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Exclusive Use Areas
A Practical Guide for Sectional Title Owners

What is an Exclusive Use Area?

An Exclusive Use Area (EUA) is a portion of the common property reserved for the exclusive use by a specific owner or owners in a sectional title scheme. Although the area forms part of the common property, only the designated owner has the right to use it.

Common Examples: Parking bays & carports. Garden areas & patios. Balconies & storerooms. Roof spaces for solar panel installations.

Types of exclusive use rights and how they are created

Exclusive Use rights are primarily established under the Sectional Titles Act 95 of 1986 for registered real rights, or via the Sectional Titles Scheme Management Act No. 8 of 2011 for rule-based rights.

EUAs can accordingly exist in two different legal forms, and can be created in three ways:

1. Real Rights by the developer

- Created when the Developer opens the sectional title register at the Deeds Registry and registers the sectional plan, by:
  - Delineating EUAs on the sectional plan as submitted; and
  - Submitting a schedule imposing conditions and reserving the exclusive use of those areas for the owner(s) of specified sections.
- Upon registration, the Registrar then issues the Developer with certificate(s) of real right EUAs.
- The Developer, upon sale of the unit and the related EUA, cedes the EUA rights to purchasers by unilateral notarial deeds of cession.
- Later cessions between owners are by bilateral notarial deeds of cession.
- These rights are registered at the Deeds Office and they can be mortgaged, leased, and burdened with personal servitudes.

2. Real rights by the Body Corporate

- On a unanimous resolution, the body corporate may request an architect and or a land surveyor to apply to the Surveyor General to delineate new EUAs on the registered sectional plan.
- The amended sectional plans are approved by the Surveyor General and registered in the deeds registry.
- The body corporate then transfers the EUA rights directly to the entitled owners by bilateral notarial deed, acting on behalf of all owners as transferor.
- Once registered in owners' names, these rights are real rights to immovable property and they are linked to the title deed of the unit.
- Can be mortgaged, leased, and burdened with personal servitudes.

Real right EUAs are permanent and secure.

3. Personal Rights

- Created in terms of management or conduct rules.
- Require a scale layout plan and allocation schedule in the rules.
- Confer contractual exclusive use rights enforceable against the body corporate and other owners.
- Can be changed or cancelled by amending the relevant rules.

These rights are less permanent but easier to manage.

Boundaries of EUAs

Real right and personal right EUA boundaries must be clearly defined by plans in that:

- All real right EUAs must be shown on the sectional plan; and
- Rule-based EUAs are shown on a scale layout plan attached to the rules.

Accurate plans are essential to avoid disputes.

Ownership and Transfer

Real right EUAs are separate real rights. They do not transfer automatically with the unit; they must be ceded by notarial deed (usually simultaneously with the unit transfer). Rule-based EUAs are personal rights that follow the unit automatically because the rules attach them to the owner from time to time of a specified section.

If a real right EUA is not properly dealt with on transfer:

- It can cause serious legal complications;
- Can result in the EUA vesting in the body corporate; and
- Can create bank/bond approval issues.

Cancelaton of existing EUAs

The manner in which an existing EUA is cancelled is dependent on its type:

- Registered EUAs: Cancellation requires a notarial deed of cancellation authorised by a special resolution of the body corporate and the written consent of any mortgagee.
- Rule-based EUAs (management rules): Cancellation requires a unanimous resolution.
- Rule-based EUAs (conduct rules): Cancellation requires a special resolution.

Rights of an EUA Holder

The holder of an EUA may:

- Use and enjoy the area exclusively.
- Make minor improvements (subject to trustee approval where required).

However, the owner must:

- Not create a nuisance.
- Not alter structures affecting the building.
- Follow scheme rules.
- Allow access for inspections or maintenance when necessary.

Maintenance and Levies

While the owner of an EUA is responsible for keeping the area in a 'clean and neat condition', the body corporate is operationally responsible for the actual maintenance and repair of the common property within that EUA. The body corporate must recover these specific costs from the relevant owner via an additional levy contribution. Alternatively, rules can provide that the EUA holder must both maintain and pay.

Costs may include:

- Maintenance;
- Insurance;
- Repairs; and
- Municipal charges.

These contributions ensure fairness among owners.

Use Restrictions

An EUA may only be used for its intended purpose.

For example:

- A parking bay cannot be used as storage
- A garden cannot be enclosed without approval

Changing the purpose of an EUA typically requires written consent from all owners.

Common Issues With EUAs

Typical disputes include:

- **Unauthorised alterations** - Owners building structures or enclosing areas without approval.
- **Maintenance disputes** - Uncertainty over who must pay for repairs.
- **Informal or "de facto" EUAs** - Areas used exclusively but never formally created.
- **Unfair levies** - Where other owners carry costs that should be paid by the EUA holder.

These matters can often be resolved through the Body Corporate, CSOS or the Courts.

Need Advice on EUAs?

Understanding EUAs is important for buyers, owners, trustees and managing agents. If you are unsure about your rights or responsibilities, professional advice can help prevent costly disputes.