

Jogging or walking a dog in a complex

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There have been mixed messages about whether residents in a sectional title scheme can jog or walk their dogs within a complex during the current lockdown.



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The amended Covid-19 lockdown Regulations – published on 2 April 2020 in Government Gazette No. 43199 – say that, every person must be confined to his or her “place of residence”, unless it is strictly for purposes specified in the Regulations.

It is reasonably certain that in terms of the Regulations, people that reside in free standing houses may jog or walk their dogs only within the perimeters of their houses – such as their yards – simply because this is done within the confines of their place of residence. However, can the same be said about people residing in sectional title schemes?

Section title Act

A sectional title scheme would be your typical complex where people are registered owners of sections, or flats, along with the undivided share in the common property forming part of these sections. In terms of the Sectional Titles Schemes Management Act 8 of 2011 (Act), a section is defined as building or buildings and the land comprised in a sectional title scheme - divided into two or more sections and common property shown on a plan approved by the surveyor-general. Common property is defined as the land included in the sectional title scheme and parts of the buildings.

From the definition of a section and common property, it is clear that when a person is part of a complex that person owns a flat, and co-owns any other land in the complex that is not part of any other owners' flats, as detailed in a plan approved by the surveyor-general.

The Act provides that with effect from the date on which any person other than the developer of a sectional title scheme becomes an owner of a section in the scheme, a body corporate shall be deemed to be established in terms of which any person who becomes an owner of a section in the scheme is a member of that body corporate.

Once a body corporate is established, it may exercise the powers conferred upon it under the Act or the rules of the scheme, including the power to do all things reasonably necessary for the management and administration of the common property. In relation to owners of sections in a scheme, the Act provides that owners must use and enjoy the common property in such a manner as not to interfere unreasonably with the use and enjoyment by other owners or other persons lawfully on the premises.

Common property

In this regard and without detracting from the purpose of the lockdown, can it be said that the Regulations prevent co-owners of common property in a complex from jogging or walking their dogs in the common property that is within the confines of the complex?

Whether the Regulations prohibit residents from jogging or walking their dogs within a complex essentially turns to what is regarded as confines of place of residence in a complex. There is no doubt that a person's flat in a complex is their place of residence. However, as a co-owner of common property in the very same complex, is such a common property part of your place of residence?

Rules of the complex

Often there are rules in a complex that provide for instances where owners may be prevented from accessing the common property in a complex, such as rules relating to parking areas for the exclusive use of particular owners. Apart from rules that are reasonably necessary for the management and administration of the common property, it would be unreasonable and unlawful for owners to be denied access to any common property in the complex. Furthermore, owners jogging and walking their dogs in the common property could be regarded as enjoying the common property in such a manner that does not interfere with the use and enjoyment of other owners.

Legal technicalities aside, it is important that people obey all the regulations in place in such a manner that will achieve the intended outcome of overcoming the pandemic that is affecting us all.

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