

MEASURES TO BE IMPLEMENTED IN COMMUNITY SCHEMES DURING LOCKDOWN

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INTRODUCTION

The period of lockdown presently being experienced by South Africans in response to the COVID-19 pandemic has resulted in much confusion and alarm, not least of which amongst members and occupants of sectional title schemes. Many members of society are unsure or unaware of what conduct is permitted and what is prohibited. This is especially difficult to regulate in community schemes such as sectional title schemes and blocks of flats, in which owners and tenants living in the scheme are unsure as to whether they are able to leave their units and enjoy their undivided share in the common property, or whether (for example) they may request that their domestic staff living in the complex to continue coming to work. In this article, we will address some of the more vexing legal questions raised by many of our clients living in sectional title schemes during this uncertain time.

The President's Announcement Cyril Ramaphosa, the President of South Africa, made an announcement on 23 March 2020 that shook the nation. The essential components of this announcement are as follows:

- In terms of Regulation 11B to the Disaster Management Act 57 of 2002 ("the Regulations"), from midnight on Thursday 26 March 2020 until Midnight on 16 April 2020, there will be a nationwide lockdown and all South Africans will be required to stay home;
- individuals will only be able to leave their homes during this period under strictly controlled circumstances, which circumstances include seeking of medical care, buying essentials such as food, medicine and other vital supplies and/or collection of social grants; and
- certain classes of workers who are determined essential will be exempted from the above measures. Some examples of exempt workers are those involved in the production and supply of food and basic goods, essential banking services, the maintenance of power, water and telecommunication services, security services, laboratory services and hygiene products.

Application of the Lockdown "Rules" to Community Living Arrangements

When you buy a unit in a sectional title scheme, you are purchasing your home (referred to as the section) together with an undivided share in the common property in the rest of the scheme. See our article "Issues to

consider when buying in too sectional title schemes" <https://www.schindlers.co.za/2019/issues-to-consider-when-buying-into-a-sectional-title-scheme/> for a more detailed explanation of same.

Many owners and tenants residing in sectional title schemes also have exclusive use areas ("EUA") attached to their sections. An EUA is defined in section 1(c) of the STSMA as "part or parts of the common property for the exclusive use by the owner or owners of one or more sections". An example of common EUAs are a garden, a balcony, or staff rooms that are often attached to an owners' section.

During lockdown, owners and tenants living in sectional title schemes would be required to remain within their sections. Owners and tenants residing in sectional title schemes may only use the common property (for example the common drive way shared by all residents within the scheme) insofar as it is necessary to facilitate access to one of the controlled circumstances outlined in the Regulations.

Owners and tenants are thus prohibited from using the common property for any purpose other than those purposes prescribed in the Regulations. This means that owners and tenants may not walk around the sectional title scheme, exercise on the common lawns, play tennis on the communal tennis courts, or lounge at the communal pool during lockdown. However, if an owner or tenant has a EUA attached to their section, they are entitled to utilise same. This means that, if your garden is an EUA, you may walk in your garden, or, if you have staff rooms attached to your section, you may access same (and concomitantly your staff may access your section).

Deliveries to and within the Sectional Title Schemes Our interpretation of the Regulations and announcement made by the President is that deliveries which are deemed as essential services, such as medicine and food supplies, can be made either to the gate of the scheme or to the unit of the member or tenant within the scheme. Reasonable discretion must be applied by the owners or tenant living in the scheme in this regard and the limitation of the spreading of COVID-19 must be the paramount deciding factor in all deliberations at all times during the lockdown.

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An example would be where an owner or tenant suspects that they have contracted COVID-19. It would be grossly negligent for this person to walk across the common property and meet the delivery person at the gate of the scheme. The preferred situation in this regard would be for the delivery person to gain access to the scheme and then drop the delivery at the gate of the member or tenant's unit.

Trustees in community schemes would, thus, be required to apply their mind to each individual situation. Paddocks property management advisers, have warned Community Schemes that overly restrictive rules, which are more onerous than National legislation, will likely not be upheld should the matter be referred to the Community Schemes Ombud Service or to Court.

Requirements in Relation to Staff of the Sectional Title Scheme and Owners / Tenants

The scheme may not compel their staff to attend work during lockdown. There is, however, an exception relating to essential service staff such as security guards. If a member of the staff does not fit the criteria of essential services as provided for in the Regulations, that staff member cannot be compelled to attend work during the lockdown. Any person residing in the scheme and acting in contravention to the Regulations will be liable for a fine or imprisonment.

Furthermore, owners and tenants residing within the schemes, cannot compel their staff, such as domestic workers, gardeners or personal assistants to attend to work, as these occupations are not listed as essential services. However, there is an exception to the rule – where a person already lives where they work with the family that they work for. If a domestic worker, gardener, nanny, au pair or personal assistant resides in the unit of the owner or tenant concerned, such person would then be able to attend to their duties as they could do so without crossing any common property or placing themselves or others at increased risk of infection. Similarly, if a domestic worker, gardener, au pair or personal assistant who resides in an EUA attached to an owner or tenant's unit, may attend to their duties. However, if one of these staff is required to cross any portion of the common property in order to get to their place of work, including, amongst others, a stairwell, a lawn or a driveway to attend work at the owner's unit, then this staff member is prohibited by the Regulations from attending their place of work.

Staff Residing in Sectional Title Schemes who are able to work during Lockdown but refuse to work.

This situation would occur, for example, if a staff member (such as a domestic worker, gardener, au pair or personal assistant) resided with the owner or tenant in their unit and refused to work during lock down and had no real or justifiable reason for failing to work during this time. Another situation could, for example, occur when the caretaker of a sectional tile scheme was instructed by the trustees to perform some of his duties from home and was capable of performing some of his duties during lock down from home but refused to attend to his work duties during lock down. Staff who have no real justifiable reasons for failing to comply with reasonable instruction given by an employer to attend to their duties and work may face disciplinary action, as refusing to carry out lawful instructions by an employer constitutes misconduct, which can, in severe cases, be a dismissible offence.

CONCLUSION

Understanding the Disaster Management Act 55 of 2002 and the Regulations thereto is a difficult task, and interpreting it is even more complex in relation to a community scheme. Infringement of the Regulations could lead to a fine or imprisonment and, accordingly, should be avoided at all costs. Should you find yourself uncertain of any provision that relates to your conduct within your community scheme during this time of lockdown, it is important that you contact us, so we may provide you with correct advice to avoid criminal sanction.

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