

Can a Body Corporate Ban AirBnB's in a Sectional Title Scheme?

By **Darika Santhia** (Senior Associate),
and **Kiana Naidoo** (Candidate Attorney)

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INTRODUCTION

Short-term rentals through platforms such as Airbnb have become increasingly popular in South Africa. Many property owners use their units to generate additional income. However, owners who live in sectional title schemes often wonder whether their Body Corporate can restrict this type of letting.

LEGISLATIVE FRAMEWORK

Sectional title schemes are governed by the *Sectional Titles Schemes Management Act 8 of 2011 (STSMA)*. In terms of section 10(2) of the STSMA, a Body Corporate may make, amend or repeal management and conduct rules that regulate how owners and residents use their sections and the common property.

Importantly, section 10(3) of the STSMA provides that these rules must be reasonable and apply equally to all owners in the scheme.

PROCEDURAL REQUIREMENTS

If a Body Corporate wishes to substitute, add to, amend or repeal a rule, it must follow the correct legal process, by being approved by the Community Schemes Ombud Service (CSOS).

Section 10(5) of the STSMA requires that any such request must be submitted to the Chief Ombud for approval. The Chief Ombud will consider whether the proposed rule is reasonable and appropriate for the scheme. If the rule is approved, the Chief Ombud issues a certificate confirming the approval, and the rule becomes effective from the date the certificate is issued.¹

In addition, if a scheme wishes to "limit or prohibit Airbnb listings" they must put it to a vote at a meeting of owners.²

BODY CORPORATE OF THE PADDOCK SECTIONAL TITLE SCHEME V NICHOLL 2020 (2) SA 472 (GJ)

The courts have also considered whether short-term rentals can be restricted. In this case, a unit owner rented her property through Airbnb. The Body Corporate introduced a rule prohibiting leases shorter than six months because of concerns about security and disturbances caused by frequent visitors.

The court found that the owner had failed to comply with several of the Body Corporate's conduct rules, including the following:

1. Failing to provide occupants with copies of the scheme's conduct rules.
2. Failing to ensure that her tenants complied with the rules of the scheme.
3. Using the unit for commercial purposes without the written consent of the trustees.
4. Using the unit as a resort facility or bed-and-breakfast type accommodation.
5. Leasing the unit for periods shorter than six months, contrary to the scheme's rules.
6. Failing to provide copies of lease agreements to the managing agent.
7. Failing to inform the managing agent of the names and contact details of tenants, as required under section 13(f) of the STSMA.
8. Failing to introduce tenants to a trustee and ensure that they signed the conduct rules.
9. Allowing the unit to be used as an Airbnb, which could increase the Body Corporate's insurance premiums.³

The High Court upheld the rule and ordered the owner to stop letting the unit for short-term stays.

CONCLUSION

The case confirms that owners in sectional title schemes do not have unlimited freedom to use their property. Where a Body Corporate adopts valid and reasonable rules under section 10 of the STSMA, those rules may lawfully restrict Airbnb-type rentals.

¹*Body Corporate of the Paddock Sectional Title Scheme v Nicholl* 2020 (2) SA 472 (GJ) at para 32

²Supra note 1 at para 33

³Supra note 1 at para 16



Darika Santhia
(Senior Associate)



Kiana Naidoo
(Candidate Attorney)