

WHO STOLE MY PARKING?

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How parking can be created in a sectional title development?

- ❑ Parking inside a sectional title development is often very problematic and the Community Scheme Ombud Service (CSOS) receives quite a few complaints dealing with parking or the lack thereof in a sectional title development!
- ❑ One thing must be clear from the onset a developer **DOES NOT NEED** to create sufficient parking space within such a development when he or she develops it.
- ❑ Yes, you heard correct, there may more units than actual parking spaces, and this is completely legal!
- ❑ It begs the questions but what can be done to create parking in such a development?

CONTINUATION

- ❑ We must differentiate between **two instances**, namely before and after a Body Corporate has been established and of course refer to case law when doing so.
- ❑ **Section 27 of the Sectional Titles Act**, No. 95 of 1986 states that a developer can when opening a sectional title register in the Deeds Office impose conditions whereby certain parts of the common property (exclusive use areas) can be conferred to certain units, ultimately to the owner of that unit.
- ❑ What this means is that the developer can state that the owner of unit number 1 can use parking bay number 1. This will then create a real right for the owner, and it is ceded to the owner by way of unilateral notarial deed of cession in the Deeds Office.

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CONTINUATION...

- ❑ The owner therefore paid to have this parking space or garage in his or her name, the owner will no longer own this parking space or owner when it is ceded to the next owner in the Deeds Office.
- ❑ **Section 10 (7) & (8) of the Sectional Titles Schemes Management Act No. 8 of 2022 (STSMA)** caters for the second scenario where the developer did not impose such a condition when opening the sectional title register, it can be catered for in either the management or the conduct rules. This is now when the Body Corporate has been established.

CONTINUATION ...

- ❑ When it is created in the rules then it must include a **sketch plan** that demarcates which exclusive use area can be used for parking. This exclusive use area is not a real right and cannot be ceded to anyone else except that unit owner.
- ❑ The rule must include a schedule showing to which owner each area is allocated and when a section is sold the exclusive use rights conferred upon that section are automatically transferred as part of the process.

CONTINUATION

- If exclusive use rights are conferred by the management rules, they can only be created and amended by a **unanimous resolution** of the body corporate. If they are conferred by the conduct rules, they can be amended by a **special resolution** of the body corporate

It is worth a mention that exclusive use areas are always part of the common property.

- ❑ The body corporate may, by special resolution, **enter into a lease arrangement** with any owner or occupier of a section to let a portion of the common property, according to Section 4(h) of the STSMA. Only the owner or occupier of a section may engage into a lease under section 4(h), and **such a lease may not be for a term exceeding 10 years**, be renewed indefinitely, or be renewable for periods totalling more than 10 years.
- ❑ **Section 5(1)(a)** of the STSMA states that the body corporate may, upon **unanimous resolution**, on direction by the owners and with the written consent of any holder of a right of extension let the common property or any part thereof under a lease for a period longer than 10 years. In this case the lessee need not be an owner or occupier, and the lease must be notarial executed and registered at the Deeds Office.
- ❑ According to **Prescribed Conduct Rule 3(1)**, an owner or occupier may upon the **written consent of the trustees** use a common property parking bay provided that this consent may only be for a specific period. This type of parking arrangement is therefore temporary and should only be used in the case of emergencies.

CONTINUATION...

- ❑ Say for instance a parking bay or garage has now been allocated to a specific owner however the owner merely refuses to upkeep this garage or parking bay, what recourse does the Body Corporate have against such a member?
- ❑ **Prescribed Management Rule 31(2)** states that If a member refuses or neglects to do any of the following in spite of written demand by the body corporate: (a) carry out work on that member's section ordered by a competent authority as required by section 13(1)(b) of the Act;
- ❑ or (b) repair or maintain a section owned by that member in a good condition the building's stability or safety, or otherwise materially jeopardizes the interests of the body corporate, its members, or the occupiers of sections generally, the body corporate must remedy the member's failure and **recover the reasonable cost of doing** so from that member; provided, however, that in the event of an emergency, no demand shall be made

Continuation...

- ❑ It is therefore clear that if you do not maintain your exclusive use area the Body Corporate will do it for you and charge you for the upkeep!

An isometric illustration of a city with various buildings, trees, and a magnifying glass over a document. The scene is rendered in a light green and grey color palette. The magnifying glass is positioned over a document that appears to be a blueprint or a set of plans. The city includes a tall skyscraper, a smaller building with a clock tower, and a house. There are also trees and a street with a car. The overall style is clean and modern.

**We trust that you have found this article useful
and from the above parking can indeed be
created in a sectional title development!**

Thank you.

The background features a light green, isometric illustration of a city. It includes several buildings of varying heights, some with windows. A person is shown under a large umbrella, suggesting rain. Another person is depicted with a headache, holding their head with both hands. There are also icons of a lightning bolt and a recycling symbol. The overall style is clean and modern, with a focus on urban and environmental themes.

FOR MORE INFO CONTACT

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