repealed)
KBA	Kenya Bankers Association
KEPSA	Kenya Private Sector Alliance
KIP	Kenya Institute of Planners
KPDA	Kenya Private Property Developers
KRA	Kenya Revenue Authority
IEK	Institution of Engineers of Kenya
ISK	Institute of Surveyors of Kenya
IQSK	Institution of Quantity Surveyors of Kenya
LIMS	Land Information Management System
LRA	Land Registration Act
LSK	Law Society of Kenya
LTA	Land Titles Act (Repealed)
MoLPP/Ministry	Ministry of Lands and Physical Planning
NCA	National Construction Authority
NHC	National Housing Corporation
NLC	National Land Commission
NMS	Nairobi Metropolitan Service
NSSF	National Social Security Fund
RDA	Registration of Documents Act

RIA	Regulatory Impact Assessment
RLA	Registered Land Act (Repealed)
RTA	Registration of Titles Act
SIA	Statutory Instruments Act
SIC	Safaricom Investment Co-operative
SPA 1987	Sectional Properties Act, 1987
SPA 2020/SPA	Sectional Properties Act, 2020
SP Regulations	Sectional Properties Regulations
UON	University of Nairobi
TCPAK	Town and County Planners Association of Kenya
VRB	Valuers Registration Board

EXECUTIVE SUMMARY

1. Introduction

The Taskforce on Formulation of the SP Regulations under the SPA, 2020 was appointed by the Cabinet Secretary for Lands and Physical Planning on the 12th March 2021 vide Gazette Notice No. 2217 of 2021. The mandate of the Taskforce was to formulate Regulations to bring the provisions of the Sectional Properties Act into effect. Membership of the Taskforce is drawn both from the public and the private sector and has representation of the sub-sectors of land registration, survey, land administration, law, real estate and property management among others.

2. Background

The preamble of the SPA 2020 states that it is an Act of Parliament to provide for division of buildings into units to be owned by individual proprietors and the common property to be proportionately owned by respective proprietors as tenants in common. The Act inter alia provides for the use and management of units and common property and other connected purposes. The increase of demand for housing in urban centres in Kenya has put immense pressure on available land and hence the pursuit for practical solutions geared to optimize use of land. One of the innovative approaches to this problem comes in the form SPA through which many proprietors are enabled to own a part of a building on a single parcel of land which, in the ordinary sense of it, is incapable of further sub-division by virtue of the project layout.

This step is in sync with the Government's agenda to deliver affordable housing to Kenyans. This has been demonstrated by earmarking housing as a key component of the Government Big 4 Agenda. Moreover, the advent of devolution in Kenya and the increased demand for developments within the Counties amplifies the object espoused by the SPA model.

The SPA journey in Kenya commenced in 1987 through the predecessor Sectional Properties Act, 1987 (Repealed). The SPA is therefore a product of the many lessons and experiences learnt from the predecessor Act. Some of the lessons and experiences which have thus influenced and shaped the SPA deserve mentioning.

The repealed Act could only apply on titles held under RLA (Repealed) and expressly excluded titles held under other registration regimes. This meant that most parcels of land in urban centres (where the sectional model was more prevalent and applicable) were left out of this bracket unless they had to undergo the arduous process of conversion to the RLA. This deliberate exclusion limited the scope of the SPA, 1987 (Repealed) and resulted into practices outside of the Act and often meant to defeat the intent and purpose of the very law. This anomaly has now been rectified by widening the scope of SPA to apply to all tenures of land.

Owners of units in a building on a parcel of land held under a registration regime outside of RLA such as the GLA (Repealed) or the RTA (Repealed) were issued with long-term leases with the property sold defined in a sketch plan or an architectural plan registered under the RDA instead of such property being defined in a georeferenced survey plan. Though the Land Registration Act required that such interests be geo-referenced as a pre-requisite for registration, the same was never enforced. This anomaly has now been addressed by the SPA, by providing for a conversion mechanism through which long-term leases can now be regularised by a geo-referenced plan.

The ownership model in the form of long-term leases though mimicked the sectional model in many respects, the critical aspect of common property was not well defined thus creating ample space for scrupulous developers or third parties fraudulently appropriating the same from owners. The SPA has bridged this gap by enabling the owners to proportionately own the common property in common so much so that the same is reflected in the issued sectional titles.

Under the long-term leases model of ownership, and except in the unique cases where the intention of a developer is to retain the reversion or the reversion cannot be transferred due to the strategic nature of the project, developers pass ownership to owners while they retain reversionary interest thus putting the owners at their (developers) mercy upon expiry of the term of the lease. This anomaly has now been corrected by the SPA by way of closure of the head lease or mother title upon registration of the sectional plan and thus issuing titles to owners with the right to seek renewal on expiry of the term apparent on the lease.

