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September 2015

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ARTICLE BY
ALAN LEVY
Alan Levy Attorneys
Notaries & Conveyancers

Chaos erupts at the Crocodile Creek Sectional Title complex AGM. Mrs Sharp Tooth a fervent youthful owner aged 93 explains "my grandchildren have no where to park when they visit me". Mr Carnivore a personal trainer retorts "that is because your 6 grandchildren all in separate cars visit at once". Mr River Hunter adds "no that is because you have each of your 3 ex-husbands vehicles parked on the common property parking". "SILENCE", THE CHAIRMAN SCREAMS OUT.

Crocodile Creek is a complex comprising 100 sections. Each section is allocated 1 parking which is either a lock up garage or an undercover parking bay as an exclusive use area (EUA) bought and owned by the owner. There are 20 *visitors parking bays* on the common property and 10 *open parking areas* also on the common property. Due to excessive occupancy, residents utilise the *visitors parking* and the *open parking*.

None is left for visitors. Some residents also have 2 vehicles. The number of residents' vehicles total 130. THE CHAIRMAN CONFIDENTLY SAYS WE NEED TO CONSULT ALA".

ALAN'S MEMO EXPLAINS TO THE CHAIRMAN: Before proposing a solution and the various consequences that the Trustees can impose on defiant residents, one must be aware of the following Sections and Rules:

- Section 17 (1) of the Sectional Titles Act (STA) which provides that by unanimous resolution of owners common property may be let out by way of a long term lease.
- Section 38 (j) of the STA which provides that the Trustees shall do all things reasonably necessary for the control and management of the common property.
- Section 44 (d) of the STA which provides that owners shall use the common property in a manner that does not unreasonably interfere with the use by other owners.
- Section 35 (3) of the STA which provides that any rule must be reasonable and must apply equally to all owners.
- Prescribed Management Rule (PMR) 28 (2) which again provides that the Trustees shall do all things reasonably necessary for the control and management of the common property
- PMR 28 (3) which again provides that the Trustees shall do all things reasonably necessary for the enforcement of the Rules.
- Prescribed Conduct Rule (PCR) 3 (1) which provides that no owner or occupier can park a vehicle upon the common property without the consent of the Trustees in writing (*this Rule requires some examination*).

- PCR 3 (2) which provides that Trustees may remove or tow away at the risk and expense of the owner of the vehicle, any vehicle parked, standing or abandoned on the common property without the Trustees consent.

NOW ALAN SAYS LETS CONSIDER THE FOLLOWING.

DEFAULT POSITION – in terms of the STA, PMR and PCR, strictly speaking a resident could take up as many *visitors parking* and *open parking* as he wishes. The only limitation would be that his use could not unreasonably interfere with the use and enjoyment by other owners.

AMENDMENT OF CONDUCT RULES – should the Trustees wish to prevent the above, the Conduct Rules need be amended to provide for example that each resident can at the most take up 1 such extra parking at any given time only for visitors, subject to availability and that such parking cannot be occupied for any period more than for example 18 hours, and can also state the following consequences for infringements and/or that the said extra parking bays can only be taken up by a tenant or owner with the written permission of the Trustees.

FINES – the Conduct Rules can be amended to provide for a spot fine, daily fine or weekly fine for a parking infringement. Such fine must be reasonable so as not to fall foul of the Conventional Penalties Act.

TOWING AWAY OF VEHICLES – in terms of PCR 3 (2) the Trustees may tow away a resident's vehicle parked without their consent. Therefore if the vehicle is parked contrary to the Conduct Rules, the Trustees may have it towed away at the risk and expense of the owner of the vehicle.

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CLAMPING OF VEHICLES – the Conduct Rules may be amended to provide for the clamping of vehicles.

When it comes to towing and clamping it is highly recommended that the parking areas contain visible illuminated signage stating the parking rules and warning of the clamping and towing system.


Such actions should only be carried out as a last resort as such actions can impede a person in genuine need or in an emergency situation and could open the Body Corporate up to potential legal action. Damage can also be caused to the vehicle opening up the Body Corporate to legal action.

From a practical perspective when it comes to clamping and towing it is advisable that for a first offence a notice be placed on the vehicle setting out that a repeated offence will result in the said actions. Upon the clamping or towing a notice should be placed on the vehicle or at the parking advising the owner on how to have the vehicle released and the cost. Provision must be made for the release of the vehicle at any time of the day or night.

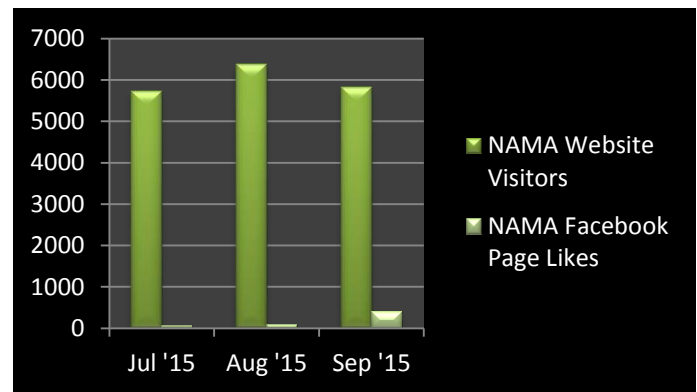
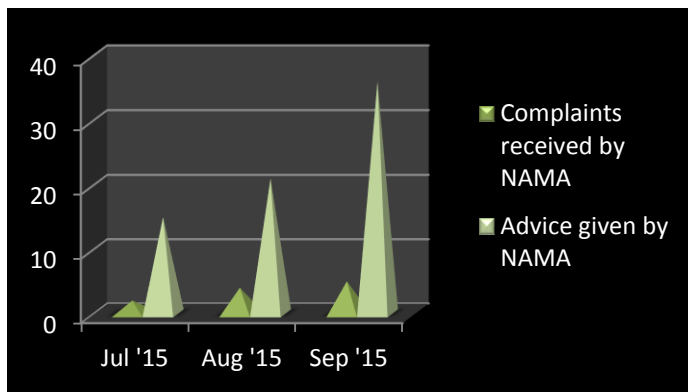
CAN RESIDENTS ACQUIRE ADDITIONAL PARKING – in terms of the above Sections and Rules the common property can be let out to the residents. The Rules can therefore provide for a

process and in what circumstances a resident can apply to let out a common property parking for his sole use.

VISITORS – the Conduct Rules can also provide for example that visitors to the complex not be allowed to park in the complex grounds and that all the common property parking can only be used by residents of the complex or that a resident's visitor may only occupy one bay at any given time for a certain amount of hours.

DISCLAIMER: Always seek advice – The content of this article may be subject to interpretation. 

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Managing Agent Information

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Publisher : NAMA - Lizbé Venter (namanews@nama.org.za)

Contributor to this issue : Alan Levy (alan@alattorneys.co.za)

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