

# PROPERTY VALUATION

## RESIDENTIAL VALUATIONS



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# PART ONE

## INTRODUCTION TO PROPERTY VALUATION

### INTRODUCTION TO VALUATIONS

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#### **ORIGINS OF VALUE**

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## INTRODUCTION

### 1.0 ORIGIN OF VALUATIONS IN SOUTH AFRICA

Valuations, for historical purposes are divided into three basic categories; Valuations for deceased estates, valuations for the Local Authority rating or road tax purposes and valuations for all other purposes – this last group includes expropriation, transfer duty, Building Society and other mortgages and the whole range of valuations for private purposes.

The earliest calculation of value in South Africa was made in the Cape and seems to have been for deceased estates. Such estates were initially handled by the Board of Orphan Masters – “Het collegie van weesmeesters” – generally referred to as the Orphan Chamber – Weeskamer. This was established in 1673, broadly to care for widows and orphans, attending to the registration of Wills and the Administration of Estates. It had other functions which included keeping a register of deaths.

The first form of valuation which can be found in South Africa was that which was done for estate purposes. The first valuation is dated 5<sup>th</sup> November 1693.

### 2.0 THE NATURE OF VALUE

The term *value* has various interpretations. Through the ages, philosophers including Aristotle (384-322 B.C.), St. Thomas Aquinas (1224-1274), Adam Smith (1723-1790), and contemporary appraisal theorists have pondered the questions, “What is value?” and “What is valuable?” Aristotle contended that the good, the true and the beautiful are valuable. Aquinas was concerned with the morality in value and Smith equated value with production costs.

Today we recognize that there are varying opinions about what is considered good, true, or beautiful. Even ideas of morality have changed through the years and production costs are recognised as only one of several elements in determining value. Thus it may be argued that the value is in the eye of the beholder. Economic or market value recognises that there are many beholders and that value decisions depend on many value opinions. Economic or market value recognises that there are many beholders and that value decisions depend on many value opinions. Market value is thus a consensus of the interactions of many buyers and sellers in the market. Adam Smith termed this *value in exchange*; Smith said that value is determined by the ability of a good to command other goods in exchange. Today we regard *value in exchange* as the market value

### 3.0 VALUATION AN ART OR SCIENCE?

There is a popular a popular debate as to whether valuations are considered to be an art or a science. On the science side, the valuation is based on economics which is regarded as a social science. On the art side, there is a great amount of judgement which is required by the valuer in order to determine whether properties are comparable, and which capitalisation rate to use. Because of the diversity of property types and valuation difficulties, experience is very important in the development of a good valuer. The amount of generalisation is less than in many scientific disciplines.

Artists conceive new ideas, forms and combinations, their minds create rather than analyse. Valuers on the other hand work as scientists, seeking to detect and explain; artists seek more to feel and touch.

#### 4.0 PURPOSES FOR WHICH VALUATIONS ARE REQUIRED

The valuer may be required to perform the following types of valuations.

- (a) Purchase and sale – where the property is large or of a specialised nature the valuer would be employed to determine the value which would lead to a successful sale between buyer and seller.
- (b) Expropriation – where the State requires land and expropriates it, the valuer will be employed to determine the amount of compensation to be paid for the property.
- (c) Deceased estates – only Valuers appointed in terms of the Administration of Estates Act No. 66 of 1965 may perform valuations for deceased estates.
- (d) Mortgages – when the amount of money advanced is a percentage of the value.
- (e) Rates assessment – for determining the rates to be paid on a property in terms of the Local Government: Municipal Property Rates Act no. 6 of 2004.
- (f) Insurance – where properties need to be insured against damage or destruction.
- (g) Company assets – in terms of the Companies Act No. 61 of 1973 as amended immovable properties have to be regularly valued and their values must be reflected on the Company's balance sheet.
- (h) Investments – where a potential investor wishes to invest in property in order to achieve an acceptable return.
- (i) Rental determinations – Valuers may be called on to determine rentals on new office blocks or shopping centres prior to completion.
- (j) Leases - the valuer may be employed to determine whether lease agreements in a building would affect the value, and whether rentals are higher or lower than the prevailing market conditions.
- (k) Servitude's – see Expropriation regarding compensation payable.
- (l) Replacement costs – see Insurance

Note that with the exception of insurance valuations all other valuations are at market value.

#### 5.0 VALUE DEFINITIONS

There are different kinds of value and each parcel of real estate or property has a different value for varying purposes. Below is a list of the types of value you may or may not encounter in your career:

|                          |                     |                        |
|--------------------------|---------------------|------------------------|
| Absorption value         | Amenity value       | Appraisal value        |
| Attached business value  | <b>Book value</b>   | Capricious value       |
| <b>Capitalised value</b> | Cash value          | Condemnation value     |
| Commercial value         | Cost value          | Created value          |
| Depreciated value        | Economic value      | Established use value  |
| <b>Exchange value</b>    | Face value          | Fair market value      |
| Forced sale value        | Going concern value | Goodwill value         |
| Improved value           | Income value        | Insurance value        |
| Intrinsic value          | Investment value    | Justified market value |
| Leasehold value          | Liquidation value   | <b>Market value</b>    |
| Nuisance value           | Physical value      | Plottage value         |
| Potential value          | Quick sale value    | Realistic value        |
| Real or trade value      | Rental value        | Replacement value      |
| Reproduction value       | <b>Sale value</b>   | Salvage/scrap value    |
| <b>Sentimental value</b> | Service value       | Sound value            |

|                          |                 |                    |
|--------------------------|-----------------|--------------------|
| <b>Speculative value</b> | Stable value    | Subjective value   |
| Summation value          | Tangible value  | <b>Tax value</b>   |
| Utility value            | Intrinsic value | Reasonable value   |
| Temporary value          | Objective value | Value to neighbour |
| Mortgage loan value      |                 |                    |

We now explain a few of the types of value listed above.

- (a) Market value - the price a property will bring when offered for sale by one who desires to sell but is not obliged to do so, and is bought by one who desires to buy but is under no necessity of buying. (*Not to be confused with the definition of market value*).
- (b) Exchange value - is the value indicated by sales prices, the price at which similar lands have been bought and sold? Exchange value is for all intents and purposes market value.
- (c) Book value - is that value of land, buildings, stocks of goods and other assets carried on the books of an owning Corporation or Company. (Book value is not reliable as the value of buildings etc. are written down each year and in many cases form a source of hidden reserves).
- (d) Capitalised value - is determined by a capitalisation of rents received from improved land, less a reasonable charge for expenses maintenance.
- (e) Speculative value - is actually not a value at all, but is the price an owner hopes someone will pay for his property on a rising market.
- (f) Sentimental value - attached to properties held by old families or owners who for reasons of personal attachment do not desire to part with their holdings. It is no basis on which to determine market value.
- (g) Sale value - is the price at which a property is transferred in a public transaction. It represents nothing more than the personal bargaining opinion of seller and buyer. Number of sales; tend to establish a level of values, which is important for the valuer to consider.
- (h) Tax value - is the valuation fixed for assessing tax. It is seldom a reliable criterion for establishing the market value.

## **THE VALUATION PROCESS**

### **6.0 THE SUBJECTIVE APPROACH**

Valuation is often regarded as an art (a subjective action). See chapter 1. In a subjective approach the valuer is dependent upon his feeling, or judgement, which is based on his knowledge and experience of estimating the value of property.

In this process the valuer often employs the technique of asking himself at what amount he would have sold the property had it belonged to him/her and what amount he/she would have been prepared to pay for the property had he been the buyer. He/she thus in turn places himself/herself in the position of a buyer and seller of the property.

Since the value of the property is determined by both the buyer and the seller, it is important, in order to arrive at a balanced result, that both processes be carried out by the valuer and that the two results be reconciled. Unfortunately valuers are not consistent in this respect when applying the technique and biased results are obtained.

Furthermore in applying the method, the valuer can confine himself/herself to those aspects which in his/her judgement will be used by the ordinary buyer and seller. His/her calculations and processing of information, is limited.

In practice it usually amounts to the compilation and consideration of a list of sales of properties in the vicinity of the property which has to be valued and from that a value estimate is arrived at.

In general the subjective approach has the advantage that it involves a minimum of work and the calculations are so simple that they are understood by the layman. However, it has the following disadvantages:

- (a) It limits the valuers' sphere of activity to rental determinations and property valuation, since investigations such as determining the highest and best use, feasibility studies, etc. cannot be conducted subjectively.
- (b) It limits the methods which can be applied in determining value.
- (c) The valuers' "feeling" for values could easily be disturbed by factors which have no connection with the property – his optimism or pessimism could perhaps be related to his health rather than to economic trends.
- (d) The valuation cannot be easily motivated.
- (e) The valuer is unable to check the accuracy of his valuation.

Notwithstanding all these disadvantages, the subjective approach should not be rejected entirely. Fairly reliable values could sometimes be obtained in this way and due to a lack of information; the valuer is often compelled to assess certain aspects of his valuation subjectively.

## 7.0 OBJECTIVE APPROACH

In the objective approach subjectively generated information is analysed objectively. This is a scientific approach which can be divided into five steps:

- (a) Objective
- (b) Observation and collection of information.
- (c) Arranging and processing of information.
- (d) Interpretation of processed information and conclusion.
- (e) Confirmation of result.

### 7.1 OBJECTIVE

Before any task can be carried out systematically and efficiently, the object of the task must be clear.

In the case of valuation, this includes the property which has to be valued, the nature of the value and the effective date of the valuation.

#### (a) The property which has to be valued

The valuer must know what he has to value. This does not only embrace the correct description of the property, but also the identification of the property on site.

#### (b) The nature of value

Since there are many types of value, such as market value, replacement value, etc the valuer must have clarity as to the type of value he has to determine.

Since principals themselves often do not know what type of value they require, the valuer must ascertain the purpose for which the valuation is required by the principal to enable him to determine what the nature of the valuation has to be. In such instances it is the valuers' duty to inform the principal as to the nature of the valuation.

In view of the ignorance existing with principals, it is imperative that the valuer obtains a written instruction. This instruction must contain the correct description of the property, the purpose for which the valuation is required and all other information which can be had only from the principal.

(c) The effective date of valuation

Only if the valuation is connected to a date does it have meaning. The date of valuation is however not necessarily the date upon which the valuation was made.

The importance of the date of a valuation cannot be over emphasized. Even if the effective date is the same as the date on which the valuation is made and even if the valuer dates his valuation report, it is advisable to state the effective date in the valuation report.

(d) The standard (accuracy) of the valuation report

Since value can never be determined exactly, a decision regarding the standard (accuracy) of the valuation has to be mad in advance. The required accuracy will have an influence on the amount of information to be collected, the time spent on the valuation and the method of valuation to be adopted.

## 7.2 COLLECTION OF INFORMATION

There is a direct relationship between the amount of information collected and the reliability of the valuation. However, the information collected must be:

- Relevant
- Complete
- Reliable

The information can be classified under the following headings:

(a) Background information

Since the value of different types of properties is influenced by different factors and to varying degrees by the respective factors, the valuer must have the necessary background knowledge of the characteristics relating to the creation of value of various types of properties. The value of an industrial property is a function of such factors as area, situation, rights etc.

The question now arising is how the value of the site changes if one of the factors changes while all the other factors remain constant, for example, how does the value of the site change if only the area changes? This type of background knowledge should to a large extent, be readily available through research in the valuation field. Unfortunately this is seldom the case and if the valuer wishes to go about is task scientifically; he has to do the necessary work himself.

(b) Information on the property in question

The information can be divided into two groups

- Documentary information which is obtained from title deed, conditions of title, town planning schemes, diagrams and other documents. To ensure that all information is obtained the valuer should have an information sheet or card which has to be completed.
- Physical information which is obtained by inspecting the property. During the inspection special attention is given to the value forming attributes which may affect the value, e.g. room count, bathroom count, layout, etc. The advantage of doing this enables the valuer to systematically analyse the results of the data collected.

(c) Information on the situation of the property

The value of the property is influenced by the immediate surroundings and the situation (or location) in general.

During the inspection the development, use and appearance of the properties adjoining the property in question must be noted. Changes which might occur must also be investigated.

The influence of the situation on the value of the property must be determined in the light of perceptible factors.

(d) Information on the potential of the property

The possibility that the property which has to be valued could have higher use than that indicated by the current use must be considered. If the highest and best use of the property does not coincide with the current use, the additional information required to determine the potential of the property must be collected.

(e) Information on the market

The value of the property is also influenced by supply and demand. Supply and demand, on the other hand, is influenced by a number of economic and political factors, such as interest rates, the availability of money, confidence in the future, etc. The influence of all these factors on the value of fixed property is included in the prices at which properties are sold and let. Consequently the valuer of a particular property is primarily interested in recent selling prices and rentals of similar properties, because in basing his valuation of the particular property on that, he automatically takes into consideration all the factors influencing the market for that type of property.

Since two properties are seldom identical in all aspects, it is necessary also to inspect the properties which have been sold to record the same information as that which have been collected in respect of the property which has to be valued. Special attention must be given to the difference between the property which has to be valued and those that have been sold.

Each sales transaction should be examined to ascertain whether it can be regarded as an "open market" transaction



(f) Other information

It is not possible to determine in advance all the information which the valuer requires. The information required will depend on the nature and extent of the problem. If, for example, land with township potential has to be valued and there are no comparable sales, the valuer must possess knowledge of the entire process of township establishment and the corresponding income and expenditure. Similarly, in the case of the building project, he must possess knowledge of building costs, finance charges, professional fees, interest rates, etc.

Finally it must be emphasised that the quality of a valuation report is closely related to the quality of the information on which it is based and that the valuation can hardly be better than the information on which it is based.

### 7.3 ARRANGING AND PROCESSING OF INFORMATION

The valuer must first of all decide on the most suitable method of valuation. Thereafter the information collected is arranged and processed in a logical and systematic manner so that an indication of the value of the property in question can be determined.

Unlike the subjective approach to valuation, where the valuers methods are limited to those used by the ordinary buyer and seller, the methods in the objective approach are unlimited. In the objective approach the valuer is stationed outside of the market while he observes the actions of buyers and sellers. Thereafter the information collected can be analysed by means of statistical or other methods which may be unknown to buyers. The most probable action of buyers and sellers in a given situation is determined on grounds of the analysis.

In addition to determining the value of the property in question, the valuer must as far as possible also determine the upper and lower limits of the value range. These limits are a check on the valuation and it gives the valuer an indication of the accuracy of the valuation and it gives the client an indication of the possibilities of negotiation in an intended transaction.

Where more than one method is used to determine provisional values for a property, every effort must be made to determine the relative weights to be attached to the various provisional values scientifically, in order for the final value to be a logical conclusion from the information.

### 7.4 Interpretation of processed information and conclusion

Provided the previous three steps have been carried out fully and correctly, a justifiable conclusion, the final value of the property and the upper and lower limits of the value range, should follow logically.

### 7.5 Confirmation of results

To confirm beyond any doubt that the result is correct the entire task should be carried out independently. This method is seldom practical and normally the valuer merely checks whether:

- (a) The correct property has been valued.
- (b) The collected information is complete and correct.
- (c) The correct method of valuation has been used.
- (d) The calculations have been carried out correctly.
- (e) The value follows logically from the processed information.
- (f) The necessary accuracy has been achieved.

It must once again be emphasized that the final test in determining value consists of the valuer asking himself whether his result reflects the most probable price which a willing buyer will pay a willing seller for the property in the open market on the date of valuation.

## 8.0 NETWORKING

### 8.1 WHAT IS NETWORKING?

Networking is about connecting with people with like interests for the purpose of uncovering opportunities, improving knowledge, or sharing of information. More simply, it's getting to know people and building relationships. Many people are afraid of networking, but the truth is we network every day – with our family, work colleagues and at social events. Its all about showing a genuine interest in another person, listening carefully to what he or she tell you and offering a sincere response, you will be amazed at the goodwill and useful titbits of information you uncover.

### 8.2 HOW DOES NETWORKING HELP YOU?

As well as identifying new business opportunities, networking allows you to share ideas, experiences and good practice, meet inspirational role models, combat isolation by making new contacts, increase your confidence and self-esteem and build long term relationships.

One of the best ways to keep you motivated and moving in the right direction in life is to constantly have new challenges. A good way to do so is to allow people to open doors for you and provide you with opportunities. Over 70% of new business is gained through word of mouth so its worth putting some energy into this endeavour.

### 8.3 THE ART OF NETWORKING

- (a) In daily life talk to people you don't know everywhere you go. Cocktail parties and weddings are just the beginning – don't forget about supermarket queues, sporting events, church. You never know where you may encounter someone with whom you can exchange a few words that may lead to a genuine connection, or the exchange of useful information.
- (b) In a business environment, effective networking comes with practice as long as you have done some preparation (develop some questions , give some thought as to how you would introduce yourself and remember to take your business cards) and learn to relax.
- (c) Always introduce yourself in a well spoken manner and create a personal bond by shaking the other person's hand. The ability to extend your hand and pull people in is a powerful way to connect with someone. Remember that people form an opinion of you within the first 15-20 seconds and the introduction stage is of critical importance.
- (d) Don't forget to look the person in the eye. There is nothing worse than a shifty eyer-darter who is always looking around the room for someone more important to talk to.
- (e) It is important to ask questions and listen since people love to talk about themselves. In fact people are usually interested in you if you are interested in them.

- (f) If you are not very confident try not to attach yourself to the first person you engage with. It's good to mingle - this gives everyone the chance to meet.
- (g) To drink or not to drink? Generally you need a clear head, so moderation is the key. A drink can help improve confidence but more than one may create a negative impression.
- (h) How do you deal with that crucial moment – offering a business card? If people are interested in what you do, generally they will ask for a card. But don't offer your card right at the outset, as it can ruin the chance of building a genuine relationship by appearing opportunistic.
- (i) Treat everyone with the same respect and enthusiasm and never make assumptions about the people you meet, often they will surprise you.
- (j) The most important thing is to be authentic. Actively listen to people while they are talking to you and offer them a sincere response.

## 9. SUMMARY

- (a) Market value is a consensus of the interactions of many buyers and sellers in the market.
- (b) All prospective and qualified Valuers are required to register with the South African Council for the Property Valuers Profession.
- (c) The valuer must be a person of integrity, with an unimpeachable character and an unblemished reputation.
- (d) Ethics are the standards of right and wrong that influence behaviour. Right behaviour is considered to be ethical and wrong behaviour is considered to be unethical.
- (e) There is nothing more powerful in the life of any human being than his or her personal habits. Your habits decide the shape of your life, what you do every day and how you do it. Your very personality, your character is little more than the sum of your habits.
- (f) Networking is about connecting with people with like interests for the purpose of uncovering opportunities, improving knowledge, or sharing of information. More simply, it's getting to know people and building relationships.

# THE PROPERTY INDUSTRY PLAYERS

## THE PROPERTY INDUSTRY PLAYERS

### CONTENTS

1. INTRODUCTION
2. THE ESTATE AGENT
3. PROPERTY INVESTORS
4. PROPERTY DEVELOPERS
5. PROPERTY VALUERS
6. SUMMARY

#### 1. INTRODUCTION

The economic activities characteristic of the property industry can be summarised under four headings:

- Agency
- Investment
- Property development and other forms of trading in property
- Property valuation and other advisory services.

These four economic activities jointly make up the property business. The government is regarded not only as an economic participant, but also as a supplier of government services to the property industry.

Note that the construction industry does not form part of the property industry. However, the construction industry and the business services industry are closely linked to the economic fortunes of the property industry.

Each of the four groups of participants in the property industry will be briefly discussed.

## 2.0 THE ESTATE AGENT

### 2.1 INTRODUCTION

The Estate Agents Act, 112 of 1976, describes an estate agent as any person who, for the acquisition of gain, on his own account or in partnership, in any manner holds himself out as a person who, either directly or indirectly advertises that he, on the instructions of or on behalf of any other person, performs one or more of the following acts in connection with immovable property, an interest in immovable property or a business enterprise:

- purchases or sells
- negotiates for the purchase or sale
- canvasses a purchaser or seller
- undertakes or offers to canvass a purchaser or seller
- negotiates for the letting or hiring
- canvasses a lessee or lessor
- undertakes or offers to canvass a lessee or lessor
- collects or receives any moneys payable on account of a lease
- renders any other service specified by the Minister by notice in the Gazette.

**In practice the primary services rendered by estate agents can be divided into three categories:**

- the finding of a buyer for, or a seller of, immovable property or an interest in immovable property
- the finding of a lessee for, or a lessor of, immovable property or an interest in immovable property
- the finding of a buyer for or a seller of, or a lessee for or a lessor of, a business undertaking

### 2.2 PURCHASE OR SALE

The service that is possibly most frequently rendered by the agent is, acting on the instructions of a seller, to find a purchaser who is willing and legally and financially able to buy immovable property or an interest in immovable property and who, as a result of the agent's introduction, concludes a valid contract of purchase and sale. The agent may also act on the instructions of a potential seller.

If an agent has received a written power of attorney from his principal, he may purchase or sell immovable property or an interest in immovable property on behalf of his principal. However, the estate agent does not normally have a power of attorney that would empower him to enter into an agreement of purchase and sale on behalf of his principal or to bind his principal contractually in any way towards a third party.

### 2.3 HIRING AND LETTING

A service frequently performed by estate agents is to find a person who is willing and financially and legally able to lease immovable property or an interest in immovable property and who, as a result of the agent's introduction, enters into a valid contract of letting and hiring. Conversely, the agent may also act on the instructions of a potential lessee.

In the case of letting, one frequently finds that an agent has a power of attorney authorising him to let property on behalf of his principal, collect or receive the rentals and see to the maintenance of improvements (buildings). These services are often collectively referred to as "property administration". Property administration is increasingly being regarded as a bipartite function consisting of:

- the operation and maintenance of the property, which could include the following - letting the property on a continuous basis, collection of the rental, maintenance and repairs, purchasing stock and equipment, employing staff, taking out adequate property insurance, bookkeeping and periodic reporting to the owner
- financial investment management, which involves a periodic analysis of the property as a component of the portfolio of a specific investor.

#### 2.4 PURCHASE, SALE AND LETTING OF A BUSINESS UNDERTAKING

A more specialised service rendered by estate agents involves finding a buyer for or a seller of, or a lessee for or a lessor of, a business undertaking. The business broker is well known in agency circles. In the preceding discussion we referred to:

- (a) "immovable property"
- (b) an interest in immovable property
- (c) A "business undertaking".

