

# Real Estate Law

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### SOUTH AFRICA

Exclusive use areas: What are they, how are they created and are they all equal?



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## Exclusive use areas: What are they, how are they created and are they all equal?

In terms of the Sectional Titles Act 95 of 1986 (Act), exclusive use areas are defined as parts of the common property for the exclusive use by the owner or owners of one or more sections in a sectional title scheme. An exclusive use area is therefore a portion of the common property which is reserved for the exclusive use of an owner of a section in the scheme. Examples of exclusive use areas can include gardens, parking bays, garages, patios, storerooms and courtyards. Section 27 of the Act regulates the rights of exclusive use of parts of common property

There are three options for the creation of exclusive use areas. First, section 27(1)(a) of the Act makes provision for the developer to create exclusive use areas by registering the real rights of exclusive use in its name upon opening of the sectional title register, before the establishment of the body corporate. In this instance, the exclusive use areas must be depicted on the sectional title plan, the purpose for which the exclusive use area is to be used must be disclosed, and the developer must impose the exclusive use areas as a condition when the sectional title register is opened. If exclusive use areas were reserved by the developer, a certificate of real right of exclusive use will be issued to the developer upon registration of the scheme in the Deeds Office. The developer will then cede the exclusive use area simultaneously with the transfer of a

section to the new owner. The owner of a section in whose favour the exclusive use area has been registered, will have a separate notarial deed for the relevant exclusive use area and may also sell their exclusive use right, but only to an owner of another section in the scheme.

The second option for creating exclusive use areas is regulated by section 27(2) of the Act. In this instance the body corporate may create exclusive use areas after the sectional title register has been opened. To enable the body corporate to create the exclusive use areas, it will require authorisation by way of unanimous resolution passed by the owners of the sections in the scheme. Once obtained, the body corporate may request an architect or land surveyor to apply to the Surveyor-General for the delineation on a sectional plan of the parts of the common property that will be for exclusive use by the owners. It is important to note that no application for lodgement in the Deeds Registry is required as no certificate of real right of exclusive use areas is issued in favour of the body corporate. The body corporate will then be able to transfer the exclusive use area by way of notarial deed of cession to the relevant owner. It is important to note that even if the exclusive use area is created by way of notarial deed, the Act does not permit the subdivision of exclusive use areas, and in the instances where the extent of the exclusive use area is reduced, it must be cancelled, and the new area delineated and ceded.

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The third option for creating exclusive use areas is regulated by section 10(7) and (8) of the Sectional Title Schemes Management Act 8 of 2011 (STSMA). In this instance either the developer or the body corporate may create exclusive use areas in either the management or conduct rules of the scheme which will confer rights of exclusive use of parts of the common property upon members of the body corporate. The rules must in this instance include a layout plan to scale on which it is clearly indicated the locality of the distinctively numbered exclusive use and enjoyment parts, the purposes for which such parts may be used, and a schedule indicating to which owner each such part is allocated. Inclusion of exclusive use areas in the management or conduct rules will have to be submitted by the body corporate or the developer to the Chief Ombud (Community Schemes Ombud Service) for approval, who will issue a certificate for lodgement in the Deeds Office upon opening of the scheme. To create exclusive use areas

after the scheme has been opened, the body corporate must follow specific procedures. If the exclusive use areas are to be established in the conduct rules, they must be authorised by a special resolution. For their creation in the management rules, a unanimous resolution is required. No certificate of real right will be issued in either of these instances.

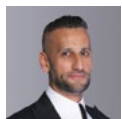
It is clear from the above that there are various factors to consider when creating exclusive use areas. If the exclusive use area is registered in favour of an owner of a section, as in options one and two above, it shall be deemed to be a real right to immovable property over which a mortgage bond, lease or servitudes may be registered. If it was to be created in the management or conduct rules, it might be less expensive, but also less secure for the owner as there is no title deed (no real right) which may be mortgaged, leased or have servitudes registered over it.

**Suné Kruger**

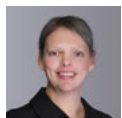


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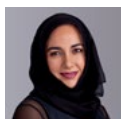
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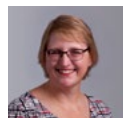
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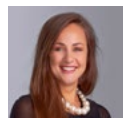
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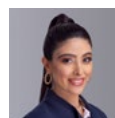
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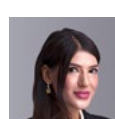
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Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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