

Managing property properly

Authorising use change in sectional title

It often occurs in sectional title schemes, that owners use parts of their sections or exclusive use areas for a purpose other than it was originally intended to be used.

An example is, when an owner converts his garage into a bedroom or lounge. The reason why this would be problematic is that a garage is intended to be used as a space for parking a motor vehicle. If this space is then used for another purpose, it would place more pressure on the availability of parking bays in the scheme, as the owner would then need to park outside the garage.

It also often occurs that a garage is used as an office or workshop. It is important to distinguish between someone quietly working from home, by sitting in front of their computer; working entirely online and using the phone, which doesn't involve any nuisance; and running a business that disrupts the residential harmony of the scheme. In my opinion, the former should be more readily consented to, whilst the latter should not.

I have also come across a situation where the owner wanted to enclose their balcony and convert it into a bathroom! My main concern was that this alteration would impair the stability of the building as the balcony would not have been able to facilitate the weight of a bathtub full of water.

The provisions that deal with using a section or exclusive use area for a purpose other than as shown on the sectional plan are dealt with in section 13(1)(g) and section 13(2) of the Sectional Titles Schemes Management Act 8 of 2011 ("the STSM Act") and Prescribed Management Rule ("PMR") 30(f). **Section 13(1)(g)** states that:

"An owner must when the purpose for which a section or exclusive use area is intended to be used is shown expressly or by implication on or by a registered sectional plan, not use nor permit such section or exclusive use area to be used for any other purpose: Provided that with the written consent of all owners such section or exclusive use area may be used for that purpose as consented to."

Section 13(2) of the STSM Act adds to section 13(1)(g) and states that:

"Any owner who is of the opinion that any refusal of consent of another owner in terms of the proviso to subsection (1)(g) is unfairly prejudicial, unjust or inequitable to him or her, may, within six weeks after the date of such a refusal, make an application in terms of this subsection to an ombud."

PMR 30(f) takes this further and states that:

“The body corporate must take all reasonable steps to ensure that a member or any other occupier of a section or exclusive use area does not subject to the provisions of section 13(1)(g) of the Act, use a section or exclusive use area for a purpose other than for its intended use as —

(i) shown expressly or by implication on a registered sectional plan or an approved building plan ;

(ii) can reasonably be inferred from the provisions of the applicable town planning by-laws or the rules of the body corporate; or

(iii) is obvious from its construction, layout and available amenities.”

In the unreported case of *Bonthuys and Others v Scheepers* CA 303/2006 [2007] ZAECHC (17 Sept 2007), the High Court of the Eastern Cape reversed the decision of the Magistrate’s Court, granting consent to the owner of a unit in a residential sectional title scheme to run her hairdressing salon. The court allowed the appeal because the lady started the business without obtaining the written consent of the owners in terms of section 44(1)(g), and because the refusal of 13 of the owners to grant their consent was not unfairly prejudicial to the applicant. The court followed the court in *Cujè-Jakoby & Another v Kaschub & Another* 2007 3 SA 345 (C) in interpreting the word “unfairly” where the court found that the words “unfairly prejudicial, unjust or inequitable” denoted conduct which departed from the accepted standards of fair play and that the word “unfairly” should be equated with the word “unreasonably.” The Court found that the prejudice suffered by the other owners, far outweighs the prejudice that may be suffered by the applicant. It was decided that:

- The hairdressing salon would affect the peace and tranquility associated with a residential scheme.
- The fact that the applicant created a separate entrance for her clients would compromise the security of the other owners.
- The evidence did not indicate any value added to the other owners, but rather suggested an adverse effect on the owners.
- It was stressed that personal circumstances of the applicant namely that she lost her job because the salon she worked for closed down and that she struggles to support a four year old child, did not justify a departure from the established scheme.

It is clear from this article and from the cases that a section or exclusive use area cannot be used for another purpose without the written consent of all the owners in terms of section 13(1)(g) of the STSM Act and PMR 30(f).

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