The meaning of these three concepts may be summed up as follows:

- (a) Immovable property. At common law immovable property comprises the following:
  - (i) Surveyed land, including surface oil, the geological substances such as gold, coal and clay, as well as surface and subsurface water.
  - (ii) Everything attached to the soil by natural means such as plants, trees and crops.
  - (iii) Permanent improvements to land (such as houses, blocks of flats and dams) together with objects which are permanently affixed to these improvements.
  - (iv) a unit as defined in the Sectional Titles Act 95 of 1986 (such a unit only comes into existence upon registration of a section title plan).
- (b) An "interest in immovable property" means an interest in land or a unit in a sectional title property. An interest of this kind is generally a "lesser right" than ownership. Examples of interests in immovable property are: a servitude of aqueduct, a usufruct, or the right to carry on a trade on certain premises.
- (c) A business undertaking. By a "business undertaking" (or "business") we mean any form of commercial enterprise of which the sole objective or one of the objectives is the pursuit of gain for the owner or manager. Examples of business undertakings are: a private hotel (which can be owned independently of the property on which it is operated), an estate agency or an import/ export business. As in the case of immovable property, Act 112 of 1976 is only applicable where the direct purchase or sale of the business enterprise has taken place. In the case of an indirect sale, as when shares in a company are bought, the transaction is excluded from the operation of Act 112 of 1976.

## 2.5 OTHER SERVICES

In order to run his business in the most efficient or competitive way, or because his clients expect it of him, the estate agent also renders other services or activities or has to take cognisance of them. The most important of these are:

- (a) Determining the market value of or market rental for properties, interests in properties and business undertakings.
- (b) Giving advice in connection with property investment.
- (c) Giving advice in connection with obtaining finance.
- (d) Giving advice in connection with property development, more specifically by carrying out feasibility studies.

Each of these activities will be briefly discussed below:

### (a) Market valuations

A market valuation is an estimate of the price at which a property or an interest in a property or a business will be sold on the market, or of the rental at which space will in all probability be let in the market. Estimates of market value are required almost daily in an estate agent's practice in order to determine asking or offer prices or the rental for properties, business undertakings, or limited real rights such as servitudes and surface and mineral rights.

The importance of valuation is obvious. Prospective buyers and sellers who allow themselves to be guided by the valuations can be seriously prejudiced if the valuations are unreliable. The estate agent in turn needs to bear in mind that a seller may ask an unreasonably high price for his property that bears no relation to its market value.

Although an estate agent is called upon to give opinions on market valuations as a necessary part of his service, the agent does not necessarily hold himself out to be a professional valuer. As a result of the tremendous need for advice on property values and the increasing complexity of this field, specialists, known as property Valuers, have become well known.

These participants in the property industry specialise specifically in the estimation of a whole range of different property values. For example, when the State expropriates property, one or more Valuers are generally appointed to advise the state on compensation.

When a difficult or specialised valuation problem crops up, an agent will refer his client to a valuer for expert advice if he does not possess the necessary expertise himself.

### (b) Property investment and financing

When a property is purchased, the purchase price is generally costed as follows, part of the purchase price is paid by the buyer out of own capital. The balance of the purchase price is financed from borrowed or loan capital. Borrowed capital is used for financing when the buyer does not have the necessary equity or in order to take advantage of the benefits of leveraging. We speak of leveraging when the interest rate at which it is possible to borrow money is lower than the yield of a property if a buyer were to use his own capital only. By bringing in borrowed capital the purchaser increases his return on equity which is invested.

Property investment is the use of own capital to acquire fixed property or an interest in fixed property in order to obtain a specific benefit, profit or yield on own capital. Finance is the investment of money, generally against the security of fixed property or an interest in fixed property. Investment analysis is carried out from the viewpoint of the equity investor, whereas financial analysis is carried out from the viewpoint of the lender that is the person or body making the borrowed money available and enabling the investor to acquire ownership of a lesser right.

Important considerations when assessing an opportunity to invest in fixed property are:

- the amount of equity to invest and the security with which it can be invested the quality and amount of expected income protection of the investment against inflation the liquidity of the investment, that is the ease with which the investment can be liquidated and the percentage of the investment that would be realised if the investment were to be liquidated
- the possibility and amount of capital growth leveraging and the use of tax benefits after-tax yield on own capital

The estate agent must be familiar with the basic principles of property investment in order to be able to offer a suitable investment property to a client and, if necessary, assist his client to analyse the investment and take an investment decision. When arranging financing, that is obtaining borrowed capital, the following are some of the most important considerations:

- the sources of borrowed capital
- the loan: market value ratio
- the amount of the loan
- the interest rate
- the term of the loan
- the method of amortising the loan
- the size of the instalment for the repayment of capital and interest additional costs involved in procuring borrowed capital

The estate agent must be knowledgeable about the basic principles of property finance since he will have to arrange finance for the purchaser in many cases. Sales transactions would frequently not be concluded if the agent were unable to arrange finance. The public is increasingly looking to the estate agent for advice on property finance, but this function has been largely taken over by bond consultants or brokers who shop around for the best deal (usually the interest rate) for their clients.

### (c) Property development

Property development can be subdivided into building development and township development. The agent who wants to sell unimproved erven or potential township land must be familiar with the processes of building and township development in order to be able to offer suitable properties of this kind to buyers. When offering properties of this kind the agent often carries out a brief feasibility study to indicate to the client whether the project is in fact feasible or the asking price is reasonable.



## 2.6 PROFESSIONAL ORGANISATION

All estate agents are required to register with the Estate Agency Affairs Board. Membership is open to all persons in possession of a valid fidelity fund certificate issued by the Board and is subject to ratification by the respective branch committees.

## 3.0 INVESTORS IN PROPERTY

By "investment" is meant the purchase of property (or of rights in property) for own use or in order to derive a monetary income usually a regular one - from it (Maritz, 1989:25). Apart from own use (in the sense of own occupation) and the obtaining of a regular income, factors such as the resale value of the property and income tax benefits should be studied in depth when investment analyses are carried out. Although resale value is always taken into account, trading in property is not a primary objective in property investment.

## 4.0 PROPERTY DEVELOPERS AND OTHER PERSONS TRADING IN PROPERTY

The person trading in property and rights in property is more interested in profit from turnover than in a regular income that could be earned on the investment. Trading in fixed property includes all those economic activities, which are directed at making a trading profit. The chief aim of the dealer (unlike the investor) is to buy and sell rights and interests in property, and make a profit from the transaction.

Like the investor, the dealer makes use of his own and borrowed capital. The commodity traded is generally full ownership, but mineral rights and other limited real rights, such as servitudes and usufructs, can also be bought and sold.

The dealer could follow a number of different strategies in order to bring about an increase in the resale price (relative to the purchase price) and so realise a trading profit.

### (a) Changing the right of use

The dealer obtains the land with existing rights and then changes the use to a lower or higher one, depending on which most increases the value. For example, "agricultural land" is converted to "industrial land" or a site with flat rights is subdivided and the right of use reduced to "special residential".

### (b) Township establishment

The dealer buys land (mostly agricultural land) and establishes a township on it. The process of township establishment includes three principal sub processes, namely:

- changing the right of use - for example land zoned for agricultural purposes is converted residential, general residential, industrial, subdividing the land into erven
- developing the subdivided land (erven) commercial services (water, sewerage and streets and a storm water system selling erven by laying electricity

The dealer (known in this case as the township establisher or township developer) will endeavour to sell the erven for a total sum of money that would be sufficient to leave him a profit after he has paid for the land plus the improvements he has made and for any other expenditure he has incurred.

(c) Building development

In the case of building development the dealer can also adopt different strategies or types of property development. Some examples include the following:

- Speculation in residential units - The dealer buys the erf and constructs a residential unit on it. Although he would not have been able to realise a profit on the resale of the erf, he hopes to make a profit when the land and improvements are sold jointly.
- Income-generating buildings - The dealer obtains the land, erects a building, lets the space and sells the property to an investor as a going concern.
- Leasebacks - The dealer erects the building, sells it to an investor and then leases it back. In this way the dealer (or eventual occupant) obtains full financing and his developer's profit is released.
- Modernisation and conversion of existing buildings - We sometimes find that, as a result of physical and structural obsolescence, buildings cease to yield an economic return. A dealer who buys and modernises the building and then relets it is able to increase rentals, which by implication increases the value of the building. It therefore becomes possible to sell the building at a price that is higher than the sum of the purchase price and the costs incurred by the dealer and so make a profit.
- Utilisation of unused floor-space ratios - One sometimes finds that buildings are not developed so as to cover the maximum permissible floor space. (The floor space ratio is the total permissible floor area of the building relative to the area of the erf.) For a particular property the permissible floor area might be 8 000 m whereas the present building only takes up 2 000 square metres. By increasing the floor area of the existing building to 8 000 m it may be possible to increase the income to such an extent that the property can be sold to an investor at a price higher than the procurement cost plus the cost of the additions.
- Sectional title development - Under sectional title development the dealer buys an existing block of flats or erects a block of flats. The individual units are then resold.

(d) Leases

In South Africa trade in leases is a relatively insignificant in comparison with the practice in the most important Western countries. What it amounts to in principle is that the dealer concludes an agreement of lease and then sells the lease.

(e) Mortgages

Unlike an investor, a dealer grants a bond not in order to derive an income from it but in order to earn a profit on it when he resells or cedes it. The profit may be derived from one or both of the following sources - a raising fee, generally a percentage of the face value of the bond; and/or collection fee or service charge if the dealer then proceeds to administer the bond and collect the payments on behalf of the purchaser.

(f) Other rights and interests

Other rights and interests in which there is fairly general trading are options and mineral rights. The government is a major purchaser of servitudes, for example.

## 5.0 VALUERS AND OTHER PROPERTY ADVISERS

In the past the agent also provided advice as part of his total service on property values, financing possibilities and most other matters relating to property. Today most agents still provide such advice but they confine it to relatively uncomplicated matters. These days, as soon as an important and difficult problem crops up, the agent should refer his client to a property adviser if he does not have the necessary expertise himself.

In broad terms an adviser is someone who is able to analyse a specific property problem, evaluate alternative possibilities and recommend solutions. The demand for this type of service is increasing rapidly, especially as a result of the growing complexity of property transactions and increasing government control over and regulation of property matters.

Advisory services cover a wide range of property matters but the following are probably the most important:

- Market value (the amount for which a property would probably be sold if it were to be offered on the market at a particular time) property investment (identification and choice of investments).
- Property development (especially the feasibility of proposed developments).
- Property financing (including advice on the use of equity and loan capital and sources of loan capital).

Estimates of market value and the calculation of other kinds of value are required daily as an input in property decision-making. These decisions are diverse in nature but the following give an indication of the types of decisions for which valuations are required:

- the purchase and sale of rights of ownership or limited real rights such as servitudes, surface and mineral rights through negotiation or expropriation the hiring and letting of fixed property and the administration of rent control the consideration of loan applications, the review of existing loans and the payment of progress payments on building loans the payment of compensation for actual pecuniary loss in the case of expropriation and consequential damage the levying of property taxes by local authorities, including revaluations, interim valuations and objections to such valuations exchange transactions, take-overs, consolidations and the payment of royalties property transactions on behalf of legally disqualified persons or minors endowments and development contributions insurance of buildings against fire, storm damage and other contingencies, and the payment of claims,
- decisions in regard to the drawing up, evaluation and analysis of financial statements, existing shares, shares offered by prospectus, liquidation, asset values and listing of shares on the stock exchange,
- determining upset prices at auctions,
- Investment decisions with regard to the purchase of land for development purposes, including the subdivision of land and the erection of buildings.

The valuer requires a sound knowledge of all aspects of real estate, an understanding of the functioning of the economy in general, a working knowledge of the most important legislation applicable to property matters and of the relevant case law, and should have sufficient practical experience to be able to identify all the factors that influence property values and take them into account, to substantiate his conclusions and defend his point of view in a court of law.

Principals require Valuers to estimate a wide variety of different types of values from observation such as: market value, market rental value, depreciated replacement value, construction costs, value for loan purposes, value for estate purposes, pecuniary loss, recovery value, demolition value, development value, investment value, statutory value, asset value and liquidation value.

## 6.0 SUMMARY

The economic activities characteristic of the property industry can be summarised under four headings agency, investment, property development and other forms of trading in property, property valuation and other advisory services.

The Estate Agents Act, 112 of 1976, describes an estate agent as any person who, for the acquisition of gain, on his own account or in partnership, in any manner holds himself out as a person who, either directly or indirectly advertises that he, on the instructions of or on behalf of any other person, performs one or more of the following acts in connection with immovable property, an interest in immovable property or a business enterprise purchases or sells, negotiates for the purchase or sale, canvasses a purchaser or seller, undertakes or offers to canvass a purchaser or seller, negotiates for the letting or hiring, canvasses a lessee or lessor, undertakes or offers to canvass a lessee or lessor, collects or receives any moneys payable on account of a lease, renders any other service specified by the Minister by notice in the Gazette.

At common law immovable property comprises the following: (i) Surveyed land, including surface oil, the geological substances such as gold, coal and clay, as well as surface and subsurface water. (ii) Everything attached to the soil by natural means such as plants, trees and crops. (iii) Permanent improvements to land (such as houses, blocks of flats and dams) together with objects which are permanently affixed to these improvements. (iv) a unit as defined in the Sectional Titles Act 95 of 1986 (such a unit only comes into existence upon registration of a section title plan).

An “interest in immovable property” means an interest in land or a unit in a sectional title property. An interest of this kind is generally a “lesser right” than ownership. Examples of interests in immovable property are: a servitude of aqueduct, a usufruct, or the right to carry on a trade on certain premises.

# THE NATURE OF FIXED PROPERTY

## THE NATURE OF FIXED PROPERTY

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#### 1.0 INTRODUCTION

Property possesses utility when it has the potential to provide services capable of satisfying human needs. A property is productive if, for a specific person, the total advantages accruing from its possession outweigh all the disadvantages. Property is also scarce in relation to demand in that it is not available freely and in unlimited quantities. The fact that property is productive and scarce makes it an economic product. As an economic product it becomes valuable that is people are prepared to bid for it and pay a price for its productivity. Through this process of bidding in the property market, prices and land uses are established. Value as such is thus not something inherent in the property but a characteristic attributed to it by people. In this regard the value characteristic must not be confused with the productivity and utility-generating attributes of the property. The three productivity-generating attributes, namely,

- physical nature of land and improvements
- location
- Institutional attributes.

The above, collectively result in a property acquiring utility or productivity, and hence value. Any attempt to quantify or predict the value characteristic must be based on the observation of human behaviour, and specifically human economic behaviour, with regard to the sale or acquisition of property.

## 2.0 THE CHARACTERISTICS OF FIXED PROPERTY

### (a) Distinguishing attributes of fixed property

Fixed property has a number of physical and economical attributes or characteristics, which distinguish it from other products and commodities. These distinguishing attributes are as follows:

### (b) Large economic units

Fixed property is relatively expensive in comparison with most other products. It is often said that buying a house is the biggest financial investment that the average person will make in his lifetime. Office blocks, shopping centres, hotels and factories typically require even larger capital amounts for their development or acquisition.

This implies that the number of participants in certain parts of the property market is relatively limited, with the result that the market for fixed property is often not an effective market. When there are few or no buyers or suppliers in the market, the effectiveness with which that market is able to function as a market is reduced.

### (c) Complexity

Buying and development of fixed property is a complex process, which requires a high level of knowledge, and it takes a relatively long time. Fixed property is therefore not as easily accessible to the ordinary investor as are other investments or possessions like shares, gemstones or minerals.

### (d) Immobility

Fixed property is geographically immovable; hence the term fixed property or immovable property. The benefit of that is that a specific property is uniquely identifiable because of its geographical location, and that fixed property is also very suitable as financial security. The disadvantages are that every market for fixed property is a local market and that a specific property could be very vulnerable from the point of view of its environment and any changes in that environment.

### (e) Fixed stock

Only a limited supply of fixed property with certain characteristics will be found in a certain location. The physical expansion of the supply of land is only possible at certain locations and in unique circumstances, like the reclamation of land in low-lying parts (e.g. Holland, Cape Town, Hong Kong, Monte Carlo), while a physical decrease in the supply of land can happen as result of factors like erosion of the coastal areas. The value-forming attributes of fixed property (which are discussed later in this chapter) are also relatively fixed regarding physical characteristics and location, whereas the institutional attributes (right of use) could possibly be changed, for instance by a change in the right of use of the property. The improvements found on land or fixed property can also be seen as a relatively fixed stock in the short term, because improvements normally take months or even years to complete.

(f) Permanence

Fixed property is nearly indestructible, and the improvements are usually relatively permanent. The utility of fixed property is not diminished easily or even quickly in contrast with many other products like food or clothes. These attributes make the long term financing of fixed property possible, but also imply that fixed property cannot be adapted, or can only be adapted at very high cost; to suit changed needs or circumstances. The property can age functionally, although there may not be significant physical ageing of the property.

(g) Heterogeneity

No specific property is identical in all respects with another property, in contrast to many other products such as shares. Even two apparently identical flats in a block of flats differ at least regarding their location, and most fixed properties differ substantially regarding the location and improvements.

This distinctiveness implies that each individual property can and should be described in a unique manner, and that specific compliance with contracts is more easily enforceable.

(h) Dependence on the public sector

No fixed property can be used without the necessary accessibility and essential services, both of which are usually supplied by the government. The use of property is also normally subject to a variety of limitations as laid down by government, from laws to local regulations.

(i) Monopolistic interaction

The result of all the above attributes is that the property market is not an efficient market, because participation in the market is limited regarding the number of participants, their actions and their access to or the availability of certain types of property. The property market is typically subject to the monopolistic market forces of the government, where supply and demand can be regulated, and to the fact that there are relatively few participants.

(j) The utility of property

Of what use is property to man? Firstly, property has functional utility. The property can be used to provide shelter, either for a family or for a business. It serves as a base from which people can live and work.

Secondly, property has financial utility. Property can be let, mined or cultivated to generate an income (cash flow), as for instance an office block, a mine and a farm. Financial utility can also be realised from the capital growth of the property. Capital growth takes place when the value of property rises over time, as a result of the growing scarcity of property, changes in the institutional characteristics or changes in the environment of the property. The capital growth is realised upon the sale of the property, but can also be realised by refinancing the property by registering a bigger bond against it after a certain period of time. A further financial utility of fixed property is that in certain circumstances it can help to obtain income tax rebates. A fourth financial utility of property is that property can be used as a security for a bond.

For a certain amount of own capital (say 20% of the price) the use of loan capital puts the owner in a position to (a) buy a bigger property than he could have bought for cash only, (b) to spread his risk between different properties or investments and (c) to get a higher return on own capital than would otherwise have been the case. It needs to be noted that a financial benefit will not necessarily always be realised. Property for lease can stand empty, the value of a property can go down and the use of financing can be detrimental when interest rates rise, for instance.

Thirdly, property has emotional utility. It could satisfy the emotional needs like security, aesthetics and status, for example when the head of the family buys a beautiful house in a prestige suburb, or when a company builds a prestige head office.

Fixed property can satisfy all these needs simultaneously. A person can buy his own house, live in it, work from the house, and derive tax benefits from it, register a further bond against the house to buy a new car and he can sell the house on retirement. A developer can develop an office building, use part of it as his head office and sublet the rest of the building.

#### (k) The value-generating attributes of property

The value of something lies in the perception by people that the product is able to satisfy certain needs. Value is not an inherent attribute of the product itself, but the product possesses certain attributes, which lead individuals to attach a specific value to it.

There are three value-generating attributes of property, namely the physical nature of land and improvements, location of the property (accessibility, exposure and other environmental factors), and the institutional attributes (public legal circumscription and private legal circumscription of ownership) of the property. These three attributes determine the utility, and consequently the value, of the property, because these attributes determine which services or return can be offered by the property and for what period the services and return can be offered. These three attributes are the source of the utility of fixed property and will be discussed in greater detail in the next chapter.

### 3.0 THE PRODUCTIVITY OF FIXED PROPERTY

The surplus of income, or yield, or advantages, or utility resulting from ownership of a property, over the costs or expenditure, or disadvantages, or disutility incurred in generating the income, is known as the productivity of the property. Productivity is therefore a net concept; this implies that a property is productive if for any person the sum of all the advantages (utility) attaching to ownership of the property is greater than the sum of all the disadvantages (disutility) attaching to its ownership.

It may be possible to measure each advantage or disadvantage directly in monetary terms, but this is not essential: the monetary value of elements like status, locality, or comfort cannot be quantified in most cases.

In the case of a residential house typical advantages are accommodation for the family, satisfaction derived from a garden, swimming pool and agreeable neighbours, the possibility of capital gains when the house is resold, and the fact that money can normally be borrowed under certain statutory conditions in order to finance the purchase of the house. A factor considered by some people is that they may be entitled to an employee's subsidy which would be unobtainable in most cases if they and their families had been occupying leased premises.

Typical disadvantages of home ownership are the payment of municipal rates and taxes, the cost of maintaining buildings and a garden, and the cost of transport to schools, shopping centres, churches and the breadwinners' places of employment.



Another disadvantage is the amortisation of the mortgage loan, for this naturally limits the family's general spending power. Once a family has weighed the advantages against the disadvantages and has decided that the former outweigh the latter, the property becomes productive in their eyes and they are prepared to bid and pay a price for the property on the market.

The productivity concept applies to most types of property. In the case of a cattle farm, for example, the most important advantages may include income from the sale of slaughter cattle, or from stud animals, pleasure derived from this type of farming and the particular lifestyle associated with it. The principal disadvantages are possibly the cost of dip, injections, feed, insemination, labour and transport, and foregoing such amenities as better shopping facilities, medical services and recreational facilities available in larger towns and cities. When the advantages of owning a farm outweigh the disadvantages from the point of view of a specific individual, the farm has productivity for which he is prepared to pay a certain sum of money. In the case of investment properties such as blocks of flats, shopping centres, shops and office buildings bought almost exclusively for investment purposes, the productivity these represent to a specific individual can to a great extent be measured directly in terms of money. The investor in the investment property often conducts a thorough and complex analysis of the productivity of a property, and bases his decisions on considerations such as possible yield on capital, risk, and the availability and price of borrowed money. To him the advantages of ownership can often be reduced to monetary advantages, which can be classified in four broad categories:

- Income from the letting of space, for example, flats offices and shops let for a monthly rental (operating income).
- Income or monetary advantages obtained from the method of financing, for example, leveraging (the use of another's money to obtain a higher yield on equity capital) or various refinancing strategies.
- Advantages in terms of the Income Tax Act, for example special deductions from taxable income in the case of hotels, border industries and other industrial buildings, and for leased blocks of flats.
- Possible capital gains on resale.

In contrast the most important disadvantages of owning investment properties can be divided into the following three categories:

- Operating expenses. These are the expenses incurred in realising operating income. Included under this heading are municipal levies, salaries and wages and maintenance costs.
- Interest payable on borrowed capital. The five principal sources of such capital are mortgages, debentures, preference shares, shareholder loans and short-term loans.
- Income tax.