The repealed statute was not expressly clear on how the corporation was to be incorporated though the same was provided for. This gap gave rise to management companies registered under the Companies Act. The SPA has provided clarity by expressly providing for the registration and therefore issuance of a certificate of incorporation of a corporation.

Whereas purchasers on mortgage under the long-term leases model get partial discharges from financial institutions upon completion of the mortgage payments, full discharge is made possible under the SPA upon an individual owner completing purchase of a unit.

Payment of rates and rent by respective individual owners has also been made possible by the SPA as opposed to the previous regime where the same were corporately done and thus exposing compliant owners to unnecessary burden and delays whenever they wanted to transact on their properties.

Whereas the resolution of disputes under the SPA, 1987 (Repealed) was vested in the Tribunal established under the Landlords and Tenants (Shops, Hotels and Catering Establishments) Act, the SPA creates an internal disputes resolution committee to be constituted by the corporation annually to hear disputes on a need basis. This provides efficiency in the resolution of disputes.

3. Methodology

On constitution, the Taskforce commenced formulation of regulations by review of the SPA 2020 and other land-sector legislations. In addition, the Taskforce conducted comparative studies by reviewing sectional properties practices in Canada and South Africa. This preliminary process informed the zero draft which was uploaded onto the MoLPP website for sharing with members of the public. Simultaneously, the process of preparing the RIA commenced and the initial draft was posted in the Ministry's website as well as the publication of the RIA notice in the official Gazette.

Identifying key stakeholders and inviting them for stakeholder consultative forums and requesting for their views and input through the shared email and addresses are initiatives that informed these regulations. The taskforce engaged with stakeholders via on-line platforms through which valuable inputs were received. Thereafter various views were reviewed and collated to inform further review of the zero draft of the regulations which eventually gave rise these regulations.

4. SP Regulations Thematic Areas

The proposed SP Regulations 2021 inter alia provide for various procedural aspects such as preparation and registration of a sectional plan; registration of the corporation; consolidation and subdivision of units; conversion of long-term leases to sectional status; making and amendment of corporation by-laws; termination of sectional status; manner of issuing of various required notices either by the corporation or owners; and various forms prescribed for each process or transaction.

5. Findings and Recommendations

5.1. Phased Development

The SPA does not apply in a phased development model. This has proved a challenge to those developers who would wish to develop part of their land without necessarily subjecting the same to sub-division. Subject to regulation and control as provided in master plan, the taskforce recommends that the SPA be amended to allow for phased development so as to bring on board this critical segment of developers. This also means that the sectional plan can also include land not yet developed.

5.2. Mixed Use Development

Though the Sectional Properties Act covers developments which comprise a mix of uses in nature, it is evident that in some respects that the management structure presented through the corporation may not after all serve the interests of disparate owners. Owners with a commercial interest or residential or even industrial have different needs and thus it may prove complex for the corporation to fulfil such needs. In this respect, it may be prudent for Sectional Properties Act to be restricted to apply to developments which are homogeneous in character or in the alternative allow the establishment of multi-layer corporation.

5.3. Stamp Duty Payable on Government Housing Schemes

Stamp Duty on a Tenant Purchase housing scheme becomes due at the point the purchaser makes the last instalment of the purchase price. By the time the purchaser finishes making payments, the value of the house may have increased thus disadvantaging him by the high stamp duty it attracts. On this basis, the Taskforce recommends amendment of the Stamp Duty Act so as to peg stamp duty on the value of the house when the purchase agreement is first entered into.

5.4. Multi-Layer or Holding Corporation

The SPA does not envisage large developments or big estates divided into sections or phases and possibly each on a different sectional plan. In such cases, the structure of management presented through the corporation may not adequately meet the needs of such development. This is partly so because such developments do share certain services and common property that span

across the jurisdiction of multiple corporations or sectional plans. A case in point is Nyayo Estate where you have multiple parcels within that development scheme and therefore many sectional plans. There is therefore need to provide for a management structure for such a development. In this respect, the Taskforce do recommend that the SPA be amended to provide for a multi-layer or holding corporation. This structure will allow co-existence of multiple corporations within one development overseen by a holding corporation to handle cross-cutting issues.

5.5. Subleases other than for SPA

Sub-leases issuing on land other than for the purpose of SPA are usually issued and registered as encumbrances against the parcel. However, there is no clear practice of defining this interest by way of survey plan or map or cadastre more so with sub-leases for a term of more than 21 years. What it means is that such interests in land end up being defined by mere sketch plans. If the law requires that an interest in land be registered, there can be no other way of defining such interests except by way of a geo-referenced survey plan. In this respect, the Taskforce recommends that sub-leases be defined by geo-referenced survey plans which do not necessarily subdivide the land if that is not intention of the owner. In other words, encumbrances on land for a term of more than 21 years should be captured into the cadastre without necessarily subjecting the land to sub-division.

