

# Regulation of the behaviour of owners and occupiers in sectional titles schemes

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The owners and occupiers in residential sectional title schemes live close to one another and share the use of the common property, so their behaviour is subject to various types of regulation. The restrictions that apply to behaviour in sectional title schemes are found in the Sectional Titles Schemes Management Act 8 of 2011 ("the Act") as well as in a scheme's management and conduct rules.



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In this article, I briefly examine the behavioural regulations in the Act and the prescribed rules and also discuss what additional types provisions can be included in each of the two types of scheme rules.

## Sectional Titles Schemes Management Act

The long title to the Act confirms that it exists “To provide for the establishment of bodies corporate to manage and regulate sections and common property in sectional titles schemes and for that purpose to apply rules applicable to such schemes; ...”

Sections 13(1)(d) and (e) are the only provisions in the Act that impose behavioural obligations on owners. In their use of the common property, owners must not unreasonably interfere with the rights of others. In addition, they must not use or permit the use of a section or an exclusive use area to cause a nuisance. In other words, owners must not cause or allow material prejudice to others in their use of their sectional property. Subject to this principle, to any other law and to the scheme rules dealt with below, owners are free to do what they like in the sections and exclusive use areas that are set aside for their private occupation, and to make reasonable use the common property.

## Management rules

Management rules exist to specify in detail how the body corporate's operations must be carried out and they also set out the rights and duties of its trustees and members. These rules, like the conduct rules dealt with below, must be reasonable

and apply equally to all owners of units. The body corporate can amend and add provisions to its management rules by passing a unanimous resolution and having the new rules approved by the Community Schemes Ombud Service (“CSOS”). Any management rules made initially by the scheme developer or later by the body corporate must deal with body corporate management issues in a manner appropriate to the scheme.

Prescribed management rule 30 obliges the body corporate to take all reasonable steps to ensure that a member or any other occupier does not breach the provisions of the Act referred to above or use a section or exclusive use area irregularly.

In practice this means that the body corporate cannot ignore behaviour that is a nuisance or an unreasonable or illegal use of common property. If the body corporate, any member or other occupier is seriously prejudiced by such behaviour on an ongoing basis, the trustees must take active steps to deal with the issue.

In terms of prescribed management rule 3(2), a member is obliged to take all reasonable steps to ensure that his or her employees, tenants, guests, visitors and family members comply with the scheme’s conduct rules.

A body corporate cannot “entrench” a behavioural restraint on owners or occupiers of sections by including this in a management rule. Any rule that governs the conduct of owners or occupiers can only be included in the scheme’s conduct rules.

## **Conduct rules**

A scheme’s conduct rules exist to regulate the behaviour of owners and occupiers, setting out their rights and in their use of sections and the common property. These rules regulate a range of issues that have the potential to cause nuisances and dangers to others or to negatively impact the value of other properties in the scheme. The body corporate can amend its conduct rules by passing a special resolution and having the new rules approved by the CSOS.

The prescribed conduct rules cover the keeping of animals, reptiles and birds, refuse and waste disposal, vehicle parking, damage to common property, changes to the exterior appearance of sections and exclusive use areas, the storage of flammable materials, behaviour generally and the eradication of pests.

A body corporate can make additional conduct rules that deal with the behaviour of owners and occupiers in their use of their sections and the common property. Any such additional rule will be valid if it serves to regulate, in a manner appropriate to that scheme, a particular activity so as to ensure that it does not prejudice others in their use of their sections, exclusive use areas and other common property.

A provision that deals with the management or operations of the body corporate cannot be included in the scheme’s conduct rules, but must be passed and approved as a management rule.

## ABOUT THE AUTHOR

Considered by many to be the authority on sectional title scheme management law and practice in South Africa, Prof. Paddock has specialised in sectional title, home owners' associations and other forms of community scheme law for over 40 years.

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