

CREATION, REGISTRATION AND ALLOCATION OF EUA'S IN SECTIONAL TITLE SCHEMES

Exclusive use areas in sectional title schemes can be created or registered and allocated by means of three different mechanisms. The developer or the body corporate can create and allocate these rights over parts of common property by means of the management or conduct rules of the scheme, or these rights can be registered by means of a notarial deed of cession.

Let's take a brief look at each method, and its requirements and processes when carried out by the body corporate.

If exclusive use areas are created and allocated in terms of the management rules, a unanimous resolution of the members of the body corporate is required approving the amendment of the scheme's management rules, adding a rule creating, and by means of a schedule of allocation linked to a layout plan, allocating these personal rights to a section within the scheme.

Alternatively, a special resolution of the members can be passed to approve the amendment of the scheme's conduct rules, with the same supporting annexures to the rules, as provided for above.

Should either one of the aforementioned routes be followed, the additional and amended rules, when approved, would need to be submitted to the Community Schemes Ombud Service for review and approval by means of a certificate before such amended rule/s would be enforceable, resulting in the holders of these rights using and enjoying these parts of common property to the exclusion of any other member or occupier within the scheme.

A real right can be registered over parts of the common property by means of a special resolution of the members, whereby the body corporate approves the delineation of these areas on the sectional plan and transfers the right of use and enjoyment to section by means of a notarial deed of cession. This right, once registered, allows the holder rights akin to ownership in that the EUA can be sold apart from the section, and can be bonded if required.

To this end, an interesting read is the matter of *Le Roux*

v Dunrobin Body Corporate and Scheer, heard in the High Court of the Western Cape, where a registered right to an EUA vested in the body corporate due to the failure to properly transfer the right to the purchaser of the section to which the EUA was registered. The body corporate proceeded to create additional EUAs and allocated these rights, along with the right which vested in it, to various sections within the scheme. The applicant successfully proved that it, by virtue of the fact that the developer had ceded the right of exclusive use of the area in question to the seller, was entitled to acquire the rights to the area in question as a registered EUA, and that the body corporate held no authority to allocate it to another section, or create additional EUAs which may hinder its use and enjoyment by the applicant.

Interestingly, despite the fact that a unanimous resolution is required to register such a right, only a special resolution is needed to cancel this right, once registered reverting the portion of common property to unregulated common property within the scheme, capable of being allocated to any other section, however due consideration should be had to its location and practical use and enjoyment. This is where the CSOS can come in when approached by an applicant who proves that it reasonably requires the EUA.

There is a common misconception that this right, be it personal or a real right, must be acquired from the body corporate, namely that parts of common property must be alienated to such a holder, as owner of a section within the scheme. This is not correct, as common property can only be alienated when it is capable of reverting to the land register from the sectional title register, namely that it is in essence, "removed" from the scheme. This is clearly not the case when an EUA is created or registered and allocated, the holder of which being an owner of a section within the scheme, who would contribute towards the cost of the area on a monthly basis, the liability increasing if and when the need arises.

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