
Cannabis use in sectional title



By Paddocks

One rule has come to the forefront recently with the legalisation of the use of cannabis within the home. As from 18 September 2018, the Constitutional Court's ruling led to the official status for cannabis now being "decriminalised". However, dealing marijuana, selling it on to others, or smoking it outside the confines of your own property, remains illegal. What about smoking it in your section, exclusive use area, or on the common property in a sectional title scheme?

In a sectional title scheme, our definition of home is slightly different than in a conventional title setting. In a sectional title scheme, we only own our section, from the median line inwards. Therefore, it would not be legal to sit at the swimming pool, that forms part of the common property of the scheme, consuming (in whichever form) cannabis, as the common property is not owned by us as individual members of the body corporate. Similarly, if my balcony is not part of my section, I cannot stand outside or even in the enclosed balcony smoking a marijuana joint.

In our consulting department, we have been receiving a few queries from owners and residents in sectional title schemes enquiring whether they can ask their neighbours to refrain from smoking marijuana within their sections.

As this is now a constitutional right, an owner or the body corporate cannot stop the use of cannabis within sections, but can do so if the activity is undertaken on common property. The scheme's rules may not unreasonably restrict an owner or occupiers right to consume cannabis within their section, but the use of may not unreasonably interfere with someone else's lawful use of their property, or cause a nuisance to any other resident within the scheme.

However, the definition of reasonable and nuisance is subject to subjective interpretation, which is why we can foresee this topic causing many a dispute in a scheme.

Although reference is specifically made to sectional title schemes, the principles set out here apply to any type of community scheme. Therefore, before you light up your joint, take note of where you are standing or sitting!