5.6. Public Awareness Exercise

For the purpose of entrenching SPA in Kenya, it is recommended that public awareness exercise be held to sensitize and educate Kenyans the benefits presented by this ownership model.

CHAPTER ONE: INTRODUCTION AND BACKGROUND

1.1 Introduction

The Taskforce on Formulation of the Sectional Properties Regulations under the Sectional Properties Act, 2020 was appointed by the Cabinet Secretary for Lands and Physical Planning on the 12th March 2021 vide Gazette Notice No. 2217 of 2021. The key mandate of the Taskforce was to formulate Regulations which shall set out in detail how the Sectional Properties Act will be implemented. Membership of the Taskforce spans across the public and the private sector. The Taskforce is composed of registrars, land surveyors, valuers, advocates, land administrators, estate agents drawn from both the public and private sector. The Ministry of Lands and Physical Planning, the State Department of Housing and Urban Development, the Attorney General, the National Land Commission, Kenya Law Reform Commission, the Council of Governors, Institution of Surveyors of Kenya, Kenya Property Developers Association, the Law Society of Kenya, Estate Agents Registration Board, Kenya Vision 2030, are some of the organisations or agencies represented in the membership of the Taskforce.

1.2 Mandate

The mandate of the taskforce is manifest in the terms of reference set out in the Gazette Notice appointing the taskforce. They are as follows:

“

1. The terms of reference of the taskforce shall be to-
 - a) Study and Review the Sectional Properties Act, 2020; the Land Registration Act; Sectional Properties Regulations, 1991; Sectional Properties (Corporation By-laws) Regulations, 1991; Land Registration (General) Regulations, 2017 with a view to formulate Sectional Properties Regulations.
 - b) Conduct the process in accordance with the Statutory Instruments Act and specifically carry out public participation and prepare a Regulatory Impact Statement.
 - c) Perform any other task as may be assigned by the Cabinet Secretary;
 - d) Submit draft Sectional Regulations to the Cabinet Secretary within 2 (two) months of this appointment.
2. In the performance of its functions, the taskforce-
 - a) Shall regulate its own procedures
 - b) Shall prepare and submit to the Cabinet Secretary its work plan and budget;

- c) Shall hold such number of meetings in such places and at such times as it may consider necessary for the discharge of its functions
- d) May solicit, receive and consider the views of members of the public and any interest groups
- e) May co-opt not more than three persons who possess relevant expertise, skills or experience where the taskforce considers necessary; and
- f) Shall submit the guidelines or rules and a final report to the Cabinet Secretary within two months of this appointment

3. The taskforce shall finalize its task within a period of two months from the date this notice is published in the gazette or for such longer period as the Cabinet Secretary may, by notice in the Gazette, prescribe.

4. The costs incurred by the taskforce including facilitation and payment of allowances in respect of the members and joint secretaries of the taskforce shall be defrayed from the voted funds of the Ministry of Lands and Physical Planning.

5. The Secretary of the taskforce shall be at the Ministry of Lands and Physical Planning, Ardhi House, 1st Ngong Avenue, P.O Box 30450, Nairobi.”

1.3 Background

The SPA was signed into law on the 11th December, 2020. The preamble provides that it is an Act of Parliament to provide for division of buildings into units to be owned by individual proprietors and the common property to be proportionately owned by respective proprietors as tenants in common. The Act inter alia provides for the use and management of units and common property and other connected purposes.

Increased urbanisation in Kenya has had its own challenges key among them being scarcity of land. the SPA is tailored to provide practical solutions that seek to optimize use of land as a finite resource. This step is in sync with the Government agenda to deliver affordable housing to Kenyans. This has been demonstrated by earmarking housing as a key component of the Government Big 4 Agenda. Moreover, the advent of devolution in Kenya and the increased demand for developments at the Counties amplifies the object espoused by the SPA model.

However, it should be noted from the onset that SPA is not a new phenomenon in Kenya having made its entry into the Kenyan space in 1987 when the SPA, 1987

(Repealed) was enacted. The SPA, 2020 therefore is built on the foundation set by the predecessor Act. There are a number of reasons that led to the enactment of the SPA, 2020 and repeal of the Sectional Properties Act, 1987 as set out below.

