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A critical analysis of a large South African bank's commercial development property loan pre-disbursement conditions

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Please will you complete the following questionnaire and return to Chloe Joubert by email at chloej@absa.co.za by **Monday 16 January 2006**. Responses will be treated as confidential and are for inclusion in her Research Report as partial fulfilment of an MSc (Building) from the University of the Witwatersrand, Johannesburg.

NAME: _____
DEPARTMENT: _____
ROLE: _____

How do you rate the IMPORTANCE of the following Development Loan Pre-disbursement Conditions in protecting Absa's interests?

	Pre-disbursement Condition	HIGH	MED	LOW	Comments
1	**GENERAL**				
1.1	Registration of the Mortgage Bond and all security documents listed as Pre-registration conditions to be duly signed and legally in order.				
2	**BORROWER'S EQUITY**				
2.1	Proof that the Borrower has contributed in cash towards the property and/or the development.				
2.2	A certified copy, acceptable to the Bank, of a Bank, Contractor's or Insurance Company Performance Guarantee for the construction of the development. Alternatively, a retention on each drawdown will be retained and will only be released on fulfilment of the conditions relating to final disbursement				
3	**PLANS AND DIAGRAMS**				
3.1	General plan of proposed township approved by the Surveyor General				
3.2	Subdivision diagram in respect of the property approved by the Surveyor General				
3.3	Site development plan in respect of the proposed development approved by the local authority				
3.4	Consolidation diagram reflecting the consolidated erven approved by the Surveyor General				
3.5	Building plans approved by the local authority				
3.6	Engineering designs approved by the local authority				

	Pre-disbursement Condition	HIGH	MED	LOW	Comments
4	**TOWNSHIP & DEVELOPMENT**				
4.1	The signed Services Agreement with the local authority				
4.2	Written evidence to our satisfaction that the development contribution has been paid to the local authority or acceptable provision has been made for payment thereof				
4.3	Conditions of Establishment approved by the local authority				
4.4	Written evidence to our satisfaction that you are not precluded by Section 67 or 97 of the Town Planning and Townships Ordinance, No 15 of 1986 (Gauteng), or any other law or by-law applicable in other provinces, from entering into contracts for the alienation or disposal of erven in the township				
4.5	Written evidence to our satisfaction that external services including inter alia roads, water reticulation, waterborne sewerage and electricity have been installed to the boundary of the township and are available to all erven in the township or that acceptable provision for installation has been made				
4.7	A certificate by the townplanner confirming that the proposed development has been approved by all the relevant authorities				
4.8	A certificate by the townplanner confirming that the conditions to be complied with prior to the declaration of the township as an approved township as contained in the approved conditions of establishment have been complied with or should they not have been complied with yet, compliance thereof is a formality				
4.9	A certificate by the townplanner confirming that all laws in respect of environmental matters have been complied with				
4.10	A certificate by the townplanner confirming that the development complies with the applicable town planning scheme				

	Pre-disbursement Condition	HIGH	MED	LOW	Comments
4.11	A certificate by the townplanner confirming that the proposed development will be undertaken in accordance with the record of decision issued by the Department of Agriculture, Environment and Land affairs				
4.12	A certificate by the townplanner confirming that no further legal procedures which may prevent the township from being declared an approved township				
4.13	A certificate by the townplanner confirming that he is satisfied that proclamation of the township is a formality and won't be unduly delayed				
4.14	A certified copy of the current zoning certificate from the local authority certifying that the property may be used for the following purposes				
5	**ARCHITECT'S CONFIRMATION**				
5.1	The Site Development Plan has been prepared in accordance with the approved rights				
5.2	The building plans have been prepared in accordance with the National Building Regulations Act and relevant municipal by-laws				
5.3	Approval of the building plans is a formality and will not be unduly delayed				
5.4	Prior to the pouring of concrete, that the foundations are correctly positioned, do not encroach on any other property/building line and are adequate				
6	**PRE-SALES**				
6.1	A schedule of selling prices approved by the Bank, net of Vat, estate agent's commission and transfer fees for release purposes				
6.2	Proof has been provided to us to our satisfaction that pre-sales have been entered into				
7	**HOUSING CONSUMERS PROTECTION MEASURES ACT (RESIDENTIAL DEVELOPMENTS INCLUDING SECTIONAL TITLE)**				
7.1	Proof that the proposed development has been approved by the NHBRC and the Department of Geo-Science, where applicable				

	Pre-disbursement Condition	HIGH	MED	LOW	Comments
7.2	Proof to our satisfaction that the contractor is registered, and the development/units are enrolled, with the NHBRC under the Housing Consumers Protection Measures Act, No 95 of 1998, and the prescribed fees have been paid				
8	**CERTIFICATE TO COMMENCE CONSTRUCTION**				
8.1	Certificate to Commence Construction in terms of Section 7(6) of the National Buildings Regulations Act, No 103 of 1997				
9	**GEOTECHNICAL REPORT**				
9.1	An acceptable geo-technical report				
9.2	A certificate from a structural engineer or other suitably qualified professional that the ground conditions are stable and that the foundations and structural design are suitable for development				
10	**DEMOGRAPHICS STUDY**				
10.1	An acceptable demographic study				
11	**PROFESSIONALS**				
11.1	Record of the members of the professional team				
11.2	The final appointment of the members of the professional team, including any joint venture arrangement with any other contractor, shall be subject to the Bank's approval upon such conditions as it may deem fit in order to satisfy itself that each professional consultant is suitably qualified, experienced and indemnified				
11.3	Proof of professional qualifications and experience to the Bank's satisfaction				
11.4	A copy of the relevant professional indemnity insurance policy				
11.5	A copy of the relevant agreement or letter of appointment				
11.6	Approval by the Bank of the professional team shall further be subject to each professional consultant acknowledging receipt of the Bank's notification that it will act as financier, that the Bank will rely on the professional consultant's payment certificates, recommendations, or other documentation, and that such professional consultant is deemed to owe a duty of care to the Bank in the exercise of all duties in terms of his/it's appointment				

	Pre-disbursement Condition	HIGH	MED	LOW	Comments
11.7	Should any professional consultant fail or refuse to acknowledge receipt of the notification referred to in 11.6 above, the Bank reserves the right to call for a cession in security of all of your/the developer's/subcontractor's rights in and to any agreements/contracts vis-à-vis such professional consultant, provided that such rights have in the opinion of the Bank not been limited to an acceptable extent, and that cession of such rights is not prohibited in terms of the relevant agreement/contract				
11.8	Based on the assessment of the abovementioned information and documents, the Bank reserves the right to impose such further conditions as it may deem fit				
12	**BUILDING CONTRACT, DRAWINGS, ETC.**				
12.1	The contractor, construction contract, development costs, site development plan, architectural drawings, specification and schedule of finishes together with any change or cancellation thereof, must be approved by the Bank in writing and, where required, by the competent authorities				
13	**CERTIFICATES**				
13.1	The Town Council, that the rates and taxes & water and electricity in respect of the property are paid up to date or from the Body Corporate of a Sectional Title Scheme or any other applicable governing body that levies and rates and taxes are not in arrears				
13.2	A certificate as required in terms of regulations of the Occupational Health and Safety Act, No 85 of 1993 in respect of electrical installations as well as confirmation that the Safety Standards contained in the Construction Regulations to this Act have been complied with				