Formalising parking arrangements by creating rule-based exclusive use areas
By Jennifer Paddock

In many sectional title schemes in South Africa, owners and tenants have tacit arrangements, generally established over long periods of time, in respect of who is "entitled" to park where. Many people really believe that a particular parking bay is "theirs", although legally they have no greater right to use it than anyone else in the scheme.

Provided it is not a contentious issue, **formalising the situation relating to parking bays in these schemes** will be beneficial not only to the owners of sections – their sections will be more valuable because they can be sold with parking bays legally attached – but also to the body corporate, as it will legally be entitled to recover money from owners in relation to the costs it expends on the parking bays.

There are only two ways in which a body corporate can create rights to exclusive use areas. The first is in terms of **section 27 of the Sectional Titles Act 95 of 1986** ("the Act") and is registered on the scheme's sectional plan. The second is in terms of **section 27A**, which is created in terms of the scheme's rules. The section 27 procedure is more expensive because the services of a land surveyor or architect must be employed, is time consuming and requires a unanimous resolution of the body corporate, which is often very difficult to obtain. The procedure in terms of section 27A, however, is much cheaper and easier as it does not require the services of a land surveyor or architect and only requires a special resolution of the body corporate if conduct rules are made.

Section 27A of the Act allows the body corporate to make rules, either management rules by unanimous resolution or conduct rules by special resolution, which confer rights of exclusive use and enjoyment of parts of the common property upon members of the body corporate. It also requires that the rules include a layout plan to scale which clearly indicates the locality of the distinctively numbered exclusive use areas, as well as the purpose for which the areas will be used and an allocation schedule detailing which owner will be entitled to use and enjoy each exclusive use area.

These two sections of the Act are the only ones that provide for the creation of exclusive use rights as that term is used in the Act. It is sometimes suggested that areas that are only accessible from one section and therefore are not ordinarily available for the use of other owners are "de facto" exclusive use areas. The concept of exclusive use, as it is used in the Act, depends on the existence of an agreement between owners, either under section 27 or section 27A. It is not possible to create exclusive use areas without an underlying agreement to this effect between owners and the Act gives specific directions as to the ways in which this agreement can be obtained and must be formalised.

Jennifer Paddock is a sectional title expert. Click here to see the schedule of training courses, or for free sectional title advice go to www.sto.co.za.

Article reference: Paddocks Press Volume 5, Issue 6, Page 4