

Managing property properly

The right to privacy

Posted In: [Paddocks Press Newsletter](#)

One of the contributing factors to the increasing popularity of living in a sectional title scheme is the security which these schemes offer. The costs of installing security and other protective and preventative measures is a shared or common expense between the scheme's members. As such, many schemes are able to afford to secure their boundaries with electric fencing, high tech security cameras, on site security guards and patrols, and access control.

However, security cameras installed on the scheme's common property may potentially infringe an owner and occupier's right to privacy. We will similarly take a look at whether photographs taken, documenting breaches of the Sectional Titles Act ("the Act") and the body corporate rules, may be considered as an infringement of an owner and occupier's right to privacy.

Your Constitutional right to privacy

Section 14 of the Constitution of the Republic of South Africa Act No. 108 of 1996 ("the Constitution"), provides that everyone has the right to privacy, which includes the right not to have (a) their person or home searched; (b) their property searched; (c) their possessions seized; or (d) the privacy of their communications infringed.

The Sectional Titles Act and privacy

Firstly, let's take a look at the provisions of the Act, which empowers the body corporate, represented by the trustees, to secure the common property of the scheme, and to record and document any breaches, by its members and occupiers, of the Act and the rules of the scheme.

The provisions that are relevant in this instance are set out as follows. In terms of section 37(1)(r) of the Act, a body corporate shall control, manage and administer the common property for the benefit of all owners. Prescribed Management Rule ("PMR") 28(2) of Annexure 8 of the Regulations to the Act, further provides that the trustees shall do all things reasonably necessary for the control, management and administration of the common property in terms of the powers conferred upon the body corporate by section 38 of the Act. In this regard, section 38(j) of the Act provides that the body corporate may exercise the power to do all things necessary for the enforcement of the rules and for the control, management and administration of the common property. While PMR 28(3) provides that the trustees shall do all things reasonably necessary for the enforcement of the rules

in force. Section 44(1)(a) of the Act further provides that an owner shall permit any person authorised in writing by the body corporate, at all reasonable hours on notice, to enter his section or exclusive use area for the purposes of inspecting it, or for the purposes of ensuring that the provisions of the Act and the rules are being observed.

When it comes to the acquisition of security installations, such as security cameras, an argument can be made that the trustees are empowered, in terms of section 38(c) of the Act, to purchase such items. This section of the Sectional Titles Act provides that the body corporate may exercise the power to **purchase, hire or otherwise acquire movable property** for the use of owners for their enjoyment or protection, or in connection with the enjoyment or **protection of the common property**. Alternatively, an argument may be made that such an item constitutes an **improvement** to the common property as set out in PMR 33. I will reserve the question of whether the installation of security cameras may constitute a luxurious or non-luxurious improvement to common property, for another article.

In light of the various provisions of the Act as set out above, it is clear that the trustees or the body corporate may have security cameras installed on the common property for the purposes of protecting the residents of the scheme as well as the property therein. However, in order to not infringe the members' and occupiers' right of privacy, these security cameras should be positioned and operated in such a way as to not record the activities within sections. Any photographs taken, documenting breaches occurring on common property, should similarly not infringe on the members' and occupiers' right to privacy.

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