

EXCLUSIVE USE THE TECHNICALITIES AND WHAT THEY MEAN FOR OWNERS

The concept of exclusive use in sectional title schemes is not always clearly understood and it should be, for three very good reasons. Firstly it is an arrangement that gives rise to legal rights that are associated with the ownership of the sectional property and are passed on to subsequent owners of that property; second there are specific things that the owner who holds the rights can and cannot do with the area concerned and thirdly, there are cost implications that the holder of the rights needs to be aware of.

Sectional title schemes are made up of two very distinct types of property, the section – flat, office, shop or small factory – which is wholly owned, and the common property – everything that is not a section in the scheme – which is owned by all the owners together, in undivided shares. Because the common property is owned by all the owners, they all have the right to use it. But they can agree amongst themselves that only one owner is entitled to use a specific portion of the common property and that the rest of the owners will not use it. In other words, the owners can grant exclusive use rights over a defined portion of the common property to one or a group of their number. To make matters even more complicated, there are two types of exclusive use rights and although exclusive use is essentially an agreement among the owners, the developer can entrench these rights during the development process as well as the owners being able to do so at a later stage.

Exclusive use rights are created and granted to owners either as real rights, which are registered at the local Deeds Registry or as personal rights by making a scheme rule. The practical difference between the two from an owner's point of view is what must be done to pass those rights on to the person who buys the unit. Real rights must be formally ceded to a new owner as part of the process of transfer, so the conveyancer must be made aware that there are exclusive use rights involved in the sale and transfer of the property. This means

that the owner must know what type of rights are involved, must tell the estate agent and must make sure that the specification is made in the offer to purchase. Personal, rule based rights are usually granted to “the owner from time to time” of the section, so they pass on automatically. But the owner must check the wording of the rule to make sure.

All portions of the common property subject to rights of exclusive use – let's just call them exclusive use areas, or EUAs – are intended for a certain type of use and that use is formally specified. Most common are parking, garden, storage and balcony. Owners need to be aware that the use specification must be strictly applied. An owner needs to know that he or she can make improvements to their EUA but before doing so they must get the written consent of the trustees. Some examples are shade cloth carports and swimming pools. The trustees have to make sure that the improvement is not unsightly or otherwise has a negative effect on the scheme or the other owners before they give their consent.

People considering buying a sectional title unit are almost always aware that they will have to pay a levy to the scheme in addition to their bond payment to the bank. They may not know that they will have to pay an amount to the scheme for their EUA. The body corporate of the scheme is obliged by law to charge the owner who holds the rights for any costs the body corporate might incur over the EUA. These are generally maintenance and repair and services costs. Finally, it's important that owners understand and remember that they do not own their EUAs, they only hold rights of exclusive use over the area. They are obliged to keep the EUA neat and clean but it is the body corporate's responsibility to maintain them.

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Footnote from Compeg:

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