The SPA, 1987 (Repealed) could only apply on titles held under RLA (RLA) and thus excluded titles held under other registration regimes like the RTA (Repealed), the GLA (Repealed) and LTA (Repealed). This meant that most parcels of land in urban centres (where the sectional model was more prevalent and applicable) were left out of this bracket unless they had to undergo the arduous process of conversion to the RLA. This deliberate exclusion limited the scope of the SPA, 1987 (Repealed) and thus occasioned a situation where practitioners resorted to practices that excluded the use of the SPA, 1987 (Repealed).

Units in buildings or houses on the same parcel of land were then being processed and registered as long-term leases under the RTA and GLA registration regimes though in every sense they were sectional in nature. It should be noted that the Government being the implementer of the SPA, 1987 (Repealed) did not do much to stop the practice of issuing long-term leases premised on plans registered under RDA. This anomaly has now been addressed by the SPA, 2020 by providing for a conversion mechanism through which long-term leases issued on the premise of plans registered under RDA can now be regularised by a geo-referenced plan. Further, the SPA, 2020 allows sectional developments on land held under any tenure (freehold or leasehold).

Restricting registration of sectional units under the RLA to the exclusion of other registration regimes as provided under the SPA, 1987 (Repealed) may now seem to have been a mistake on the part of the drafters of the SPA, 1987 (Repealed). However, careful analysis of the land sector policy and legislative history speaks otherwise. The RLA (enacted in 1963) behoved that all titles issued outside of the RLA registration regime required to be migrated or converted to the RLA for the purpose of having one registration regime across the country. Since the anticipated conversion process then envisaged under the RLA didn't happen, it meant we had to continue with multiple registration regimes and thus denying the SPA, 1987 (Repealed) an opportunity to be fully actualized. Slow uptake of SPA, 1987 (Repealed) can therefore be largely attributed to delay by the MoLPP to carry

out conversion process in time so as to provide a canvass upon which the sectional titles model would be cast.

The ownership model in the form of long-term leases issued under RTA and GLA can be said to have, in many respects, mimicked the sectional model. However, an aspect like providing a clear definition of what constitutes the common property and consequent protection of this interest by way of registration lacked and thus created ample room for the developer, or even a third party, to appropriate such common property to the detriment and loss to unit owners. The SPA, 2020 has bridged this gap by enabling the owners to proportionately own the common property in common so much so that the same is reflected in the issued sectional titles.

Another low moment espoused by the long-term leases model is that it allows the developer to retain the reversionary interest thus putting the owners at the mercy of the developer upon expiry of the term of the head lease. This retention of the reversionary interest often happens without the knowledge of owners either for lack of or non-disclosure of information at the transaction stage. This anomaly has now been corrected by the SPA, 2020 by closure of the head lease or mother title upon registration of the sectional plan.

Though the SPA, 1987 (Repealed) provided for incorporation of a corporation, it was however not clear how the same was to be incorporated and under what legislative regime. This created room for arbitrariness thus leaving no option but subject users and implementers of the Act to guesswork. That meant that formation and registration of the corporation under the SPA, 1987 (Repealed) did not happen. The SPA, 2020 has provided clarity by expressly providing for the registration of the corporation under the SPA, 2020. Under this arrangement, a register for the corporation is maintained at every Lands Registry, and a certificate of registration is issued upon registration of the corporation.

Purchasers on mortgage under the long-term leases model get partial discharges from a financial institution upon completion of the mortgage payments. Under the SPA, 2020, a purchaser can get full discharge on completion of payment of the loan since the certificate of leases or titles are stand alone. Unit owners are therefore treated individually and not corporately as happened in the past. The

same practice applies to payment of rates and rent since they are apportioned to each unit as opposed to the practice under the SPA, 1987 (Repealed) where rates and rent were corporately paid.

Whereas the resolution of disputes under the SPA, 1987 (Repealed) was vested in the Tribunal established under the Landlords and Tenants (Shops, Hotels and Catering Establishments) Act, the SPA, 2020 creates an internal disputes resolution committee to be constituted by the corporation annually. The Internal Dispute Resolution Committee hears disputes pitting against owners and the corporation on a need basis.

1.4 Organization of the Report

This report is organized into Four chapters. Chapter 1 sets out the introduction and background of the subject. Chapter 2 presents the methodology used by the Taskforce to come up with the SPA Regulations. Chapter 3 presents the report on the Taskforce findings from stakeholder consultations as well as public participation. Chapter 4 presents the conclusions and recommendations. The Annex section contains associated reference material that have been used to support the compilation this report.

CHAPTER TWO: METHODOLOGY

2.1 Methodology

It is critical to mention that the SPA regulations have been formulated during the COVID-19 pandemic period hence severely affecting the consultative process as far as physical interaction is concerned. The Taskforce did surmount this limitation by resorting to online meetings for both internal and external stakeholders. The Taskforce members during the first sitting unbundled the Terms of Reference and defined tasks that will lead to formulation of the SPA Regulations. Thereafter the activities were included in a workplan and budget. Table 1 shows some of the key activities undertaken by the Taskforce members.