Where investment properties are concerned, productivity or net income is often expressed as yield on capital in one form or another. When an investor decides that a property is productive from his point of view, he bids for it on the market up to the amount it is worth to him.

Productivity is, as we said earlier, a net concept involving advantages over disadvantages. If a particular individual is of the opinion that the disadvantages attaching to a property outweigh its advantages, it will not be productive in his eyes.

Consequently he will not bid against other buyers in order to obtain it. A property that no one regards as productive is valueless, or may possibly even have a negative value. Consider for example a public street or road. A municipality could not conceivably find a buyer for it because no advantages attach to owning it, and because the cost of maintaining and cleaning it would be considerable. However once a person acquires the right to levy a toll or erect kiosks, thereby ensuring that income will exceed expenditure, a positive market value becomes a real possibility.

The productivity of a specific type of property and the amount of money individual buyers will be prepared to pay for the productivity ascribed to it will vary considerably from one person to another. The amount of money a particular individual is prepared to pay for the productivity of a property is known as the personal or individual value.

The purposes for which such property can be used are as follows:

- Ownership for own use. Property is often bought for own use. A family buys a house to live in, a group of doctors buys and uses a building as consulting rooms, and a bank builds and moves into a prestige new head office. Ownership provides benefits such as increased security, greater flexibility, the possession of a favourable location, and it negates the need to pay rent to somebody else.
- Ownership for cash flow. No amount of money need remain static over time; hence people invest their savings with the object of obtaining a regular yield on their investment. For the same reason investors acquire blocks of flats, office buildings, factories, warehouses and shopping centres in order to let the space and obtain a regular income. The yield on the investment is stable and predictable and supplements the person's monthly income or consolidates the position of his estate.
- Ownership for capital growth. Recently deforested land, undeveloped land with the potential for township development in the future, vacant urban land and land on which there may be exploitable mineral deposits are all examples of properties which are purchased because an increase in their value is anticipated. It is also possible that during the waiting period the property will yield sufficient income to cover holding costs, for example as when a vacant erf in the city centre is used as a parking lot and casual parking is allowed in return for payment. Often such income is sufficient to cover the annual taxation that is levied. In the case of potential township land, however, it may be necessary for the owner to make additional payments during the holding period, for example to the municipality in respect of assessment rates.

Frequently, owners are able to realise the utility of a property in all three ways simultaneously. An instance of this is where a developer constructs an office block, occupies part of the space himself and lets the remaining space. Such a strategy gives him occupation and guarantees a regular monthly income, whereas any capital growth that occurs is for his own account.

In each of these three ways of realising the utility of a property it is, by implication, possible to utilise the benefits of income tax strategies to achieve tax savings, and by so doing increase the yield on equity capital. Moreover, borrowed capital can also be used to enable the owner, through leveraging, to obtain a higher yield on his own capital than would otherwise have been the case.

#### 4.0 PRODUCTIVITY-GENERATING ATTRIBUTES OF FIXED PROPERTY

Next to the property market and the general economic conditions, the most important factors influencing the net proceeds of a property, are its utility-generating or productivity-generating characteristics, namely:

- the physical nature of the property (land and improvements)
- location of the property
- the institutional attributes of the property

##### (a) Physical nature of property

Land and improvements, or the physical suitability of a property, or its onsite characteristics, determine the services or yield which the property can provide and the period for which they can be provided and what their quality will be. The quantity of the services or utility that a property can provide is a function of the permanence and extent of the improvements, while the quality of the service is synonymous with the functional efficiency of a property relative to the quality of service produced by a modern property specifically designed for a particular use. Regarding the contribution of the land, the following factors are the most important in determining productivity:

- size and shape of the erf
- topography
- soil and subsurface conditions
- the availability of municipal services

Regarding the improvements, the quantity and quality of the services are mainly a function of:

- the size of the structures
- the permanence of the structures
- the functional efficiency of the property

##### (b) Location

Location determines whether or not there will be a demand for the services, which the property is capable of providing, and is a function of:

- the convenience network (or accessibility network)
- the exposure network (relation to other properties) of the property

##### (c) Institutional attributes

Institutional attributes determine what legal use can be made of the property. It is normally the purpose of a physical inspection to determine to what degree the present use of the property is also the most obvious economic use that can be made of the property. Typical questions to which answers are needed are:

- To what degree is the permissible floor space utilised on the property? The improvements may consist of a shopping centre for instance, but the property has at its disposal other rights, which allow for the doubling of the present shopping centre and the erection of another 50 000-m<sup>2</sup> complex consisting of office space.
- Is it possible to establish a new right of use on the property, which will increase value of the land and/or all the existing improvements? There could, for example, be a single residential house on the property, which, if valued as a residential property, may have a value of R160 000. The property might also have business rights, which would place a market value of R240 000 on the land alone. All unused rights and/or alternative legal and economic uses that could be utilised on a specific property could have an influence on its investment value thereof.

From these productivity-generating attributes we can deduce the specific attributes for every property, whether it is residential, commercial, industrial or other property. Each of these attributes will now be discussed in detail.

## 5.1 PHYSICAL NATURE OF THE PROPERTY (LAND AND IMPROVEMENTS)

### (a) General

Nowadays fixed property is a manufactured product. In town and urban areas this manufacturing process begins with township development. Trade services (i.e. electrical, sewerage and water reticulation) are installed and each erf is provided with such facilities. The construction of streets and the installation of a storm water network usually complete the first phase of the manufacturing process. The second phase (which, in South Africa, is mostly undertaken by persons other than the original township developer) commences when improvements such as dwelling houses, hotels and factories are added to the land in order to increase its productivity, for example by own occupation or by deriving an income for it. It is virtually impossible to exploit the utility or productivity of fixed property optimally without improving the land in one way or another.

- The utility or productivity of a vacant business erf in the city centre which has shop and office rights cannot be fully exploited before buildings have been erected.
- The utility or productivity of a cattle farm probably remains underdeveloped until the farm is subdivided into camps and provided with the necessary watering places, pens and crushes. The productivity of a property is influenced not only by the improvements added to the land but also very often by the physical nature of the land itself.
- In the case of agricultural activities where the productivity of the property is inherent in the land itself, the nature of the soil is of cardinal importance; for instance, is it suitable for cultivating crops or sustaining cattle? Similarly, the physical size of the farm determines whether or not it can be regarded as an economic unit in agricultural terms.
- In non-agricultural industries where productivity is not inherent in the land, its physical nature can nevertheless exert a significant influence on productivity. The shape of the erf may influence the way in which it can be used. Moreover, the presence of unstable sands, expansible clay or dolomite affects the cost of foundations drastically, besides affecting both the legitimate uses to which the land can be put and township layouts.

The physical suitability of a property for providing services depends on the erf and the improvements. Improvements largely determine how the property can be used. Once an office building has been erected on an erf, the erf can no longer be used to accommodate a hotel, factory or dwelling house. A new use for an existing property is possible only if the cost of converting the existing improvements can be profitably absorbed.

The quantity of services, which a property can provide, is a function of the permanence and extent of the improvements. The permanence of improvements determines the period for which a property can yield a steady income. This in turn has a direct influence on the quantity of services that can be derived from the property. The quantity of services is also directly influenced by the extent of improvements. Obviously an office covering 2 000 m<sup>2</sup> will provide fewer services than one covering 20 000 m<sup>2</sup>.

The functional efficiency of a property may be defined as the quality of service, which it provides relative to the quality of service produced by a modern property specifically designed for a particular use. For example, an old supermarket which has been converted into a restaurant is possibly not as efficient as a new building which has been specifically designed as a restaurant; an old house which has been added on to is often not as efficient as a new architect-designed house; and an old hotel frequently lacks the functional efficiency of a new five-star hotel.

#### (b) Investigation of the utility of the land

It is virtually impossible to draw up an exhaustive list of all the factors influencing the utility of an erf. If the erf is vacant the physical features of the land can have a decisive influence on the highest and best use to which such land can be put. If the property has already been developed and is in use, the physical features of the land often no longer play a part in a decision regarding the size and nature of improvements, which can be erected.

Some of the features of the land, which must be considered (depending on the circumstances), are the following:

- Size and shape of the erf. Often the size and shape of vacant erven are of cardinal importance, especially in urban areas. An erf which is smaller than the standard size or which has an irregular shape frequently has a limited number of uses. In addition its exploitation results in higher costs, the construction of inefficient buildings or in the waste of land. Consequently the unit value of such an erf is usually lower than the value of erven of a standard size and shape. A long narrow erf 16 metres wide and 100 metres in length is not suitable and/or efficient when it comes to building a house on it - even though it has a total area of 1600 m<sup>2</sup>. Normally the unit value of erven declines as the area increases. In certain cases, however, the converse is true, as for example where two small erven are consolidated and are then suitable for the construction of an office block (which would not have been possible on either erf individually). In instances such as these the unit value of the consolidated erf can be higher than the combined unit values of the individual erven. This phenomenon is referred to as plottage and originates because the larger tract of land can be used more intensively, or at a lower cost or more efficiently than would have been possible if the erven had been exploited separately.
- Topography. The topography or the surface contours of the land should not normally be excessively uneven for uses such as businesses, industries and cultivated lands.

Very steep ridges on a pasture farm often lower its value relative to other farms where pasturage is more accessible to cattle. In the case of township development hilly terrain can be adapted for dwelling houses, even though this may mean building costs and the cost of providing streets will be considerably higher than the costs associated with a more evenly undulating area. However, the greater attractiveness of residential developments in hilly parts often draws people from higher income groups who are prepared to pay considerably more for the view and relative privacy, a fact which of course justifies the increased costs. Topography can also have an important influence on drainage and erosion, since contours affect the flow of water. The possibility of flooding is always an important consideration. Moreover standing or polluted water is a potential source of disease and a health hazard.

- Soil and subsurface conditions. Soil and subsurface conditions directly influence the utility of an erf or tract of land. Fertile agricultural land produces better crops and is therefore more valuable than relatively infertile land. In urban areas marshy conditions and underground rock impede township and building development, besides making it an expensive undertaking. Rural areas, which have no sewerage system, must have permeable soil that is suitable for septic tanks in order to permit more intensive subdivision and hygienic development.
- Services. By services we mean the provision of an erf or tract of land with a road and storm water system as well as with trade services such as electricity, water and sewerage. Electricity is required as a source of power and the sewerage and water connections are necessary if septic tanks cannot or may not be installed. In many areas storm water systems have to be installed to prevent periodic flooding. Fresh water is essential for good health and to eliminate inconvenience, and access to streets or a road system is a must for every erf or tract of land. The value of a farm, factory or office building which can be reached only on foot is naturally considerably lower than that of a similar property, which is served by good roads. A 2,5 ha. erf on a mountain which can be reached only by mountaineers must be expected to have a lower value than a plot which is accessible to the general public by road. On a comparative basis, the market will in all probability place a lower value on land if services are not immediately available. Smallholdings with a water supply are very often worth considerably more than those without water which are situated in an area that is known to have a poor underground water source. The amount by which the market price is reduced will depend on specific market conditions. However, the deduction made should reflect the loss of benefits resulting from the absence of services. Sometimes services have already been installed but still have to be paid for. In the case of, say an electricity levy on an erf or plot the value of such erf will be reduced by the amount of unpaid costs or outstanding levy.

(c) Investigation into the utility of improvements

Improvements normally include primary or major structures such as a dwelling house, office building or factory, plus miscellaneous auxiliary structural and non-structural improvements such as garages, storerooms, pathways, ramps, gardens, retaining walls, terraces and fences. On an urban property, structures are often responsible for the largest part of the value or cost of the property, but on farms non-structural improvements such as an efficient system of camps or a dam and irrigation system can add a substantial amount to the value of the land.

An investigation into the utility of improvements embraces a study of the main or primary structure or structures, all auxiliary structures and all non-structural improvements.

A study of the improvements entails an examination of the amount and the quality of the services that can be rendered. The amount of utility or services a property can provide is chiefly a function of:

- the size of structures
- the permanence of structures and associated essential equipment such as air-conditioning and water and electricity systems.

In contrast the quality of the services, or utility of the property, is reflected by their functional efficiency. Functional efficiency has the following dimensions:

- The size and permanence of structures determine the quantity of services that can be provided. All other factors being equal, a larger structure will yield more services than a smaller one. The permanence of a structure will depend on the quality of materials and labour, which go into building it.
- A measure of functional efficiency is how serviceable a building is for its existing or proposed use. Functional efficiency is evaluated by comparing the serviceability of a building with that of a new building which has been specifically designed for the use in question. Any shortcoming relative to the new property is termed "functional obsolescence". Current market standards of acceptance provide the basis for such an evaluation. Functional obsolescence is the reduced capacity of a property to provide benefits or services of the same quality as a new property designed for the same use. Such obsolescence manifests itself in various ways, for example in higher operating costs; higher maintenance costs lower market rentals and reduced facilities. A five bedroomed house with only one bathroom has less utility than a similar house, which has two and a half bathrooms. Modern free-span office buildings and factories are far more efficient than older structures with their numerous load-bearing walls and columns, and inefficient layout.
- The structure-to-erf ratio. Many of the older shopping centres provide too little parking space in relation to the trading areas of shops; hence in this regard they are obsolete when compared with newer centres. A house, which is too large for an erf, is an over-improvement and frequently does not allow the family occupying it sufficient space for outdoor living. In contrast, a house, which is too small, constitutes an underdevelopment. In both the last two cases a reduction of value relative to the standard can be expected. Functional utility is optimal when the erf, the structures and the non-structural improvements have been combined in their expected ratios to provide for the needs of typical users or buyers in the relevant price class and specific environment.
- The appearance of a building. The appearance of a building is also a consideration when determining functional utility. A block of flats that has been fully renovated and improved inside but which has a neglected appearance outside could repel prospective tenants. An extravagant architectural style or garish colours could detract from the general acceptability and therefore the functional efficiency of a building.
- Adequacy of miscellaneous improvements. A luxury house in the suburbs, which has no garden, garage or storerooms, will not come up to the expectations of the average buyer of this type of property.

## 5.2 LOCATION OF THE PROPERTY

The utility of a property depends not only on its physical suitability for rendering services but also on its location. Whereas land and improvements involve the physical characteristics of the property as observed in situ, location is concerned with relationships external to the property. The location determines whether or not there will be a demand for the services, which the property is capable of providing. The concept, "location" is a dynamic one and comprises two components. The first component is the convenience network, which a specific property maintains with human functions that are of vital importance to it. The second component is the exposure network of the property to the other properties in its vicinity.

Convenience network (or accessibility network) comprises all the links, which originate between a property and human functions. A link is a relationship between two land uses or activities, which generates a movement of people or goods from one to the other. Every link is characterised by movement from and/or to the subject property, and hence distances to be overcome and concomitant costs. When a family chooses a house, for example, its location must largely meet the family's requirements regarding distance from facilities such as schools, shopping centres, churches, and the place of employment of the breadwinner, and still be within its financial means. Often decisions as to where certain types of factories and commercial buildings should be sited can be taken only after intricate convenience analyses have been conducted. Examples of links are pupils moving to and from school or customers moving to and from a shopping centre. A child going to school is a link. A mother who goes to the cafe to buy bread is a link. The movement of vans from a printing firm in Doornfontein, Johannesburg to a distributor in Pretoria is a link.

The movement of people and goods gives rise to four types of cost, not all of which are readily measurable in monetary terms. These four cost types are termed the costs of friction and are the following:

- Out of pocket transport cost such as bus fare, or expenditure on a private motor vehicle.
- The time cost of travelling: This cost refers to the time, which is taken up in transporting people or goods from one erf to another.
- Terminal costs: An example is the cost of loading furniture onto a furniture van and then off-loading it at the destination. Another example is the parking fees, which are paid out when visiting the city centre.
- Irritation costs: Irritation caused to the traveller by delays, traffic congestion or being jostled by fellow commuters in an overcrowded train is an example of that cost of travelling which, at a personal level, forms part of the costs of friction.

The erf which, relatively speaking, has the lowest cost of friction is the obvious location for a specific land use; hence it acquires the highest value.

- Exposure network comprises all the factors to which a property is exposed as a result of its contiguity or proximity to other properties. No movement is implied in this concept. If for example the family mentioned above selects a house in a neighbourhood in which it feels at home socially, we say that such a house has a favourable exposure from the family's point of view. A good view is another example of favourable exposure.



The proximity of a house to a factory causing extensive air pollution, or to a busy street or to a railway line are examples of probable negative exposure. Exposure acts upon the senses (site, hearing and smell) and is experienced without moving from the erf.

Location as a whole (convenience and exposure networks) is possibly the single most important attribute of a property, which influences the utility, productivity or benefits which it provides for people. Consider the following examples:

- When siting a suburban shopping centre it is of cardinal importance to ensure the greatest possible net income (productivity), and hence an acceptable yield rate on the capital costs incurred. Usually the centre is sited in such a way that it not only reaches the largest possible trade area (total convenience network with customers) of a specific market, but is also largely protected against existing or future centres that could disrupt its convenience network.
- Consider two cattle farms, each comprising 2 000 ha, that are largely comparable in all respects except location. Assume that one of the farms is situated in the far Northern Transvaal and the other fifteen kilometres from the centre of Johannesburg. By virtue of its location the farm near Johannesburg will enjoy a considerable advantage when cattle and supplies have to be transported to and from the market. Naturally it costs considerably less to transport cattle fifteen kilometres to the market than it does to convey them over a distance of 400 km. If one also bears in mind that the farm near Johannesburg could be developed as a township within ten years (proximity to housing market), it follows that the productivity or utility (and hence the value) of this farm will be considerably greater than that of the one in the far Northern Transvaal.
- Compare the net income (and hence the price) of the Carlton Centre in the Johannesburg city centre (focal point of the market for office space, hotel accommodation, shopping and consumer goods) with the possible net income and price of an identical centre if it were to be sited in Bronkhorstspuit.
- Polluted water, dumping grounds and sewerage works are unwelcome neighbours of virtually all land users. The results of such an unfavourable exposure are lower land and property values in the vicinity of these "neighbours".
- Most urban areas have at least one or two elite residential areas. These areas usually have high aesthetic qualities, and in addition the address is viewed with a considerable degree of social approval. People are therefore frequently prepared to pay large sums of money for residential properties in suburbs of this nature.
- Office blocks in the same city possess varying degrees of prestige, which is often reflected by the size of the rental that can be charged.

### 5.3 INSTITUTIONAL ATTRIBUTES OF THE PROPERTY

By institutional attributes we mean all Civil and public restriction<sup>S</sup> that individually and collectively determine the legal use of the property; in other words, the ius utendi (right of use).

No owner, even if he enjoys full ownership, is entitled to use his property for any purpose that he thinks fit. (A person cannot for example simply erect a hotel on a special residential erf where the right of use is confined to a single dwelling house.) His right of use is circumscribed by private legal restrictions in particular.

The effect of all these restrictions on the productivity of the property is considerable. For example, a centrally situated property with general business rights that has been developed to its maximum economic potential normally provides the owner with a far higher net income than an adjacent property of the same area where the right of use is restricted to low density duplex flats. Similarly, two crop farms that adjoin the same river and are virtually identical will probably differ materially in terms of net yield, and hence value, per unit of land, if one owner has unrestricted riparian rights while the other is prohibited from pumping water.

# DIFFERENT TYPES OF FIXED PROPERTY

## DIFFERENT TYPES OF FIXED PROPERTY

### CONTENTS

- 1.0 NON-NEGOTIABLE BUT INCOME PRODUCING PROPERTIES
- 2.0 NEGOTIABLE INCOME PRODUCING PROPERTIES
- 3.0 INCOME PRODUCING PROPERTIES

There are a large number of types of fixed properties and the different kinds of properties can be divided into three distinct groups.

#### 1.0 NON-NEGOTIABLE BUT INCOME PRODUCING

- (a) Government buildings
- (b) Hospitals
- (c) Railway lines
- (d) Libraries
- (e) Council buildings
- (f) Public roads
- (g) Public open space
- (h) Private open space
- (i) Harbours
- (j) Beaches
- (k) Museums
- (l) Schools
- (m) Educational facilities
- (n) Mountain land.

#### 2.0 NEGOTIABLE INCOME PRODUCING

- (a) Vacant building stands
- (b) Residential erven
- (c) Churches
- (d) Undeveloped non-agricultural land
- (e) Private roads
- (f) Agricultural co-op buildings.

### 3.0 INCOME PRODUCING PROPERTIES

An income producing property is usually a property which is not occupied by the owner himself, but which he lets to a tenant in order to receive an income from the rental. A house is not regarded as an income producing property, why, because a person does not usually buy a house in order to obtain a return on his investment. The rental received from the letting of a house has a low return on the investment compared to other conventional income producing properties. The following types of properties are conventionally regarded as income producing properties:

- (a) Shops
- (b) Offices
- (c) Service stations
- (d) Flats
- (e) Single residential dwellings
- (f) Old age homes
- (g) Factories
- (h) Cinemas
- (i) Golf courses
- (j) Storage tanks
- (k) Refineries.

# PROPERTY AS AN ECONOMIC PRODUCT

## PROPERTY AS AN ECONOMIC PRODUCT

### CONTENTS

1. INTRODUCTION
2. USE
3. IMPROVEMENTS
4. DEVELOPMENT

#### 1.0 INTRODUCTION

Land is the original and basic factor without which man would be unable to exist; no forms of agriculture, products of industry or any building structure can take place, be made or erected without land.

Land, and more specifically, property, is an economic product because it is productive and is scarce in relation to the demand therefore.

When the benefits accruing to a property exceed the burdens attached to it, the property is said to possess productivity, and this applies to all kinds of property. The productivity, demand and supply of that property directly affect the value of property. Factors influencing the productivity of a property are its:

#### 2.0 USE

The purposes for which a property may be used, are not universal or unlimited, but, in the case of townships, are restricted to conform to and comply with those usages permitted by the particular town planning scheme, or to the extent to which it is physically possible due to topography, shape, soil type, environmental infrastructures (such as availability of municipal services, etc.); and in the case of farms the use is determined by the land's physical attributes and its situation with relation to markets and climate.

The highest and best use of a property is restricted to its zoning, unless it is possible for a rezoning or special consent to a different usage to be obtained, and comprises two elements, i.e., the purpose for which the property may be used, and the extent to which the property may be developed.

While an envisaged development may well comply with both elements, it must also be an economic proposition and which might not mean the property's optimum development.

The highest and best use of a property may not always be immediately apparent, but may be hidden with its potential and the demand for the particular accommodation that the improved property could offer, and should be seen as being complimentary to the market for that particular accommodation rather than being in direct competition with it.

The highest and best use of a property can, therefore, either be its existing use, the use to which it is restricted by the town planning scheme, a completely different use, or even a combination of uses that may change as time goes on.

