What does real rights of extension in a sectional title scheme entail?

One seldom comes across a deed of sale of a sectional title unit, where the existence or non-existence of a real right of extension is mentioned in the agreement. This is a crucial clause that could, at the option of the Purchaser, cause an agreement of sale to fall apart. A real right of extension refers to a right which the developer reserves to himself to develop further units on the common property of the scheme, usually within a specified period of time. These units can either be a horizontal or vertical extension of an existing building, or the erection of further units on the property. This is a typical scenario where the development occurs in phases.

In order to afford protection to purchasers of units in a scheme which is subject to such a right of extension, the Sectional Titles Act (section 21(14)) requires that such a right of extension must be disclosed in the deed of alienation to every purchaser concerned, whether it be a first purchase from the developer, or any subsequent purchase. A deed of alienation in which the real right of extension is not disclosed, is voidable at the option of the purchaser.

In practice, the problem created by the omission of such a disclosure clause, is often overcome by means of an affidavit, prepared by the transferring attorneys and signed by the purchaser to the effect that:
– The real right of extension was not disclosed in the deed of sale;
– The Purchaser obtained knowledge of the real right of extension after conclusion of the agreement;
– The purchaser nonetheless confirms his intention to proceed with the agreement despite the failure to initially disclose the real right of extension.
Agents and sellers are cautioned to take heed of the requirements of section 21(14) and, where applicable, to include the necessary clause in the deed of sale. Failure to do so may afford an opportunity to a purchaser to retract from an agreement, thereby causing an unnecessary delay in the sale of the property, and financial harm to the seller.