Table 1:Taskforce Activities

Serial	Specific Objectives	Task Description	Output
1	Preparatory and planning.	<ul style="list-style-type: none"> • Hold meetings/consultations within the Taskforce. • Interpretation of Terms of Reference. • Identification of Activities and timelines. • Prepare detailed work plan and budget 	<ul style="list-style-type: none"> • Methodology of Achieving the TOR. • Detailed Work Plan. • Budget
2	Review of Relevant statutes and comparative analysis.	<ul style="list-style-type: none"> • Review the SPA, 2020; the LRA; Sectional Properties Regulations, 1991; Sectional Properties (Corporation Bylaws) Regulations, 1991; Land Registration (General) Regulations, 2017 to inform formulation of Sectional Properties Regulations; Survey Act; Physical & Land Use Planning Act. • Prepare Regulations and schedules in form of Forms, Corporation Bylaws 	<ul style="list-style-type: none"> • Identifying sections of Sectional Properties Act that require regulations, forms and guidelines • Draft Regulatory Impact Assessment Report (RIA) • Draft regulations

3	Stakeholders Consultation	<ul style="list-style-type: none"> • Publish public Notice inviting members of the public for public participation. • Publish RIA • Give access to draft regulations • Engage officers of the MOLPP staffers for their comments on draft regulations 	<ul style="list-style-type: none"> • RIA publication • Published notice • Enrich draft
4	Prepare Final Regulations	Workshop to incorporate Stakeholder inputs in the regulations.	<ul style="list-style-type: none"> • Regulations • Forms • Proposed amendments to the Land Statutes
5	Prepare Final Report	Prepare Final Report	Final Report for Submission to the Cabinet Secretary MOLPP

On the basis that the Taskforce was granted leeway to co-opt not more than three persons with relevant expertise, skills or experience as may be dictated by need, the Taskforce saw the need to co-opt a Land Officer and a member from Vision 2030 to bring on board expertise on land administration procedures and also skills in dealing with government infrastructural projects. In this respect, two members respectively from the National Land Commission and a Director from the Vision 2030 were co-opted to be members of the Taskforce.

At inception, the Taskforce formed two sub-committees to respectively handle issues that pertain to the review of the physical planning and survey activities that lead to preparation of sectional plans and review of the land administration processes and registration on the sectional properties. The two sub-committees were tasked to review relevant statutes and undertake a comparative analysis in various jurisdictions that have operationalized sectional properties. Review of the SPA informed the formulation of the SPA Regulations. Comparative analysis of best

practices for Canada and South Africa in respect to planning, survey and registration of property came in handy in preparation of the report and Regulations.

The above process yielded the first zero draft that was subjected to stakeholders for review and enrichment. Simultaneous to this process, the RIA in respect to the whole process was prepared and shared with the stakeholders. The same was published in the daily newspaper and in the Kenyan Gazette to notify the members of the public of the ongoing process. Mapping of stakeholders was done and invitations sent to notify the stakeholders on dates which they could engage with the Taskforce and tender their views. In addition, the RIA and draft regulations were published in the MoLPP website.

An email address was also setup specifically for the Taskforce i.e. spregulations@gmail.com through which stakeholders and members of the public were advised to send their views, proposals and any memoranda on the formulation of Sectional Properties Regulations.

To enable the Taskforce, execute its mandate and in compliance with the constitutional requirement of public participation, the Taskforce organized stakeholder consultative forums from 27th April, 2021 to 7th May 2021 where representatives from various National and County governments, professionals' bodies, private institutions, SACCOS, Civil Society Organizations (CSO's) and individual members of public were able to give their presentations.

The Taskforce conducted a series of meetings on the draft SPA Regulations as follows:

No	Targeted Stakeholders	Date	No of participants
1	1. Law Society of Kenya 2. Association of Licensed Land Surveyors of Kenya	28th April 2021	128

2	<ul 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 (ACMK) 7. Kenya Private Sector Alliance (KEPSA) 8. Kenya Property Developers Association (KPDA) 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 	29th April 2021	245
3	Council of Governors, County Governments	3rd May 2021	52
4	<ul 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 	4th May 2021	28
5	<p>CSO's</p> <ul 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 	5th May 2021	41

	8. ISK		
6	1. Ministry of Lands and Physical Planning 2. National Land Commission 3. Kenya Vision 2030	7th May 2021	81

The meetings were aimed at receiving views from the public so as to enrich the draft regulations. The Taskforce then proceeded to verify the information gathered, build consensus on the issues and polish the draft guidelines.