### 3.0 IMPROVEMENTS

The development of a property by the erection of improvements compliments its productivity; if the development is in accordance with the property's highest and best use, the productivity will be maximised, while any over or under development will only achieve a relatively lower increase in productivity. The economic law of diminishing returns applies equally to property development and to any other economic activity. Improvements generally enhance the productivity of a property, but there are exceptions, for instance:

- **Poor physical condition:** Improvements that are not regularly repaired and renovated can deteriorate into such a dilapidated condition that renders them uninhabitable and unlettable, in which event they would be a burden to the owner and detract from the market value of the property.
- **Functional and Economic Obsolescence:** Improvements that have fallen into disuse due to lack of demand because of changes in the economy or the environment etc., can place a burden on the property even if little or no physical deterioration has taken place.
- **Illegal Improvements:** By this we understand improvements that do not comply or are in conflict with the property's zoning, the municipal building regulations or the laws of the country, for example, a block of flats on a special residential erf (zoning), a newly erected wood-and-iron building in a residential area where only brick-built structures are permitted (building' regulations), or a gambling house (casino) or indoor dog racing track (laws of the country). These "illegal" improvements do not enhance the productivity of the property on which they have been erected and are a burden.

**Special Purpose Buildings:** Improvements that has been erected for a specific purpose and has been so designed to permit no other usage and for which there is, therefore, no functioning market, place a burden on the property. Examples: disused power and substations, sewerage installations.

### 4.0 DEVELOPMENT

Economic and legal development lends to maximum productivity. The development of a property should be planned thoroughly, as incorrect, uneconomic under- or over development adversely affects the productivity and value of the property. Over development occurs when the cost of development is not economically justifiable; the productivity of the property decreases with every additional capital outlay invested over and above the optimum economic development because there is no additional income and the income per capital unit invested, therefore, decreases.

Example of over development: A five-bedroom luxury dwelling erected at a cost of say R80 000 in a residential area where the average dwelling exists of a three bedroom unit, with standard finishes, costing say R50 000. Taking the cost of unimproved erven in the township at R10 000 each, the average house is likely to sell at R60 000, but the over developed property is likely to fetch only R75 000. The additional capital of R30 000 above the economic development of R50 000 resulted an increase in value of only R15 000, and this type of development is destined to be handicapped by an economic depreciation in value from the start.

Under development occurs when a property is not developed to its highest and best use; for instance a dwelling house standing on a general residential erf, and the productivity and value of the property is restricted thereby. If, however, it is practical and economically justifiable to extend the existing development of and under developed property in such a way as to realise the property's highest and best use, the existing development will contribute to the value of the property and be part of its potential.

If, however, it is practical and economically justifiable to extend the existing development of and under developed property in such a way as to realise the property's highest and best use, the existing development will contribute to the value of the property and be part of its potential.

# PART TWO

## THE PRACTICAL VALUATION REPORT

### THE PRACTICAL VALUATION REPORT

#### CONTENTS

1. THE PURPOSE OF THE VALUATION REPORT
2. THE REPORT INVOLVES THE FOLLOWING
3. COMPILING A VALUATION REPORT
4. VALUATION REPORT FORMAT – RESIDENTIAL VALUATIONS
5. WHAT NOT TO PUT IN A VALUATION REPORT

#### 1.0 THE PURPOSE OF THE VALUATION REPORT

- To test a student on his ability to determine the value of the subject property and produce a motivated valuation report.
- To convey information to the client, that is done in such a manner that it will lead the reader from the definition to a valuation problem to a specific conclusion through reasoning and relevant descriptive data.

#### 2.0 THE REPORT INVOLVES THE FOLLOWING:

##### 2.1 Demonstrating the student's ability to identify the subject property.

- Obtaining the full title deed particulars,
- Obtaining all the municipal data available,
- Obtaining full particulars of the town planning aspects,
- Identifying the neighbourhood,
- Physical inspection and description of the property.



2.2 Demonstrating the ability to recognize the value forming characteristics of a property, this involves the following:

- Determining the highest and best use.
- Recognizing potential.
- Discovering deviations from the town planning schemes.
- Investigating accessibility and proposed road building schemes.
- Investigating the possible shifting of business or residential environments.
- Analyzing the design of the property in terms of market demand and preference.
- Analyzing the locality of the property in terms of availability of amenities, services and schools.

2.3 Demonstrating the ability to do market research and to identify salient economic factors influencing market behavior of purchasers and sellers.

This would include the ability to:

- Identify preferences of purchasers and sellers.
- Determine the influence of the general economic cycle on the value of the property.
- Obtain factual data of a transaction.
- Obtain factual data on leases.
- Analyze leases in terms of market rental levels.
- Obtain actual and market related expenditure and to make meaningful adjustments.
- Analyze sales to determine a basis of comparison, including arriving at a capitalization rate.

2.4 Demonstrating the ability to reach a conclusion and, motivate such conclusion. This would include the ability to:

- Finally analyze market data.
- Reject some indicators and motivate why.
- Accept the most applicable indicators and motivate the acceptance thereof.

2.5 Demonstrating the ability to decide on the correct method of valuation.

- The ability to decide when more than one method of valuation is applicable.
- The ability to motivate the application of such methods of valuation.
- Explain the steps in the method of valuation.
- Demonstrating the students understanding of the place and effect of asking prices, date of valuation, servitudes and title deed endorsements on the value of the property.

### 3.0 COMPILING A VALUATION REPORT

The report offers the valuer the opportunity to prove that he is not guessing. He can prove his ability to research and analyze the property market and convince the reader of the report of his professional approach to his assignment. It offers the client the opportunity to distinguish between the quality of his work and that of a valuer producing only a certificate of value.

It will convey invaluable additional information to his client. This additional information may play an important role in his clients' decision making. However, the valuers' whole thinking process is reduced to writing. Any misjudgment due to hasty conclusions will be there for anyone else to see. A lack of dedication will be noticeable and only one such report will be enough to harm an image built up over a number of years.

#### 4.0 VALUATION REPORT – SINGLE RESIDENTIAL FORMAT

##### **1.0 INTRODUCTION**

- 1.1 Instruction
- 1.2 The Date of Valuation
- 1.3 The Date of Inspection

##### **2. TITLE DEED INFORMATION**

- 2.1 Title deed
- 2.2 Description
- 2.3 Registered owner
- 2.4 Extent
- 2.5 Purchase Price
- 2.6 Date of Acquisition
- 2.7 Mortgage Bonds
- 2.8 Title conditions
- 2.9 Land restitution claims.
- 2.10 Surveyor General Information
- 2.11 Mineral rights
- 2.12 Unregistered rights

##### **3. LOCAL, PROVINCIAL AND CENTRAL GOVERNMENT INFORMATION**

- 3.1 Local Authority
- 3.2 Town Planning Information
- 3.3 Road widening
- 3.4 Municipal Valuation
- 3.5 Municipal Services

##### **4. PHYSICAL DESCRIPTION**

- 4.1 Location
- 4.2 Buildings
- 4.3 Leases

##### **5. ESTABLISHMENT OF COMPARABLES**

- 5.1 Highest & Best use
- 5.2 Market conditions (Macro and Micro)
- 5.3 Comparable factors
- 5.4 Comparable properties

## **6. APPLICATION OF COMPARABLES**

- 6.1 Method of Valuation
- 6.2 Motivation to value
- 6.3 Conclusion
- 6.4 Certifying of Value

I hereby certify that I have identified the subject property and obtained all the necessary information to determine the market value thereof.

Accordingly, I hereby certify that in my opinion, to the best of my knowledge, skill and expertise, the value of the subject property as identified in section ..... as at ..... to be R.....(two million seven hundred thousand rand only).

### **4.0 WHAT NOT TO PUT IN A VALUATION REPORT**

- In the opinion of various people consulted I was advised that the property is overpriced.
- The value of the property would probably be worth R1 000 000 if a buyer could be found.
- This is an old house for which there is little demand with a lot of new houses being erected at present in the area.
- If the stand could be subdivided into two even the value of the property could be increased.
- It appears as if the property is rent controlled and is therefore not a viable proposition.
- The property was locked on the date of inspection and it appears to be in a sound condition.
- The valuation is based on the information supplied by the client only.
- The valuation is not conclusive because not enough information was provided.
- This valuation could be increased by 50% because the client is well off.
- I did not fully understand what the client wanted but here is a valuation anyway.

# THE REGISTRAR OF DEEDS

## THE REGISTRAR OF DEEDS

### CONTENTS

1. INTRODUCTION
2. THE DUTIES OF THE REGISTRAR
3. THE POWERS OF THE REGISTRAR
4. GENERAL PROVISIONS IN THE DEEDS REGISTRIES ACT
5. INFORMATION AVAILABLE

#### 1.0 INTRODUCTION

The Deeds Registries Act 47 of 1937 was promulgated to consolidate and amend the laws relating to Deeds Registries. Since promulgation of the Act it has been amended many times. There are deeds registries in Cape Town, Johannesburg, King Williams Town, Kimberley, Vryburg, Pietermaritzburg, Pretoria and Bloemfontein

#### 2.0 THE DUTIES OF THE REGISTRAR

“The registrar shall, subject to the provisions of the Act-

- (a) Take charge of and preserve or cause to be preserved all records of any deeds registry in respect of which he has been appointed. The registrar may destroy or otherwise dispose of any record which has been cancelled.
- (b) Examine all deeds and other documents submitted to him for execution or registration and after examination reject any such deed or other document; the execution or registration of which is not permitted by this Act or by any other law, or to the execution or registration of which any other valid objection exists.
- (c) Register grants of leases of land lawfully issued by the Government or grants issued by any other competent authority and register amendments, renewals and cancellations of such leases, and releases of any part of the property leased.
- (d) Attest or execute and register deeds of transfer of land and, execute and register certificates of title of land.
- (e) Attest and register mortgage bonds.

- (f) Register cessions of registered mortgage bonds, and register cancellations of such cessions if made as security.
- (g) Register cancellations of register mortgage bonds, releases of any part of the property if the debt is further secured by collateral bond, releases of any joint debtor or of any surety in respect of any such bond, the substitution of another person for a debtor in respect of any such bond, reductions of cover in respect of any such bond intended to secure future debts, and part payments of the capital amount due in respect of any such bond intended to secure future debts.
- (h) Register waivers of preference in respect of registered mortgage bonds and notarial bonds with regard to the whole or any part of the property hypothecated thereby in favour of other such bonds whether registered or about to be registered.
- (i) Register waivers of preference in respect of registered real rights inland, in favour of mortgage bonds, whether registered or about to be registered.
- (j) Register notarial bonds and cancellations and cessions thereof (including cessions made as security) and cancellations of such cessions if made as security.
  - (j)bis Register releases of any part of the property hypothecated by any registered notarial bond or of all such property if the debt is further secured by a collateral bond, releases of any joint debtor or of any surety in respect of any such bond, reduction of cover in respect of any such bond intended to secure future debts, and part payments in respect of the capital amount due in respect of any such bond other than a bond intended to secure future debts.
- (k) Register ante-nuptial contracts and register such notarial deeds of donation, (including a donation to be held in trust), and such other notarial deed having reference to persons and property within the area served by the registry in question as are required or permitted bylaw to be registered.
- (l) Register grants or leases lawfully issued by Government of rights to minerals.
- (m) Register notarial cessions, leases and sub-leases of rights to minerals and notarial variations of such cessions, leases or sub-leases, notarial cessions of such registered leases or sub-leases, notarial cancellations of such leases or sub-leases, certificates of registration in grants or transfers of land, and notarial variations of such reservations.
- (n) Register on the title deeds of the land and of the rights to minerals affected, and in the relative registers, the issue of mynpachbrieven.
- (o) Register any servitude, whether personal or praedial, and record the modification or extinction of any registered servitude.
- (p) Register notarial leases, sub-leases, and cessions of leases or sub-leases, of land and notarial cessions of underhand leases or sub-leases of land, which have been registered prior to the commencement of the Act and notarial amendments, renewals and cancellations of such leases and sub-leases and notarial releases of any part of the property leased.
- (q) Register notarial prospecting contracts and notarial cessions thereof and cancellations of such contracts.
- (r) Register any real right, not specifically referred to under the duties of the registrar, and any cession, modification or extinction of any such registered right.
- (s) Register against any registered mortgage or notarial bond any agreement entered into by the mortgagor and the holder of that bond, whereby any terms of that bond have been varied.
- (t) Register general plans of erven or subdivisions of land, open registers of the erven or subdivisions of land shown on such general plans, and record in such registers the conditions upon which the erven or subdivisions have been laid out or established.

- (u) Register powers of attorney whereby the agents named therein are authorised to act generally for the principals granting such powers, or to carry out a series of acts or transaction registrable in a deeds registry, and register copies of such powers registered in another deeds registry, which have been certified by the registrar thereof, or which have been issued for the purpose of being acted upon in a deeds registry by a Master or registrar of the Supreme Court of South Africa or a registrar of mining titles or a mining commissioner in his capacity as registration officer.
- (v) Make, in connection with the registration of any deed or other document, or in compliance with the requirements of any law, such endorsements on any registered deed or other document as may be necessary to give effect to such registration or to the objects of such law.
- (w) Record all notices, returns, statements, or orders of courts lodged with him in terms of any law.
- (x) Remove from his records, with the approval of the Master and after the lapse of ten years from the date of entry in such records, any entry made therein, whether before or after the commencement of this Act, in pursuance of the transmission to him of a notice of transmission or an order of liquidation or sequestration or in pursuance of the lodging with him by the Master of a return under section 10 of the Administration of Estates Act.
- (y) Keep the registers prescribed under this Act and any other law, and make such entries therein as are necessary for the purpose of carrying out the provisions of this Act or such other law and of maintaining an efficient system of registration calculated to afford security of title and ready reference to any registered deed,

and generally the registrar shall discharge all such duties as by law may or are to be discharged by a registrar of deeds or as are necessary to give effect to the provisions of this Act, provided that nothing in this Act contained shall be construed as imposing upon the Rand townships registrar the duty of registering any deed or other document which he would not have registered if this Act had not been passed.

### 3.0 THE POWERS OF THE REGISTRAR

“Each registrar shall have power to-

- (a) To require the production of proof upon affidavit or otherwise of any fact necessary to be established in connection with any matter or thing sought to be performed or effected in his registry;
- (b) Whenever it is in his opinion necessary or desirable to rectify in any deed or other document, registered or filed in his registry, an error in the name or the description of any person or property mentioned therein, or in the conditions affecting any such property to rectify the error: Provided that –
  - (i) every person appearing from the deed or other document to be interested in the rectification has consented thereto in writing;
  - (ii) if any such person refuses to consent thereto the rectification may be made on the authority of an order of Court;
  - (iii) if the error is common to two or more deeds or other documents, including any register in all those deeds or other documents;
  - (iv) no such rectification shall be made if it would have the effect of transferring any right;
- (c) To issue, under condition prescribed by regulation, certified copies of deeds or other documents registered or filed in his registry;

- (d) It in his opinion any deed or other document submitted to him has become illegible or unserviceable, to require that a certified copy thereof be obtained to take its place,”

#### 4.0 GENERAL PROVISION IN THE DEEDS REGISTRIES ACT

The following general provisions in the Act are important:

- (a) When registration takes place – “Deeds executed or attested by a registrar shall be deemed to be registered upon the affixing of the registrar signature thereto.”
- (b) Deeds to follow sequence of their relative causes – “Save as otherwise provided in this Act or any other law or as directed by the court, transfer of land and cessions of real rights therein shall follow the sequence of the successive transactions in pursuance of which they are made and it shall not be lawful to depart from any such sequence in recording in any deeds registry any change in ownership in such land or of such real right.”
- (c) Preparation of deeds by a conveyancer – “Save as is otherwise provided in any other law, no deed of transfer, mortgage bond or certificate of title or registration of any kind mentioned in this Act shall be attested, executed or registered by a registrar unless it has been prepared by a conveyancer practising within the province within which his registry is situate.”
- (d) How real rights shall be transferred – “Save as otherwise provide in this Act or in any other law the ownership of land may be conveyed from one person to another only by means of a deed of transfer executed or attested by the registrar, and other real rights in land may be conveyed from one person to another only by means of a deed of cession attested by a notary public and registered by the registrar. Provided that notarial attestation shall not be necessary in respect of the conveyance of real rights acquired under a mortgage bond.”

#### 5.0 INFORMATION AVAILABLE

When a valuer has to determine market value he has to consider all factors which would influence a purchaser. Many of these factors are obtainable from the records of the Register of Deeds. Some of the information which is contained in the records of the registrar will not necessarily influence a purchaser, but it is nevertheless necessary that the valuer should have knowledge of such information. This information includes the following:

- The correct registered description of the property.
- The size of the property.
- Any restrictive condition of title that may encumber the property.
- Any servitudes that may benefit or encumber the property.
- Any registered leases or cessions of leases that affects the property.
- Who holds the mineral rights?
- The purchase price and date of sale of the property.

Additional information for the benefit of the valuer

- The names of the buyers and sellers of comparable properties.
- The purchases prices and dates of sale.
- Any bonds which are registered against the property.

# MORTGAGES AND THE REGISTRATION OF LAND

## MORTGAGES AND THE REGISTRATION OF LAND

### CONTENTS

1. MORTGAGES
2. REGISTRATION OF LAND

#### 1.0 MORTGAGES

It often happens that a person wishes to borrow money and that he offers his property as security for the debt. This is known as a mortgage or pledge and it is a right over property of another which serves as security for the performance of an obligation. It is the right to sell the mortgaged property and to receive payment of the debt from the proceeds in preference to other creditors.

For example, A owes money to B and B wishes to secure payment as far as possible. If A owns property and B requires preference to other creditors in respect of the property, in the case of movable property, A could deliver the property to B with the intention that it will serve as security for debt. The property is therefore pledged.

If A wishes to retain possession of the property, he can have a mortgage bond registered in favour of B, both for movable and for immovable property. The difference is that in the one instance a mortgage has to be registered and in the other the property has to be delivered. The person against whose property the mortgage is registered is known as the mortgagor, and the person in whose favour the mortgage is registered is known as the mortgagee. In the case of pledge, these persons are known as the pledgor and pledgee.

There are a number of different types of mortgages, but only two will be briefly discussed because they affect the valuer directly.

#### 1.1 SPECIAL MORTGAGE OF IMMOVABLE PROPERTY

This is the most effective form of mortgage. The mortgagor's immovable property is placed in the power of the mortgagee for the purpose of securing the performance of the obligation by the mortgagor to the mortgagee.

A special mortgage of immovable property is effected by a mortgage bond. This is a document which must be prepared by a conveyancer and executed in the presence of the Registrar of Deeds. It must be registered against the title deed of the property.



The property cannot be dealt with in any way which derogates from the rights of the mortgagee without the consent of the mortgagee.

## 1.2 KUSTINGSBRIEF

A kustingsbrief is a particular type of special mortgage over immovable property. It is a mortgage which is granted by the buyer of immovable property for the amount of the selling price, or portion thereof if a deposit has been paid in favour of the seller or any other nominated person. For example, A buys a house for R500 000. He has got R100 000 and he grants a mortgage for the balance of R400 000 to the seller, or he has no money and the seller takes a mortgage for the whole R500 000. It is an essential requirement that the mortgage must be registered simultaneously with the transfer of the property.

A mortgage bond must be executed in the presence of the registrar by the owner of the bonded property or by a conveyancer duly authorised by such owner by power of attorney, and must be attested by the registrar.

## 2.0 REGISTRATION OF LAND

Section 16 of the Deeds Registries Act, 1937 (act 47 of 1937) provides *inter alia* that, save as otherwise provided in that Act or in any other law, the ownership of land can be conveyed from one person to another only by means of a deed of transfer executed or attested by the Registrar of Deeds, and other real rights inland may be conveyed from one person to another only by means of a deed of cession attested by a notary public and registered by the registrar; provided that where the State acquires all the land held under one title deed, the registrar must make such alterations and entries in his registers and such endorsements on such title deed as may be necessary to register transfer to the State of the property so acquired, free of charge.

### 2.1 METHODS OF CONVEYING OWNERSHIP

#### (a) By means of deed of transfer

This is the usual means, section 20 of the Act reads:

“Deeds of transfer shall be prepared in the form prescribed by law or by regulation, and, save as in this Act or any other law provided or as ordered by the court in respect of deeds of transfer executed by the registrar, shall be executed in the presence of the registrar by the owner of the land described therein, or by a conveyancer authorised by power of attorney to act on behalf of the owner, and shall be attested by the registrar.”

#### (b) By means of expropriation

Section 31(1) of the Act reads:

“Whenever any land has, under the authority of any law, been expropriated by, and whenever the ownership of any land has by statute been vested in, the State, any public or local authority or any corporate body or any association of persons, the registrar shall, upon lodgement with him of a deed of transfer on the prescribed form prepared by a conveyancer in favour of the transferee, execute the same. . . . provided that no such transfer shall prejudice any claim to compensation which any owner or other person may have in respect of the change of ownership of such land.”

(c) By means of endorsement of an existing title

See the proviso to section 16 of the Act as reflected in the preamble to paragraph 2 above.

(d) By means of procedure other than the ordinary

Section 33(1) of the Act reads:

“Any person who has acquired in any manner, other than by expropriation, the right to the ownership of immovable property registered in the name of any other person and who is unable to procure registration thereof in his name in the usual manner and according to the sequence of the successive transactions or successions in pursuance of which the right to ownership of such property has devolved upon him, may apply to the court by petition for an order authorizing the registration in his name of such property.”

Such a claim to transfer may, for example, arise from prescription.

## 2.2 SUBSTITUTED TITLE DEEDS

(a) Certificate of registered title

In terms of the Act a certificate of registered title (c.r.t.) can be issued for various purposes. There are several formalities which have to be complied with in the different cases, but we will not deal with them.

- C.R.T. of undivided share (section 34) – Any person who is the joint owner of a piece of land the whole of or shares in which is or are held by such person and others under one title deed, may obtain a c.r.t. of his undivided share in such land.
- C.R.T. of aggregate share (section 35) – Any person who is, by virtue of more than one title deed, the owner of undivided shares in one or more than one piece of land may obtain a c.r.t. in respect of his aggregate share in the land.
- C.R.T. of one or more properties held under one deed (section 36) – Any person who holds two or more pieces of land, or undivided shares therein, by one title deed may obtain a c.r.t. in respect of one or more such pieces of land or of the undivided share or shares held by him there, provided that at least one of the pieces of land or the share therein held by such deed remains held thereby.
- C.R.T. taking place of lost or destroyed deeds (section 38) – If the title deed of any land has been lost or destroyed and the registry duplicate of such title deed has also been lost or destroyed, the registrar shall on written application by the owner of the land, accompanied by a diagram of the land, if no diagram thereof is filed in the registry or in the office of the Surveyor General concerned, execute a c.r.t. in respect of such land in accordance with the diagram of the land.
- C.R.T. to correct error in registration (section 39) – If by reason of an error the same land has been registered in the names of different persons, the registrar may, upon transfer of the land being given to one of them by the other or others, issue to the person to whom transfer is so given a certificate of registered title of the land held by him under various title deeds.

