

Managing property properly

Visitor parking bays in sectional title schemes



By Carryn Melissa Durham

In this Carryn's Corner article I would like to address the contentious topic of **visitor parking bays** in sectional title schemes.

It's no secret that parking creates many **problems** in sectional title schemes. This is especially the case in older schemes that were built in a time where not many people owned cars. Nowadays families have at least two cars. The **limited availability** of parking bays in sectional title schemes has put great pressure on visitors' parking bays.

There is nothing in the Sectional Titles Act 95 of 1986 ("the Act") or prescribed rules that specifically deals with visitor parking bays or that defines what visitors parking bays actually means. **Prescribed Conduct Rule ("PCR") 3(1)** states that no owner or occupier shall park or stand any vehicle upon the common property, or permit or allow any vehicle to be parked or stood upon the common property, without the consent of the trustees in writing. This prohibition does not apply to any visitors' parking bays. Visitor parking bays is not a condition that is dealt with in any of the scheme documentation because it forms part of the relevant town planning ordinance. Therefore the **requirements for visitors parking is a local municipality town planning issue.**

For example, the City of Cape Town zoning scheme regulations states that: "Visitor parking bays shall be clearly demarcated, readily visible and accessible to visitors and preferably grouped together."

Furthermore the **City of Cape Town zoning scheme regulations** set out the required number of visitors' parking bays – one visitors' parking bay per four units.

In terms of **section 37(1)(n) of the Act**, the body corporate must “ensure compliance with any law relating to the common property or to any improvement of land comprised in the common property”. This means that the trustees must, on behalf of the body corporate, ensure that this regulation is adhered to. While in practice the visitor parking bays may be used by residents, the trustees are not entitled to give any resident permission to park in such a bay or let these parking bays out in terms of a lease agreement. Furthermore the trustees cannot give exclusive use rights to any owner over a visitors parking bay.

In practice, the local municipality does not usually react to contraventions of the town planning scheme except of the basis of complaints. In my experience, I have visited the building survey and town planning department in Cape Town and could not obtain a clear answer on the application of the zoning scheme regulations.

So what can be done to deal with the use of visitors’ parking bays then?

If the scheme does not have sufficient off-street parking to serve the needs of the residents and there are unallocated parking bays on the common property, the trustees should take and record in the minutes of their meetings a **parking policy** that set out the rights and obligations of residents in their use of these bays. Notice of this resolution should be posted on a notice board on the common property or otherwise communicated to all residents. Furthermore owners may in terms of **section 39(1) of the Act give trustees directions** as to how they should control parking on the common property. Some schemes have rules on how many nights per month a visitor may stay over. Some issue a **limited number of overnight parking tokens** to residents for the use of their visitors.

Where schemes do not have sufficient parking bays I suggest that, if there is unused open space, the trustees **initiate the creation of additional parking bays**. It will be a non-luxurious improvement to common property, and the process set out in PMR 33(2) for a non-luxurious improvement will need to be followed.

Image source: myparkingsign.com

Footnote from Compeg:

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