



MEUMANN WHITE

A T T O R N E Y S

Exclusive Use Areas

Prepared by Meumann White Attorneys

A] Exclusive Use Areas under the 1971 Act

1. The 1971 Act made no provision for exclusive use areas and as a result, various methods were employed to ensure that a defined portion of the common property could be reserved for the use of a particular owner.
2. In some schemes under the 1971 Act, exclusive use rights were created by the registration of servitudes whereas in other schemes, they were created by conditions of title. However the most common method was to confer exclusive use rights in terms of the Rules.
3. A developer who wanted to confer exclusive use areas in terms of the Rules would ensure that this was disclosed in the agreement of sale and in each agreement, the Purchaser would give the developer a Power of Attorney to vote at meetings of the Body Corporate for the adoption of the Rules which made provision for exclusive use areas. By using these Powers of Attorney, the developer was then able to obtain the required unanimous resolution of the Body Corporate and perform his obligation to confer exclusive use rights on the various owners.

B] Exclusive Use Areas under the 1986 Act

1. In terms of this Act, exclusive use areas may be established in terms of Section 27 of the Act either by the developer when applying for the opening of the Sectional title register or by the body corporate at a later stage.
2. If the developer proposes to establish exclusive use areas when opening the sectional title register, he must require the land surveyor or the architect to indicate the proposed exclusive use areas on the draft sectional plan and the right to the exclusive use of such part or parts of the common property must be reserved in favour of one or more of the sectional owners by the inclusion of a condition in the 11 (3) (b) Schedule filed with the sectional plan. The developer will be issued with a Certificate of Real Right in respect of the Exclusive Use Areas, as shown on the Sectional Plan and the developer will then cede these rights to the owners of the various sections by way of a Notarial Deed of Cession.
3. In order for a Body Corporate to establish exclusive use areas, it must be authorised to do so by a unanimous resolution of the members. As in the case of the developer, the body corporate must request an architect or land-surveyor to apply to the Surveyor –General for the delineation of the exclusive use areas on the registered sectional plan. The Body Corporate can then transfer the exclusive use rights to the various owners, by way of a Notarial Deed of Cession.
4. By the insertion of a new section 27A, the Sectional Titles Amendment Act of 1997 revived the cheaper and less cumbersome method of establishing exclusive use areas in terms of the Rules of a Scheme. In terms of this amendment, a developer or the body corporate is empowered to make Rules that confer exclusive use rights to members of the Body Corporate. These exclusive use areas are shown on a scale layout plan, which is included in the Rules. The layout plan must clearly indicate the locality of the exclusive use areas and allocate a distinctive number to each. The Rules must also specify the purpose of each exclusive use area and include a schedule showing the allocations to the owners.

5. Exclusive use rights in terms of Section 27 of the Act are urban immovable property and they can be bonded and dealt with like any other real property whereas exclusive use rights created in terms of Section 27(A) are not urban immovable property and although like any other Rules, they are binding on all owners and occupiers of sections in the scheme, they are not binding on third parties.
6. Exclusive Use rights allocated in terms of the Rules are far more cost effective and apart from the fact that they cannot be bonded and are not enforceable against third parties, the areas designated as exclusive use areas in terms of the Rules will still be subject to all the other provisions of the Act dealing with exclusive use areas.

[C] Informal Exclusive Use Areas

1. Quite frequently a Body Corporate of a sectional title scheme would allocate certain areas of the common property, for example a parking bay, to an owner without such specified area of the common property being registered as an Exclusive Use Area either by way of a notarial deed or in terms of the Rules.
2. Accordingly, this type of informal exclusive use area allocated by the Body Corporate is not a registered exclusive use area and agents must be aware that such an informal exclusive use area cannot be sold with the section.
3. Agents are therefore encouraged to make the necessary enquiries to ascertain whether or not there are registered exclusive use areas attaching to the section being sold. In this regard, enquiries can be made with the Managing Agent of the sectional title scheme concerned.