

ALTERATIONS TO COMMON PROPERTY

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The Sectional Title community are currently immersed in confusion as to what authority is required, and, in what circumstances alterations may be made by an owner to the common property in a scheme.

The only way to overcome this confusion is to investigate the principals and provisions found in the Sectional Titles Act, Act 95 of 1986, as amended (“the Act”).

In terms of the Act:

(1) a unit in a Sectional Title scheme consists of:

- (a) a section in such scheme;
- (b) an undivided share in the common property apportioned to that section in accordance with the quota of the section.

(2) common property, in relation to a scheme includes:

- (a) the land included in the scheme;
- (b) such parts of the building or buildings as are not included in a section; and
- (c) land referred to in section 26 of the Act;

If the aforesaid definitions are applied, the area underneath a section, the area above a section’s ceiling and all boundary walls, windows and doors of the section, as from the centre line thereof, all form part of the common property of a scheme. To ensure that co-owners or trustees, in the execution of their duties, do not prejudice an owner’s rights in respect of the common property, the Act contains restrictive conditions, when common property is dealt with.

In accordance with the provisions of the Act, trustees may only attend to the maintenance and upkeep of the common property. This maintenance and upkeep are financed by the central levy fund of a scheme.

Should the trustees wish to effect certain alterations to the common property and this intended alteration does not fall within the ambit of maintenance or upkeep, the intended alteration should be measured against the provisions of Rule 33 of Annexure 8 of the Act. In terms of the aforesaid provision of the Act, trustees must first determine whether the intended alteration is of a luxurious or non-luxurious nature. In practice various criteria exist to determine whether the intended is of a luxurious or non-luxurious nature, which criteria *inter alia* includes the market value of units in the scheme, the location of the scheme etc.

It is important to note that, in terms of the provisions of the Act, only trustees may effect alterations to the common property. No provision is made, nor does the Act allow owners to make alterations to the common property. The trustees have no authority whatsoever to consent to an owner making an alteration to the common property, even if the owner requesting such consent, finance the alteration.

It therefore follows that in the instance where consent was granted by trustees to an owner to effect certain alterations to the common property, such consent would be void and the owner must be requested to remove the alteration, even if the trustees were under the *bona fide* belief that they had the necessary authority to grant the consent.

An owner may only effect alterations to the common property if a real right is registered over the portion of the common property in respect of which the alteration is effected. This real right or right of exclusive use, as referred to in the Act, can only be registered in favour of an owner if certain requirements, contained in the Act, are met. Notwithstanding the registration of such a right, an owner still needs to obtain the consent from the trustees prior to effecting any alteration to the common property over which such a right is registered.

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