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Extend consent and then unit

It is very seldom, when buying a property, that one can be sure the property will satisfy the buyer's needs for an unlimited number of years.

Families often grow, requiring more bedrooms, hobbies and social habits demand more recreational space and sooner or later an owner might decide to enhance his investment in the property by adding further living space. Unlike conventional property, where only an owner's cash flow situation dictates the size of the additions to the property, an owner of a sectional title property also has to get the consent of 75% of the members of body corporate before he can build that extra bedroom, thus extending his section.

If the decision to give permission to extend a section is taken at a general meeting and a quorum of owners has been established, only 75% of the owners present or represented at the meeting have to vote in favour of the proposal, and that seems easily achievable. Unfortunately, hidden in the provisions of the Sectional Titles Act is another provision that could prevent an owner from getting the necessary consent.

If, as is often the case, the building works necessary to extend the section are in the owner's exclusive use area, for example a garden or yard area, to which the owner holds rights under notarial deed of cession, this owner will have to obtain a further special resolution to cancel the exclusive use rights to that area, such as a garden.

In order to restore the exclusive use rights to the rest of the garden or yard that will remain after the building works have taken place, this owner will have to obtain a unanimous resolution to have the remainder of the exclusive use area allocated to him again. More often than not, the extension of a section will not lead to an increase in the size of the exclusive use garden.

However, the extent of the garden area will decrease if the section is extended onto it and this change has to be recorded by the body corporate when consent is considered to extend the section. This could lead to the unsatisfactory situation of an owner receiving the necessary special resolution to extend his section and to cancel the exclusive use area, but not being able to obtain a unanimous resolution to restore his exclusive use rights to balance of the garden or yard.

This anomaly in the Sectional Titles Act should be addressed and it should be provided that if a section is being extended onto an exclusive use area, the rights to which have been ceded to the owner of the section under section 27 of the Sectional Titles Act, 1986, it is implicit in the consent to extend the section that the size of the exclusive use area will be reduced accordingly on registration of the sectional plans of amendment. No separate unanimous resolution should be necessary.

Unfortunately, until this issue is addressed, owners will have to obtain both a special resolution and a unanimous resolution to properly address the impact of the extension of their section onto their registered exclusive use areas.

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