THE IMPORTANCE OF GETTING THE EXCLUSIVE USE AREAS RIGHT IN A SALE AGREEMENT

I felt the need to write this newsletter as we regularly experience issues whereby we receive a Sale Agreement for a Sectional Title Unit and there is an exclusive use area referred to in that Agreement but the owner is not the registered owner thereof.

As you may know, an exclusive use area (EUA) could be allocated in 2 ways that is, in terms of Section 27 of the Sectional Titles Act or in terms of Section 27A of the same Act.

If an EUA is allocated in terms of Section 27, it means that it has been delineated on the sectional plan and the holder thereof has his/her own title deed that has been registered in the deeds office to reflect ownership. This EUA can then be ceded/sold to anyone else as long as they are the owner of a section in that scheme.

If an EUA is allocated in terms of Section 27A, it means that it has been allocated to the unit (not to the unit owner) in terms of the Management Rules. This cannot be sold or ceded but goes with the Unit, when it is sold. There is no separate registered title. With the new Sectional Scheme Management Act, 2011 (which came into existence in October 2016), Section 27A has been repealed by this Act, however the concept is the same.

If the EUA is not allocated in either of the above ways, it does not legally “belong” to the owner and he/she actually has no legal rights thereto.

What we find is that sellers incorrectly inform the Agents as the Seller assumes that since they have been given the use of a parking, for example, it is theirs and can be sold – not realising the technicalities thereof. Please can you ensure that you check with the managing agents and do a search to see if the EUA is allocated in terms of the rules, in terms of a separate title or is actually even “owned” by the seller? If it is not, please do not insert it into the Agreement as this will be picked up by us or the conveyancer concerned and you will need to delete it from the Agreement. This could crash your sale as the buyer would have been told by you that they will be getting an EUA as part of the deal.

We do note that some of the schemes are not correctly run as the EUA has not been correctly allocated by the body corporate (legally) but rather people are just allowed to use them. Your buyer will not have any rights if the body corporate suddenly realises this and tries to reallocate them, as has happened before in one of our matters.

If you have any queries please don’t hesitate to contact us.

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