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## LEGAL ISSUES RELATED TO SOLAR PANELS/GEYSERS IN SECTIONAL TITLE SCHEMES

by Lauren Squier - Fri, Apr 26, 2019

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### Introduction

An article released by *The Citizen* on the 3<sup>rd</sup> of April 2019 shows the enormity of the magnitude of the problem we face in South Africa at present. According to *The Citizen*, Eskom is struggling with debt of R420 billion, with very little end in sight, and while government has attempted to alleviate some of this pressure through various “bail-outs” and/or loans, it is apparent that it is just a matter of time before government shifts the entirety of this burden over to the everyday consumer, with electricity prices predicted as increasing in the forthcoming years from 9.42% in 2019 to 8.1% in 2020 and 5.22% in 2021.

The above being said, are planned electricity outages and load shedding something we really have to just grin and bear? It appears not. More and more South Africans (both in full title as well as sectional title schemes) are beginning to see the benefits these energy sources have to offer. Be it a few solar panels here or there, rain water

tanks or upcycling, living partially off the grid has never seemed more desirable than at present.

This article examines the legal framework relating to the installation of solar panels/heating systems in a sectional title scheme with the aim of educating owners intending to purchase such equipment what permissions/consents might be required beforehand, and what the consequences of not obtaining said permissions/consents might be.

**What is renewable energy?** Broadly speaking “renewable energy” refers to energy which comes from a source that cannot be depleted when used, which includes sources such as wind or solar power. Despite its very simplistic definition, as appears from the below, the concept presents far-reaching challenges.

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### Aesthetic differences

Installing solar panels or a solar heating system on the roof of your full title house generally will not have any legal bearing on you as a property owner, however, this is not the case for your sectional title counterparts. This is because sectional title schemes are governed differently to freehold properties. The majority of schemes having special rules in place to promote uniformity within the scheme itself, often which do not permit any deviation that will create aesthetic contrast between the exteriors of units (such

as the different aesthetic effects that different kinds of solar panels might have). Any deviation which is not permitted could warrant the imposition of a fine and could likewise be followed with a request or demand for the panels and/or equipment used to be removed from the property.

A body corporate would be justified in obtaining an enforcement order from the Community Schemes Ombud (CSOS) or a court compelling the removal of offending solar panels/equipment, at the cost of the owner.

In order to avoid running into this kind of difficulty owners should check with their trustees/managing agents before purchasing any renewable/green energy products that need to be installed outside of their units what the procedure is for applying for the requisite consent to erect same, and further what the aesthetic guidelines are for such units/equipment (if guidelines have already been issued).

### **Damage to Common Property**

The Conduct and Management Rules are specifically put in place to provide for the regulation, management, administration, use and/or enjoyment of sections and common property in sectional title schemes. Of special importance here are the Conduct rules as envisaged in **Section 10 (2) (b)** of the Sectional Title Schemes Management Act (“the Act”).

In terms of **PMR 4** of the Prescribed Conduct Rules (which will apply unless the developer or body corporate has amended them to the contrary) a party to a scheme may not without the written consent of the relevant trustees erect anything on the structure forming part of the common property, which in doing so will cause damage to that common property.

Sectional title schemes comprise of common property, owners’ units and exclusive use areas and are managed by the trustees on behalf of a body corporate. The outer part of the roof of a section is defined as common property, and is regulated by the trustees of the body corporate. The roof is not part of the section that the owner buys and is not ‘private property’ in the conventional sense the way the roof of a freehold property would be.

From a practical perspective, there is no doubt that fixing solar panels or a solar heating system to the roof of a sectional title unit will inevitably cause some damage, even if this is mitigated to only drilling into the roof of the property to fasten the bracket which is going to keep the panels in place. An owner fixing solar panels or a solar heating system to the roof of a sectional title unit without consent from the trustees will thus be in breach of **PMR 4**. Even if the owner concerned obtains the requisite consent, section 13 of the Act places the onus on him/her to keep the objects in good order and repair.

**PMR 5** states further that an owner or occupier should refrain from making any external changes to the common property without the required consent, where such changes would detract from the appearance of the common property. This again, reintegrates the idea of uniformity.

### **Fines**

In some schemes, depending on how the rules have been created, fines can be levied against members for non-compliance. Typical examples include the installation of solar panels and solar water heating systems

on the exterior of a section (which is common property) without the prior permission of the trustees. One should bear in mind, however, that the owner in transgression of the conduct rule in question be warned in writing of the transgression and provided an opportunity within which to remedy same. Should the owner still fail to remedy their non-compliance, the trustees must apply their mind to the situation and only once this has been done can a fine be implemented.

In schemes where the conduct rules do not provide for fining, the legal standpoint is that fines simply cannot be implemented, and we suggest that if this practise is occurring that the owner refers the matter to CSOS.

## **Conclusion**

Sources of renewable energy such as solar panels/heating systems are becoming an increasingly popular topic in South Africa. If you are considering utilising this source of energy in a sectional title setting, you should appraise yourself of the necessary consents required before installation and the guidelines (if any) for aesthetic appearances.

Should you find yourself in a situation where you are unaware of the rules applicable to you within your sectional title scheme, or otherwise as to what your rights/obligations are as an owner in your scheme, it is always best to consult an attorney or specialist in the field.

*Written by Lauren Squier and Kyle Venter*