

## *Managing property properly*

### Rules – Are they Constitutional?

Various types of rules regulate and affect many areas of life in a sectional title scheme. Aside from the model **Management and Conduct rules** prescribed in Annexures 8 and 9 of the Sectional Titles Act 95 of 1986, other non-prescribed rules are adopted by either the developer initially or later by the members of the body corporate. These rules provide for the control, management, administration, use and enjoyment of the sections and the common property.

Owners and their occupiers have the entitlements of use and enjoyment of their sections and their share in the common property, in proportion to their participation quota. However, these **entitlements are restricted by the rules** in operation within the scheme. Although the rules restrict and limit the entitlements of owners and occupiers in the interest of the sectional title community, they may not be unreasonable in their application and effect. In some instances, the application of the rules may exceed the bounds of reasonableness and result in unfair discrimination, arbitrary deprivation, unfair administrative action or restrictions on access to courts for dispute resolution.

**If certain rules are unreasonable** in their application, based on one or more of the above mentioned grounds, the court is tasked with interpreting the rules and if it is found to be in contravention, these rules will need to be substituted, amended or repealed and replaced because they are potentially unconstitutional and invalid. After a statutory and constitutional enquiry into the nature, scope, application, operation and effect of the rules, it may be concluded that the various types of rules governing sectional title schemes restrict and limit owners' and occupiers' entitlements of use and enjoyment of their sections and share in the common property. However, after being tested against section 25 of the Constitution of the Republic of South Africa 1996 ("property clause") and other non-property rights entrenched in the Bill of Rights, to determine whether the rules are reasonable in their application and constitutionally permissible, it can be seen that the application of the rules do not necessarily amount to arbitrary deprivations of property and proprietary rights, and that they can be justified in terms of the Constitution because there is sufficient reasons for the particular regulations and they are procedurally fair.

The rules serve as reasonable regulations in as far as they contribute to a harmonious relationship between the members of the body corporate. They are therefore considered reasonable and constitutionally valid in as far as they do not enforce excessive regulation and as long as they are equally applicable and do not unfairly differentiate in their application.

**Article reference:** Paddocks Press:

#### ***Footnote from Compeg:***

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