Thereafter the revised regulations were subjected to a validation process with a select stakeholder after which they were subjected to a pre-publication exercise with the National Assembly committee on delegated legislation.

2.2 Best Practices in Other Jurisdictions.

With a view to informing this process of regulation-making, the Taskforce benchmarked with South Africa and Canada being jurisdictions that have got it right so far. In both jurisdictions, statutes and regulations governing the conduct of sectional property surveys form the backbone of the practice. The legal regimes in the two countries provide for aspects such as phased developments, bare land sectional titles, multi-layer developments with multiple uses coupled with multiple corporations where each corporation is dedicated to specific use needs. It is recommended that Kenya do adopt the phased development, and multi-layer corporations.

Survey and preparation of sectional plans being the major service required in the sectional properties practice, it dictates that the survey professional human resource pool be developed to match the task. South Africa makes deliberate efforts to highly train its surveyors by offering an examinable curriculum for practitioners where one is required to attain a minimum pass mark of 60%. This capacity is lacking in Kenya since sectional property survey is not included in the curriculum of both tertiary and higher learning institutions. As a stop gap measure, the Taskforce recommends that sectional property survey trainings be conducted for

surveyors in the public and private sectors. Other key players like the land registrars and land administration officers can also be included in this program. Further, the Taskforce recommends that this practice and knowledge be incorporated into the curriculum of both tertiary and higher institutions of learning.

The share of each unit in a sectional property set-up is key since it is the determinant of the service charge payable and the proportionate share in the common property. In Canada, it is designated as a unit factor and is computed as a whole number while in South Africa it is designated as participation quota and computed as a percentage to four decimal places. Accuracies in distance are measured to 0.01m while the area is computed to 0.1m².

Canada and South Africa have specimen forms wherein details of the professional undertaking the Sectional Property Survey are included. These include, name, signature, address and Registration/Licence number.

symbols are used to depict the various details presented in a sectional plan without cluttering it. South Africa has an elaborate list of symbols designated for use in this respect.

It is important to note that save for the recommendations clearly spelled out here, most of the duly pointed out best practices in both countries have been incorporated into the regulations. Where it was not possible to incorporate some due to the limitations of the SPA, 2020, the same are set out herein as proposals.

CHAPTER THREE: THEMATIC AREAS IN SP REGULATIONS

3 Thematic areas

The proposed SP Regulations 2021 inter alia provide for procedural aspects of preparation of a sectional plan; registration of a sectional plan and the corporation; consolidation and subdivision of units; conversion process of long-term leases; termination of sectional status; making of the corporation by-laws and amendment thereof; giving of Notices by owners and the corporation; and various prescribed forms being instruments through which these procedures are carried out.

The above thematic areas are explained in detail as follows.

3.1. Preparation of a Sectional Plan

Once a building is complete, there is need to survey the same for the purpose of preparing a sectional plan which forms the basis of registering sectional units. This process requires to be done by a registered surveyor who but cannot commence work save by obtaining instructions from the developer. The instructions are given by the owner and should include the original title of the parcel and the approved architectural or building plans. Thereafter survey work is carried out and subsequently a sectional plan showing all the units duly geo-referenced is prepared. The same is signed by the developer before it is forwarded to the relevant County Government which duly endorses its certificate on the face of it, and later to the Authority Responsible for Survey for quality control and authentication. The sectional plan is then endorsed by the Land Administration Officer for purpose of apportioning rent to each unit before the same is presented to the registrar for registration.

This process is guided by Sections 4, 9, 10, 11 of the SPA 2020, and regulations 2 through 8 of the draft SP Regulations, 2021.

3.2. Registration of a Sectional Plan

The registration of a sectional plan is guided by Section 5 of SPA, 2020 and Regulations 9 through 12 of the proposed Regulations. The sectional plan having been prepared as enumerated above is presented to the registrar in a prescribed form under the Land Registration (General) Regulations, 2017. Once the Registrar reviews the application and is satisfied that it meets the requirements of the SPA and the SP Regulations, he registers the sectional plan in a sectional plan register and thereby closes the mother title or original title to give way to opening of the respective unit registers all in prescribed forms. On each unit register opened, a certificate of title or lease will issue depending whether the parcel of land is freehold or leasehold, as the case may be.

The registration process of registration of a sectional plan is crowned by forwarding the same to the County Executive Committee Member (CECM) for the

time responsible for approval of buildings. This will thereafter form a basis for apportionment of rates payable in respect of each unit.

