

Managing property properly

Exclusive use areas – can they still be created?

In this article, we will take a look at exclusive use areas, either registered, or created in terms of rules, in sectional title schemes.

The Sectional Titles Act 95 of 1986 (“the STA”), has been repealed and replaced, in part, by the Sectional Titles Schemes Management Act 8 of 2011 (“the STSMA”), as from 7 October 2016. The STSMA removed most of the scheme administration and management provisions from the STA.

It has recently become clear that there is misconception that exists regarding exclusive use areas, created and allocated in terms of a scheme’s registered, or now approved, rules. In our practise, we have been receiving queries relating to whether exclusive use areas may still be created in terms of a scheme’s rules, considering that section 27A of the STA has been repealed. Let us have a look at this question, in light of what is seen as an exclusive use area, how it is registered or created, and who must maintain and repair it.

How is an exclusive use area registered?

In terms of section 27 of the STA (not repealed by the STSMA), the developer, when making application for the opening of a sectional title register, and the registration of the sectional plan, may impose a condition by which the right to the exclusive use of a part or parts of the common property, delineated for this purpose on the sectional plan, is conferred upon the owner or owners of sections. The developer cedes the right to the exclusive use of a part of the common property to the owner of a unit within the scheme by the registration of a notarial deed in the favor of the owner. Should a developer cease to be a member of the body corporate before the cession of this right, the right to an exclusive use area still registered in the name of the developer, will vest in the body corporate free from any obligation, such as a mortgage bond.

Should the body corporate wish to delineate and register the rights of exclusive use, the members of the body corporate will need to authorise the process by passing a unanimous resolution. The body corporate may then instruct an architect or land surveyor to apply to the Surveyor-General for the delineation on the amending sectional plan of extension, of a part of the common property for the exclusive use by the owner of a section. The body corporate will transfer this right by the registration of a notarial deed. This registered right to an exclusive use area is deemed to be a real right to immovable property, which can be transferred or bonded.

Can exclusive use areas still be created and allocated in terms of a scheme’s rules?

As mentioned above, section 27A of the STA has been repealed. However, it has been replaced by section 10(7) and (8) of the STSMA.

In terms of section 10(7) of the STSMA, a developer or the body corporate may make management or conduct rules which confer rights of exclusive use and enjoyment of parts of the common property upon members of the body corporate.

In terms of section 10(8) of the STSMA, these rules will include a layout plan to scale, on which it is clearly indicated, the locality of the distinctively numbered exclusive use areas, and the purpose for which these exclusive use areas may be used. A schedule will also be included, indicating to which owner the exclusive use area is allocated.

The management or conduct rule, along with the layout plan and schedule of allocation, once approved by the members via special or unanimous resolution, must be submitted to the Community Schemes Ombud Service for examination and approval, and will only come into operation on the date of such approval.

Are contributions payable on exclusive use areas?

In terms of section 3(1)(c) of the STSMA, the trustees of the body corporate must require that the owner of a section, entitled to the right of exclusive use of a part of the common property, whether such a right is registered or conferred by the body corporate rules, to make an additional contribution to the body corporate's administrative fund as estimated necessary to defray the costs associated to that area of common property.

Who is responsible to maintain exclusive use areas?

In terms of section 3(1)(l) of the STSMA, the body corporate is responsible to maintain the common property, including exclusive use areas, in a state of good and serviceable repair. Whereas, in terms of section 13(1)(c) of the STSMA, an owner must just keep their exclusive use area in a clean and neat condition.

When marketing the sale of a sectional title unit, it is important to determine whether an exclusive use area exists, either as a registered right recorded in a notarial deed of the section and the sectional plan, or created in terms of the body corporate's rules.

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