

Exclusive Use Area

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What is an exclusive use area?

Exclusive use areas in a sectional title scheme are defined in the Sectional Titles Act as ‘a part or parts of the common property for the exclusive use by the owner or owners of one or more sections.’

Examples of what can be the subject of the exclusive use right includes gardens, parking bays, courtyards, storerooms, patios and so forth.

The common property comprises of “the land included in the sectional title scheme together with such parts of the building or buildings that are not included in a section and land referred to in section 26.”

Certain parts of the common property can be reserved, either by the developer or the body corporate, for exclusive use by a specific owner.

Accordingly, such exclusive use areas forms part of the common property and do not form part of a section.

The owner holding the right to exclusive use may use that area exclusively of all the other owners, but it still remains part of the common property.

There is a clear difference between an owner’s undivided share in the common property and his right to the exclusive use of a part of the common property.

An owner automatically has an undivided share in the common property if he is the owner of a section, but an owner does not necessarily have the same right to an exclusive use area.

Creation of exclusive use areas in terms of section 27 [Sectional Titles Act] and section 10(7) [Schemes Management Act]

The Sectional Titles Act and Schemes Management Act makes provision for the creation of exclusive use areas in one of two ways.

Firstly, exclusive use areas can be created in terms of section 27 in the Sectional Titles Act (registered/genuine exclusive use areas).

Secondly, exclusive use areas can be created in terms of section 10 (7) in the Schemes Management Act (rule-based/non-genuine exclusive use areas).

Registered (genuine) exclusive use areas

Registered exclusive use areas in terms of section 27 can be created either by the developer at the opening of the sectional title register:

By the developer

If the delineation of a part or parts of the common property is indicated on the sectional plan, the developer must, when making application for the opening of a sectional title register and the registration of the sectional plan, reserve such a part or parts of the common property for use as exclusive use areas by a specific section by way of a certificate of real right of exclusive use, and when the specific section is sold this right will be ceded to the owner of the section by registration of a unilateral notarial deed.

If no such reservation was made by the developer, then the Sectional Titles Act grants the developer a second chance to reserve exclusive use areas.

The developer may, after the opening of the sectional title register, but before the establishment of the body corporate apply for a certificate of real right of exclusive use at the Registrar of Deeds.

This right to exclusive use is then notarially ceded to an owner.

By the body corporate

The body corporate may, subject to the provisions of section 5 (1) and 5 (1)(d) of the Schemes Management Act, request an architect or land surveyor to apply to the Surveyor-General for the delineation of the exclusive use areas on a sectional plan for the exclusive use by the owner or owners of one or more sections.

In this instance the right to exclusive use will then be notarially ceded from the body corporate to an owner.

Rule-based (non-genuine) exclusive use areas

Exclusive use areas can be created in terms of section 10(7) of the Schemes Management Act. This section provides for a cheaper and less cumbersome method of creating exclusive use areas in the rules of the sectional title scheme.

The developer may, at the opening of the sectional title register, add a special rule that will provide for exclusive use areas.

On the other hand the body corporate may also amend the management or conduct rules, by unanimous or special resolution (depending on the rule that is amended) to create exclusive use areas.

The requirements for this method of creation are that the rules must:

- Include a layout plan to scale, indicating the location of the distinctively numbered exclusive use and enjoyment parts and the purpose for which these parts are to be used.
- Include a schedule indicating to which member each such part is allocated.

If the exclusive use area is created by the body corporate then a further requirement is that the Registrar of Deeds should be notified of the amendment. Only after this notification will the rule be of force.

Nature of the right of exclusive use in terms of section 27

An exclusive use right created in terms of section 27 is deemed to be a right to immovable property over which a mortgage bond, lease contract or personal servitude of usufruct, usus or habitatio may be registered.

Nature of the right of exclusive use in terms of section 27A

The rights of exclusive use created in terms of section 27A are not real rights in immovable property and are not registrable in the Deeds Office.

These rights are personal rights created in terms of the rules of the scheme.

* Reference to Sections 26 and 27 – Please contact Whitfields for relevant sections of the Sectional Titles Act: info@whitfields.co.za.