

Managing property properly

ARE THERE DRONES IN YOUR RULES?

Trustees and Directors in Community Schemes may wish to elucidate the current drone regulations in their rules.

Picture the scene. You're sitting in your backyard on a hot day, surrounded by a fence and invisible to your neighbours in your residential estate. You decide to take a skinny dip, when suddenly you notice a buzzing sound.

You look around for a swarm of bees and, instead, find yourself looking up at a drone with a camera, hovering in the air over your swimming pool. What can you do? If you live in a freehold home, the short answer is not much except pull on your clothes or go inside. If you live in a sectional title complex or a community housing scheme like a townhouse complex, retirement village or a residential estate, the solution may lie in your rules.

Drone regulations are relatively new and the law is struggling to keep up with advances in the sophisticated technology. Drone law is an aspect of robot law, and until quite recently, drone flying was unregulated in South Africa, and was, for all intents and purposes, illegal. In July 2015, the Minister of Transport adopted the laws found in Part 101 of the South African Civil Aviation Regulations. These tighter controls are a direct result of collaboration between the Government and the drone industry. It was critical to deal with this rapidly expanding industry by fleshing out the main issues of safety, security and privacy when using drones, and the correct way to classify them. South Africa became one of the first countries to effect comprehensive drone laws and is a member of the International Civil Aviation Organisation (ICAO) working with the member states to create an international regulatory framework for drones using Standards and Recommended Practices (SARPS).

Going back to our skinny-dipping homeowner, it turns out that little Pravesh Perumal who lives down the road in the estate is the proud owner of the DJI Spark Drone which was hovering over the skinny dipper. Undoubtedly, although Pravesh is a keen fan of any TV programme related to the FBI, his toy drone bought at Drone World for R7 500 does not constitute a threat to National Security. A thorny issue is the distinction between a 'toy' and a drone. The initial suggestion by the SACAA is that if the aircraft is being used solely for recreational or sport purposes, then it is governed by Recreation Aviation Administration South Africa (RAASA). So the aircraft would most likely be regarded as a toy and its use would be legal. However, if the aircraft is used for commercial purposes, professional or aerial work, then it would likely be classified as a drone and would have to be regulated by the SACAA. This type of drone must be registered.

Your privacy as owner in a Sectional Title Scheme or Homeowners Association is of paramount importance.

In terms of the common law, as a home owner, you are entitled to the peaceful and undisturbed possession of your property. In a Sectional Title complex, Section 13(1)(d) of the Sectional Titles Schemes Management Act 8 of 2011 states that an owner must use and enjoy the common property in such a way as not to interfere unreasonably with the use and enjoyment thereof by other owners or other persons lawfully on the premises. Privacy also needs to be taken into account when further developing drone law as drones are often equipped with video cameras on them. They could record or stream videos anonymously and potentially also gather data. The Protection of Personal Information Act (POPI Act) protects an individual from the unlawful processing of their personal information. Collection is included in the definition of 'processing' so before these regulations are signed into law, they must take the provisions of POPI into account especially in light of new advanced technologies like drones.

The pilot of a commercial or toy drone has to fly the drone safely in all circumstances and cannot by law go higher than 45m from the ground. Interestingly, the drone may not weigh more than 7kg and cannot fly closer than 10km to an airport or over a Sanpark reserve. Our fictitious Pravesh Perumal would have to obtain permission from his skinny-dipping neighbour to get closer than 50m to within her property, and if he familiarised himself with the regulations, would know that his drone could only be flown in daylight, in clear conditions, within his visual line of sight. Trustees and directors in Community Schemes may wish to elucidate the current regulations in their rules.

Reference Marina Constat – BBM Attorneys