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SECTION, EXCLUSIVE USE AREA OR COMMON PROPERTY, WHICH ONE IS IT?

In my ten and counting years, as a Sectional Title Attorney, most of the Sectional Title Schemes which I have come across consist of the above 3 separate areas. People often confuse the nature of each.

THESE AREAS ARE:

- the **Section itself**;
- **Exclusive Use Areas (EUA's)**;
- the **Common Property**

A "**Section**" is defined in the Sectional Titles Act as a Section shown as such on a Sectional plan. A Section is that part of the scheme which belongs entirely to the owner and is where the owner normally resides, i.e the actual flat or townhouse.

An "**Exclusive Use Area**" is defined as a part of the Common Property for the exclusive use by the owner of a Section, i.e a balcony, patio, garden, storeroom or garage.

"**Common Property**" is defined as land in the scheme and the parts of the building that are not included in Sections, i.e the entrance to the complex, the pool area and clubhouse.

Common Property (dealt with in Section 16 of the Act) is owned by owners of Sections jointly in undivided shares proportionate to the quotas of their respective Sections. The Sectional Title Deed for the Section concerned has to describe in a separate paragraph the undivided share in the common property. The Section and the undivided share together are deemed to be one unit and the Section cannot be disposed of or otherwise dealt with apart from the undivided share in the Common Property. Likewise the Common Property cannot be disposed of or otherwise dealt with apart from the section.

In regards to Exclusive Use Areas (dealt with in Section 27 of the Act) from the time that the Sectional Title Register is opened, a condition must be imposed conferring Exclusive Use of Common Property to certain owners of certain Sections. The developer then cedes the right to the Exclusive Use Areas to owners in the scheme by registering a unilateral notarial deed. An owner may transfer his right to an Exclusive Use Area to any other owner of a Section in the scheme by also registering a notarial deed of cession. Exclusive Use Areas may also be conferred to by way of rules made by the Developer or the Body Corporate in terms of Section 27A of the Act.

When faced with a challenge in a Sectional Title Scheme, involving a part of the property or building, often the first question to be answered is whether the particular part concerned is a Section, Exclusive Use Area or Common Property!

The views in this article are not intended to be and should not be construed as legal advice. If legal advice is required, a suitably qualified attorney should be consulted with.

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