

Owner's rights not absolute

Must consider effect on others

OWNERSHIP of a home, such as a house or a flat, gives a person certain rights and powers of use and enjoyment over property. A tenant's right of use and enjoyment is temporary – the period of lease allows the tenant to rent the dwelling that belongs to the owner. The tenant also has to pay rental, and may be required to pay other charges if that was part of the agreed terms and conditions.

Should the tenant breach the agreement by being a nuisance to others – and after being warned to desist from such behaviour, continue the nuisance – the owner or landlord can terminate the lease agreement and start eviction proceedings.

The right of use and enjoyment of the dwelling by an owner of a house that is free standing – i.e. built on a separate piece of land – is not temporary, but he or she does not have an absolute right to do as he or she pleases.

An owner or a tenant in a residential neighbourhood can report to the police or health authority the nuisance of loud music or the sound emanating from the use of a compressor. The offended or injured neighbour/ tenant could approach the courts for an interdict that would put an end to the nuisance, and can also institute a delictual claim for damages.

It therefore follows that an owner does not have absolute powers to do as he or she pleases regarding the right to use and enjoyment of the dwelling. But what happens when several owners live next to each other, separated only by the walls of their flats or units?

In a sectional title scheme, each owner has absolute right of ownership over his or her section (i.e. a flat) similar to the ownership rights and powers of a person of a house built on a separate piece of land. Each owner has the right of use and enjoyment over his or her section and mutual rights over common areas.

The right of use and enjoyment of the owner's section is, however, restricted by the rights of the other (co-)owners in terms of common law. There are other restrictions that come about because of other real rights, restrictive conditions in the sectional plan, existing servitudes and restrictions imposed by the Sectional Titles Act.

If all the flats in a block were for residential purposes, as registered in the sectional plan, an owner must get written permission from all the other owners to change its use.

The Sectional Titles Act also places certain obligations; for instance, an owner must maintain and carry out repairs to his or her section and must, upon written permission sought, allow a person reasonable access to inspect, maintain or carry out repairs to communal installations, equipment, etc inside his or her section.