- C.R.T. of portion of a piece of land (section 43) – If a defined portion of a piece of land has been surveyed and a diagram thereof has been approved by the Surveyor General concerned, the registrar may on written application by the owner of the piece of land issue a c.r.t. in respect of such portion.

(b) Certificate of amended title of one piece of land (section 41)

A certificate of amended title may be issued by the registrar in respect of any one piece of land where rectification of title is required in consequence of a survey or re-survey of such land as provided in the Land Survey Act.

### 2.3 CERTIFICATE OF CONSOLIDATED TITLE

Two or more erven in one township, or two or more portions of a farm, may be consolidated to form one erf, or one portion of the farm. Section 40 of the Act provides *inter alia* as follows:

“(1) If a diagram has been framed and approved under the provisions of the Land Survey Act, and such diagram represents two or more pieces of land which are –

- (a) contiguous to each other;
- (b) owned by the same person or by two or more persons in the same undivided shares in each such piece of land;
- (c) (paragraph (c) deleted by section 18(b) of Act 43 of 1957)
- (d) registered in the same property register; and
- (e) situate in the same administrative district,

then the title deed or deeds of the pieces of land may . . . be superceded by a certificate of consolidated title issued by the registrar. . . .

(4) In registering the certificate, the registrar shall endorse on the title deed or deeds that they have, in respect of the land described in the certificate, been superceded by the certificate . . . . .“

### 2.4 CERTIFICATE OF UNIFORM TITLE

Section 42 of the Act reads *inter alia*:

“(1) If the owner of two or more pieces of land which are –

- (a) contiguous to each other;
- (b) situate in the same administrative district;
- (c) registered in the same property register; and
- (d) held on different condition of tenure, or subject to different rights reserved in favour of the State, desires to consolidate his title in respect of those pieces of land on uniform conditions of tenure or subject to the reservation of uniform right in favour of the State, the title deeds of the said pieces of land may, with the written consent of the Minister of Agriculture . . . . be superceded by a certificate of uniform title issued by the registrar. . . . .”

### 2.5 NOTARIAL TYING OF LAND

Sometimes it is not possible to consolidate two or more pieces of land by means of a certificate of consolidated title, for example where such pieces of land are registered in

different property registers, whilst it may, for some reason, be necessary to consolidate the land.

Two contiguous erven may, for example, be situated in different townships (suburbs) and each erf may be too small to be utilised as a building stand in terms of the applicable town-planning scheme, whilst the two together may be large enough. Because the erven are situated in different townships they may not be consolidated by means of a certificate of consolidated title.

The erven, A and B may then be notorially tied. This is a provision which is registered against the title deed of each of the erven, namely that against the title deed of A that A shall not be transferred without B and against the title deed of B that B shall not be transferred without A.

## 2.6 NOTARIAL DEEDS

Sometimes erroneous reference to notarial deeds is made when notarial tying is meant. The Act defines a notarial deed as follows: “notarial deed means a deed attested by a notary public, and does not include a document, a signature to which is merely authenticated by a notary public, or a copy of a document which has been certified as correct by a notary public”.

# THE SURVEYOR GENERAL

## THE SURVEYOR GENERAL

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1. INTRODUCTION
2. THE LAND SURVEY ACT NO. 9 OF 1927
3. POWERS AND DUTIES OF THE SURVEYOR GENERAL
4. PROVISIONS IN RESPECT OF BEACONS
5. INFORMATION AVAILABLE

#### 1.0 INTRODUCTION

In order for the valuer to prepare a fully motivated valuation report factual information needs to be investigated regarding the subject property. The following can be used as sources of information.

#### 2.0 THE LAND SURVEY ACT 9 OF 1927

The Land Survey Act 9 of 1927 was promulgated to consolidate and amend the laws relating to the survey of land. Since promulgation of the Act it has been amended many times. The following definitions as contained in the Act are important:

- (a) “Diagram” - means a document, containing geometrical, numerical and verbal representation of a piece of land, line, feature or area forming the basis for registration of a right which has been signed by a person recognised, under any law then in force, as a land surveyor, or which has been approved or certified by a surveyor general or other officer empowered under any law so to approve or certify a diagram and includes a diagram or copy thereof prepared in a surveyor-general's office and approved or certified as aforesaid or a document which has at any time, prior to the commencement of this Act, been accepted as a diagram in a deeds registry or a surveyor-general's office; but does not include a diagram attached to or issued with a certificate of ownership to land situated in the district of Vryburg, Mafeking or Kuruman.

- (b) “General Plan” – means a plan which, representing the relative positions and dimensions of two or more pieces of land, has been signed by a person recognised under any law then in force, as a land surveyor, or which has been approved or certified as a general plan by a surveyor general or other officer empowered under any law so to approve or certify a general plan and includes a general plan or a copy thereof prepared in a surveyor general's office and approved or certified as aforesaid or a general plan which has at any time prior to the commencement of this Act been accepted for registration in a deeds registry or surveyor-general's office”.
- (c) “Owner” – in relation to land, means the person registered in a deeds registry as the owner of such land and includes; (i) the liquidator of a company or the representative recognised by law, of any owner who has died, become insolvent, assigned his estate, is a minor or of unsound mind or is otherwise under disability, provided that such liquidator or representative acts within the powers conferred on him by law; (ii) the person in whom the ownership of land is vested by statute and the allottee of land held under provisional title and in process of alienation by the State; (iii) the lessee of land held under a lease for a period of 99 years registered in a deeds registry and in Natal, a lease of land from the State for a period of 99 years; (iv) for the purposes of sections 16, 17, 18, 18bis, 21, 22, 31bis, 40, 42, and 43 the holder of a right to minerals in respect of such land.
- (d) “Reference mark” – means a survey mark of permanent construction placed in a township to form one of a system of such marks for the purpose of basing the survey or resurvey of the pieces of land in such township thereon or connecting such survey to resurvey thereto.
- (e) “Trigonometrical station” – means any survey station excluding a reference mark erected by or under the direction of the Director-General and for which he shall have published, or intends publishing official co-ordinate values, and shall include such other stations as maybe prescribed.

### 3.0 POWERS AND DUTIES OF THE SURVEYOR GENERAL

A Surveyor General shall be in charge of the office in respect of which he/she has been appointed and in the region for which he/she has been appointed, he shall subject to the provisions of this Act and the regulations:

- (a) Take charge of and preserve all records appertaining to surveys of land which were prior to the commencement of the Land Survey Amendment Act 1972, preserved as records in a surveyor-general's office, or which may become, after such commencement, records of the surveyor-general's office in respect of which he has been appointed.
- (b) Before any registration is effected in a deeds registry, examine and approve all general plans and diagrams which have been prepared in accordance with the regulations and when applicable in accordance with any statutory approval in so far as the layout is concerned.
- (c) On the diagram of a piece of land define the geometrical figure representing any portion of such land the transfer whereof has been registered in a deeds registry and deduct the numerical extent of such portion.
  - Define the geometrical figure representing any portion thereof for which a certificate of township title or registered title has been issued under the provisions of any law relating to the registration of deeds, and deduct the numerical extent of such portion.

- Define the geometrical figure and make the necessary endorsements in respect of any servitude or lease over or on such land and which has been surveyed in terms of this Act and registered in a deeds registry.
- (d) Cancel and amend in accordance with the provisions of any law any general plan or diagram.
- (e) Prepare, certify and issue, at the request of any person and on payment of such person of such fees as may be prescribed, copies of diagrams and other documents filed in his office and available to the public, and copies of general plans and diagrams registered in a deeds registry in such region.
- (f) Compile and amend from time to time, as the circumstances necessitate such maps as may be required.
- (g) Conduct such geodetic, trigonometrical, topographical, cadastral, level and tide surveys and such other operations as the Director-General may direct.

and generally exercise all such powers and perform all such duties as are by any law conferred or imposed upon a Surveyor-General, and perform such other duties as the Director-General may from time to time assign to him.

#### 4.0 PROVISIONS IN RESPECT OF BEACONS

##### 4.1 No poles etc. to be placed near beacon

Except with the consent of the Surveyor General, it shall not be lawful for any person to place any fence post or fence anchor or any other erection or make any excavation within one metre of any trigonometrical station.

##### 4.2 Repair or re-erection of beacons

- Every owner of land shall maintain in proper order and repair in accordance with regulation any beacon or mark defining a corner point of such land.
- If such beacon or mark has not been maintained in proper order and repair or has been removed or destroyed, the Surveyor-General may, by delivery or by transmission in a registered letter through the post, serve upon the owner of every piece of land whereof such beacon or mark forms a corner, a notice in writing calling upon him to have such beacon or mark restored by a land surveyor.
- If such beacon or mark is not so restored or re-erected within six weeks of the date upon which any such notice was so delivered or posted, the Surveyor-General may cause such beacon or mark to be restored or re-erected by a land surveyor. The Surveyor-General may at the request of the owner extend the period of six weeks.
- The owners of all such pieces of land shall be liable in equal shares for the costs of the repair, restoration or re-erection of any such beacon or mark and the Surveyor General may recover from every such owner his share of all costs incurred by the Surveyor-General under (c) above, provided that if any such owner or the servant or agent of any such owner damaged, removed or destroyed any such beacon or mark, the entire cost of the repair, restoration or re-erection of such beacon or mark shall be borne by such owner.

#### 4.3 Offences in respect thereof

Any person who, without lawful excuse (the burden of proof whereof shall be upon him):

- Alters, moves, disturbs or wilfully damages or destroys any beacon, benchmark, reference mark, signal or trigonometrical station intended to be permanent and erected for the purpose of or in connection with any survey operations, whether such beacon, bench mark, reference mark, signal or trigonometrical station is upon his own land or not.
- Erects any beacon except under the supervision of a land surveyor, whether his intention is to alter the boundary line of any piece of land or to cause deception as to that boundary or not,

shall be guilty of an offence and liable on conviction to a fine not exceeding R500 or, in default of payment to imprisonment for a period not exceeding six month, or such imprisonment without the option of a fine or to both such fine and imprisonment.

#### 4.4 Authority to remove beacons

Any person who, for the purpose of carrying out any work which he may lawfully perform, desires to remove or disturb any beacon or mark erected in connection with the survey of land, shall apply to the Surveyor-General for authority to effect such removal or disturbance and the Surveyor-General may thereupon, at the expense of such applicant, employ any land surveyor to personally effect or supervise the removal or disturbance and subsequent replacement, in accordance with regulation, of such beacon or mark or the erection or placing of any other mark to indicate the position of such removed or disturbed beacon or mark, in such manner as the Surveyor-General may direct.

#### 5.0 INFORMATION AVAILABLE

- Maps
- Aerial Photographs
- Cadastral information
- Erf diagrams
- General Plans

NOTE NEVER SCALE ANYTHING OFF MAPS IN THE ABSENCE OF MEASUREMENTS; IT IS ALWAYS BEST TO MEASURE.



# THE DIAGRAM OF A PIECE OF LAND

## THE DIAGRAM OF A PIECE OF LAND

### CONTENTS

1. INTRODUCTION TO UNITS OF MEASURE
2. SIZE OF DIAGRAM
3. INFORMATION APPEARING OF AN ERF DIAGRAM
4. INFORMATION APPEARING ON A GENERAL PLAN
5. BEACONS

#### 1.0 INTRODUCTION TO UNITS OF MEASURE

##### 1.1 CAPE MEASURES

Before metrification Cape measures were used in land surveying in large part of the country.

- (a) Distance was measured mainly in roods and Cape feet, where 1 rood = 12 Cape feet.
- (b) Area was measured mainly in morgen, square roods and Cape square feet where:  
1 square rood = 144 Cape square feet; 1 morgen = 600 square roods or 86 400 Cape square feet

##### 1.2 ENGLISH MEASURES

- (a) In those parts of the country where Cape measures were not used, distances were measured mainly in English feet and areas in acres, where 1 acre = 43 560 English square feet.
- (b) Building plans and therefore also buildings were measured in English feet in all provinces.
- (c) For converting Cape feet to English feet the following factor was used, where: 1 Cape foot = 1 033 English feet.

### 1.3 METRIC MEASURES

Since metrification, distances measured in metres and areas in square metres or hectares, both in land and buildings.

As you will be dealing with old maps, plans and diagrams which have been measured in the old measures, it is necessary that we know the relation between the old measures and metric measures.

Regulation 33 of the regulations in terms of the Land Survey Act, 1927, reads as follows:

“33

- 1) On any diagram the sides and when required, the co-ordinates, shall be expressed in metres.
- 2) For the purposes of converting co-ordinates on the national survey system the following factors shall be used:

|                      |   |                  |
|----------------------|---|------------------|
| 1 Geodetic Cape Foot | = | 0.314 855 575 16 |
| 1 S.A. Geodetic Foot | = | 0.304 797 365 40 |

- 3) For the purpose of converting areas, the following factors shall be used:

|          |   |                     |
|----------|---|---------------------|
| 1 morgen | = | 0.856 532 hectares  |
| 1 acre   | = | 0.404 686 hectares” |

### 2.0 SIZE OF THE DIAGRAM

The dimensions of a diagram form shall be either 297 by 420 millimetres (A3) or 297 by 210 millimetres (A4), provided that in exceptional circumstances the Surveyor-General may permit the use of forms of different size.

### 3.0 INFORMATION APPEARING ON AN ERF DIAGRAM

#### 3.1 FIGURE

Land shall be represented on a diagram by a single figure.

#### 3.2 SCALE

The figure on a diagram shall be accurately plotted to a prescribed scale. When beacons are in such close proximity to each other that their relative positions cannot be clearly shown without unduly increasing the size of the diagram form, they shall be represented in an insert at a larger scale orientated to the main figure. The scale to which the figure is plotted shall be recorded on the diagram below the figure. The scale of an inset shall be given in such inset.

#### 3.3 TOPOGRAPHICAL FEATURES

All topographical features affecting rights to ownership, such as roads and railways, shall be depicted on the diagram.

### 3.4 LAND HELD UNDER DIFFERENT TENURES OR CONDITIONS OF TITLE

When it is necessary for the purpose of registration to represent on a diagram the boundaries of areas held under different tenures or condition of title, such boundaries shall be represented by black dotted lines and shall be lettered.

### 3.5 CONTIGUOUS PROPERTIES

The directions of the boundary lines of contiguous properties shall be indicated by broken lines drawn from the points representing common beacons, and the names and other designations of such contiguous properties shall be written in their respective positions.

### 3.6 CONNECTING DATA

When no rectilinear boundary of the subdivision coincides, in whole or in part with a boundary of the land being subdivided, the position of two suitably situated beacons of such land, or of a former subdivision thereof, shall be accurately determined and connecting data, comprising the sides, directions and co-ordinated of the quadrilateral figure connecting such beacons to two beacons of the subdivision, shall be furnished on the sub divisional diagram provide that:

- The co-ordinates shall be omitted when no other co-ordinates are furnished.
- Connecting data shall not be furnished on a sub-divisional diagram when the sub-divisional survey is based on trigonometrical stations or on reference marks, and any approved survey, which included at least two beacons, not less than 150 metres apart of such land being subdivided has been similarly based.

When it is necessary to depict the connecting figure, it shall be indicated on a diagram by broken lines or by means of an inset. It shall not be necessary to plot such figure to scale if this is found to be inconvenient.

### 3.7 DESCRIPTION OF BEACONS

A diagram shall contain a clear and concise description of each beacon, and of the locality of each beacon in relation to any permanent feature in its immediate vicinity.

### 3.8 NUMERICAL DATA

A diagram shall contain the following numerical data:

- Co-ordinates – the co-ordinates in metres of, inter alia, every corner point defining the rectilinear figure and of every indicatory beacon defining such corner point, all other corner points in respect of which connecting data are furnished and all trigonometrical stations falling within the figure or within 30 metres of any of the above corner points.
- Distances – the length in metres of the sides of the rectilinear figure and under certain circumstances, the radius of every circular curve forming a boundary, provided that it shall not be necessary to record the distance from an indicatory beacon to an irregular curvilinear boundary.

- Directions – directions to the nearest one second of all sides when the side is part of a boundary, determined during the course of the survey and whose length exceeds 2 000 metres, provided that when the length of the side is less than 2 000 metres the direction may be expressed to the nearest 10 seconds, provided further that on a diagram of land in a township, the direction shall be expressed to the nearest 10 seconds.

### 3.9 AREA

The area, which shall be expressed in square metres to the nearest square metre when the area is less than one hectare, otherwise in hectares to four decimal places.

### 3.10 SERVITUDE DATA

Such data as may be necessary to define the units of the figure representing a servitude.

### 3.11 CERTIFICATE

Every diagram shall be signed by the responsible land surveyor under the following certificate:

Surveyed in (month, year) .....by me

.....  
Land Surveyor

Provided that if a diagram has been compiled for consolidation of title the word “compiled” shall be substituted for the word “surveyed” in the certificate and in the case of a diagram reflecting only official co-ordinate values, the word “framed” shall be substituted for the word “surveyed” in the certificate.

### 3.12 THOROUGHFARES

When a roadway, street, right of way or lane of uniform width abuts on any boundary of township land under survey, its registered width shall be recorded on the sub-divisional diagram.

### 3.13 TRUE NORTH

The direction of true north shall be indicated on every diagram by an arrow pointing, as a general rule towards the top of the paper.

### 3.14 VERBAL DEFINITION

Every diagram shall contain a clear verbal definition of the limits of the figure representing the land. In the definition shall be recited, clockwise and in the order in which they occur, the letters by which the corner points are indicated, and if applicable a description of the curvilinear boundary.

When a river, stream, water-course, wall, kran, or other well defined permanent, natural or artificial feature forms a new boundary, it shall be distinctly recorded in the verbal definition of the figure which specific part of the feature forms such boundary.

### 3.15 DESIGNATION

The land represented on a diagram shall be distinguished by name, letter or number according to customary procedure prevailing in each province. The spelling of the name, or the designation of a piece of land, as recorded on an original diagram, shall be retained in all sub-divisional diagrams, except when a new designation is assigned in terms of section 93(2) of the Deeds Registries Act, in which case the amended farm name or designation shall be recorded.

### 3.16 LOCALITY

When applicable a diagram shall contain an appropriate reference to:

- The township or settlement
- The urban local authority area
- The administrative district
- The province

In which the land is situated.

### 3.17 REFERENCES

Every diagram shall contain:

- A reference to the Surveyor General's number of the original diagram.
- A reference to the title deed to which the original diagram relates.
- Such Deeds Office references to the original diagram as may be required.

## 4.0 INFORMATION APPEARING ON A GENERAL PLAN

### 4.1 WHEN REQUIRED

A general plan shall be provided when:

- (a) Land is subdivided into five or more portions and the original diagram is plotted on a scale which does not permit the deduction of such portions being clearly shown.
- (b) A general plan is required under any law.
- (c) In the opinion of the Surveyor General a general plan is require for any other reason.

### 4.2 INFORMATION APPEARING ON A GENERAL PLAN

The following information which is mentioned above under the heading of information appearing on an erf diagram will also apply to a general plan, the information is as follows – scale, topographical features, land held under different tenures or conditions of title, contiguous properties, description of beacons, numerical data, servitude data, thoroughfares, verbal definition, provided that:

- In the case of townships, the co-ordinates of the reference marks shall be tabulated.
- The sides and direction may be recorded on the figure.

The following information shall be furnished in respect of the subdivisions:

#### 4.2.1 CO-ORDINATES

The co-ordinates which shall be tabulated, of:

- In the case of rural land, all corner points and any indicatory beacons defining any such point.
- The corners of blocks of erven or, in lieu thereof, the pieces of truncated corners, unless adjacent blocks are of regular shape and several block corners or pieces are collinear, in which case the co-ordinates of only the terminals of the lines are required.

#### 4.2.2 SIDES AND DIRECTIONS

The length and direction of each side, which shall be recorded within the figure whenever it is feasible to do so, provided that when the sides of two or more adjoining erven in a block are parallel, it shall only be necessary to record the direction of the first and last of such parallel sides.

#### 4.2.3 AREAS

The areas which shall be tabulated consecutively and separately for each erf or lot.

#### 4.2.4 ROAD WIDTHS

The width of roads when uniform shall be recorded in the figure of the road.

#### 4.2.5 CONNECTING DATA

Sufficient numerical data to connect the blocks with each other and with the boundaries of the outside figure. Such data shall be provided in the figure of the plan or in the inset.

#### 4.2.6 NUMBERS OF ERVEN AND LOTS

The description of each erf or lot shall be written within the figure.

#### 4.2.7 CERTIFICATE

Every general plan shall bear the date of survey and shall be signed under the certificate. If two or more land surveyors were engaged on the survey and the responsibility can be divided, each land surveyor shall sign the general plan under a separate certificate.

### 5.0 BEACONS

#### 5.1 SPECIFICATIONS FOR BEACONS

With a few exceptions the corner points of every piece of land shall be marked by beacons in accordance with the following specifications:

(a) For land situated in a township

A 12 millimetre iron peg or galvanised iron pole, 450 millimetres long, driven in vertically and flush with the surface of the ground.

(b) For land situated in a settlement

An iron standard weighing approximately 3 kilograms per metre, a 20 millimetres iron peg or galvanised iron pole, 600 millimetres long, driven in vertically and projecting not more than 150 millimetres above the surface of the ground.

(c) For rural land

An iron standard weighing approximately 3 kilograms per metre, a 20 millimetre iron peg or galvanised iron pipe, 900 millimetres long, driven in vertically and projecting not more than 150 millimetres above the surface of the ground, over the standard peg or pipe shall be erected a cairn of stones, or a heap of sods, 600 millimetres high with a base of 600 millimetres; or a solid stone or concrete block, 900 millimetres in length and 225 square centimetres in cross section, firmly planted in the ground to a depth of at least 600 millimetres;

Provided that when it is not possible to drive the standard peg or pipe into the ground, the corner point shall be defined by a 12 millimetre hole drilled 25 millimetres deep into the obstructing rock, pavement or structure.

## (d) When a post forms part of a properly erected fence and occupies a corner point of land being surveyed, it may be adopted as a beacon.

For rural land the corner post shall be distinguished from other fence posts in the vicinity by erecting a small cairn of stones or a heap of sods around the post, by paint marks, or by two trenches dug in the direction of the two boundaries meeting at the post. A peg shall not be placed at the foot of the corner post for the for the purpose of identification.

**5.2 INDICATORY BEACONS**

When a corner point of a piece of land falls in an inaccessible or in a secure position, or in a position where it is deemed inadvisable to place a beacon, such position shall be preserved by means of indicatory beacons.