3.3. Registration of the Corporation

Simultaneous with the application for registration of a sectional plan, an application for registration of a corporation is also made in a form prescribed under the proposed regulations. The by-laws of the corporation are also attached to this application. Once the registrar is satisfied that the application is in order, a certificate of the corporation is thereby issued.

3.4. Consolidation & Sub-Division of Units

The proposed regulations provide for the procedure of subdivision and consolidation of units in a sectional building. The process of consolidation and subdivision is guided by Section 12 and regulations 13 through 16 of the draft Regulations. Before consolidation or sub-division, the registrar shall not only require production of consent issued by the corporation but also a consent of the likely affected owner or owners and any encumbrancers which eventually inform the granting of approval by the County government. These consents by owners, the corporation and any encumbrancers to demonstrate that incidental rights of such persons are not affected by the changes that are made to the development.

The Registrar completes this process by endorsing on the registered sectional plan and thereby indicating on the sectional plan a diagram with an indication of the units to be consolidated or subdivided.

3.5. Conversion

Section 13(2) of the SPA, 2020 provides that long-term leases hitherto registered shall be reviewed to conform to Section 54(5) of the Land Registration Act within a period of 2 years of the commencement of the Sectional Properties Act. It is expected that within a period of 2 years, all long-term leases shall be made regular by surveying the properties and preparing sectional plans in respect of the subject parcel i.e., geo-referencing of the interests represented by long-term leases. The conversion process has further been clarified under Regulations 18 through 21 of the proposed SP Regulations, 2021. Under this process, stamp duty if already paid shall not be required to be paid again.

Section 13(4) of the act provides that the conversion process can be initiated by an owner, a developer or a management company. Where the property is charged, the owner shall be required to do the necessary paperwork and the application be presented by the encumbrancer. The application for conversion shall be accompanied by the following documents: -

- a) A sectional plan,
- b) Original parcel title or a copy of parcel title

- c) Original long-term lease and subleases
- d) An indemnity where the original title is not available.

The Act envisages that where the developer or the owner is unwilling or unavailable to surrender the title for the purpose of conversion, the registrar shall give a 60 days' notice and upon expiry of this notice dispense with the title as per Section 31 of Land Registration Act to prevent any further dealings and dispositions. The registrar shall then proceed to close the parcel register and further issue a certificate of lease or a certificate of title to the affected unit owners.

3.6. Termination of a Sectional Plan

Just as the SPA, 2020 creates the sectional status, it in the same manner provides for termination of the same. Termination of sectional status can be achieved by a unanimous resolution of the owners or in case of substantial damage on the existing building or compulsory acquisition. The termination of a sectional plan is guided by section 47 of the SPA 2020 and Regulations 27 of the proposed regulations. The Regulations provide that where a sectional status is terminated, a notice shall be given to the registrar who shall proceed to endorse on the relevant sectional plan a notice to terminate the sectional plan where all the registers that were opened during registration shall be closed. The parcel shall then be vested on the unit owners and registration shall be as per Land registration Act where a new parcel title shall be issued in the name of all the unit owners.

3.7. By-Laws of the Corporation

The by-laws of the corporation are established pursuant to Section 29 of the Sectional Properties Act and aims to provide for the control, management and administration of the units, the movable and immovable property of the Corporation and the common property. The by-laws of the corporation are a schedule to the regulations and serve as a generic guide to be adopted by the corporation at first registration.

The by-laws of the corporation inter-alia provides for duties of the owner; powers of the corporation; establishment of the board; election of the board; composition of the board; term of the board and meetings of the board; conduct of meetings of the corporation and the board; voting in meetings of the corporation and the board; powers and duties of the board; establishment of capital replacement fund; establishment and conduct of Internal dispute resolution mechanism; and, amendment of the by-laws

3.8. Internal Resolution of Disputes

As mandated by section 20(6) of the SPA, an internal Disputes Resolution Committee is constituted under the regulations to hear disputes arising between owners and the corporation. The committee is comprised of not less than three members and not more than five members of the corporation. The members constituted by the corporation annually and the chairperson and the secretary

appointed by the board. The committee shall hear disputes as dictated by need and shall do it within time-lines stipulated by the board. A party aggrieved by the decision of the committee shall be free to seek legal redress in the courts.

CHAPTER FOUR: FINDINGS AND RECOMMENDATIONS

4.1 Phased Development

Clamour for Sectional Properties Act to allow for Phased development has been received from a cross-section of stakeholders. The Sectional Properties Act does not apply on a parcel of land that is partly developed. This is because the parcel on which sectional property sits is closed upon registration of the sectional plan and thus any portion of land that is part of the parcel is considered common property and counted as being part of the sectional property. In the prevailing circumstances, one is therefore compelled to sub-divide his or her land for sectional property Act to apply. This complete-package presentation of the Sectional property is thus a big hindrance to developers who wish to develop a part of their land but are hesitant to subject the same to sub-division. This segment of developers feel disfranchised and left out. For this reason, it is their view that phased development be accommodated in the Sectional properties Act.

