

What you can and can't do with sectional title property

By Anton Kelly

Anyone who has ever lived in a sectional title scheme will be aware that there are advantages and disadvantages to the lifestyle. Along with the advantages, like good security and freedom from building and garden maintenance obligations, are the disadvantages, like the possibility of having to pay a special levy and restrictions on what you can and can't do with your property.

Ownership of sectional title property involves a number of elements, bearing in mind that the unit is a section plus an undivided share of the common property. The first element is the section (read flat/apartment/shop/office/factory), which is exclusively owned, and the second is the common property, which is owned by all the owners in undivided shares.

The third possible element to sectional ownership is the right to exclusively use a certain part of the common property. While exclusive use areas are *not* exclusively owned, there are restrictions on how the owner holding the rights can use them and so we've included it as an element of ownership.

Let's look at what owners can and can't do with their sectional title property.

The unit:

The unit may be bought, sold and mortgaged.

The section:

The section may be extended, subdivided or consolidated with another section. The consent of the body corporate and trustees is required. The owner of the section is responsible for its maintenance and for making sure that it physically supports neighbouring sections and common property, and is liable for damage to the common property or another section caused by any failure in their section (the common example is the shower leaking into the section below).

The owner may renovate and change the section without asking permission as long as the change is not aesthetically displeasing (and visible from outside) and still provides the support mentioned above. An owner is also responsible for the maintenance of the hot-water system that supplies their section even if most of the system is outside the section. The section is private property and the owner is entitled to prevent others from entering. However, the trustees must be given reasonable access to the section. Sections may only be used for their designed purpose.

The common property:

Owners are entitled to reasonably use all the common property that is not set aside for the exclusive use of other owners. Owners are not allowed to maintain or make any changes to the common property except for areas over which they hold exclusive use rights.

Exclusive use rights:

Exclusive use rights are essentially a formal agreement between all the owners that only one owner (or a specific group of owners) may use a specific portion of the common property. These portions

remain common property and are thus owned by all the owners in the scheme in undivided shares. The most common exclusive use areas are parking bays and gardens.

Owners must keep their exclusive use areas clean and neat. The body corporate is responsible for their maintenance but the owners holding the rights bear all costs associated with these areas. Exclusive use areas may only be used for their defined purpose. An owner may seek permission from the trustees to make changes to their exclusive use area, but the change may not constitute the extension of their section or the creation of a new section. Examples of these changes are shadecloth carports, built-in braais and Wendy houses.

Anton Kelly is one of the Course Conveners of the [UCT \(Law@Work\) Sectional Title Scheme Management course](#). The next course is due to start on 6 December 2010. For more information go to: www.paddocks.co.za or email kate@paddocks.co.za