An indicatory beacon shall be placed on each two of the rectilinear boundaries meeting at such corner point, and as close thereto as will be consistent with its safety, provided that it shall not be placed in a position where it could be mistaken for the corner beacon.

An indicatory beacon for defining the intersection of a rectilinear boundary with a curvilinear boundary, shall be placed on the form boundary, as near to the intersection as circumstances permit without endangering the permanency of the beacon and unless impracticable, on the same side of the curvilinear boundary as the land under survey.

# SERVITUDES

## SERVITUDES

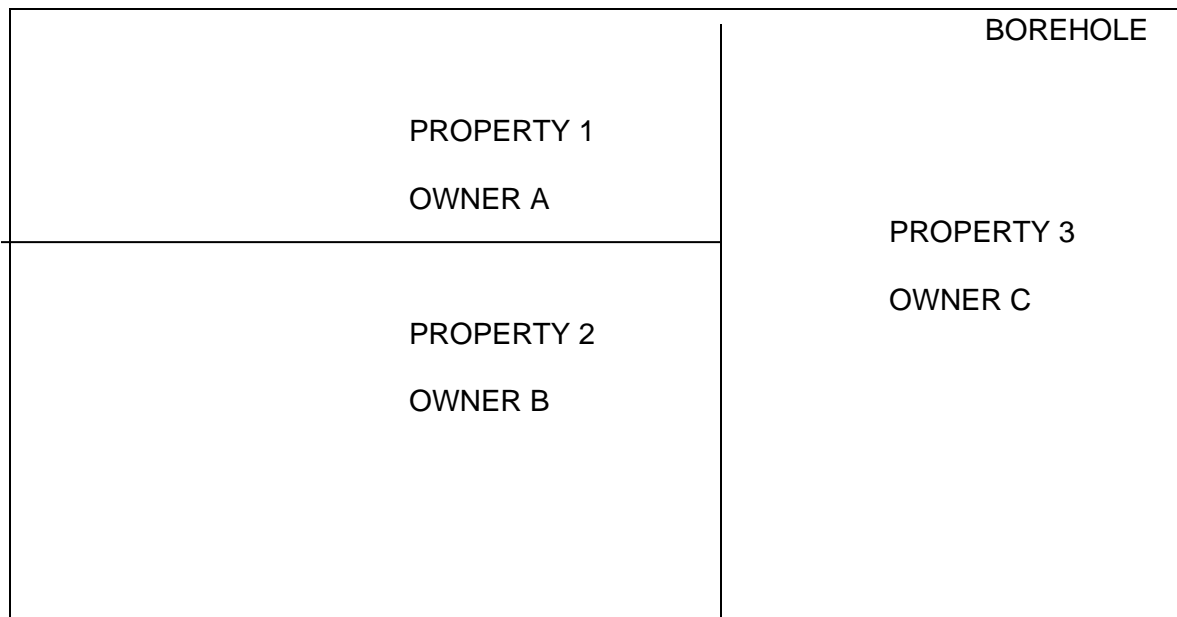
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## 1.0 DEFINITION

A servitude is a right belonging to one person, in the property of another, entitling the former either to exercise some right or benefit in the property, or to prohibit the latter from exercising one or other of his normal rights of ownership.



### RIGHT OF WAY

- If B grants A in his capacity as the owner of property 1 a right of way over property 2, the right of way is a praedial servitude.
- Should A later sell his property to X, X would then be entitled to exercise the servitude because he is the owner of the property 1.
- Where C allows A to draw water from a borehole situated on his property no 3 this is a personal servitude because the servitude is not granted to A in his capacity as owner of property 1.
- Should A sell his property 1 to Y, Y would not be entitled to exercise the servitude merely because he has acquired ownership of property 1: the servitude has been granted to A in his personal servitude.

## 1.1 THE NATURE OF THE SERVITUDE

B wants to cross A's land to get to his property or the railways station.

B could ask A for permission to cross A's property

B cannot possibly ask A's permission every time he want to cross property

A & B may enter into an agreement regulating his right to cross A's property

This agreement when registered in the deeds office becomes a servitude vested in B over A's land

A's land is burdened to the extent that B has a right to cross it.

The land so burdened is called the servient tenement as it serves the person in whom the right is vested.

B's land is called the dominant tenement.

Three main types of servitudes can be distinguished, namely praedial servitudes, personal servitudes and public servitudes.

The main distinction between praedial and personal servitudes lies in the fact that a praedial servitude accrues to a person in his capacity as owner of a particular property whereas a personal servitude is a right in favour of a particular individual. A praedial servitude is not constituted in favour of a particular person: a person is entitled to exercise the servitude because he happens to be the owner of the property which the servitude intends to benefit.

## 1.2 PRAEDIAL SERVITUDE

Exists over one piece of land in favour of another piece of land and its owner for the time being. If the dominant owner sells the servitude is then in favour of the new owner.

## 1.3 PERSONAL SERVITUDES

A personal servitude is one which exists over movable or immovable property in favour of a particular person. A personal servitude exists for the benefit of the person in whom it vests and it is not in favour of or connected to another piece of land.

Both these servitudes have significance for the valuer and could have a bearing on the valuation outcome.

## 2.0 GENERAL PRINCIPLES RELATING TO SERVITUDES

- In general a servitude does not place a responsibility on the owner of the servient tenement to do something positive. The idea is that he will allow the owner of the dominant tenement to do something on, or over or in connection with the servient tenement. Exceptions to this rule are boundary walls.
- A servitude must confer a benefit on the land or person in whose favour it exists. This follows on from the idea that the servient serves the dominant.
- There can be no servitude on incorporeal things.
- A person cannot have a servitude over his own property even if he own two adjoining properties.
- There can be no servitude of a servitude.
- The grant of the servitude will entitle the person in whose favour it was granted to do everything necessary to give him full enjoyment of the servitude.
- The right of the servitude must be reasonable exercised by the person in whose favour it exists.
- The servient owner may not do anything deliberately which could limit or prevent the dominant owner from exercising his right of servitude.

## 3.0 COMMON FEATURES BETWEEN PERSONAL AND PRAEDIAL SERVITUDES

- Personal and praedial servitudes are both limited real rights meaning that the holder of the servitude is entitled to enforce his right against all other persons.
- Both types of servitudes exist over land belonging to someone else.

- The holder of the servitude is therefore entitled to some benefit from another person's property (called the servient property). He is not entitled to demand some positive act on the part of the owner of that property.
- Neither a personal nor a praedial servitude can exist over property owned by the holder of the servitude. A servitude always exists over property belonging to someone else, and if the holder should become the owner of that property the servitude lapses.
- The holder of a praedial or a personal servitude cannot grant to another a servitude in respect of the servitude which he holds.
- The owner of property subject to a servitude is bound to allow the holder of the servitude the opportunity to exercise his right.

It is advisable that the parties indicate by agreement what is deemed to be a proper use of the servitude, the more precise the agreement the less room there is for a complaint that the servitude is not exercised reasonably.

The holder of a servitude is entitled to protect his interests by means of an interdict. In appropriate circumstances damages can be claimed if the servitude holder suffered a loss as a result of a wrongful interference with his rights by someone else.

#### 4.0 PRAEDIAL SERVITUDES

##### 4.1 General features

A praedial servitude is a limited real right constitutes in favour of the owner of a property in his capacity as such. The servitude entitles him to exercise some right on the property of another, or to prohibit another landowner from exercising one or other ownership right.

There is no fixed number of praedial servitudes. A praedial servitude can have any conceivable content. The following requirements have to be met before a right will qualify as a praedial servitude.

- There must be two tracts of land or erven, the dominant tenement and servient tenement. The servitude benefits the person who is the owner of the dominant tenement. In the drawing property 1 constitutes the dominant tenement and property 2 the servient tenement.
- The servitude must offer some advantage either present or future, to the dominant tenement whereby its value of the enjoyment to be derived from it is increased.
- A praedial servitude can be granted in perpetuity or for a limited period only, say 10 years.
- A praedial servitude cannot compel the owner of the servient tenement to do something positively on the property.
- A praedial servitude is indivisible. This means that a joint owner of the dominant tenement cannot acquire a servitude in favour of his undivided share only.

A praedial servitude cannot be alienated independently of the dominant tenement.

##### 4.2 TYPES OF PRAEDIAL SERVITUDES

The following are the most common types of praedial servitudes.

- Servitudes of way, including a servitude of footpath, trekpath (the right to drive cattle over the land of another) and a general right of way.
- Servitudes pertaining to water, such as a servitude relating to the watering of cattle, the drawing of waste and the release of water on to the servient tenement.
- Servitudes of grazing, such as the right to graze a specified or unspecified number of cattle on another's land.
- Servitudes of outspan, that is a servitude whereby the owner of the dominant tenement has the right to graze and water his cattle on the servient tenement.
- Servitudes giving the holder of the dominant tenement the right to gather raw materials such as wood, clay or sand from the servient tenement for use on the dominant tenement.
- Servitudes regulating building activities, such as servitude prohibiting the construction of a building above a certain height, or the construction of a building whereby another's light or view is obscured.
- Servitudes granting the right to support buildings and allow balconies to overhang another person's property.
- Servitudes granting the right to lead away sewage, drain and normal storm water.

Some of these servitudes have become less important over the years as a result of statutory control. Modern health regulations adequately control the supply of light and air. Servitudes such as trekpath and outspan have, to a certain extent, fallen into disuse because of modernization. The only example of servitude of outspan that still exists is near Epping market and at Wingfield.

## 5.0 PERSONAL SERVITUDES

### 5.1 GENERAL FEATURES

A personal servitude is a limited real right entitling the holder in his personal capacity to exercise some right in the property of another, or to prohibit another landowner from exercising one or other normal ownership right. Two erven are not required for the establishment of a personal servitude, the personal servitude is constituted in favour of a particular individual. Apart from this a personal servitude has the following features:

- A personal servitude is not granted in perpetuity. The servitude can be granted for a specified period, if no period is specified, it terminates on the death of the holder of the servitude.
- Once acquired a personal servitude cannot be alienated or transferred to someone else. The servitude holder can, however, let or sell to another person the use and enjoyment of his servitude.
- A personal servitude is divisible meaning that it can be granted on an undivided share in property which is held in joint ownership.

### 5.2 TYPES OF SERVITUDES

As in the case of praedial servitudes, there is no fixed number of personal servitudes. The right to lay cables and pipes on, over or under the ground to provide water, electricity and gas is a personal servitude, as is the right granted to an individual to trade on a specific tract of land. Rights which has the same content as praedial servitudes but which are granted in favour of a particular individual, are also personal servitudes.

An example of this right of way over the property granted in favour of a particular individual. The most common forms of personal servitudes are the following usufruct, use and habitatio.

- Usufruct is a personal servitude in terms of which the usufructuary (the holder of the servitude) is entitled to use and take the fruits of another person's property. 'Fruits' here mean natural fruits such as crops, or civil fruits such as the interest earned on capital invested or the rental received on a lease of immovable property. Usufruct is commonly used in wills, a testator bequeaths property to certain persons (for example his children) subject to a usufruct in favour of another person (his wife). The fundamental principles underlying usufruct is that the capital in its entirety remains with the owner, but the yield of the servient property accrues to the usufructuary either wholly or in part. On termination of the usufruct, the property must be returned to the owner in the same condition as it was when received, reasonable wear and tear accepted. The usufructuary is obliged to maintain the property at his own expense.
- Use confers the right of use the property of another person for daily needs. The holder of the right is entitled only to those fruits that provide him and his family with the necessities of life. Surplus fruits cannot be sold, nor can the holder of the right alienate or let his use.
- Habitatio is the right to occupy or let another person's house. The holder of the right cannot allow strangers to stay in the house free of charge. He is also entitled to gather fruits from the property for his daily use. Being a personal servitude, the right to stay in the house lapses upon death of the holder.

## 6.0 PUBLIC SERVITUDES

### 6.1 GENERAL FEATURES

A public servitude is a right constituted in favour of the general public. It is not a praedial servitude because there is not a dominant tenement involved; it is not a personal servitude because the servitude is constituted in favour of the public and not a particular individual.

### 6.2 TYPES OF PUBLIC SERVITUDES

- Public outspan, provides for the resting and care of livestock, outspans are usually close to public roads.
- Common pasturage
- Public roads, e.g. national roads, main roads, district and provincial roads.
- Public trekpaths

## 7.0 ESTABLISHMENT OF PRAEDIAL AND PERSONAL SERVITUDES

- By agreement between the parties concerned. The owner of the servient tenement is normally compensated for the diminution in rights on his land. The amount of compensation could be regarded as the price of the servitude.

- By subdivision of land when one portion obtains a right of way over the other. In this instance the dominant tenement is sold together with the right of servitude and the servient tenement is sold subject thereto and there is no price for the servitude as such.
- By the establishment of a township where some erven are made subject to servitudes. Here also the erven are sold subject to the servitudes and there are no prices for the servitudes.
- A court order, which is normally, obtained when land has no access or where a servitude results from prescription. In the case of a servitude granted to provide access to a piece of land, the court normally requires that the owner of the servient land be compensated.
- Expropriation in which case the owner of the servient land is entitled to compensation for actual financial loss or inconvenience. The amount of compensation is however not an indication of the value of the servitude.
- A will, usufruct almost all of these are personal servitudes
- Legislation, road widening, servitudes are sometimes established by legislation, without reference to a particular piece of land, for example all land in the old Transvaal which was more than 100 morgen in extent used to be made subject to a servitude of outspan, one seventy fifth part of the farm in extent. No compensation was paid for these servitudes. In other examples legislation provides for the proclamation of servitudes, for example for road purposes, normally the owners are compensated for their loss in such cases.

#### 8.0 EXTINCTION OR TERMINATION OF PRAEDIAL AND PERSONAL SERVITUDES

- By agreement between the parties
- Abandonment of the servitude
- The repealing of legislation
- A notice in the government gazette
- The merger of the dominant and servient tenement under one owner
- Expiry on the death of a person
- Disuse after 30 years give right to prescription
- Destruction of the property which is subject to a servitude

#### 9.0 PUBLIC SERVITUDES ARE ESTABLISHED BY THE FOLLOWING

- Immemorial user, this is where the public has exercised the particular right for so long that it can be said that the state of affairs has an immemorial existence. A period of 30 years is deemed to constitute immemorial use.
- A reservation of the servitude (for example a public right of way) when State land is granted to a particular individual.
- Registration of a notarial deed in terms of the Deeds Registries Act.
- Registration of a public right of way in a partition deed in terms of section 65(1) of the Deeds Registries Act 47 of 1937. This usually takes place when land is subdivided for township development.
- Statutory provisions such as the National Roads Act 54 of 1971 and the various provincial ordinances which give the State President and the provincial Administrators the authority to proclaim public roads.

## 10.0 RIGHTS TO PROPERTY

- (a) An owner of a property cannot also be the owner of a limited real right over his own property or create such a right over his own property in favour of himself.
- (b) Limited real rights exist in respect of land and limit ownership of another person's property.
- (c) A limited real right can also be established in respect of another limited real right (personal right) as happens when a usufructory interest is mortgaged.
- (d) The term limited real right is used because this type of real right can never confer on the holder the same extensive powers as the right of ownership itself.
- (e) The right of ownership may be so restricted as to have virtually no monetary value.
- (f) Bare ownership can be transformed into full ownership if the real rights restricting ownership lapse or are cancelled.
- (g) The title deed may be examined to check if there are any real rights attached to the property.

## 11.0 COMMON RESIDENTIAL SERVITUDES

### Sewers and water pipes

These servitudes occur mostly in an around urban areas. Although the owner of one piece of land could have a servitude to lay a water pipe across his neighbours land, in which case it is a praedial servitude. In the majority of cases such servitudes are personal and in favour of a local authority or some other authority.

The width of the servitude is determined by the size and number of sewers or water pipes to be laid across the land and is contained in the agreement between the parties.

The rights of the owner of the land are restricted to the extent that he is not entitled to erect a building or other permanent structure within the specified distance from the centre line of the servitude. Furthermore, he is not entitled to plant any trees within the servitude area or depending on the type of tree, within a specified distance outside the servitude area.

The servitude also provides that the authority concerned or its employees shall have free access to the servitude for maintenance purposes.

Usually sewers and water pipes are laid well below the ground and consequently the surface of the land may still be used for normal agricultural activities.

In urban areas the effect of a sewer or water pipe line servitude could be somewhat different. The existence of a sewer or water pipe through the middle of an erf could depending on the size of the erf render the land altogether unsuitable for development. Usually such servitudes in urban areas are along boundaries of erven, where they are less onerous to the owners of the land.

# THE LOCAL AUTHORITY

## THE LOCAL AUTHORITY

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- 2.0 WHAT IS ZONING?
- 3.0 INFORMATION AVAILABLE
- 4.0 TYPES OF APPLICATIONS
- 5.0 BUILDING REGULATIONS

#### 1.0 TOWN PLANNING SCHEMES

##### 1.1 THE GENERAL PURPOSE OF A TOWN PLANNING SCHEME

The general purpose of a town planning scheme is to enable the comprehensive management of all property and related public sector functions across the City, through the implementation of the following general guidelines.

- (a) To promote and implement the applicable planning and development principles as adopted by the relevant national, provincial and municipal spheres of government from time to time; and
- (b) To determine or limit land use rights to provide for control over use rights, to manage urban growth and development, and to manage conservation of the natural and cultural environment in order to:
  - Achieve co-ordinated and harmonious development in a way that will most effectively promote public health, safety, good order, amenity, convenience and general welfare of the inhabitants of the municipal area;
  - Promote integrated and sustainable development;
  - Promote sound environmental management and where appropriate conservation of important natural and cultural resources;
  - Enhance the quality of the built environment;
  - Promote a mutually supportive mix of land uses managed in an orderly manner;
  - Promote employment and the opportunity for affordable housing in appropriate locations and
  - Guide urban growth and contain urban sprawl.



## 1.2 TYPES OF PLANS AND POLICIES

Various types of plans, strategies and policies with different levels of detail and areas of application are components of the planning system, including the following:

- (a) Integrated development plan, which refers to a spatial development framework and land use management system, aligns the resources and capacity of the municipality with implementation programmes and provides a policy framework and planning input for annual budgets.
- (b) Spatial development frameworks and plans consist of strategies, guidelines and development goals indicating spatial implications and proposals for an integrated development plan.
- (c) Structure plans are written strategies or plans dealing mainly with one of the sectors or particular subjects that form part and integrated development plan.
- (d) Zoning maps identify the permitted use of property, thereby encouraging certain land uses and restricting others in a particular area.
- (e) Detailed Urban Design, Heritage Resource, Urban Renewal or Environmental Management Plans depict detailed proposals and management principles for local areas.
- (f) Policy Plans are written strategies, criteria or guidelines that provide the framework for decisions made in terms of a zoning scheme

## 2.0 WHAT IS ZONING?

Zoning is a method of development management that designates property for a particular development or use category or zone. Within each zone there are provisions and rules setting out the purposes for which property may be used and the manner in which it may be developed. These rules which include both rights and obligations for property owners; apply to land, buildings and structures. Zoning has a more precise application as the legal statement of rights and obligations for property, although other laws may also apply. Zoning should work in conjunction with and be linked to policy plans and other tools in the land use management system to enable the City Council to manage land and development in the city.

### 2.1 ZONES

All properties within the municipal area shall be allocated a zone for the purposes of managing land use, the use of buildings and the extent of development.

Please be advised that the City of Cape Town is a consolidation of many smaller municipalities each which had their own town planning schemes and regulations there is in essence no uniform town planning scheme for the City of Cape Town. Proposals have been made to have one town planning scheme covering the whole City of Cape Town but this is still in a discussion stage and no formal scheme has been adopted. When valuing property in an area which was previously a smaller municipality it is advisable to obtain a copy of the applicable town planning scheme.

| ZONING                       | SUB-ZONES |
|------------------------------|-----------|
| Single Dwelling Residential  |           |
| Intermediate Residential     |           |
| Grouped Dwelling Residential |           |

|                      |   |
|----------------------|---|
| General Residential  | R1, R2, R3, R4, R5, R6, R7, R8, R9, R10, R11, R12 |
| Special Business     |   |
| General Business     | B1, B2, B3, B4                                    |
| General Commercial   | C1, C2, C3, C4                                    |
| General Industrial   |   |
| Noxious Industrial   |   |
| Show and Exhibition  |   |
| Community Facilities |   |
| Public Open Space    |   |
| Street Purposes      |   |
| Undetermined         |   |

## 2.2 FACTORS WHICH CONTROL THE AREA AND EXTENT OF BUILDINGS

### 2.2.1 Building lines

- Imaginary lines on an erf usually parallel to and at a specified distance from a boundary. No building may be erected between these lines and the boundary.
- Also ensures that buildings are not erected against or so close that insufficient air and light is permitted to the buildings.

### 2.1.2 Density

- Minimum areas of special residential erven
- Avoid erven becoming too small and unattractive to neighbourhood.
- Erven, which are large, cause the cost of providing services to increase.

### 2.1.3 Coverage

- The portion of an erf that may be covered by buildings expresses as a percentage.
- Ensure sufficient air and light in and open space around buildings.

### 2.1.4 Floor space ratio

- the ratio obtained by dividing the gross floor area of building by area of the erf
- controls gross floor area of building

### 2.1.5 Height

- Determines the height of buildings and is usually given in metres or floors.
- Amenity and convenience

### 2.1.6 Access and egress from erven

- Determine where access and egress to erven will be allowed.
- Safety aspects.

### 3.0 INFORMATION AVAILABLE

The following information is obtainable from the local authority

- Zoning information
- Possible road widening
- Relevant by-laws relating to the property
- Consent uses
- Departures from town planning schemes

### 4.0 TYPES OF APPLICATIONS

An owner of property may submit any one or more of the following types of applications relating to development. These applications are not necessarily made in terms of Planning Law or the Zoning Scheme. These applications may or may not involve a public participation process.

- (a) Rezoning application is required to obtain approval for a change of use rights to permit a land use not allowed in terms of the current zoning for a particular land unit.
- (b) Departure application is required to obtain: (i) changes to the zoning provisions or development rules which set out the permitted extent of development on a land unit (such as building lines or coverage), without rezoning the land unit or; (ii) permission for a temporary use right that is not otherwise provided for in the zone concerned.
- (c) Consent use application is required to obtain approval for a land use listed as a "consent use" in the applicable zone.
- (d) Subdivision application is required to create two or more land units, capable of being registered in the Deeds Registry.
- (e) Authorisation in terms of the National Environment Management Act is required to obtain an environmental permit for activities governed by the provisions of that Act.
- (f) Approval is required for specified activities in terms of the National Heritage Resources Act, including demolition and changes to buildings over 60 years old.
- (g) Removal or amendment of restrictive title conditions is required where there is a conflict between title deed conditions and an application under the Planning Law or a zoning scheme.
- (h) Amendment of conditions of approval is needed to change a condition or conditions imposed by Council in terms of the Planning Law or a zoning scheme.
- (i) Approval or amendment of plans (such as site development plans, precinct plans, structure plans and development frameworks) is required in order to obtain approval for applications submitted under Planning Law or this zoning scheme, which require such plans as part of the development management system.
- (j) Other applications may be required to obtain Council's approval for a range of matters provided for in a zoning scheme (such as approval to use property for a certain temporary activity).
- (k) Building plan approval in terms of the National Building Regulations and Building Standards Act is required before construction of buildings is permitted, and Council will not approve building plans that do not comply with the zoning scheme.

