

Buyer beware: what are the property's restrictive conditions?

 By [Bruce Swain](#)

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Many buyers have purchased their dream home, only to realise that the plans they had to add another storey, or to subdivide the property can't be realised because of restrictive conditions they weren't aware of.



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The majority of buyers ask questions about the condition of the plumbing, the maintenance conducted and so forth, but completely forget, or don't know to ask about the restrictive conditions attached to the property. It can not only cause frustration, but could lead to legal and financial ramifications if the new owners make structural changes that are not in compliance with the restrictions listed.

What are restrictive property conditions?

Essentially, restrictive conditions listed in the property's registered Title Deed limit owners' use of the property in some way – in order to protect the amenity and character of an area. Common restrictive conditions include:

- That the property can't be subdivided.
- That there is a set height limit, i.e. the building may not be more than two storeys tall for example.
- Buildings in residential areas may not be used for business purposes.
- That only a certain percentage of the erf may be covered.
- In the case of heritage properties or areas, only certain colours may be used on exterior walls and/or only certain kinds of fences and boundary walls may be erected.

Title deeds are normally retained by the mortgagee so buyers often never see it. However, they are within their rights to obtain a copy of the Title Deed from the Deeds Office or from the bank or financial institution that holds the bond.

Can the restrictive conditions be amended?

It is possible to get restrictive property conditions lifted or amended – be prepared for a fairly complex, legal procedure. Even if the proposed developments/alterations don't require rezoning or the complete removal of the restrictive conditions,

it's still necessary to obtain the local council's permission (a Consent Application will need to be completed) and I'd advise buyers / new owners to get a professional's guidance to ensure the process is technically and legally correctly completed.

There is a cost attached to the application. Below are the costs levied by the City of Johannesburg, these may vary from province to province – the exact fees can be obtained from the local council:

Relaxation of Building Line	R323
Consent	R567
Second Dwelling	R567
Subdivision	R425 plus
	R17 per portion over five
Division of Land	R3,217
Consolidation	R274
Township	R3,757
Rezoning	R3,757
Site Development Plan	R567
Removal of Restrictions	R600
Simultaneous Rezoning and Removal of Restrictive Conditions	R2,000

Information remains a buyer's greatest resource; while it's possible to get restrictive conditions repealed or altered, it's a time consuming, complex process, it would still save buyers a lot of trouble down the line by simply finding out what restrictive conditions pertain to a property before purchasing.

ABOUT BRUCE SWAIN

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