



Nama News

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Sectional Title Property Community



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Commercial signage on S/T buildings



Article by
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The trustees and managing agents of Sectional Title schemes in metropolitan areas are increasingly being approached by persons and businesses wishing to erect commercial signage on the buildings.

Although the financial incentives linked to some of these enquiries may be substantial, the trustees need to bear in mind that the areas on which the signage would be erected (generally the façade or outer walls of the scheme's building) are common property and must therefore be administered according to the provisions of the Sectional Titles Act 95 of 1986 (the Act) and the prescribed rules.

Signage contracts with outsiders

The trustees and or/managing agent do not have the power to lease a portion of the common property (eg. a defined portion of the building's façade) to an outsider (i.e. a non-owner) for the purpose of signage erection or any other purpose.

Section 17 of the Act provides that sectional owners may, by unanimous resolution, direct the Body Corporate (in practice the trustees) to lease a portion of common property to an outsider.

But such a lease must be for a period of at least ten years or must be renewable for periods from time to time which will in all amount to not less than ten years.

This is a very long period for a signage lease and therefore may not be suitable to advertise a brand or product.

Commercial section owners' signage

After all, commercial signage goes hand in hand with the use of commercial premises.

But what about owners of commercial sections in mixed schemes (ie. schemes zoned for both residential and commercial use)?

The owners of sections zoned for commercial purposes in this context would also expect to be able to erect signs advertising their commercial activities, but the residential section owners and trustees may object to this.

The Act is silent on this issue and the prescribed conduct rules deal only with signage in relation to residential sections where owners/occupiers may only erect signage on common property with the prior written consent of the trustees.

Common property

There is nothing in the Act or prescribed rules requiring a commercial section owner to obtain the consent of the trustees before erecting reasonable signage relating to the business run from his/her commercial section.

But if signage is to be erected on the common property, most likely on the façade or outer-wall of the building, all other owners should be consulted



KNOW YOUR RIGHTS!

In a recent case heard by the Supreme Court of S.A (Transvaal Provincial Division)(Pretoria) the court instructed the City Council to re-instate the pre-paid electricity meter of a Sectional Title owner.

BACKGROUND

- 1) The S/T owner (CC) who owns a few flats in central Pretoria, which he rents out, applied to the city council to install pre-paid electricity meters (for obvious reasons) which was duly approved and installed.
- 2) In one instance the city council removed the pre-paid meter without informing the owner and/or the tenant.
- 3) When confronted by the owner the city council reply was that the administrator of the building (no trustees) contracted Constantia Metering CC to administer the electricity usage of the building.

The order of the court confirm that the trustees of a Body Corporate (in this case the administrator) does not have the power to intervene in the contractual relations between the city council and the user (owner or tenant) with relation to the electricity usage of a unit.

The trustees may only manage, control and administer the common property and cannot enter into a contract and /or instruct a third party to take over the power provision and management of a unit's power from the city council.

and given the opportunity to give their opinions regarding the signs potential effect on the harmonious appearance of the building. [Prescribed Management Rule 68(iv)] as well as whether the sign would be injurious to the scheme's reputation [Prescribed Management Rule 68(1)(i)]. Another option, and perhaps a more conservative route for a commercial section owner,

would be to enter into a short term lease (under 10 years) for an area of common property with the trustees in terms of section 38(i).

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Parking bays in a Sectional Title scheme



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It happens quite often that an owner of a section in a sectional title scheme lays claim to the use of a parking bay, averring that he "bought" it from a previous owner and that he has a contract of sale evidencing his claim that he bought the parking bay.

Unfortunately for this owner, and despite the fact that the right to the use of the parking bay was "included" in the purchase price of his section, it is possible that he is not entitled to the right to the use of that parking bay at all and that his predecessor in title was under a mistaken belief that he was legally entitled to the use of the parking bay.

There is no provision in the Sectional Titles Act of 1986 ("the Act") which provides that each owner of a section must have the use of a parking bay.

Bays can be ceded

If it is possible to create parking bays at a scheme, the Act provides that the rights to the use of parking bays can be ceded to owners by way of notarial deed of cession, registered in the Deeds Registry, or the developer or the owners, by unanimous or special resolution, can make rules conferring the right to the exclusive use of parking bays to owners of sections from time to time.

These methods of allocating rights to parking bays do not generally cause problems on the resale of sections.

The problems arise when no parking rights have been legally allocated and owners have only "customary" rights to use particular parking bays for reason of the bays that were made available to them by the developer or a subsequent owner.

The trustees are also entitled to rent parts of the common property to owners for use as parking but, more often than not, no rental agreement is entered into and parking bays are "transferred" from the one owner to the next based on oral agreements and without proper legal foundation.

Oral agreements are often without proper legal foundation.

If there is uncertainty as to owners' entitlement to the rights to the exclusive use of parking bays the trustees should attempt, on behalf of the body corporate, to formalize the use of the parking rights, taking into account existing rules and practices at the scheme.

If an owner can successfully prove that he is entitled to the use of a parking bay, whether the rights to the bay were ceded to him and whether or not there are valid rules allocating the rights to the use of the parking bay to him, such rights cannot now in practice be taken away from the owner.

If, however, it transpires that a previous owner was not entitled to rights which he "sold" to his successor in title, this new owner's claim for losses suffered by him will be against the previous owner and not against the body corporate.



Especially for lexophiles

1. A bicycle can't stand alone; it is two tired.
2. A will is a dead giveaway.
3. A backward poet writes inverse.
4. In a democracy, it's your vote that counts; in feudalism, it's your Count that votes.
5. A chicken crossing the road: poultry in motion.
6. Show me a piano falling down a mine shaft and I'll show you A-flat miner.
7. When a clock is hungry, it goes back four seconds.
8. A grenade fell onto a kitchen floor in France resulted in Linoleum Blownapart.
9. A boiled egg is hard to beat

PARKING

When Solomon said there was a time and a place for everything he had not encountered the problem of parking his automobile.
-- Bob Edwards

FAQs

Is Surveillance Cameras Permitted on Common Property?

Surveillance of the common property in residential buildings is permitted and will not invalidate an arrest.

The underlying basis for this finding is that residents have no reasonable expectations of privacy in areas that are in joint control of the B/C known as "common property" which are publicly accessible.

As a result surveillance of such areas may be undertaken without residents knowledge and even over their objections.

Block for Managing Agents

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