## 5.0 BUILDING REGULATIONS

Each local authority administers a set of building regulations. These regulations are designed to protect the health, guarantee the safety of people living or working in buildings and safeguard members of the public in the vicinity.

No new buildings may be constructed or existing buildings altered before a plan containing the full particulars regarding the proposals has been submitted to the local authority. Acceptance or rejection of the plan by the local authority will depend on whether or not the proposed work complies with the relevant building regulations. Building activities may only commence after the plan has been approved. Should a building not be constructed according to the approved plan, or should a building be erected in the absence of an approved plan, the owner is guilty of an offence under the building regulations.

Building inspectors employed by the local authority keep a close watch on the progress of building work.

The following are examples of matters regulated by means of building regulations: the height of boundary walls, excavations for and the construction of, foundations, storm-water drainage and sewerage, the removal of refuse and building rubble resulting from the building process, the testing of materials to be used in the construction of a building, the possible demolition, or imposition of restrictions on the use of a building which has not been constructed in accordance with the building regulations, the fate of dangerous and offensive, unhealthy or unusable buildings and structures, and the materials which must be used in for example, flush-toilets and bathrooms.

# FACTORS WHICH INFLUENCE THE DEMAND AND SUPPLY OF PROPERTY

## THE SUPPLY AND DEMAND FOR PROPERTY

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#### GENERAL RESIDENTIAL PROPERTIES

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## 1.0 INTRODUCTION

The information which must be collected for each valuation is divided into four categories and is as follows:

- (a) Information regarding the current market and economic situation, both with regards to the country (macro environment).
- (b) Information about the general environment.
- (c) Information about the immediate environment.
- (d) Information about the property itself.

The lists or points mentioned hereunder are merely an indication of the type of information that should be collected or noted by the valuer. The list is by no mean exhaustive or final and each valuer should compile their own list or add to the list depending on the circumstances and the type of information.

## FACTORS INFLUENCING A SINGLE RESIDENTIAL PROPERTY

### 2.0 THE CURRENT MARKET AND ECONOMIC CONDITIONS

- (a) Financial – rates of interest and the availability of loans.
- (b) Political climate – General optimism and confidence in the future.

### 3.0 THE GENERAL ENVIRONMENT (TOWN OR CITY)

- (a) Population trends – is the population shifting, is it increasing or decreasing?
- (b) Planning trends – Zoning and possible changes
- (c) Supply and demand – in respect of both improved and unimproved properties.
- (d) Building costs and trends.
- (e) The property market – is the market active or inactive? Market trends.

### 4.0 THE IMMEDIATE SURROUNDINGS

- (a) Popularity of the area concerned.
- (b) Income group in which the inhabitants of the area fall. Is a person who belongs in that income group still in a position to buy a property in the area concerned? It is important to note that buyers in a boom period are often compelled to buy a property in a cheaper neighbourhood. The reason is that the value of the more expensive properties is the first to rise in a boom period. The result is that some intending buyers of property in those areas are compelled to buy in cheaper areas. This causes an increase in demand in the cheaper areas, resulting in a rise in value in those areas. Then the process is repeated lower down on the scale, so that the value of the cheaper class of property, at the end of the boom period when the increase in the value of the more expensive properties has already flattened, still rises.
- (c) Services – availability of electricity, water, sewerage, tarred roads, stormwater drains and telephones.
- (d) Schools – the ideal situation of a residence as regards schools in such that primary school children are within walking distance of the school, without their children having to cross main roads, and that high school children can conveniently cycle to school.

On the other hand a residence must not be situated too close to a school, seeing that noise during school times and parking on pavements during evening meetings may be a nuisance.

- (e) Churches – a residence ought to be within a convenient distance from a church. Once more because of the annoyance of parking on pavements during church services and other gatherings, a residence must not be situated too close to a church.
- (f) Shops – In view of the petrol price increases it is a great advantage if a residence is situated within walking distance or at least within convenient driving distance of shops, especially shops which satisfy the daily needs of customers.
- (g) Availability of a library and other communal facilities.
- (h) Availability of parks and other open spaces.
- (i) Availability of doctors and dentists.
- (j) Transport facilities – bus and taxi services, traffic routes with reference to work places.
- (k) Work opportunities for the residents within the area concerned.
- (l) Topography of the area – is the area topographically homogeneous, or are there higher and lower lying parts?
- (m) Character of the area. Are the values of properties in the area homogenous or are there expensive and cheaper parts. This aspect is usually coupled with topography. Higher lying areas have a higher demand and the more steep the erf is the more sought after it is.
- (n) Soil conditions – is the condition of the soil in the area suitable for building purposes or not, is the soil conditions in the subject area the same or are there soil problems in some of the areas. Soil conditions can also have an effect on the value of a property.
- (o) Pollution – is the area subject to smoke, dust or noise coming from neighbouring industries. An area may be free from such disadvantages in the summer but in winter it is covered in smog. The valuer should be aware of such possibilities.
- (p) Zoning and development schemes – Is the area concerned established as a special residential area or is there a possibility of roads and or other planning factors which may result in economic obsolescence of the area.
- (q) Sales prices and trends – both of improved and unimproved erven in the area.
- (r) Building costs and trends in the area – it is a well known fact that building costs in a particular town can vary from one area to another. For example, it may cost more to build a particular house in an up-market suburb than it would cost to build the same house in an average suburb.

## 5.0 THE SUBJECT PROPERTY

### 5.1 THE ERF

- (a) Identification of the property. The registered description and the area of the property, as well as the physical identification of the property on the ground are important. It has happened that a valuer has valued a property and only later discovered that he has valued the wrong property. Valuers have to be careful especially in areas where there is a lot of vacant land to correctly identify the property.
- (b) The zoning in accordance with the applicable town planning scheme with special emphasis on the minimum size requirements for erven in a particular area.
- (c) Is there a possibility that surrounding properties may be rezoned?

- (d) The shape of the stand. Is the stand rectangular, square or irregular in shape, can a dwelling be easily built on the erf.
- (e) Orientation – South Africans choose to build their houses so that a maximum of sunshine penetrates in winter and a minimum in summer.
- (f) Access – is the erf accessible from the street or is it higher or lower than the street level, which may require an access road to be built.
- (g) Privacy – does the erf allow a measure of privacy from the neighbours?
- (h) Is the property situated on a busy street or thoroughfare or is it quiet?
- (i) Situation of the erf in the block. In the old days erven situated on a corner were considered to be more valuable, this trend is no longer applicable for the following reasons. (i) Because the erf border two streets there are two front building lines which makes placement of the buildings a challenge. (ii) There are two pavements which must be maintained. (iii) Lack of privacy, it is difficult to plan the orientation of the house without losing some level of privacy.
- (j) Servitudes – are there servitudes on the property which may affect the laying out of the buildings or gardens?
- (k) Building lines – building lines and side spaces on the erf must be established, building lines will have an influence on the placing of buildings and the use of the erf.
- (l) Other restrictions – there are often title conditions such as a prohibition against iron roof or there are minimum slopes of roofs, etc.
- (m) Conditions of soil – both for building and for gardening purposes.
- (n) View – does the site have a view?
- (o) Situation of the property with regard to schools, churches, shops, business, etc.
- (p) Character and quality of surrounding houses and other buildings, if the erf is situated next to a block of flats this may adversely affect the value of the erf.
- (q) Services – availability of electricity, water, sewerage, tarred roads, stormwater drains and telephones.

## 5.2 THE IMPROVEMENTS OR BUILDINGS

- (a) Do the improvements fit in with the surrounding buildings?
- (b) If the house is older than the surrounding houses, can it be modernized economically?
- (c) If the house is newer and modern than the surrounding houses, does the neighbourhood have an adverse effect on the value of the subject property?
- (d) Is the house built in such a way that the view can be utilised?
- (e) What kind of roof does the house have and what is the condition of the roof?
- (f) Is the house practically and economically designed and does it satisfy current norms or has functional obsolescence set in?
- (g) Is there sufficient insulation and ventilation?
- (h) Finishings of floors, walls and ceilings.
- (i) Are the bathrooms adequate and do they satisfy the requirements of the potential buyers?
- (j) Do the garage and outbuildings satisfy the requirements of the potential buyers?
- (k) Are there enough electric lights and wall plugs?
- (l) What is the physical condition of the building is it well maintained or does the house need maintenance?



## FACTORS INFLUENCING GENERAL RESIDENTIAL PROPERTY

### 6.0 THE CURRENT MARKET AND ECONOMIC CONDITIONS

- (a) Financial – rates of interest and the availability of loans.
- (b) Political climate – General optimism and confidence in the future.

### 7.0 THE GENERAL ENVIRONMENT

- (a) Population trends – is the population shifting, is it increasing or decreasing? Population tendencies are more important to flats than to single residences, since only one buyer is needed for a residence while for a block of flats a number of tenants or in the case of a sectional title block a number of buyers. Whether a block of flats will be profitable or not is closely linked to the population tendencies of the neighbourhood.
- (b) Planning trends – Zoning and possible changes
- (c) Supply and demand – in respect of both improved and unimproved properties.
- (d) Building costs and trends.
- (e) The property market – is the market active or inactive? Market trends.

### 8.0 THE IMMEDIATE SURROUNDINGS

- (a) Popularity of the area concerned.
- (b) Income group in which the inhabitants of the area fall. In the case of flats a distinction must be made between the following:
  - (i) An area which has been zoned as residential.
  - (ii) An area with only isolated general residential erven.
- (c) Services – availability of electricity, water, sewerage, tarred roads, stormwater drains and telephones.
- (d) Schools – the ideal situation of a residence as regards schools is such that primary school children are within walking distance of the school, without their children having to cross main roads, and that high school children can conveniently cycle to school. On the other hand a residence must not be situated too close to a school, seeing that noise during school times and parking on pavements during evening meetings may be a nuisance.
- (e) Churches – a residence ought to be within a convenient distance from a church. Once more because of the annoyance of parking on pavements during church services and other gatherings, a residence must not be situated too close to a church.
- (f) Shops – In view of the petrol price increases it is a great advantage if a residence is situated within walking distance or at least within convenient driving distance of shops, especially shops which satisfy the daily needs of customers. This item is of less importance in the case of flats than it is in the case of single residential properties, since fewer full time housewives inhabit flats and single female residents do their shopping during their lunch hour or on the way home from the office.
- (g) Availability of a library and other communal facilities.
- (h) Availability of parks and other open spaces. It is important for young mothers with babies to be within walking distance of the park, but this also has security issues attached to it.
- (i) Availability of doctors and dentists.

- (j) Transport facilities – bus and taxi services, traffic routes with reference to work places.
- (k) Work opportunities for the residents within the area concerned.
- (l) Topography of the area – plays a less important role in the case of general residential properties.
- (m) Character of the area. Is it predominately a flats area or are there only a few isolated blocks of flats. Are there predominately rental blocks or sectional title blocks or is there a mixture of both. There is a distinct difference between a tenant of a rental block and a buyer of a sectional title flat. The former tends to regard the rental flat as a temporary residence whereas the latter often has the same approach as a home owner.
- (n) Soil conditions – is the condition of the soil in the area suitable for building purposes or not, is the soil conditions in the subject area the same or are there soil problems in some of the areas. Soil conditions can also have an effect on the value of a property.
- (o) Pollution – is the area subject to smoke, dust or noise coming from neighbouring industries. An area may be free from such disadvantages in the summer but in winter it is covered in smog. The valuer should be aware of such possibilities.
- (p) Zoning and development schemes – Is the area concerned established as a special residential area or is there a possibility of roads and or other planning factors which may result in economic obsolescence of the area.
- (q) Sales prices and trends – both of improved and unimproved erven in the area.

## 9.0 THE SUBJECT PROPERTY

### 9.1 THE ERF

- (a) Identification of the property. The registered description and the area of the property, as well as the physical identification of the property on the ground are important. It has happened that a valuer has valued a property and only later discovered that he has valued the wrong property. Valuers have to be careful especially in areas where there is a lot of vacant land to correctly identify the property.
- (b) The zoning under the applicable town planning scheme.
- (c) Is there a possibility that surrounding properties may be rezoned?
- (d) The shape of the stand. Is the stand rectangular, square or irregular in shape, can a block of flats be easily built on the erf.
- (e) Orientation – An erf with a long east-west measurement is a far more attractive proposition to a developer than one with a long north-south measurement.
- (f) Access – is the erf accessible from the street or is it higher or lower than the street level, which may require an access road to be built.
- (g) Is the property situated on a busy street or thoroughfare or is it quiet? Tenants do not necessarily worry about streets being busy or not, however if there is a choice between a rental flat on a busy street and one on a quiet street the one on the quiet street will be chosen. In the case of a sectional title block, there is a greater probability that buyers will take notice of the effects of a street.
- (h) Situation of the erf in the block. Is it a corner erf or not? A corner erf can have a slight advantage over an erf in the middle of a block as the corner erf offers two possibilities of access and regress from an erf.
- (i) Servitudes – is there servitudes on the property which may affect the laying out of the buildings or gardens?

- (j) Building lines – building lines and side spaces on the erf must be established, building lines will have an influence on the placing of buildings and the use of the erf.
- (k) Other restrictions – there are often title conditions but there may also be restrictions regarding height, floor space ratio etc. Special attention should be given to parking requirements.
- (l) Conditions of soil – both for building and for gardening purposes. The valuer should make an effort to obtain information regarding the soil conditions as the foundation structure for flats is different to that of single residential properties.
- (m) View – does the site have a view? A block which has unobstructed view can be more valuable than a block with a view of other blocks of flats.
- (n) Situation of the property with regard to schools, churches, shops, business, etc.
- (o) Character and quality of other buildings, a tenant takes less notice of the surrounding area than the potential purchaser of a sectional title flat.
- (p) Services – availability of electricity, water, sewerage, tarred roads, stormwater drains and telephones.

## 9.2 THE IMPROVEMENTS OR BUILDINGS

- (a) Do the improvements fit in with the surrounding buildings?
- (b) If the buildings are older than the adjoining buildings can they be modernized to such an extent that they will be more acceptable to potential tenants or buyers, both from a leasing and a sale point of view?
- (c) If the buildings are newer and more modern than the adjacent buildings, does the neighbourhood have a detrimental effect on the value of the subject property, both from a leasing and a selling point of view?
- (d) Is the full development potential of the erf being fully utilised? If not what are the possibilities of extending the building so as to utilise the building's full potential?
- (e) What kind of roof does the building have and what is the condition of the roof?
- (f) Has the building been designed practically and economically and does it comply with current norms or has function ageing occurred? Here the value has to be very careful. Often old blocks of flats do not comply with modern standards in respect of built in cupboards, size of windows, etc. In general the rooms of older buildings are larger than those of modern newer buildings and this compensates for the lack of modern conveniences.
- (g) Are there sufficient insulation and ventilation and exposure to sunlight during the winter months?
- (h) Finishing of floors, walls and ceilings.
- (i) Are the bathrooms adequate and do they satisfy the requirements of the potential buyers and tenants?
- (j) Are the parking facilities adequate for tenants, buyers and visitors?
- (k) Are there enough electric lights and wall plugs?
- (l) What is the physical condition of the building is it well maintained or does the building need maintenance?
- (m) Lifts – are there enough lifts and in what condition are they?
- (n) The Registrar of Deeds will not open a sectional-title scheme if the development does not comply with the directives of the relevant town planning scheme and the local authority's regulation. When existing blocks of flats are converted it is important to ensure that town planning regulations have not been exceeded. Costs to rectify violations are both time consuming and expensive.

The valuer must inspect the property thoroughly and ensure that any violations of the regulations have been noted and if there will be any affect on the valuations.

- (o) Number, size and types of flats in the building, e.g. how many one, two, three bedroomed units.
- (p) Recreational facilities on site, e.g. swimming pool, playrooms, gym, laundry, etc.
- (q) What is the present rental, will the block make a good conversion, are there any protected tenants, at what price can the flats be sold.

# PART THREE MARKET VALUE

## MARKET VALUE

### CONTENTS

1. MARKET VALUE DEFINITION
2. SCARCITY VALUE
3. RESIDENTIAL MARKETS
4. PUBLIC AUCTIONS

#### 1.0 MARKET VALUE DEFINITIONS

##### 1.1 DIFFERENT DEFINITIONS

Hereunder is a list of different definitions of market value.

- (a) "Market value is the price expectable if a reasonable time is allowed to find a purchaser if both seller and prospective buyer are fully informed" – Appraisal Terminology, American Institute of Real Estate Appraisers.
- (b) "The full or fair price or sum which such property would, in his (the valuers) judgement, be likely to realise if brought at the time of valuations to voluntary sale and sold upon the usual terms and conditions" – *Pietermaritzburg Corporation V SA Breweries Ltd 1911 AD 501*.

The accepted South African legal definition of market value may be summarised as follows:

The most probable price<sup>1</sup> which a willing and informed buyer<sup>2</sup> will pay a willing and informed seller<sup>2</sup> for a property on the open market at the date of valuation when neither is under any stress or duress to transact.

1. The price is the price which could be obtained had the property been exposed to the market for a reasonable time.
2. The willing seller and the willing buyer referred to in the definition of market value are not the owner and the buyer but imaginary persons or notional persons.

**Seller:** The decision to sell must be of free choice. He should not be anxious to sell but willing to do so if he obtains a fair price.

**Buyer:** The buyer must be willing, but not under any urgent necessity to buy. The valuer must fix a price a price which a willing seller might reasonable expect to obtain from a willing purchaser where both parties negotiate on equal terms and both realise the existing advantages and potential of the property.

The International Valuation Standards Committee (IVSC) definition as shown below has been accepted as the new South African definition of market value.

Market value is defined by the International Valuation Standards Committee as:

“The estimated amount for which an asset should exchange, on the date of valuation, between a willing buyer and a willing seller, in an arms-length transaction, after proper marketing, wherein the parties had each acted knowledgeably, prudently and without compulsion”.

An explanation of the definition follows hereunder:

- (a) “The estimated amount . . .” refers to a price in terms of money which (normally in the local currency) payable for the asset in an arm's length market transaction. Market value is measure as the most probable price reasonably obtainable in the market at the date of valuation in keeping with the Market Value definition. It is the best price reasonable obtainable by the seller and the most advantageous price reasonable obtainable by the buyer. This estimate specifically excluded an estimated price inflated or deflated by special terms or circumstances such as atypical financing, sale and leaseback arrangements, special considerations or concessions granted by anyone associated with the sale, or any other element of Special Value (defined in the IVSC Standard 2).
- (b) “. . . an asset should exchange . . .” refers to the fact that the value of an asset is an estimated amount rather than a predetermined or actual sale price. It is the price at which the market expects a transaction that meets all other elements of the Market Value definition should be completed on the date of valuation.
- (c) “. . . on the date of valuation . . .” required that the estimated Market Value is time specific as of a given date. Because markets and market conditions may change, the estimated value may be incorrect or inappropriate at another time. The valuation amount will reflect the actual market state and circumstances as of the effective valuation date, not as of either a past or future date.
- (d) “. . . between a willing buyer . . .” refers to one who is motivated, but not compelled to buy. This buyer is neither over eager nor determined to buy at any price. This buyer is also one who purchases in accordance with the realities of the current market and with current market expectations, rather than an imaginary or hypothetical market that cannot be demonstrated or anticipated to exist. The assumed buyer would not pay a higher price than he market requires. The present asset owner is included among those who constitute “the market”. A Valuer must not make unrealistic assumptions about the market conditions nor assume a level of market value above that which is reasonably obtainable. In some countries an explicit reference to a willing buyer is omitted from the definition of market value to emphasise this responsibility.

- (e) “. . . a willing seller . . .” is neither an over eager nor a forced seller, prepared to sell at any price, nor one prepared to hold out for a price not considered reasonable in the current market. The willing seller is motivated to sell the asset at market terms for the best price attainable in the open market after proper marketing, whatever that price may be. The factual circumstances of the actual asset owner are not part of this consideration because the “willing seller” is a hypothetical owner.
- (f) “. . . in an arm’s length transaction . . .” is one between parties who do not have a particular or special relationship (for example, parent and subsidiary companies, or landlord and tenant) that may make the price level uncharacteristic of the market or inflated because of an element of special value. The market Value transaction is presumed to be between unrelated parties, each acting independently.
- (g) “. . . after proper marketing . . .” means that the asset would be exposed to the market in the most appropriate manner to effect its disposal at the best price reasonably obtainable in accordance with the Market Value definition. The length of exposure time may vary with market conditions, but must be sufficient to allow the asset to be brought to the attention of an adequate number of potential purchasers. The exposure period occurs prior to the valuation date.
- (h) “. . . wherein the parties had each acted knowledgeably and prudently . . .” presumes that both the willing buyer and the willing seller are reasonably informed about the nature and characteristics of the asset, its actual and potential uses, and the state of the market at the date of valuation. Each is further presumed to act for self-interest with that knowledge and prudently to seek to seek the best price for their respective positions in the transaction. Prudence is assessed by referring to the state of the market at the date of valuation, not with benefit of hindsight at some later date. It is not necessarily imprudent for a seller to sell property in a market with falling prices at a price that is lower than previous market levels. In such cases, as is true for other purchase and sale-situations in markets with changing prices, the prudent buyer or seller will act in accordance with the best market information available at the time.
- (i) “. . . and without compensation . . .” establishes that each party is motivated to undertake the transaction, but neither is forced or unduly coerced to complete it.

## 1.2 THE MARKET

A market is described as a set of arrangements in which buyers and sellers are brought together through the price mechanism. A market may be defined in terms of geography, products or product features, the number of available buyers and sellers, or some other arrangement or circumstance. Generally the circumstances of a transaction reflect conditions within one or several markets.

A real estate market is the interaction of individuals who exchange real property rights for other assets, such as money. Specific real estate markets are defined on the basis of property type, location, income-producing potential, typical investor characteristics, typical tenant characteristics, or other attributes recognised by those participating in the exchange of real property.

## 1.3 PRICE VERSUS COST

The term price usually refers to a sale or transaction price and implies an exchange; a price is an accomplished fact. A price, once finalised represents the amount a particular purchaser agrees to pay and a particular seller agrees to accept under the circumstances surrounding their transactions.

The term cost is used by valuers in relation to production, not exchange; cost may be either an accomplished fact or a current estimate.

