

Smoking and braaiing in Sectional Title schemes

Living in close proximity to neighbours, which is what sectional title living often is, can sometimes bring situations to the fore that might seem trivial to some, but might affect some more seriously than others think.

An example of those contentious issues where there are two very opposing factions are smokers vs non-smokers and those who like to braai and those who don't.

These activities can affect the neighbours negatively, and those taking part in the activity don't realise just how negative the impact can be, says Michael Bauer, general manager of property management company IHFM.

An example of this is if there is a party and smokers go outside to smoke, or if a couple is hosting a braai on their balcony; the smoke will waft upwards - compromising the enjoyment of the upstairs occupants' use of their balcony.

The cigarette or braai smoke could even go through the upstairs windows into the apartment, and could create an unpleasant environment for anyone upstairs. This is why sectional title schemes often ban smoking or braaiing on balconies, not to be unreasonable, but to consider all the occupants within the scheme.

In the Sectional Titles Schemes Management Act, Rule 30(e) under the section dealing with the use of sections and common property, it states that anything causing a "material negative effect" on the value or utility of any other section or exclusive use area is prohibited.

If one owner had to bring a complaint forward against another owner, the negative effect would have to be considered, how frequent the events take place, the number of people smoking, whether the person affected has a health condition which could be worsened by being exposed to smoke, and so on.

As in many subjective situations, said Bauer, the factors that the Ombudsman will look at will be whether the complaint or defence is "reasonable" or not. However, before any case is taken to the Ombud, there should be some attempt to resolve disputes within the scheme first.

It should be remembered, that living in a sectional title scheme has limitations on some behaviour and each action should be considered - in how it affects others, said Bauer.

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