

MANAGEMENT OF SECTIONAL TITLE SCHEMES DURING THE LOCKDOWN

Given the understandable haste with which the COVID-19 Lockdown was announced, the inevitable result has been that certain problematic areas on which guidance would have been invaluable have been overlooked. A brief glance at one's social media feed will show that one of these problem areas is the usage of common property during the lockdown, with residents complaining that activities which were initially allowed on common property (such as running, walking dogs etc) have now been banned.

The primary cause for confusion is that the Disaster Management Regulations confine people to their "place of residence", whereas in a sectional title scheme you own a section, and a share of the common property, for residential purposes. The question therefore is on what legal basis can residents be prohibited from utilising common property for activities which prior to the lockdown were not prohibited?

Whilst the South African Police Service has stated that "*The Regulations... meaning no walking, jogging or walking of pets within closed estates/complexes is allowed*", it is respectfully submitted that such statement fails to take cognisance of the nature of ownership within a sectional title scheme. The Regulations to which they refer clearly apply to public spaces, and not to common property, which is a privately owned space.

A reading of the Sectional Title Schemes Management Act further shows that there is nothing in the Act which authorises Trustees to confine residents to their units. Therefore, in the absence of an amendment to the Disaster Management Regulations themselves, it is difficult to see how activities on common property can be legally restricted.

Whilst the above sets out the legal position surrounding this issue, it does not fully take into account the practical considerations regarding community living. In finding a solution to this problem we agree with the opinion put forth by leading sectional title law expert Mr Graham Paddock, who asserts that this is a complex problem that needs to be dealt with by each residential complex individually. The solution therefore relies upon the trustees communicating with owners in a scheme, and developing a solution that is appropriate for their particular circumstances. Such solution may involve prohibiting certain activities on common property entirely, or perhaps such activities can be allowed only at certain times. Suffice to say, in these unusual times, people need to pull together to find a solution that is acceptable to all.