From the foregoing, the Taskforce recommends that the Sectional Properties Act, 2020 be amended to accommodate Phased developments. On this basis, it is further recommended that where phased development is applied, it must be preceded by a master plan that clearly sets out clear time-lines within which various phases of development takes place without necessarily departing from the laid-out plan. Once this is adopted into the Sectional Properties Act, it then behoves that a sectional plan will not only entail a building and the common areas but may also cover vacant portion or portions of land within a parcel of land where phased development is applied.

4.2 Mixed Use Development

Though the Sectional Properties Act covers developments which are mixed use in nature, it is evident that there are cases where the sectional model of management of the property may not be able to serve the needs of owners with disparate interests. Owners with a commercial interest, residential or industrial have their respective needs and thus may prove complex for the corporation to fulfil such needs. In this respect, it may be prudent for Sectional Properties Act to be restricted to apply to developments which are homogeneous in character or in the alternative allow the establishment of multi-layer corporations.

4.3 Stamp Duty Payable on Government Housing Schemes

Stamp duty on a tenant purchase housing scheme becomes due at the point the purchaser makes the last instalment of the purchase price. The current value, as opposed to the value when the purchaser entered into an agreement to purchase the house, is the one used to determine the amount of stamp duty payable. This approach defeats the purpose of affordable housing on account of possible big

variance of value between the time the purchaser entered into agreement to purchase and the time the purchase is completed. On this basis, the taskforce do recommend amendment of the Stamp Duty Act so as to peg stamp duty on the value of the house at the point when the purchase agreement is entered into.

4.4 Multi-layer Or Holding Corporation

The structure of management envisaged in the Sectional properties Act does not take into account the needs of large developments or big estates divided into sections or phases each possibly on a different sectional plan. Though it may be possible to have a corporation in respect of each section or phase contained in one sectional plan, it is also possible to have such a development share certain services and common property. A case in point is Nyayo Estate Embakasi where you have multiple parcels within that development scheme and therefore several sectional plans. This is a multi-layer development which cannot strictly fit into the sectional model of management of the property. It is therefore necessary to cater for the needs of such a development. In this respect, it is the recommendation of the Taskforce that the SPA, 2020 be amended to provide for a multi-layer or holding corporation. This arrangement will allow for co-existence of more than one corporation all subservient and answerable to an overall one for the purpose of coordinating the cross-cutting issues in such a development.

4.5 Subleases other than for SPA

Sub-leases issuing on land other than for the purpose of SPA are usually issued and registered as encumbrances against the parcel. However, there is no clear practice of defining this interest by way of a survey plan more so with sub-leases for a term of more than 21 years. What it means is that such interests in land end up being defined by mere sketch plans. If the law requires that an interest in land be registered, there can be no other way of defining such interests except by way of a geo-referenced survey plan. In this respect, the Taskforce do recommend that sub-leases be defined by geo-referenced survey plans which do not necessarily subdivide the land, against the wish and intention of land owner. In other words, leases on land for a term of more than 21 years should be captured into the cadastre without necessarily subjecting the land to sub-division.

4.6 Section 51(1) of the SPA, 2020

Section 51(1) of the SPA, 2020 provides that the rating authority shall assess rates, charges ground rent and taxes in relation to parcel or part of it. The position projected by this provision is partly true and there is need to amend it to reflect the correct position. Rating authorities or County governments cannot possibly charge ground rent on land where they are not lessors. To this extend, the Taskforce recommends amendment of the SPA to reflect the correct position.

4.7 Training

Survey and preparation of sectional plans being the major service required in the sectional properties practice dictates that the survey professional human resource pool have to be developed and equal to the task. South Africa makes deliberate efforts to highly train its surveyors by offering an examinable curriculum for practitioners where one is required to attain a minimum passmark of 60%. This capacity is lacking in Kenya since sectional property survey is not included in the curriculum of both tertiary and higher learning institutions. As a stop gap measure, the Taskforce recommends that sectional property survey trainings be conducted for surveyors in the public and private sectors. Other key players like the land registrars and land administration officers can also be included in this program. Further, the Taskforce recommends that this practice and knowledge be incorporated into the curriculum of both tertiary and higher institutions of learning.

4.8 Public Awareness Exercise

Owing to the immense interest the subject of sectional properties has elicited, the Taskforce recommends that the MoLPP do carry out a public awareness exercise to sensitize and educate members of the public on all matters pertaining to the Sectional property model.

References

Annexures