



LEGAL TAKE

— PROJECTS · GUIDE

From the Ground Up: Structuring Real Estate Development Projects

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A development succeeds or fails on decisions made before ground-breaking: the structure, the title and the approvals. Get those right and sales, financing and completion follow; get them wrong and they surface later as delays, disputes and refunds.

KEY POINTS

- Hold the project in its own company, with the landowner deal in writing.
- Have every approval in hand before marketing units.
- Plan for sectional titles and an owners' corporation from day one.

1. Structure the project

Use a project company (SPV). A dedicated company ring-fences the project's risk and makes it easier to bring in investors or lenders.

Agree the landowner deal in writing. Contributions, decision-making, deadlock, what the landowner receives — units, revenue share or cash — and how either side exits.

Plan the financing early. Lenders will want security over the land and the project's contracts.

Price in the tax. Stamp duty on moving land into the SPV, capital gains tax for the landowner, and VAT on construction and commercial sales.

2. Secure the land

Run full due diligence on title, encumbrances, rates, land rent and boundaries before any money moves.

Regularise the user. If the approved use does not match the project, apply for change of user or extension of use before marketing.

Allow for registry timelines. Nairobi, Murang'a and Mombasa now run on Ardhisasa; land still in conversion can take longer to search and register.

3. Obtain the approvals

APPROVAL	ISSUED BY	WHAT TO KNOW
Development permission and building plans	County government	Under the Physical and Land Use Planning Act, 2019, including change of user.
Environmental Impact Assessment licence	NEMA	Needed before construction starts.
Project and contractor registration	National Construction Authority	The contractor and the project must be registered.
National Building Code, 2024	County and national authorities	In force since 1 March 2025. Design standards and inspections every five years.
Height clearance	Kenya Civil Aviation Authority	For taller buildings near airports and flight paths.

Buyers and lenders increasingly ask to see approvals before committing, so a complete approvals file is also a sales tool.

Nairobi's new development rules

Nairobi's Development Control Policy, 2026 replaced guidance last reviewed in 2006. It divides the city into 15 zones, with a matrix setting land use, maximum floors, ground coverage, plot ratio and minimum plot size for each sub-zone. For projects in Nairobi:

Published maximums are ceilings, not rights. Parking, setbacks, green space, fire safety, utilities and aviation limits can all reduce what you can build.

Plot size drives height. Higher floor limits apply only to larger plots, which can make amalgamating plots worthwhile, at the cost of extra title and timing risk.

New charges are proposed but not yet in force. Development impact fees, planning gain and transferable development rights need county legislation, expected within 18 months, before they can be charged.

Re-test your numbers now. Check every project against its exact sub-zone before pricing, financing or marketing it.

See our separate Legal Take on the Policy for more detail.

4. Sell with clear documents

Off-plan sale agreements should set out the payment plan, completion date, delay remedies, termination and refunds, and how deposits are held.

Plan for sectional titles under the Sectional Properties Act, 2020, and reflect them in the sale agreement from day one.

Protect buyer data. Most developers must register with the Office of the Data Protection Commissioner.

Managing community objections

Residents' associations are increasingly active on high-density projects. They cannot approve or block a development, which only the County and NEMA can do, but they can delay one:

Their routes. Objecting to the County, appealing a planning decision, appealing a NEMA licence to the National Environment Tribunal, and asking the court to pause works while a petition is heard.

What courts look at. Whether approvals are complete and whether consultation was genuine. A full approvals file and a record showing every concern was heard and answered is the best protection.

Phased schemes. Disclose later phases in the environmental assessment and assess their combined impact, so objectors cannot argue the project was split to understate it.

Marketing. Keep unit numbers and descriptions in line with what has been approved, and make sales subject to approvals.

Contracts. Build suspension and extension rights for court or regulatory stoppages into sale, construction and finance documents.

5. Complete and hand over

- Register the sectional plan and issue sectional titles to buyers.
- Set up the owners' corporation, with service charge arrangements in place.
- Hand over common areas and records in an orderly way.

COMMON PITFALLS

- Marketing units before approvals are in hand.
- Joint venture agreements silent on delay, deadlock or exit.
- Off-plan agreements with no clear remedy for late completion.
- Leaving title and registry issues to the end of the project.
- Marketing more units than have been notified or approved.
- Relying on a county policy without checking that it has been formally adopted.

TALK TO US

Every situation is different. This is where we get specific to yours.

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