## 2.0 SCARCITY VALUE

When the stands in a popular suburb have all been sold, one finds that the prices asked and paid for the last few stands are exorbitant. One often hears a valuer saying that these excessive prices are not market value but "scarcity value". Such a statement reveals that person's inadequate understanding of market value. There is no such thing as scarcity value. We may well say that the market value of stands is high because stands are scarce, but it is still market value.

## 3.0 RESIDENTIAL MARKETS

### 3.1 CHARACTERISTICS OF AN OPEN MARKET

The open market does not imply a specific place where buyers and sellers get together and it also does not imply a public auction. In fact a sale by public auction is often a poor indication of market value, for it is not the usual way in which property is sold.

- there must be a greater effort to advertise properties so that buyers are able to take note that a particular property is on the market
- the property must be on the market for a reasonable time
- all persons who have an interest may make an offer
- the property is sold subject to normal conditions

### 3.2 CHARACTERISTICS OF THE PERFECT MARKET

- Buyers and sellers who act independently of one another
- Buyers and sellers have no restraints and sell whatever and whenever they like
- Buyers and sellers have free access to market without limitations on time and place.
- There is no discrimination between buyers and sellers
- Buyers and sellers fully informed as to market conditions, objects and prices.
- Prices are only influenced by supply and demand
- Objects are not subject to price control.
- Objects are homogenous in all aspects.

### 3.3 CONDITIONS OF EXCHANGE

- more than one party
- both parties have something the other wants
- both parties free to trade
- both parties equally informed

## 4.0 PUBLIC AUCTIONS

Is a public auction conclusive of market value? NO



- (a) If a public auction is conclusive of market value everybody would sell by public auction.
- (b) General market situation informed purchaser. Public must know of auction and be informed.
- (c) Single people might influence price by false bidding.
- (d) Usually forced sales. Seller has no time to search for informed purchasers, insolvencies, bond call-ups, etc.
- (e) Bidders get emotionally involved due to shortage of time at their disposal to make decision.
- (f) Insufficient market exposure period.
- (g) Insufficient advertising time.
- (h) Purchasers seeking bargains at auctions.
- (i) Auctions sometimes create mass hysteria and prices go sky high.

# THE COMPARABLE SALES APPROACH

## THE COMPARABLE SALES APPROACH

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#### 1.0 THE CONCEPT

The theoretical definition of each method follows hereunder:

The comparable sales approach is based on the theory that a knowledgeable purchaser would pay no more for a property than the cost of acquiring an acceptable substitute property. In applying the Comparable Sales Approach it is necessary to investigate the sales of similar type properties that have been sold as well as comparable properties which are on the market.

The above information is compared to the subject property, which involves judgments as to the degree of similarity with regard to value factors such as location, construction type, age, condition and layout.

The sales of properties, which are most comparable, tend to set the range in which the value of the subject property will fall. Further consideration of comparative data will indicate to the valuer a figure representing the value of the subject property in keeping with the definition of value sought as at the date of valuation.

Direct comparisons involve the analysis of recent sales of similar properties. As no two properties are identical, necessary comparisons and adjustments must be made to determine the actual value of the particular property. Factors which influence the property must be determined and assessed in order that the necessary adjustments may be quantified.

## 2.0 THE MOST IMPORTANT ADVANTAGES OF THIS APPROACH

- Actual sales are normally the most reliable indication of value and are preferable to any other alternative forms of evidence that are available.
- It is the most reliable method for concluding what the market will pay based on what has been paid in the recent past.
- It is the simplest method of convincing the courts of the market value of a subject property. The valuer should bear in mind that lawyers are not necessarily trained valuers.
- The logic and principles upon which the method is based are easily understandable and are comparatively easy to explain. Moreover, unlike other methods, complex mathematical models are not employed.

## 3.0 THE MOST IMPORTANT DISADVANTAGES OF THIS APPROACH

However, the method also has its limitations, and both clients and valuers should be aware of these. The most important problems and limitations experienced in applying this method are set out below.

- Even comparable properties differ from one another in respect of their location, physical nature and institutional attributes. In the final analysis, when the valuer deduces the value of the subject property from the selling prices of comparable sold properties, there is inevitably a degree of subjective judgement on his part. The greater the comparability between the properties, the smaller is the degree of possible subjectivity. However, as the differences increase, the comparisons can become highly subjective.
- The lack of comparability in respect of certain types of property limits the relevance of the method in these particular cases. Thus, for example, it is extremely difficult (if not often impossible) to apply the method to large hotels, office buildings and shopping centres. What this amounts to is that there are simply not enough substitutes for various types of property. Consequently, the validity of the method of comparable selling prices diminishes to such an extent that the estimate of market value based thereon becomes completely unreliable.
- Certain types of property are seldom if ever sold, and, though a market exists, its functioning is either unknown or is slow and limited in degree. The result is that there is no market information, or inadequate market information, to ensure that a projection based thereon at least has a minimum statistical validity. This situation is particularly predominant in the following cases:

- Older properties. An older property often has a less sought-after location (economic obsolescence) and experiences the disadvantages of structural and functional obsolescence. Thus, for example, an older block of flats may require a considerably longer market exposure period than a new one, which is similar and an obsolete shopping centre may be offered on the market for two to three years before it is sold.
  - Properties with relatively high values. A farm of 8 400 ha in the Phalaborwa vicinity has a limited number of buyers. However, if it were to be sold under twelve separate title deeds, there would perhaps be a hundred possible buyers.
  - Large portfolios.
  - Special types of improvement, e.g. hospitals, schools and churches.
  - A unique property, e.g. historical houses and farms. These properties are often so unique that there can be no question of a functioning market.
- Recent sales may possibly provide an indication of the historical value only and not of the current market value. One of the fundamental assumptions of the method of comparable selling prices is that market conditions must not have changed since the last transactions. However, it is a fact that market conditions sometimes change rapidly and drastically, for example, when an announcement is made those important industrial developments will shortly occur in a new area. Political unrest can also lead to a dramatic change in market conditions. Similarly, a considerable increase in building society rates and the availability of money can bring about a rapid change in the market values of certain types of dwelling house, particularly those that are more expensive. Thus even though a valuer may have traced transactions that were concluded only three weeks previously, these may not be very reliable for estimating the market value of the subject property. Time adjustments of sales in terms of price under new market conditions are often a most difficult and highly subjective task.
  - It is often very difficult for the valuer to be fully informed regarding all the circumstances surrounding a specific transaction. Consequently, it is not always easy to determine whether or not a transaction was at "arm's length". Moreover, the terms of sale often differ considerably between ostensibly comparable sales, and it is not always easy to discover, for example, the way in which financing, etc., has been managed. The cost of obtaining detailed and reliable current market information is often particularly high when considered in relation to the additional accuracy that can be achieved and the fee agreed upon.

#### 4.0 SELLING PRICES WHICH ARE TOO LOW

- Over anxious seller – financial problems, poor health, already moved or bought somewhere else.
- Ignorant seller – poorly informed on market conditions, sells property in another town.
- Closed market – not properly advertised, no reasonable time on market
- Inadequate information – option exercised.

#### 5.0 SELLING PRICES WHICH ARE TOO HIGH

- Over anxious buyer – people with money, under pressure to buy, inheritance of money and rushes to buy property without any knowledge of market trends.
- ignorant buyer – no knowledge of selling procedures

- irrational buyer – next door to parents
- special buyer – needed for business, complete block purchased without any regard to market value
- Expropriation – price includes compensation, price could be excessive to avoid costly lawsuits.
- favourable conditions of sale – sold with low interest rate
- Sale linked to another transaction.
- Incorrect information – purchase price inflated to save tax on possible resale.
- Public auction – buyers not informed of market conditions, emotional bidding, and not sufficient exposure.

## 6.0 CRITERIA FOR SELECTING SALES

The four criteria for the selection of comparable sales:

These attributes provide the first set of guidelines on the basis of which the other properties are selected. These are namely the physical nature of the land and improvements, the location network, the institutional attributes.

- The utility - generating attributes of the subject property are in most instances unique and there are usually no other properties which meet these requirements exactly. Properties must be selected so that their utility generating attributes are much the same as those of the subject property.
- Bona fide status of the sales – the second criterion for selection is that the selling price paid for the comparable property must have been established in a bona fide way, in other words the transaction must have been between a willing buyer and a willing seller, both buyer and seller must have been concluded at arm's length.
- Date of sale – It must be borne in mind that one of the fundamental assumptions of the approach of comparable selling prices is that the market conditions should not have changes drastically since the occurrence of the comparable transaction.
- The nature of the sales transactions – To be truly comparable, sales must have been concluded in more or less similar financial circumstances. In selecting comparable sales it is essential that the valuer select transactions which are subject to similar financial conditions.

## 7.0 CHECKLIST FOR CONFIRMING SALES

Introduce yourself and the firm for whom you are working and confirming the sale. State the purpose of the call: "We are studying recent sales in the vicinity of the property, which you have bought (or sold) in order to make an appraisal of value of a similar property."

"May I ask you for a few facts about the property you recently bought?" Identify the property by location or in some manner so that the person will know what you are talking about. Wait for an affirmative answer, and then continue.

1. "From public records (or other source) we have information that you bought (or sold) the property from/to (read grantor or grantee's name from deed). The deed was dated and the deed indicated a sale price of R... Is that correct?"
2. "Was that the full and correct price?" If the answer is "no", ask what the price was and the explanation of difference. Get the confirming source to expand on this.

3. "Was the seller (buyer) a friend? Are there circumstances known to you which would have caused the seller to sell (or the buyer to buy) at a price below the fair market price?" Do not be bashful about this. This is a most important item to cover in the sale confirmation.
4. "Have you ever had any other dealings with the same seller, or with any other company in which the seller has a large interest?" This is to learn if there was another concurrent transaction. If there was, and even if the sale price allocations were arbitrary, the source may still reveal that a concurrent transaction took place. If the answer is "yes", you may want to finish other questions before following up on this.
5. "Did you buy (sell) the property or contract to buy (sell) just shortly before the deed date, or was this deed pursuant to a contract purchase made, say, a few months or even years earlier?" Get details, if offered.
6. "Why did you buy (sell) the property?" Examples of answers may be to use, to develop, or for investment. If you get an answer like "I owned the property next door", you should inquire further whether there was any particular motivation by the purchaser that might have influenced the paying of other than the market price for the property. In some cases the purchaser may pay above market price but not realise it because value in use is the consideration to him or her rather than the market value. In a few cases the sale may have been below the market. Explore for any unusual circumstances.
7. "Have you, or any company you control, ever owned this particular property before?" This is to detect "flip-up" transactions. If the answer is "yes", get all the details you can.
8. "Was there any compelling reason why you bought (sold) the property?" Examples might be financial difficulties, a desire to be in a particular location, and so forth.
9. "What was the condition of the property when you bought (sold) it?" At this point obtain all the details possible so you can understand the sale based on its physical configuration and condition. You might want to ask if any immediate changes were planned. This is also a good time to ask about personal property and equipment that could have been included. Ask if any was included in the sale price you discussed or, if extra, how much.
10. "Have there been any changes in the property since you bought (sold) it?" This is to assure that you understand what the property was like when it was sold. The changes may be more than physical. Tenants may have moved. Rents may have changed. Explore these possibilities.
11. "Did you buy (sell) through a real estate agent?" If so, get the name. This can be a valuable source of additional information. Obtain further information about the property based on clues from the answers to previous questions. This is a good place to go into questions specific to the property type. These should be planned ahead and well organised.
12. "What influenced you to buy this particular property rather than another?" The answer to this question will bring you some surprising and extremely valuable insights into the marketplace, how its participants think, and what they see as important.
13. "What were the terms?" Because an answer to this question is refused more often than any other, it is left until late in the interview.

Go back to any difficult questions you saved for last. At the conclusion, remember to say "Thank you." Remind the person again of your name and your firm's name.

They might remember you someday when they need a valuation and they will feel much more comfortable for having given the information. This may also make the next valuer's job easier.

Answers to these questions will give important clues to the elements of time and motivation that must be considered in comparing the sale to the subject property. Locational factors might seem obvious, but the sale confirmation may yield important clues to the need for, and even the extent of, adjustment.

This leaves only physical and financial factors that could be considered in additional questions. The value Predicators, the items for which adjustments might be made, are key to planning the special set of questions for a specific type of property. The following are examples of some of these items for various types of properties. These are not intended to cover all that should be known about a sale property, only the facts that a buyer or seller is likely to know. All of these questions may not need to be asked in every case; to avoid imposing on the person who is giving the information; the questions should be limited to what is truly important. In some instances, the difficult questions for which an answer might be refused should be saved until the end of the interview.

## 8.0 PLOTTAGE

### 8.1 DEFINITION

Plottage is an added percentage to the value of two or more adjacent properties belonging to the same owner. That is to say, the combined value of the two or more adjacent stands belonging to the same owner is higher than the sum of the value of each of the relevant stands if they belong to different owners. There are various reasons for this, namely:

- (a) The owner of adjacent stands only needs to consolidate them in order to have one large stand on which he can erect a large building.
- (b) The unit costs of a large building are lower than that of a smaller building.
- (c) Consider two identical, adjacent stands. If the two stands belong to different persons and they erect two identical buildings, it could happen that one lift per building is not enough, in which case each has to install two lifts. If the two stands belong to the same owner, he can consolidate them and erect one large building for which three lifts for the building, which is as large as the two buildings jointly, will be sufficient.
- (d) Two caretakers are needed for two buildings belonging to different owners while one caretaker is sufficient for a large building.
- (e) A large stand offers more design possibilities than a smaller stand. If the stand is large enough, an arcade could, for example, be planned within the building. In this way more shop fronts are created.
- (f) The administration costs of a large building could be less than those of two separate, smaller buildings.

There are other advantages that make a larger development attractive, but the above-mentioned six advantages are sufficient to illustrate that plottage does exist.

## 9.0 POTENTIAL

Note the following:

- A property has more than one potential.
- Some potential are more utilisable than others.
- How would buyers and sellers assess the potential of property?
- Cost and time to utilise the potential must be taken into account.
- Value of land not sum of all potentials.

## 10.0 HIGHEST AND BEST USE

This is described as the most probable use of a property, which is physically possible, appropriately justified, legally permissible, financially feasible and which results in the highest value of the property being valued.

OR

The highest and best use of a property is the legal, feasible and most probable use for which the property will be employed to obtain the highest nett return from the property in the current circumstances.

When making assumptions or assessing highest and best use always consider rights in terms of town planning schemes as well as possible restrictions. The highest and best use may change from time to time. The main purpose of highest and best use is to obtain the highest nett return from the property under the current circumstances.



# PART FOUR

## THE LAWS RELATING TO PROPERTY

### THE LAWS RELATING TO PROPERTY

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15. THE SUBDIVISION OF AGRICULTURAL LAND ACT 70 OF 1970
16. THE EXPROPRIATION ACT 63 OF 1975

There are several statutes which have a direct bearing on the use of immovable property and the rights and duties of property owners. Reference to these acts would be made in certain title deeds; a brief mention of these acts follows:

#### 1.0 HOUSING ACT NO. 107 OF 1997

The purpose of the act is to provide for the facilitation of a sustainable housing development process; for this purpose to lay down general principles applicable to housing development in all spheres of government, to define the functions of national, provincial and local governments in respect of housing development and to provide for the establishment of a South African Housing Development Board, the continued existence of provincial boards under the name of provincial housing development boards and the financing of national housing programmes; to repeal certain laws; and to provide for matters connected therewith.

#### 2.0 LAND AFFAIRS ACT NO. 107 OF 1987

To provide for the determination of amounts of compensation, purchase prices or rents in respect of immovable property expropriated, purchased or leased by the Department of Public Works and Land Affairs for public purposes and the giving of advice with regard to the value of land, rights on or in respect of land and purchase prices or rents in respect of certain immovable property; for that purpose to make provision for the establishment of a Land Affairs Board; and to provide for incidental matters. To promote the orderly physical development of the Republic, and for that purpose to provide for the division of the Republic into regions, for the preparation of national development plans, regional development plans, regional structure plans and urban structure plans by the various authorities responsible for physical planning, and for matters connected therewith.

#### 3.0 THE REMOVAL OF RESTRICTION ACT 84 OF 1967 THE IMMOVABLE PROPERTY (REMOVAL OR MODIFICATION OF RESTRICTIONS) ACT 94 OF 1965

To empower the Administrator of a province to alter, suspend or remove certain restrictions and obligations in respect of land in the province; to repeal the Removal of Restrictions in Townships Act, 1946; to validate certain proclamations of Administrators; and to provide for incidental matters.

#### 4.0 THE ADMINISTRATION OF ESTATES ACT NO 66 OF 1965

To consolidate and amend the law relating to the liquidation and distribution of the estates of deceased persons, the administration of the property of minors and persons under curatorship, and of derelict estates; to regulate the rights of beneficiaries under mutual wills made by any two or more persons; to amend the Mental Disorders Act, 1916; and to provide for incidental matters.

#### 5.0 RENTAL HOUSING ACT NO. 50 OF 1999

To define the responsibility of Government in respect of rental housing property; to create mechanisms to promote the provision of rental housing property; to promote access to adequate housing through creating mechanisms to ensure the proper functioning of the rental housing market; to make provision for the establishment of Rental Housing Tribunals; to define the functions, powers and duties of such Tribunals; to lay down general principles governing conflict resolution in the rental housing sector; to provide for the facilitation of sound relations between tenants and landlords and for this purpose to lay down general requirements relating to leases; to repeal the Rent Control Act, 1976; and to provide for matters connected therewith.

#### 6.0 NATIONAL WATER ACT NO.36 OF 1998

To provide for fundamental reform of the law relating to water resources; to repeal certain laws; and to provide for matters connected therewith.

#### 7.0 ENVIRONMENTAL CONSERVATION ACT NO. 73 OF 1989

To provide for the effective protection and controlled utilization of the environment and for matters incidental thereto. This act regulates environmental conservation in South Africa.

#### 8.0 THE ESTATE DUTY ACT NO. 45 OF 1955

To consolidate and amend the laws relating to transfer duty. This Act was instituted mainly for the purpose of levying a tax on estates of deceased persons.

#### 9.0 THE TRANSFER DUTY ACT NO. 40 OF 1949

In terms of section 2(1) of the Transfer Duty Act 40 of 1949 transfer duty is payable as follows:

- In the value of property acquired by any person by way of a transaction or any other manner or;
- On the amount by which the value of any property is enhanced by the renunciation of an interest in, or restriction upon, the use or disposal of that property.

#### 10.0 THE VALUE ADDED TAX ACT 89 OF 1991

To provide for taxation in respect of the supply of goods and services and the importation of goods; to amend the Transfer Duty Act, 1949, so as to provide for an exemption; to amend the Stamp Duties Act, 1968, so as to provide for an exemption from stamp duty and to discontinue the levying of certain stamp duties; to repeal the Sales Tax Act, 1978; and to provide for matters connected therewith.

#### 11.0 THE ROADS ORDINANCE 19/1976

To consolidate and amend the law relating to public roads and public paths and to provide for matters incidental thereto.

## 12.0 ALIENATION OF LAND ACT 68/1981

To regulate the alienation of land in certain circumstances and to provide for matters connected therewith.

## 13.0 SECTIONAL TITLE ACT 95/1986 AS AMENDED

To provide for the division of buildings into sections and common property and for the acquisition of separate ownership in sections coupled with joint ownership in common property; the control of certain incidents attaching to separate ownership in sections and joint ownership of common property; the transfer of ownership of sections and the registration of sectional mortgage bonds over, and real rights in, sections; the conferring and registration of rights in and the disposal of common property; the establishment of bodies corporate to control common property and for that purpose to apply rules and the establishment of a sectional titles regulation board and to provide for incidental matters.

## 14.0 LAND USE PLANNING ORDINANCE 15/1985

### Objectives

- Promotion of forward planning – free market forces
- Reinforcement of free market in land use control – expedite by evolution
- Devolution of decision making – public participation
- Rationalisation of procedures – period review

### 14.1 LAND USE PLANNING DOCUMENTS

- Guide plan
- Sub regional structure plan
- Urban structural plan
- Rural structural plan
- Development plan
- Town planning scheme
- Zoning scheme
- Substitution plan
- Use rights
- Subdivision layout
- Subdivision
- General plan

### 14.2 PROCESS FOR APPLICATION FOR SUBDIVISION

1. Applicant fills in prescribed forms.
2. Submits to local authority.
3. If incorrectly filled out returned to applicant.
4. Applicant resubmits within 14 days
5. Town clerk advertises in Government Gazette and newspapers.
6. Objections referred to applicant for comment.
7. Town clerk may call any other person who has interest to comment.
8. Town clerk then submits to Council for approval.

9. Need and desirability discussed impact on surrounding areas.
10. Needs of community also discussed.
11. All restrictive condition of title to be cleared up prior to approval.
12. Draft approved with condition and referred to owner.
13. Owner negotiates.
14. Agreement reached.
15. Land surveyed by Surveyor General.
16. Diagrams framed and general plan framed.
17. Local authority rates clearance certificate
18. Conveyancing completed deeds and clearance certificates issued.
19. Owner to register one unit within five years.
20. All public places ceded to council without compensation.
21. Subdivision confirmed.

#### 14.3 APPLICATION PROCEDURE ITO LUPO FOR DEPARTURE, REZONING, SUBDIVISION

1. Owner submits application to town clerk on prescribed form
2. Town clerk advertises for objections
3. Objections referred to owner for additional comment
4. Town clerk obtains comments from any other interested person
5. Desirability, health, infrastructure, amenity, safety considered
6. Town clerk refers to full Council
7. Consent granted
8. Subject to conditions
9. Lapses after 2 years but may be extended on application

#### 14.4 ZONINGS

- If after 15 years expiry after commencement date any use right is not utilised or exercised in respect of land shall be zoned according to usage
- Appeal committee may extend for 5 years
- Departure lapses after 2 years if not utilised
- If council rezones and owners land depreciates in value compensation may be applied for in terms of section 19(1).

#### 14.5 SUBDIVISION

- After approval owner to register first unit within 5 years.

#### 15.0 SUBDIVISION OF AGRICULTURAL LAND ACT 17/1970

Without consent of the Minister, no person shall in terms of section 3:

- subdivide agricultural land
- bequeath land to joint owners
- lease agricultural land
- no agricultural land may be let or sold

#### 16.0 EXPROPRIATION ACT 63/1975

To provide for the expropriation of land and other property for public and certain other purposes; and to provide for matters connected therewith.

#### 16.1 EXPROPRIATION PROCEDURE

1. Notice as per registered letter.
2. Government gazette and newspaper.
3. Provision for appeal.
4. Minister to decide compensation.
5. Owner not satisfied appeals to Arbitration Court.
6. Minister will again decide compensation.
7. Acceptance by owner.