

# Implied Servitudes in Sectional Title Schemes

In sectional title schemes, residents are often required to traverse their neighbouring properties, in one way or another, for utilities or services. The nature of sectional title schemes usually entails that the units are built in close proximity to one another. This makes it impractical and quite regularly impossible to obtain services without access through a neighbouring property.

The legislator took this into account when the *Sectional Titles Act, 95 of 1986* (“the Act”), was drafted. Section 28 of the Act often goes unnoticed but holds significant importance as it creates certain servitudes that will automatically apply to all units in a sectional title scheme.

These implied servitudes create rights in favour of each section and reciprocal obligations against each section. The servitudes include, amongst others, a servitude for the subjacent and lateral support of a section, the passage or provision of water, sewerage, drainage, gas, electricity, and garbage through or by means of any pipes, wires, cables, or ducts existing on or under the land or in the building.

In terms of the Act, these servitudes are deemed to be incorporated in the title deed of each unit. Accordingly, each title deed of a sectional title unit provides that the unit is subject to “the servitudes referred to in section 28 of the Sectional Titles Act, 1986”.

Section 28(b) furthermore provides a right to the owners of sections, exercisable by the body corporate, to access each section and the exclusive use areas to affect any repairs and maintenance which may be required.

These implied servitudes play a pivotal role in ensuring harmonious coexistence between the occupants of units.

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